

**Assessment — County Board of Equalization—County Commissioners—Classification—Equalization—Lands.**

The County Assessor may make a recommendation to the Board of County Commissioners for a change in classification and the Board of County Commissioners may consider such application or recommendation at any meeting of the Board in all cases where no assessment has been made, and, in cases where assessment has been made, the County Commissioners may change the classification so as to affect the assessment only at a meeting of the Board as a Board of Equalization.

The Board of County Commissioners may meet as a Board of Equalization only at the times specified in the statute.

The County Assessor may not classify or reclassify lands, but must assess them as classified by the Board of County Commissioners.

W. S. Towner, Esq.,  
County Attorney,  
Fort Benton, Montana.

My dear Mr. Towner:

You have requested an opinion upon the reclassification of lands.

The specific questions you ask, after referring to several opinions of this office, are:

"1. Should the Assessor make a recommendation to the Board of County Commissioners for the change of this classification, may the County Commissioners consider such application or recommendation at any meeting of the Board? In other words, may the County Commissioners convene as a Board of Equalization at any time, or are they confined to their meetings within the time prescribed by law for the sitting of the board as a Board of Equalization?"

"2. Do you now hold that the Assessor may classify or reclassify?"

In Vol. 9, Opinions of Attorney General, page 258, you will find an opinion discussing at some length the right to reclassify lands after the Board of Equalization has adjourned. The specific question discussed is the power of the Board to reclassify land so as to relate back and affect the assessment for that year. It is there held that the Board may not, after adjournment as a Board of Equalization, change the classification of land found to be incorrectly classified so as to change the assessment for that year, and may not refund any excess taxes collected by virtue of such incorrect classification. This opinion, however, does not cover the particular point which you have raised in your questions.

In this opinion on page 260 appears the following:

“Reading all of the provisions of the statute relating to the assessment of property and the classification of lands for the purpose of furnishing a basis of assessment together, it is apparent that the Legislature intended that the classification of the land should be completed prior to the second Monday in July, with the right, however, in the Board of County Commissioners to change the classification under Section 8 of Chapter 239 of the 1921 Laws.”

That is, after the assessment has been made, it can be changed only by the Commissioners sitting as a Board of Equalization, but this would not prevent the Board of County Commissioners from at any time changing a classification so as to affect only future assessments.

I can find nothing in the law that would prevent the Board of County Commissioners from, at any time, changing the classification of land where the classification did not affect an assessment already made. The intent and purpose of the Classification Act was to place in the hands of the Board of County Commissioners the power to make proper classification and necessary changes in the classification when the facts warrant their doing so, and there is no reason why a change of classification could be made only by the Board of County Commissioners while sitting as a Board of Equalization, except where the assessment had already been made upon land and was made for the purpose of affecting the immediate assessment.

In answer to your first question, it is, therefore, my opinion that the County Assessor may make a recommendation to the Board of County Commissioners for a change in classification and that the Board of County Commissioners may consider such application or recommendation at any meeting of the Board in all cases where no assessment has been made, and, in cases where assessment has been made, that the County Commissioners may change the classification so as to affect the assessment only at a meeting of the Board as a Board of Equalization, and that the Board may meet as a Board of Equalization only at the times specified in the statute.

Answering your second question, it is my opinion that the County Assessor may not classify or reclassify lands, but must assess them as classified by the Board of County Commissioners.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.