

**Counties—Classification—County Commissioners.**

The board of county commissioners, when determining the class of county, must use the assessment of the current year and not that of a previous year.

C. E. Bracewell, Esq.,  
County Clerk and Recorder,  
Columbus, Montana.

December 16, 1924.

My dear Mr. Bracewell:

Your letter was received in which you state that at the regular September meeting of the board of county commissioners of Stillwater county the board proceeded to determine the classification of said county, as required by section 4742, R. C. M. 1921; that in so doing the board used the 1924 assessment of property required to be assessed by the county assessor, but that as to property within the county, which is, by law, required to be assessed by the state board of equalization, had not received the assessment from said board and therefore used the value as fixed by it for the year 1923; that in this manner the board found that the taxable value of the property in said county exceeded by \$103,600 the amount required to constitute the county a county of the sixth class, and the board classified the county in that class; that on or about the 20th of November, 1924, the board received the assessment of the property within the county fixed by the tax commission, which showed a reduction of approximately \$120,000 from that of 1923, or sufficient to reduce the taxable value of all property within the county to less than that required by law to constitute a county of the sixth class.

Upon this state of facts you inquire whether Stillwater county is a county of the sixth or seventh class.

Section 4742, R. C. M. 1921, above adverted to, provides as follows:

"The several boards of county commissioners must, at their regular session in September, 1906, make an order designating

the class to which such county belongs, as determined by the assessed valuation of such county for the year 1906, under the provisions of this act, and in each even numbered year thereafter: provided, that such classification shall not change the government of the county then in existence until the first Monday in January next succeeding."

Under this statute the board must determine the classification in every even numbered year, using the valuation of all property in the county as assessed for that year. This authority is purely statutory. The board had no right to use a valuation for any part of the property in performing this statutory duty other than that specified in the statute, which is that for the year 1924. For a part of the property the board used the valuation for 1923. This was contrary to the statute, because (1) it was not for the year in which the classification was made, and (2) it is not an even numbered year. As the board did not pursue the terms of the statute, from which it derived its authority, its determination that the county was in the sixth class is without authority of law.

It is obvious that the board could not make the classification at its September meeting without having available the 1924 assessment of all the property in the county. It endeavored to perform its duty, but could not for reasons over which it had no control. The result is no legal classification has been made. The duty must be performed and inasmuch as mandamus would lie to compel its performance the board has the right and the duty to perform it now even though it should have been done at its regular September meeting.

It is, therefore, my opinion that the board should proceed to determine the classification of the county, using the 1924 valuation of all property within the county in doing so, and when it has arrived at the proper classification, to make an order designating the class to which the county belongs.

Very truly yours,

L. A. FOOT,  
Attorney General.