

Opinion No. 11

**Taxation—County Commissioners
—Statutes—Cancellation of Certain
Delinquent Taxes on Personal Property
Not A Lien on Real Estate.**

Held: When the county treasurer pursuant to Chapter 44, Laws of 1949, has submitted to the board of county commissioners a list of personal property taxes which are not a lien on real estate and which have been delinquent for ten years or more it is mandatory that the board of county commissioners make its order cancelling all such personal property taxes contained in such list, as corrected. That the board of county commissioners pursuant to said Chapter 44, does not have the power to cancel some of these personal property taxes and require the county treasurer to attempt to collect others.

April 13, 1951.

Mr. J. M. Watts
County Attorney
Musselshell County
Roundup, Montana

Dear Mr Watts:

You have requested my opinion on the following question:

“When the County Treasurer has submitted to the Board of County Commissioners a list of personal property taxes which are not a lien on real estate and which have been delinquent for ten years or more, is it mandatory that the Board of County Commissioners cancel all such personal property taxes, or may the Board of County Commissioners cancel some and require the County Treasurer to attempt to collect others?”

Prior to December 3, 1948, the Montana Constitution prohibited the cancellation of any personal property taxes. Before this date the applicable Section of the Constitution, Section 39, of Article V, read as follows:

“No obligation or liability of any person, association or corporation, held or owned by the state, or any

municipal corporation therein, shall ever be exchanged, transferred, remitted, released, or postponed, or in any way diminished by the legislative assembly; nor shall such liability or obligation be extinguished, except by the payment thereof into the proper treasury."

The people of Montana, in November, 1948, approved an amendment to the above section of the Constitution, which amendment became effective by virtue of the Governor's proclamation on December 3rd, 1948. This amendment added the following to Section 39, Article V of the Montana Constitution:

"It shall however be lawful for the legislative assembly, in such manner as it may direct, to authorize the cancellation of any personal property taxes which are not a lien on real estate and which have been delinquent for ten (10) years or more.

"It shall also be lawful for the legislative assembly, in such manner as it may direct, to authorize the cancellation of any contractual obligation owed to or held by a county, for seed grain, feed or other relief, the collection of which obligation is barred by the statute of limitations."

Under this new authority the Thirty-first Legislative Assembly enacted Chapter 44, Laws of 1949. Section 1 of this act provides that it shall be the duty of each county treasurer to prepare and submit to the board of county commissioners on or before the first Monday of June in each year, a list of personal property taxes which are not a lien on real estate and which have been delinquent for ten (10) years or more. This same Section further provides that, at the same time the County Treasurer shall prepare a list of all contractual obligations owed to, or held by, the County for seed grain, feed, or other relief, the collection of which is barred by the statute of limitations.

Section 2 of this Chapter 44 reads in part:

"Upon receipt of such list or lists, and within thirty (30) days thereafter, the board of county commissioners shall examine the same and make any necessary corrections. Thereupon the board of county commissioners shall make its order can-

celling all such personal property taxes and contractual obligations contained in such list or lists, as corrected, required by this act to be cancelled, and spread such order upon its minutes." (Emphasis supplied)

There is no all inclusive rule to determine whether a statute is mandatory or merely directory. Many tests may be employed to determine the legislative intent, any one of which may be sufficient. One such test is to look to the terminology. Note that the Legislature used the words "shall" and "required by this act to be cancelled." In this connection the Montana Supreme Court said in *State ex rel. McCabe v. District Court* 106 Mont. 272, 277, 76 Pac. (2d) 634;

"... the synonymous terms 'must' and 'shall' in that connection being generally interpreted as mandatory..."

The Court also said:

"We are reluctant to contravene or construe away terms of a statute which in themselves are mandatory upon their face, except where the intent and purpose of the legislature are plain and unambiguous and clearly signify a contrary construction..."

I see no clear intent on the part of the legislature to take away the mandatory effect of the above quoted words from Chapter 44.

On the precise question of whether the Board of County Commissioners has the discretion under this Chapter 44 to cancel some taxes and not others we have the rules that the courts look to the effect and consequences of the interpretation and may consider whether a construction is equitable or not. In this Chapter there is no guide or rule laid down as to when a tax should not be cancelled. I am of the opinion that the legislature did not intend to give the boards of county commissioners the power to arbitrarily determine that some personal property taxes are cancelled under this law while others are not.

On this latter portion of your question, provisions of the Montana Constitution could be considered, but I feel that this is unnecessary and therefore express no opinion. However, the

Montana Constitutional provisions pertaining to special laws, and uniformity in taxation might prevent holding that the County Commissioners have the power to cancel some taxes and not others under Chapter 44,

It is my opinion that:

(1) When the county treasurer pursuant to Chapter 44, Laws of 1949, has submitted to the board of county commissioners a list of personal property taxes which are not a lien on real estate and which have been delinquent for ten years or more it is mandatory that the board of county commissioners make its order cancelling all such personal property taxes contained in such list, as corrected.

That the board of county commissioners pursuant to said Chapter 44, does not have the power to cancel some of these personal property taxes and require the county treasurer to attempt to collect others.

Very truly yours,
ARNOLD H. OLSEN
Attorney General