

tion for a reduction in valuation, and that he has not paid the taxes under protest. The tax is now delinquent, and the taxpayer has offered to pay the sum of \$74.80.

Through an inadvertent error a taxpayer will be required to pay ten times the tax he should rightfully pay. It must be conceded that if it can be avoided, a taxpayer should not be required to pay such an unjust tax. Can such an obvious mistake be corrected?

Payment under protest, followed by an action to recover as provided by Section 2269, amended by Chapter 142, Laws of 1925, is not an available remedy in the circumstances for the reason (1) that delinquent taxes may not be paid under protest, and (2) the levy is not unlawful. (See our opinion to Oscar C. Hauge, dated May 15, 1935, Vol. 16, Report and Official Opinions of the Attorney General, No. 102.)

Section 2222, Revised Codes 1921, provides: "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, \* \* \*."

Since the tax has not been paid, of course, nothing can be refunded. This office, however, has held that 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 assessments at any time, as there would be no purpose or equity in collecting illegal taxes and then ordering a refund as provided by said Section 2222. (See our opinion to Bertha Lorentz, County Auditor, Great Falls, May 20, 1933, Vol. 15, Report and Official Opinions of the Attorney General, No. 214, and our opinion to H. H. Longenecker, March 23, 1935, Vol. 16, Report and Official Opinions of the Attorney General, No. 66.)

The question arises whether the taxpayer should not have applied to the county commissioners sitting as a Board of Equalization and have had the valuation corrected and, having failed to do so, whether the Board of County Commissioners, as such, may make the correction. It is true, the

#### Opinion No. 218.

##### Taxation—Assessment, Errors In— Corrections—County Commissioners— County Assessor.

HELD: It appearing that an error was made in an assessment for taxes, the board of county commissioners may order a correction of the records so as to show the correct tax due.

December 26, 1935.

Mr. Homer A. Hoover  
County Attorney  
Circle, Montana

You have asked my opinion as to whether the Board of County Commissioners have power to refund taxes paid where it appears that a taxpayer made a mistake in filling out the assessment sheet for 1934 and listed his personal property as worth \$5,000 instead of \$500, the true value thereof. As a result, the taxes for that year are \$237.18, whereas they should have been \$74.80. You advise that the taxpayer did not make application to the Board of Equaliza-

board of equalization meets to equalize the assessment of property (Section 2113, R. C.), and it sits for a limited time for this purpose. While the board of equalization has the broad power to equalize assessments, special power, however, has been given to the board of county commissioners by Section 2222 to correct errors in taxation by ordering a refund of taxes paid. Such special power given to the board of county commissioners is not dependent upon the general powers given to the board of equalization, and it may be exercised at any time. If the board may correct errors in taxation by a refund, I see no good reason why it may not make such correction in the first instance as would make the refund unnecessary.

I am, therefore, of the opinion that the board of county commissioners may order a correction of the records so as to show the correct tax due, it appearing that an error was made in the assessment.