

Opinion No. 21**Taxation—Assessment—Valuation.**

HELD: It is not lawful for an assessor, board of county commissioners, or any other tax levying agency to levy taxes on any land or improvements in excess of the "true and full valuation," which means the amount at which the property would be taken in payment of a just debt from a solvent debtor.

January 14, 1933.

You have requested my opinion as to the value to be placed upon agricultural lands for the purpose of taxation.

The term "true and full value" as used in the statute for assessment is used in the same sense in which it is used by people generally. In the case of *James et al. v. Speer*, 69 Mont. 100, the Supreme Court has defined value as follows: "When applied to property, and no qualification is expressed or implied, 'value' means the price which the property could command in the market * * *, 'By (value), in common parlance, is meant (market value) which is no other than the fair value of property as between one desiring to purchase and another desiring to sell, and the words (value) and (market value) are often used interchangeably, and both as being the equivalent of (actual value) and (salable value)' *Hetland v. Bilstad*, 140 Iowa, 411, 118 N. W. 422."

It is not lawful for an assessor, a board of county commissioners, or any other tax levying agency, to levy taxes on any land or improvements in excess of the true and full valuation. This term has been construed by the Supreme Court of this state in the case of *State ex rel. Schoonover v. Stewart*, 89 Mont. 257. "Section 2001, Revised Codes, 1921, provides that all taxable property must be assessed at its full cash value. This section has not been

changed since its enactment * * * ; and its mandate is the law today. * * * The terms 'value' and 'full cash value' mean the amount at which the property would be taken in payment of a just debt due from a solvent debtor (Sec. 1996, subd. 5, Revised Codes 1921)." Page 270.

Speaking of the classification law the court says: "We agree with the Attorney General that the only purpose of the classification prescribed in Sections 2034 et seq. is to determine relative values. The classification is merely a grouping of lands according to the purposes for which they are valuable, but the full cash value of them does not in any manner emanate from the classification but on the contrary can only be fixed by the judgment of the taxing officers. Whatever the character of the land it must still be assessed on a uniform basis, namely: its full cash value." Page 273.

The purchase price of land does not necessarily control as in a specific case a person may have purchased land at a lesser or greater value than the actual value thereof. Certainly no assessor or other taxing agency is entitled to fix the true and full value of lands and improvements in the locality where they are situate. Bona fide sales and transfers of land of the same quality and equal value certainly determine the actual value of land in a given community. The specific instances of sales cited in your letter do not necessarily prove the actual value. There certainly is, however, a commonly understood and recognized value in a community for lands of a certain class and an assessment of such lands at a value greatly in excess of that price would certainly be contrary to law.

It has been held by the Supreme Court of Montana in a decision rendered November 5th, 1932, that a complaint stating that lands were grossly over-valued, and it appearing that such overvaluation is so gross an error as to be inconsistent with any exercise of honest judgment, states a cause of action and in such case the courts will set aside the assessment. *Johnson v. Johnson*, 92 Mont. 512, 15 Pac. (2d) 842.