County Assessor, Duty of—Assessed Valuation, Statement of for County Superintendent of Schools—School Districts, Assessed Valuation of, Not to be Funished.

It is not the duty of the county assessor to furnish the county superintendent of schools with a statement of the assessed valuation of each school district.

June 18, 1920.

State Board of Equalization,
Helena, Montana.

Gentlemen:

You have submitted to me a copy of an opinion rendered the county assessor of Musselshell County by Mr. V. D. Dusenberry, County Attorney of such County, holding that it is the duty of the county assessor to make a report to the county superintendent of schools of his county on or before August 20th in each year, giving the assessed valuation of the several school districts of the county, and requesting that I advise you as to the correctness of this opinion.

I cannot concur in this opinion as I believe that Mr. Dusenberry has failed to take into consideration several matters which materially affect the question.

Section 2011 of Chapter 76, Session Laws of 1913, provides that the county assessor in each county shall make a report to the county superintendent of schools within his county on or before the 20th day of August in each year, giving the assessed valuation of the several school districts of the county for that year, but it is very evident that whoever framed this section overlooked entirely certain provisions of the statutes, which render it absolutely impossible for the county assessor to comply with the provisions of such section. In the first place, when this section was enacted the county assessor assessed all property except that of railroads operated in more than one county, the property of such railroads being required to be assessed by the State Board of Equalization by Section 16 of Article 12 of the Constitution, while at the present time not only the property of all railroads operated in more than one county, but also all electric light, electric power, telephone and telegraph lines, canals, and similar properties operated in more than one county are required to be assessed by the State Board of Equalization, (Subdivision 5 of Section 1, Chapter 48, Session Laws of 1919), the assessment being made between the 5th Monday in July and the 3rd Monday in August (Section 6, Chapter 49, Session Laws of 1919), such assessment being apportioned by the State Board of Equaliation and transmitted to the several counties not later than the 4th Monday in August (Sec. 7, Chapter 49, Laws of 1919). After the State Board of Equalization has transmitted the apportionment to each county, the board of county commissioners apportions the county assessment between the several school districts on the 2nd Monday in September, (Sec. 8, Chapter 49, Session Laws 1919), and after the county board has made this apportionment the county clerk must enter the assessments in the assessment books. Second, for the purpose of equalizing taxes, and making changes and corrections in assessments made by the county assessors and county boards of equalization the State Board of Equalization meets on the 3rd Monday in July and remains in session until the 4th Monday in August, and later if the business of the board requires (Subdivision 7 of Section 1 of Chapter 48, Session Laws of 1919), and after it has completed its work the secretary of the board must transmit to each county clerk a statement of the changes made by the state board in the assessment books of the county, or any assessment contained therein, (Section 3, Chapter 48, Session Laws of 1919), and the county clerk must enter such changes and corrections in the assessment books (Section 2607, Revised Codes). It will, therefore, be seen that the assessment is not completed until after the date when Section 2011 of Chapter 76, Session Laws of 1913, requires the county assessor to furnish the statement to the county superintendent of schools, and that if the assessor attempted to comply with the requiremens of such section his statement could not possibly show the full assessed valuation but could only show a portion of such assessed valuation.

Again, the county assessor must complete his assessment books, that is, he must assess and enter in the assessment books all property which he is required to assess, with the valuation thereof, not later than the second Monday in July, and as soon as completed he must deliver the assessment book to the county clerk (Sections 2545 and 2547, Revised Codes), and the assessment books then remain in the possession of the county clerk until he has computed and entered the taxes, which must be not later than the first Monday in October, when he must deliver the assessment book to the county treasurer (Section 2609, Revised Codes,) who thereafter retains possession of it. So, it will be seen, Section 2011 of Chapter 75, Session Laws of 1913, attempts to require the county assessor to furnish a statement from the assessment books, which have passed from his possession, and over which he has no control whatever and before all property has been entered in the assessment book.

Again, at the time of the enactment of Section 2011 of Chapter 76, Session Laws of 1913, Section 2002 was enacted as a part of said Chapter 76, said Section 2002 providing for a special school tax, and requiring the board of school trustees to fix the number of mills necessary to be levied and to certify the same to the board of county commissioners, which board then must make the levy. Of course, in order to determine the number of mills necessary to be levied it was absolutely necessary for the board of trustees to know the assessed valuation of the property in the district, otherwise it would be impossible for them to determine such number of mills. However, Section 2002 was amended by Section 32, Chapter 196, Session Laws 1919, so that at this time the board of school trustees, instead of fixing the number of mills necessary to be levied, simply ascertain and determine the amount of money needed in the district, over and above the amount apportioned to the district by the county superintendent, and certify such amount to the board of county commissioners which board then fixes the number of mills of the levy, so that it is apparent that it would not aid or assist the board of county school trustees in any way to know the assessed valuation of the property in the school district. There is but the one question with which they are concerned, namely, the amount of money they must raise by the special school tax, the question of the number of mills necessary to be levied to raise this amount being solely a question for the board of county commissioners. When the board of county commissioners has received from the trustees of the school district a certificate showing the amount of money necessary to be raised by the special school tax, then it is for the board to determine the number of mills which will produce this amount, and in order to determine the number of mills the board of county commissioners must then be advised regarding the assessed valuation of property within the district. It is therefore apparent that before fixing the levy the board of county commissioners must receive from some officer a statement showing the assessed valuation of property in each school district. A statement from the county assessor made at the time he delivers the assessment book to the county clerk will not be sufficient for that statement will not include the assessments made by the State Board of

Equalization and apportioned to the county by that board and opportioned by the board of county commissioners to the several school districts, therefore, will not show the full assessed valuation of all property in the several districts. Again, under Chapter 51, Session Laws of 1919, property is classified, taxes being computed on different percentages for the different classes. This chapter has nothing whatever to do with the assessment of property by the county assessor, as his sole duty is to enter the property on the assessment book at its full and true value, but when the assessment book is received from the assessor by the county clerk he then computes the taxes on the percentages fixed by Chapter 51, (Hilger v. Moore, 56 Mont. 146; 182 Pac. 477). If the assessor should, therefore, attempt to give either the county commissioners a statement showing the assessed valuation of property in the several school districts such statement would show only the full and true value of all the property in the district assessed by the county assessor, would not show the value of the property assessed by the State Board of Equalization, and would not show the percentages thereof on which taxes would be computed, so could not in any manner whatever serve or aid either the school trustees in determining the amount of money necessary to be raised by the special tax, or the board of county commissioners in fixing the number of mills on the tax. As a matter of fact any statement or report furnished the county superintendent of schools can serve but one purpose, viz, it will enable the county superintendent of schools to advise the trustees of the several school districts regarding the amount of indebtedness which must be incurred, but if this statement or report should be furnished by the assessor it would have to be furnished while the assessment book was in his possession and this would be before the assessments made by the State Board of Equalization had been entered on the assessment book, hence the statement would not even serve that purpose.

As a matter of fact, the earliest date when such a report or statement can be furnished the county superintendent of schools, which will show the assessed valuation of all property in the several school districts, is immediately after the county clerk has entered in the assessment book the assessments made by the State Board of Equalization as apportioned by that board and by the board of county commissioners, at which date the assessment book is in his possession, the duties of the county assessor in connection therewith having terminated long prior thereto.

In order for the board of county commissioners to fix the number of mills of the special school tax, after the school trustees have certified to the board of commissioners the amount necessary to be raised by such tax, it is absolutely necessary for the board of county commissioners to know the assessed valuation in each school district, and the only officer who is in a position to furnish the board of commissioners with this information is the county clerk, who must take the same from the assessment book after he has entered therein the assessments made by the state board of equaliaztion and apportioned to the county, and the changes and corrections made by the state board in such assessment book and the assessments contained therein, and when

he takes off this information for the board of county commissioners he can, at the same time, furnish a copy thereof to the county superintendent, who will then be in a position to advise each school district of the amount of indebtedness which can be lawfully incurred.

In Missouri the income tax law provides that when taxes have been paid on personal property the receipts received therefor may be exhibited to the *assessor* in payment of the tax. Under other provisions of the income tax law the assessment books for that tax were required to be completed and delivered over to the *collector* long before taxes on personal property can be paid, and the collector is required to collect the income tax, so to exhibit the personal property tax receipts to the assessor, who has nothing whatever to do with the collection of the income tax would amount to nothing. Construing this provision the supreme court of Missouri held that the word "assessor" should be read "collector" and that the personal property tax receipts should be exhibited to the "collector" and not to the "assessor" in payment of the income tax, saying:

> "Under the general law * * * pertaining to the assessment and collection of taxes due and payable in any given year on real and personal property, the tax books are not required to be delivered into the hands of the collector until long after March 1st of each year, the date upon which the assessor is required to forthwith certify his income tax assessment lists to the proper officials."
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> "It is therefore evident that a person or corporation against whom an income tax is assessed in any given year could not possibly procure a tax receipt for his real and personal taxes due and payable in that year in time to exhibit the same to the assessor before the assessor's duties in connection with such assessed income tax had entirely terminated."
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> "To whom did the General Assembly intend such tax receipts should be exhibited? To the collector, who, from the time such tax receipts could first possibly come into existence, was the only official authoried by law to collect such income taxes, or to the assessor, who at such time had nothing whatever to do with the assessment or the collection of said income taxes?"
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> "To hold that the General Assembly intended that the tax receipts should be exhibited to the assessor would be to hold that 'it intended to enact an absurd law incapable of being intelligently enforced.' The presumption is that the eneral Assembly did not intend to enact an absurd law. * * * "
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> "When the entire act is read and considered in the light of the entire scheme of revenue assessment and collection, we are satisfied that it was the intention of the eneral Assembly that such receipts should be exhibited to the collector whose duty it is to collect the income tax, and that the word 'assessor' in section 32 of the act, is the result of a clerical error, and should

be construed to read 'collector' in harmony with the true legislative intent. The correct rule here applicable is stated in 36 Cyc. 1126, as follows:

"'Here verbal inaccuracies or clerical errors in statutes in the use of words or numbers, or in grammar, spelling, or punctuation, will be corrected by the court whenever necessary to carry out the intention of the Legislature as gathered from the entire act.'"

I am, therefore, of the opinion that it is not the duty of the county assessor to furnish the county superintendent of schools with a statemnet showing the assessed valuation of each school district, but that the word "assessor", used in Section 2011 of Chapter 76, Session Laws 1913, should read "county clerk," and that under such section it is the duty of the county clerk, after he has entered in the assessment book the assessments made by the State Board of Equalization, as apportioned by the board of county commissioners, and the changes and corrections made in the assessment book by the state board of equalization, to furnish to the county superintendent of schools a statement showing the assessed valuation of each school district, and that the county clerk may perform this duty by furnishing to the county superintendent of schools a copy of the statement showing the assessed valuations of the school districts which it is necessary for him to furnish the board of county commissioners in order to enable such board to fix the levy for special school tax in each school district.

Truly yours,

S. C. FORD,

Attorney General.