

Opinion No. 42

TAXATION: Land Classification Tax: five year limit on levy—TAXATION; Levy: five year limitation for land classification—Sections 84-429.7, 84-429.8, 84-429.10 and 84-602, Revised Codes of Montana, 1947—Chapter 191, Laws of 1957.

Held: The two mill levy provided for by Section 84-429.8, RCM, 1947, is to continue in effect for only a five year period and thus will not be in effect after July, 1962.

May 15, 1962

Mr. Dan Fulton, Chairman
State Board of Equalization
Capitol Building
Helena, Montana

Dear Mr. Fulton:

You have asked whether Section 2, Chapter 191, Session Laws of 1957 (now Section 84-429.8, RCM, 1947) providing for an annual two mill levy will continue in effect after July 1, 1962.

As was stated in *State ex rel Tillman v. District Court*, 101 Mont. 176, 181, 53 Pac. 2d 107 (1936):

"We start our investigation of the question presented with the full understanding that all proceedings in the nature of assessing property for purposes of taxation, and in levying and collecting taxes thereon, are in invitum, and must be stricti juris."

Two maxims of statutory construction relative to taxation need to be iterated. In *Mann v. McCarroll*, 130 SW 2nd 721, 727, Ark. (1939), it was said: ". . . if there is any doubt about the fact of the levy such doubt must be resolved in favor of the taxpayer." And in *State v. Markway*, 110 SW 2nd 1118, 1119, Mo. (1937):

"It is well established that the right of the taxing authority to levy a particular tax must be clearly authorized by the statute and that all such laws are to be construed strictly against such taxing authority." (Citation omitted.)

The purpose or intent of Chapter 191, Session Laws of 1957, was to establish a common standard of classification and appraisal to determine valuation in all 56 counties of Montana. This was to be accomplished under the direction of the State Board of Equalization. Section 84-429.7, RCM, 1947, provides in part:

"It is hereby made the duty of the board of county commissioners of the several counties of the State of Montana to accomplish, in such manner as the State Board of Equalization may direct, the following: a. The classification of all taxable lands. b. The appraisal of all taxable city and town lots. c. The appraisal of all taxable rural and urban improvements."

It was apparent to the Legislature that additional funds might be necessary to complete this classification and appraisal. Section 84-429.8, RCM, 1947, provides in part:

"The board of county commissioners shall create . . . a fund . . . and may levy a tax not to exceed two (2) mills upon all property in the county subject to taxation . . ."

Section 84-429.10, RCM, 1947, provides:

"It is the intent of this act that classification and appraisal be initiated expeditiously, but in no event later than July 1, 1957, and shall be completed not later than five (5) years from the effective date of this act."

At the end of the five year period it was the directive of the Legislature that this classification and appraisal be completed. Upon completion, the standard of classification and appraisal in all Montana counties would be similar and, of course, current with present day valuations.

Section 84-429.7, RCM, 1947, provides in part that:

"After compliance with the other provisions of this act, it shall be the duty of the board of county commissioners to maintain current the classification of all taxable lands and appraisal. . ."

This is not a new duty, but has always been a task assigned to the board of county commissioners.

Section 84-602, RCM, 1947, provides in part:

"The board has power . . . to equalize the assessment of the property . . . and make the assessment conform to the true value of such property in money . . . The board also has power, in the event that any class of property . . . demands a general reclassification by raising or lowering all of the property in said class a certain percentage, the same may be done by the county commissioners."

Section 84-429.7, RCM, 1947, therefore, did not bestow new or additional duties on the office of the county commissioners. Rather, Section 84-429.7, RCM, 1947, is merely a re-affirmation of that part of Section 84-602, RCM, 1947, wherein the county commissioners are required to keep valuations current by reclassification.

This further illustrates the legislative intent that the two mill levy authorized by Section 84-429.8, RCM, 1947, was not to be levied after five years from the effective date of this act. The legislative intent being that the additional levy was necessary only to meet the costs of standardizing and bringing current the classification and appraisal of all property in each county. This having been done within the five year period, the job of maintaining said valuations current would, pursuant to Section 84-602, RCM, 1947, still be a duty of the county commissioners. This duty existed prior to the enactment of Chapter 191, Session Laws of 1957.

It is therefore my opinion that the authority provided by Section 84-429.8, RCM, 1947, to levy two mills for a classification and appraisal fund expires at the end of the five year period, during which time said classification and appraisal was to be completed.

Very truly yours,
FORREST H. ANDERSON
Attorney General