

Levy, Annual Tax, Time to Make—County Commissioners, Powers Of.

Where the rights of taxpayers are not injuriously affected, the Board of County Commissioners may make a tax levy under Sec. 2598, Revised Codes of 1907, at an adjourned meeting.

July 7, 1919.

Mr. A. M. Johnson,
County Clerk and Recorder,
Thompson Falls, Montana.

Dear Sir:

I have your letter of June 7th, in which you request an opinion as to whether or not the County Commissioners of your county may levy the annual tax at a time other than the second Monday in August under the provisions of Section 2598 of the Revised Codes, which reads as follows:

“The Board of County Commissioners of each county *must* on the second Monday in August, fix the rate of county taxes and designate the number of mills on each dollar of valuation of property for each fund, and must levy taxes upon the taxable property of the county.”

As I understand it, your County Commissioners have submitted to the electors of your county the proposition of whether or not they shall be authorized to make a special levy for 1919 under Chapter 160 of the 1919

Session Laws, for the purpose of constructing bridges in your county. This election does not take place until September 2nd, a considerable time after the date provided by Section 2598 as the date on which the county levy should be made.

There is some conflict in the authorities upon the construction of a statutory enactment such as Section 2598 of our Revised Code. While the court decisions of other states are helpful upon such a statute, they are not, however, conclusive as each state has statutes of its own which generally vary with one another. The general rule upon the question of whether or not a county board might make a levy under Section 2598 at a date other than that provided therein, or at an adjourned meeting, depends upon whether or not the rights of tax-payers will be injuriously affected thereby.

In the case of *State Auditor vs. Jackson*, 65 Ala. 150, it is said as follows:

“Provisions of this character are not usually regarded as mandatory, unless accompanied by negative words, importing that the act required shall not be done in any other manner or time than that designated. But, when the requisitions prescribed are intended for the protection of the citizen, and to prevent a sacrifice of his property, and by a disregard of which his rights might be, and generally would be, injuriously affected, they are not directory, but mandatory. They must be followed, or the acts done will be invalid. The power of the officer, in all such cases, is limited by the measure and conditions prescribed for its exercise.”

While there are some states which place a different construction upon such a statute as the one under consideration, yet the reasoning in the Alabama case above referred to appeals to me as being sound. In the case which you have submitted it does not readily appear where the rights of any tax-payer would be injuriously affected if the levy was made at a date later than the second Monday in August of 1919. In this connection it must be taken into consideration that the question of a levy is merely a matter of mathematics. The constitution and the statutory enactments prescribe the limitation within which the levy must be placed. Section 2572 provides that the Board of County Commissioners must meet on the third Monday of July in each year to examine the assessment books and equalize the assessment of property in the county. It is provided that it must continue in session for that purpose until the business of equalization is disposed of, but not later than the second Monday in August. It is provided by other parts of our Code that when the Board of County Commissioners sits as a board of equalization it may examine witnesses to inform it upon the work in which it is engaged and further that people may appear before it on their own initiative and give them such information and facts as would induce the Commissioners to reduce the valuation upon particular property or raise the valuation upon other property. From a complete reading of our Code upon the matter of taxation it appears that when the equalization has been completed the question of making a levy on the second Monday of August as has been heretofore indicated is merely a mathematical process, and so long as the Commissioners confine themselves to the constitutional and statutory limits as to amounts, and

further, so long as the mathematical principle will show that the levy is warranted by the requirements of the county as based on the valuation of property which has been determined by the board as a board of equalization, no person can be injuriously affected by a levy whether it is made within the period of the fiscal year. Section 2594 of the Code provides that the fiscal year for state and county taxes commences on the first day of December of each year and ends on the last day of November of the succeeding year.

It is further a rule that unless expressly prohibited by some statutory enactment a county board when it is required to meet at a certain date, has the inherent power of adjourning from time to time and transacting business at such adjourned meetings. The case of *Bower vs. People*, 220 Ill. 93, 77 N. E. 91, contains a good discussion upon this proposition and cites many authorities sustaining its contention. The Supreme Court of Illinois in the case cited holds as follows:

"In the absence of any express provisions to the contrary when a county board is once lawfully convened, it may adjourn or take a recess to a subsequent day, or from day to day until the business before it is finished. Ordinarily any business may be transacted at an adjourned meeting which might have been transacted at the meeting of which it is a continuation."

In this connection we must further take into consideration Section 2732 of the Revised Codes which reads as follows:

"No assessment or act relating to assessment or collection of taxes is illegal on account of informality, nor because the same was not completed within the time required by law."

Under this section I am of the opinion that the Board of County Commissioners may meet on the second Monday in August for the purpose of levying taxes and adjourn from time to time to complete their levy even though the adjournment occurs at a date after September 2nd, but prior to the first day of December.

Under the circumstances as they arise in your particular case, I would suggest that the Board of County Commissioners meet on the second Monday in August and levy their general taxes required by the county for 1919, and separately make a special levy for bridge purposes conditioned upon the fact that this special levy shall be ratified by the election to be held on the second day of September, 1919. The minutes of your Board should then show that it adjourned its meeting until a date after September 2nd, and when the date of the September meeting arrives the Board should meet and have its minutes show that it ratifies the special levy made on the second Monday in August if the election is favorable to such proceedings. If the special levy is not carried at the September election then, of course, the Board should annul the special levy which it undertook to make at the August meeting. Such action on the part of the Board of County Commissioners would undoubtedly be valid upon the question of the general levy as well as upon the question of the special levy.

Respectfully,

S. C. FORD,

Attorney General.