

**Opinion No. 69.**

**Taxation—Levy, omitted by inadvertence—County Assessor—Board of County Commissioners.**

**Held:** The board of county commissioners may make a levy, which was omitted through inadvertence, as in this case, after the second Monday in August, if the levy is made prior to the second Monday in October and before the county assessor has delivered the completed assessment book to the county clerk.

September 20, 1945.

Mr. Ray Alexander, Chairman  
Board of County Commissioners  
Golden Valley County  
Ryegate, Montana

Dear Mr. Alexander:

You have requested my opinion concerning the following facts:

A high school district in Golden Valley County voted an extra five mill levy for high school purposes. The anticipated amount from the levy is \$2,000.00 and the high school budget included this amount. The budget was duly approved by the board of budget supervisors, but the county commissioners through inadvertence failed to make the levy.

Section 2150, Revised Codes of Montana, 1935, provides:

"The board of county commissioners of each county must, on the second Monday in August, fix the rate of county taxes and designate the number of mills on each dollar of valuation of property for each fund, and must levy taxes upon the taxable property of the county."

The above quoted statute is one of the steps in the orderly procedure of the assessment, levy and collection of taxes and the date is fixed by the section so as to permit ample time for the subsequent steps in taxation. However, if a levy such as is here under consideration, which was omitted through inadvertence, is made after the second Monday in August, and before any taxes are collected and before the rights of any taxpayer have been injured, it

would not appear to be a material matter.

In *Tallon v. Vindicator Consolidated Gold Mining Co.*, 59 Colo, 316, 149 Pac. 108, the Colorado court said:

"The time for fixing the levy, and delivering the tax warrant to the treasurer, are not for the purpose of giving the taxpayer notice, or a hearing, and are of no concern or importance to him, so far as the time for doing the acts are concerned." (See also 61 C. J. 564; *Baker v. Paxton*, 29 Wyo. 500, 215 Pac. 257; Volume 1, page 259, and Opinion No. 153, page 253, Volume 18, Report and Official Opinions of the Attorney General.)

Under the provisions of Section 1222, Revised Codes of Montana, 1935, it is mandatory for the board of county commissioners to make the special levy which has been authorized by the electors of a school district at a special election, and which was approved by the board of budget supervisors.

Section 2160, Revised Codes of Montana, 1935, as amended by Chapter 167, Laws of 1943, provides that the county assessor must compute the amount of taxes due on all property listed in the assessment book "and shall on or before the second Monday of October deliver the completed assessment book to the county clerk."

Section 2163, Revised Codes of Montana, 1935, as amended by Chapter 167, Laws of 1943, provides:

"On or before the third Monday of October, the county clerk must charge the treasurer with the full amount of taxes levied and deliver the original assessment book to the county treasurer."

Section 2169, Revised Codes of Montana, 1935, makes it the duty of the county treasurer to publish, within ten days after the receipt of the assessment book, a notice stating when taxes should be paid and other specified facts concerning the payment of taxes.

While it would cause some confusion and perhaps a hardship on the county assessor to make new computations after starting on such duties, yet he would have the power to do so and no taxpayer could complain. After the county assessor has delivered the completed assessment book to the county

clerk, the book would be out of his jurisdiction and as the assessor is the one who computes the taxes, it would seem that new computations based on the omitted levy could not be made.

Under the facts as here considered, it is my opinion that the board of county commissioners may make a levy, which was omitted through inadvertence, as in this case, after the second Monday in August, if the levy is made prior to the second Monday in October and before the county assessor has delivered the completed assessment book to the county clerk.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General