

Opinion No. 16.**Counties, Classification of—County Commissioners.**

HELD: For the purpose of classification of a county, the correction of an error in the total taxable valuation of a county will relate back to the time when the correction should properly have been made and will control in the classification of the county.

December 27, 1934.

Mr. Vernon Hoven
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You inquire whether Sheridan County shall stand classified during the

year 1935, as a sixth or a seventh class county.

All counties having a taxable valuation of less than \$5,000,000, are seventh class counties and all counties having a taxable valuation of more than \$5,000,000, and less than \$10,000,000, are sixth class counties. (Section 4741, R. C. M. 1921.) The classification of a county for the ensuing two years is to be determined at the September meeting of the county commissioners of the county in each even-numbered year. (Section 4742, R. C. M. 1921.)

According to the facts submitted it appears that at the time of the September meeting the assessed valuation of Sheridan County was some \$3,000 less than \$5,000,000. The county had previously been a sixth class county. No re-classification was made at such September meeting and thereafter considerable property erroneously omitted from the assessment roll in 1934, was added to such assessment roll in order to properly assess the property of said county. At the December meeting of the board of county commissioners, after adding to the assessment roll this property which had been previously wrongly omitted, the total valuation of the county was over \$5,000,000.

The question, therefore, is: should the classification be made in accordance with the figures as they existed at the time of the September meeting or should there be included therein those items of property which had been previously wrongly omitted and were later assessed in order to correct such omission and which appeared on the assessment roll at the time of the December meeting and should have appeared at the time of the September meeting?

The Classification Law of the State of Montana has existed in a somewhat different form for many years. In the year 1892 the assessed valuation of Yellowstone County was \$3,800,000. On October 15, 1892, a portion of the Crow Indian Reservation became a part of Yellowstone County. Although this property in the Crow Indian Reservation had been assessed in Custer County in the year 1892, by adding the assessed value of same to the valuation of Yellowstone County the ag-

gregate valuation amounted to more than \$4,000,000. At that time the law required that a second class county must have an assessed valuation of over \$4,000,000. It was held by the Supreme Court of this State that Yellowstone County was a second class county and that the assessed valuation of the portion previously assessed in Custer County might be proved by the records of Custer County. (State ex rel Herford v. Cook, 14 Mont. 201.)

In another case the classification of a county was questioned on the ground that certain items of property assessed were improperly included. The Court investigated that matter to determine whether or not an error had been made and sustained the county commissioners in their conclusion as to the classification of the county. (State ex rel. Hauswald v. Ellis, 52 Mont. 505.)

It therefore appears that the courts may inquire into the validity of the action of the county commissioners in determining the classification of a county. From this we may conclude that if it appeared that the county commissioners had either by erroneous calculations, omissions or inclusions improperly determined the classification of a county, same would be corrected by the courts.

There remains one question to be determined, i. e., does the power to correct errors in the classification of a county include the right to correct the total of the assessed valuation by adding thereto property erroneously omitted therefrom and not discovered or assessed until after the September meeting of the board of county commissioners?

The fact that the assessment roll at the time of the September meeting of the county commissioners failed to show an assessed valuation of \$5,000,000 was not due to any error upon the part of the county commissioners. So far as the record before them went, it appeared that the assessed valuation of the county warranted the classification of the same only as a seventh class county. Facts which subsequently developed showed that the assessment roll at the time of the September meeting, if all property had been properly assessed, would have exceeded the \$5,000,000.

It appears that the effect of an error is the same whether it was an error of the county commissioners or of some other person or persons, and that upon the discovery of such error and the correction of the assessment roll such correction would relate back to the time when same should have been properly made. Therefore, the correction of these errors shows that the assessment roll should have exceeded \$5,000,000 at the time of the September meeting. The two cases cited heretofore, carried to their logical conclusion, appear to require the decision that the county should be classified for the next ensuing two years as a sixth class county.