

upon the following questions:

1. When an error has been made by the county assessor on assessment of property and the taxpayer does not appeal to the county board of equalization, does the board of county commissioners have authority to order cancellation after the assessor has detected his error and after taxes are spread on the rolls, providing the assessor approves such cancellation?
2. May the assessor reduce an assessment on property after the board of equalization has set the tax levy and time has expired for the board to act?

You have directed my attention to 19 Opinions of the Attorney General 2, No. 2 and 15 Opinions of the Attorney General 149, No. 214 which previously considered your first question. These opinions hold, in substance, that the board of county commissioners, acting as commissioners and not as the county board of equalization, may at any time cancel or reduce an assessment in any case where they might refund the tax if it had been paid under Section 84-4176, R.C.M., 1947.

A good deal of difficulty would be encountered in applying the results of these two opinions since the application of Section 84-4176, supra, is far from clear. (See *Christoffer-son vs. Chouteau County*, 105 Mont. 577, 74 Pac. (2d) 427; *First National Bank vs. Sanders County*, 85 Mont. 450, 279 Pac. 247; and *First National Bank vs. Beaverhead County*, 88 Mont. 577, 294 Pac. 956.)

Opinions No. 2, Volume 19, and No. 214, Volume 15, are in conflict with Section 84-603, R.C.M., 1947, and the declaration of the Montana Supreme Court in the case of *Yellowstone Packing Company vs. Hays*, 83 Mont. 1, 268 Pac. 555, in which it was said:

“ . . . The only authority giving county commissioners power to reduce, or in any manner change, assessments of property for taxation, is vested in them as a board of equalization, and, when acting as such, they must strictly comply

Opinion No. 10

Taxation — Assessment — Correction of Errors in Assessment Book

HELD: 1. Errors made by the county assessor in assessment of property may not be corrected by the board of county commissioners except when sitting as a board of equalization.

2. The county assessor, with the consent of the county attorney, may reduce an assessment on property after the board of equalization has set the tax levy and time has expired for the board to act in those cases where the assessment is in error because of an omission, error or defect of form in the assessment book.

April 28, 1955.

Mr. Richard V. Bottomly
County Attorney
Cascade County
Great Falls, Montana

Dear Mr. Bottomly:

You have requested my opinion

with the authority conferred upon them by statute. When taxes are regularly levied they become a lien on the property taxed; an obligation immediately rests upon the owner to pay the amount ascertained to be due. Thereafter the county commissioners can neither release the property from the lien nor discharge the owner from the obligation. (*Sanderson v. Bate-man, supra*; *State v. Central Pacific R. R. Co., 9 Nev. 79*)." Section 84-603, *supra*, provides:

"Application For Reduction In Valuations. **No reduction must be made in the valuation of property unless the party affected thereby, or his agent, makes and files with the board on or before the 1st day of August, a written application therefor, verified by his oath.** Said application shall specifically describe the property involved and shall state the facts upon which it is claimed such reduction should be made. The board of county commissioners shall, however, have the right to raise or lower the valuation of all of one class of property in a county, as provided in the preceding section." (Emphasis supplied.)

The rule of law laid down by Section 84-603 and the Yellowstone Packing Company case has been the same since Montana became a state. (*See Barrett vs. Shannon, 19 Mont. 397, 48 Pac. 746*.)

As stated in the Yellowstone Packing Company case, the board of county commissioners has no authority to change or reduce assessments except when sitting as a board of equalization. Section 84-603, *supra*, provides that reductions in individual assessments can be made only upon written application by the taxpayer to the county board of equalization. Since the board of equalization meets between the third Monday of July and the second Monday of August in each year, the taxpayer may request reduction of his assessment and, if correct, receive the reduction before he is required to make any payment upon his tax. As the first installment of real property taxes is not due until November 30 of each year, the taxpayer has ample opportunity to contest his assessment.

The only exception to this procedure occurs in the case of personal property which is not secured by a lien upon real estate, and which may be collected immediately under Sections 84-4201 and 84-4202, R.C.M., 1947. In such case, the tax having already been paid, the question is one of remission of tax rather than change of assessment, and the remedy provided by Section 84-4176, or the usual process of payment under protest, may be used in the situations to which they respectively apply.

It is therefore my opinion that errors made by the county assessor in assessment of property may not be corrected by the board of county commissioners except when sitting as a board of equalization.

Your second question concerns the statutory power of the assessor to correct errors in the assessment book after tax levies have been set and the time in which the county board of equalization may act has expired. Section 84-511, R.C.M., 1947, provides:

"Defects In Form of Assessment Book May Be Supplied. Omissions, errors, or defects in form in any original or duplicate assessment book, when it can be ascertained therefrom what was intended, may, with the consent of the county attorney, be supplied or corrected by the assessor at any time prior to the sale for delinquent taxes, and after the original assessment was made."

This is the only procedure outlined in the code by which changes in assessments, and therefore in tax liability, may be made after the time for action by the county board of equalization has expired. The statute specifically provides that defects or errors may be supplied or corrected by the assessor at any time prior to the sale for delinquent taxes (with the county attorney's consent). This section, by its own terms, applies only to assessments which are incorrect because of mistakes. It does not authorize the county assessor to make a new exercise of discretion in the classification or valuation of property. It is confined to instances of actual mistakes of fact and mistakes in computation upon

the assessor's part which affect the valuation made by him.

It is therefore my opinion that the assessor, with the consent of the county attorney, may reduce an assessment on property after the board of equalization has set the tax levy and time has expired for the board to act in those cases where the assessment is in error because of an omission, error or defect of form in the assessment book.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.