

Opinion No. 2.

Livestock Sanitary Board—Levy on Livestock—Taxable Valuation Assessed Valuation—Board of Equalization.

HELD: The livestock sanitary board may request the State Board of Equalization to levy on livestock up to and including one and one-half mills on the assessed valuation of all livestock, or its equivalent in taxable valuation, which is four and one-half mills of the value of such livestock as enunciated by the classification act.

January 24th, 1953.

H. F. Wilkins, D. V. M.
State Veterinary Surgeon
Montana Livestock Sanitary Board
Helena, Montana

Dear Dr. Wilkins:

You have requested that I issue an official opinion clarifying Section 84-5211, Revised Codes of Montana, 1947, relative to the power of the State Board of Equalization to make levies upon livestock in the event that the Livestock Sanitary Board should find it necessary to request the Board of Equalization to prescribe a levy exceeding one and one-half mills of the taxable valuation of livestock.

Section 84-5211, Revised Codes of Montana, 1947, provides as applicable:

"The amount of such levy shall not in any event exceed one mill upon the assessed valuation of sheep and one and one-half mills upon the assessed valuation of other livestock, which shall be levied to aid in the payment of the general expense of the livestock commission of Montana . . . and a separate levy of not exceeding one and one-half mills on

all livestock for the use of the livestock sanitary board . . ."

It is to be noted that while the words "assessed valuation" are twice used in the statute, they are not repeated in the latter portion of the statute which creates the levy for the sanitary board. However, as stated in *Landrum vs. Flannigan*, 60 Kan. 436, 56 Pac. 753, an omission due to inadvertence does not negative the legislative policy.

"If the words of a statute be of doubtful meaning, if they be inartificially arranged, if the syntax be violative of the rules of composition, if ellipsis, tautology, or redundancy occur, the statute must be looked at in other lights than those afforded by the mere words employed; and chief among those lights are those afforded by the evident purpose and intent of the legislature, and the entire context of the statute . . . The failure to include 'employers' and 'other persons' in the list last enumerated was clearly an inadvertent omission; and, upon well-settled rules of statutory construction, the last enumeration may be extended by construction to correspond with the first."

The Constitution itself recognizes that livestock is a species of property which needs special levies in order that this industry may be adequately protected. This fact is attested to by recent occurrences which demonstrate that unless certain diseases of livestock are prevented from spreading into Montana by an enforced embargo the entire industry may be seriously jeopardized, if not destroyed. The need for adequate funds to safeguard livestock cannot be disputed. It is understandable why the legislature provided that livestock be levied on at their assessed valuation, instead of at their taxable valuation as contained in the Classification Act. (Sections 84-301, et seq., R.C.M., 1947).

The legislature has provided three separate levies on livestock in conformity with Section 9, Article XII of the Constitution of the State of Montana, which authorizes a special levy on livestock of not to exceed four mills on the dollar. (Sections 84-5211, 84-5214 R.C.M., 1947.

Fund	Levy	
	All Livestock Mills	Sheep Mills
Livestock Com.....	1 & ½	1
Livestock San. Bd.....	1 & ½	1 & ½
Bounty payment.....	1	1 & ½
Total	4	4

Both the levy for the livestock commission and for bounty payments specify that the levy is on the assessed valuation of the livestock. Since the total authorized levy equals the constitutional limitation when assessed valuation is used as the basis for the levy of the livestock sanitary board, the rule of State vs. District Court, 83 Mont. 400, 272 Pac. 525, is applicable:

“When the intention of the legislature can be ascertained from the statute, words may be modified, altered or supplied so as to compel conformity of the statute to that intention.”

You have further informed me that should the livestock sanitary board request the Board of Equalization to levy one and one-half mills on the assessed valuation of livestock, the Board of Equalization will convert the requested assessment into a levy on the taxable valuation in order to achieve uniformity in the taxing structure. Since the taxable valuation of livestock under Section 84-302, R.C.M., 1947, is thirty-three and 1/3 percent of the assessed valuation, you question whether the statutory limitation will be exceeded by such a conversion.

In *Judd vs. Cooney*, 97 Mont. 75, 32 Pac. (2d) 851, the court distinguished between taxable and assessed valuation as follows:

“Taxable value as distinguished from assessed value means the percentage of assessed value prescribed by the scale given in R.C.M., 1921 § 2000. Prior to that the assessed value and the taxable value of property meant the same thing—full cash value. The law still is that all taxable property shall be assessed at its full cash value. By enacting the classification act the legislative assembly defined ‘taxable value’ to mean the percent-

age of the assessed value prescribed in the scale. This per centage runs from 7 to 100 per cent of the true and full value of the property a sesser. It is manifest that more money will be raised by computing taxes upon the assessed value than upon the taxable value of all property subject to taxation.”

Since the limitation contained in Section 84-5211 (supra) is upon the assessed valuation and not upon the taxable valuation, it is clear that the statute will not be violated by levying in excess of one and one-half mills on the taxable valuation. A levy of one and one-half mills on the assessed value equals four and one-half mills on the taxable valuation.

Nor will this violate Section 9, Article XII of the Constitution of the State of Montana, which declares that the special levy on livestock shall not exceed four mills on the dollar. At the time of the adoption of the Constitution the only recognized value was the full value, that is, the assessed value. Taxable valuation as a criterion was not recognized until the classification act was passed in 1919. (See Chapter 51, Laws of 1919).

The only question which remains is whether the classification act superceded the provisions of Section 84-5211 (supra).

Section 84-5211 (supra) was originally enacted in 1915. As then enacted it did not contain the words “assessed valuation.” In 1919 the classification act was adopted, and, subsequently, in 1928, Section 84-5211, was amended to include the words “assessed valuation.” It is a well established rule of statutory construction that the most recent enactment controls. (*State vs. Board of Commissioners of Hill County*, 56 Mont. 355, 185 Pac. 147.)

In *Northern Pacific Railway Company vs. Dunham*, 108 Mont. 338, 90 Pac. (2d) 506) our court considered whether the legislature could still provide that the levy be upon the assessed valuation in view of the classification act. The court stated:

“The subject is one over which the legislative intent controls, and it is competent for the legislature to provide, if it sees fit, that taxes for certain purposes may be imposed upon

the assessed value of property, rather than the taxable value, notwithstanding the classification statutes. For the same reason, it is competent for the legislature to provide that the maximum levy shall be measured upon the assessed rather than the taxable value."

It is therefore my opinion that the Livestock Sanitary Board may request the State Board of Equalization to levy on livestock up to and including one and one-half mills on the assessed valuation of all livestock, or its equivalent in taxable valuation, which is four and one-half mills of the value of such livestock as enunciated in the classification act.