

VOLUME NO. 43

OPINION NO. 28

COUNTIES - Authority to compromise unpaid, delinquent property taxes;  
COUNTY COMMISSIONERS - Authority to compromise unpaid, delinquent property taxes;  
COUNTY GOVERNMENT - Authority to compromise unpaid, delinquent property taxes;  
TAXATION AND REVENUE - Authority of county commissioners to compromise unpaid, delinquent property taxes;  
MONTANA CODE ANNOTATED - Sections 15-1-402(1) and (2), 15-1-406(1) and (3), 15-2-301(1) and (5), 15-2-303, 15-2-306, 15-2-307, 15-2-310, 15-7-102(3) and (6), 15-8-115(1), 15-15-102, 15-16-601(1)(a);  
REVISED CODES OF MONTANA, 1947 - Section 84-4176;  
REVISED CODES OF MONTANA, 1935 - Section 2222;  
REVISED CODES OF MONTANA, 1921 - Section 2222;  
OPINIONS OF THE ATTORNEY GENERAL - 25 Op. Att'y Gen. No. 29 (1953).

- HELD: 1. Section 15-16-601, MCA, does not authorize county commissioners to compromise unpaid, delinquent property taxes.
2. County commissioners do not possess inherent authority to compromise unpaid, delinquent property taxes.

July 25, 1989

Russell R. Andrews  
Teton County Attorney  
Teton County Courthouse  
Choteau MT 59422

Dear Mr. Andrews:

You have requested my opinion concerning the following questions which I have phrased as follows:

1. Does section 15-16-601, MCA, authorize county commissioners to compromise unpaid, delinquent property taxes?
2. Do county commissioners possess inherent authority to compromise unpaid, delinquent property taxes?

Your letter indicates that the foregoing questions have arisen in the context of a taxpayer's dispute over the valuation of his property by the Industrial Property Bureau of the Department of Revenue for the years 1985-87. Property taxes due from this interval are delinquent and unpaid. Apparently, the valuation was significantly reduced in 1988. The taxpayer has paid the first half of the 1988 taxes and has proposed a compromise regarding the accrued delinquent property taxes. Under the proposed settlement, the taxpayer would agree to pay the delinquent property taxes in the amounts actually assessed. The board of county commissioners would agree to order a refund, pursuant to section 15-16-601, MCA, of the difference between the 1988 assessment and the actual assessment in each of the years in which taxes are delinquent.

Section 15-16-601(1)(a), MCA, provides:

(1)(a) Any taxes, interest, penalties, or costs paid more than once or erroneously or illegally collected or any amount of tax paid for which a taxpayer is entitled to a refund under 15-16-612 or 15-16-613 or any part or portion of taxes paid which were mistakenly computed on government bonus or subsidy received by the taxpayer may, by order of the board of county commissioners, be refunded by the county treasurer. Whenever any payment has been made to the state treasurer as provided in 15-1-504 and it afterwards appears to the satisfaction of the board of county commissioners that a portion of the money so paid should be refunded as herein provided, the board of county commissioners may refund the portion of the taxes, interest, penalties, and costs so paid to the state treasurer, and upon the rendering of the report required by 15-1-505 the county clerk and recorder shall certify to the state auditor, in such form as the state auditor may prescribe, all amounts so refunded. In the next settlement of the county treasurer with the state, the state auditor shall give the county treasurer credit for the state's portion of the amounts so refunded.

The foregoing statutory provision has previously been codified in substantially similar form. See § 84-4176, R.C.M. 1947; § 2222, R.C.M. 1935; § 2222, R.C.M. 1921.

The Supreme Court of Montana has had occasion to construe the predecessor of the foregoing statutory provision in a case involving facts remarkably similar to those described herein. See Yellowstone Packing & Provision Co. v. Hays, 83 Mont. 1, 268 P. 555 (1928). The taxpayer therein claimed that his property had been "assessed at a higher valuation than other like property in the vicinity." *Id.* at 556. The board of county commissioners agreed to a compromise acceptance of a substantially lesser amount than the amount actually delinquent. The court held as follows:

The language employed in the statute appears to be plain and without any ambiguity; therefore it must be construed and applied in accordance with its apparent meaning. It speaks for itself, and by it the board of county commissioners of a county is permitted to refund only such taxes as have been "paid more than once, or erroneously or illegally collected." It should be manifest that the board is not empowered to remit taxes which have not been paid, and that no attempt was thereby made to clothe the board with authority to compromise delinquent taxes.

*Id.* at 556. (Emphasis supplied.) The Yellowstone Packing & Provision Co. decision formed the basis for a subsequent Attorney General's Opinion. See 25 Op. Att'y Gen. No. 29 at 49 (1953). The issue there was whether a board of county commissioners had authority to remit payment of penalties and interest in cases of hardship. The opinion quoted the familiar rule that such boards are limited to the exercise of powers specifically provided by law. It concluded that the predecessor of section 15-16-601, MCA, constituted the sole source of authority authorizing remission of taxes and associated penalties and interest. Applying Yellowstone Packing & Provision Co., the opinion held that the authority conferred by this statute did not include the power to remit interest and penalties simply in the interest of providing relief to delinquent taxpayers.

The foregoing discussion dictates the proper resolution of your first question. My research does not disclose any subsequent legislation or judicial decision which would alter the conclusion reached in the Yellowstone Packing & Provision Co. decision and the previous Attorney General's Opinion. Therefore, I conclude that section 15-16-601, MCA, does not confer upon boards of county commissioners the authority to compromise unpaid, delinquent property taxes.

Your second question raises the issue of whether county commissioners possess inherent authority to compromise an unpaid, delinquent tax liability. I conclude that such authority would be inconsistent with the judicial and

legislative preference for the resolution of property tax disputes by means of the administrative structure specifically created for that purpose. A brief review of the remedial provisions of Montana law for relief of improper assessment of property taxes provides the proper context.

Section 15-7-102(3), MCA, provides a property owner with the right to a hearing before the Department of Revenue when aggrieved by its classification or appraisal of his land or improvements. An aggrieved taxpayer may then appeal to the county tax appeal board. § 15-7-102(6), MCA. Section 15-15-102, MCA, also permits a taxpayer to proceed directly to the county tax appeal board:

No reduction may be made in the valuation of property unless the party affected or his agent makes and files with the county tax appeal board on or before the first Monday in June or 15 days after receiving a notice of classification and appraisal from the department of revenue, whichever is later, a written application therefor. The application shall state the post-office address of the applicant, shall specifically describe the property involved, and shall state the facts upon which it is claimed such reduction should be made.

The county tax appeal board is thus often "the first jurisdictional level for considering protests by taxpayers to assessments, classifications, or appraisals." Department of Revenue v. Countryside Village, 205 Mont. 51, 667 P.2d 936, 942 (1983). These boards are vested with authority to "change any assessment or fix the assessment at some other level." § 15-15-101(3), MCA. An adverse decision may be appealed to the state tax appeal board. § 15-2-301(1), MCA. The state board may "affirm, reverse, or modify" decisions of the county tax appeal board and may order the refund of taxes paid under protest. §§ 15-2-301(5), 15-2-306, MCA. Decisions of the state board are subject to judicial review. § 15-2-303, MCA. During the pendency of the administrative process, the taxpayer is required to pay under protest the disputed portion of the taxes prior to delinquency. § 15-1-402(1), MCA. After exhaustion of the administrative process, a taxpayer may bring an action in district court to recover taxes paid under protest. § 15-1-402(2), MCA.

Montana law also provides direct judicial remedies. Sections 15-2-307 and 15-1-406, MCA, provide that in lieu of the administrative process, a taxpayer may bring a declaratory judgment action to challenge the legality of, respectively, the method of assessment used or the imposition of the tax. Taxes arising under the challenged assessment procedure or tax must be paid when due as a condition of maintaining either action. §§ 15-2-310, 15-1-406(3), MCA.

As the foregoing discussion indicates, Montana has very detailed and carefully crafted statutory procedures providing relief from excessive or improper

assessment. The role of the county commissioners in these procedures is limited:

Montana's 1972 Constitution provides: "The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization and taxes. The legislature shall include a review procedure at the local government unit level." Art. VIII, § 7. Pursuant to this constitutional mandate, the Montana Legislature determined that the County Tax Appeal Board (Local Board) would be the review procedure at the local government unit level.

Butte Country Club v. Dept. of Revenue, 186 Mont. 424, 608 P.2d 111, 115 (1980). Absent unlawful activity supportive of a declaratory judgment action under section 15-2-307 or 15-1-406, MCA, the administrative remedy is exclusive.

This Court has determined that as a condition precedent to the reduction of the valuation of property, the taxpayer must appeal at the local level. See Barrett v. Shannon (1897), 19 Mont. 397, 399-400, 48 P. 746. Further, this Court has determined that except in cases where fraud or the adoption of a fundamentally wrong principle of assessment is shown, an appeal to the [county tax appeal board] is the exclusive remedy granted the taxpayer. Keller v. Department of Revenue (1979), \_\_\_ Mont. \_\_\_, 597 P.2d 736, 36 St. Rptr. 1253; Larson v. State (1975), 166 Mont. 449, 534 P.2d 854.

Butte Country Club v. Dept. of Revenue, *supra*, 608 P.2d at 116; accord Boehm v. Nelson, 44 St. Rptr. 2147, 747 P.2d 213, 216 (1987). The limited authority to order refunds conferred upon county commissioners by section 15-16-601, MCA, is clearly subordinate to the role of the administrative agencies provided in the protest procedure set forth in section 15-1-402, MCA.

Clearly, § 15-16-601, MCA, was not meant to be used in lieu of the 15-1-402, MCA requirements of paying under protest, but when the recourse of § 15-1-402, MCA is not available [*e.g.*, where the taxpayer is unaware that his taxes were incorrect at the time he paid them], a taxpayer can obtain a refund under § 15-16-601, MCA.

Department of Revenue v. Jarrett, 216 Mont. 189, 700 P.2d 985, 988 (1985). As a final matter, it is the obligation of the Department of Revenue to defend disputed assessments in actions before the administrative boards and in court. § 15-8-115(1), MCA.

The conclusion that county commissioners possess inherent authority to compromise delinquent property taxes is clearly inconsistent with the roles of the Department of Revenue and the administrative structure discussed above. An obvious implication of such authority would be the opportunity for an aggrieved taxpayer to circumvent the exclusive roles of the department and the administrative boards in controversies involving valuation and assessments.

THEREFORE, IT IS MY OPINION:

1. Section 15-16-601, MCA, does not authorize county commissioners to compromise unpaid, delinquent property taxes.
2. County commissioners do not possess inherent authority to compromise unpaid, delinquent property taxes.

Sincerely,

MARC RACICOT  
Attorney General