

Opinion No. 214

**County Commissioners—Poor Tax—
Road Tax—Cancellation—Refund
—County Board of Equalization.**

HELD: The power of the board of county commissioners to refund taxes illegally or erroneously collected, or to order the cancellation of illegal special poor and road assessments is independent of the powers of the board sitting as a county board of equalization and may be exercised at any time.

May 20, 1933.

You have submitted the following questions:

"1. Does the board of county commissioners have the power and authority to order cancellations of special poor and road assessments for the current year (1933) that are legally exempt from such assessment at this time, or can such cancellations only be made when the commissioners sit as a board of equalization?"

"2. Does the board of county commissioners have the legal right to refund erroneous collections for 1933 special poor and road tax collections at this time or must such actions be made after the completion of the tax roll?"

Answering your second question first, I call your attention to Section 2222, reading as follows: "Any taxes, per centum, and costs paid more than once or erroneously or illegally collected, may, by order of the board of county commissioners, be refunded by the county treasurer, * * *" The Supreme Court of California in *Hayes v. Los Angeles County*, 33 Pac. 766, in construing a similar statute, held that the word "may" meant "shall"; in other words, that it is the duty of the county commissioners to order the county treasurer to refund taxes illegally collected. In my opinion such refund should be made by the county commissioners whenever demand is made therefor after the illegal or erroneous collection of the tax and such power is not dependent upon the powers of the board of equalization. This would be only equitable and there appears to be no sound reason for waiting until after the completion of the tax roll.

Since it is the duty of the county commissioners to refund taxes illegally collected, they must necessarily have the power to order the cancellation of illegal special poor and road assessments, at any time, as there would be no purpose or equity in collecting illegal taxes and then ordering a refund. This is a duty of the county commissioners. The board of equalization is not concerned with the cancellation of assessments or refunding of taxes illegally collected. That board meets "to examine the assessment book and equalize the assessment of property in the county." (See

Section 2113, R. C. M., 1921.) In the following section as amended by Chapter 187, Laws of 1933, the power of the board of equalization is stated to be: "* * * to increase or lower any assessment contained in the assessment book, so as to equalize the assessment of the property contained therein, and make the assessment conform to the true value of such property in money, * * *."

In none of the sections of the code dealing with the board of equalization is any power given to that board to cancel assessments illegally made, or refund taxes illegally or erroneously collected. These are duties of the board of county commissioners and are not dependent upon the powers of the board of equalization.