

No. 2

COUNTY COMMISSIONERS — TAXES — TAX REFUNDS

Held: Where erroneous assessment for taxes was made, the Board of County Commissioners may order a correction of the records to show the true tax due.

January 10, 1941.

Mr. Bert W. Kronmiller
County Attorney
Big Horn County
Hardin, Montana

Dear Mr. Kronmiller:

Your letter of January 6, 1941, has been received in which you ask my opinion as to whether the Board of County Commissioners has the power to correct an erroneous assessment, where, through inadvertent error, the assessment was set at \$500.00, when the correct assessed value should have been set at \$80.00.

Section 2222, Revised Codes of Montana, 1935, as amended by Chapter 201, Session Laws of 1939, provides:

“Any taxes, percentum and costs, heretofore or hereafter, 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, in the instant case, 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 or erroneous assessments at any time, as there would be no purpose or equity in collecting illegal taxes and then order a refund, as provided by said Section 2222. (See our opinion to Bertha Lorentz, County Auditor, May 20, 1933, Vol. 15, Report and Official Opinions of the Attorney General, No. 214.)

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, as amended, 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. As the Board may correct errors in taxation by a refund, it necessarily has the power to make such corrections in the first instance as would make the refund unnecessary.

I am, therefore, of the opinion that the Board of County Commissioners has the power to order a correction of the records so as to show the correct tax due, it appearing that an error was made in the assessment.

Very truly yours,

JOHN W. BONNER
Attorney General