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November 13, 1962  
Letter Opinion No. 62-119-L  
R-459

REQUESTED BY: W. E. Bissett, Executive  
Secretary, State Tax Commission

OPINION BY: ROBERT W. PICKRELL  
The Attorney General

QUESTION: Where the County Assessor assessed a given piece of property, and where this assessment was upheld by the County Board of Equalization and the State Board of Equalization, may the County Board of Supervisors reduce this assessment after the third Monday in August of any given year, and after the County and State tax rate and levy has been set and made?

CONCLUSION: No.

The specific facts here arise primarily out of assessment of a major industry in one county. The industry was assessed by the County Assessor and protested this assessment to the County Board of Equalization. The assessment was upheld. Thereafter when the assessment rolls were forwarded to the State Tax Commission sitting as a State Board of Equalization, the assessment was again challenged and again upheld. The taxpayer did not choose to institute proceedings to have the valuation changed by court order under A.R.S. § 42-146 and § 42-147. The tax rate for the state was set on the second Monday of August and the tax rate set for the county on the third Monday of August following the appropriate provisions of the statutes, A.R.S. § 42-301 and § 42-304. Thereafter at a regular meeting of the Board of County Supervisors of the county in which the property was located, on October 1st, the Board of Supervisors entered an order reducing the assessment of the taxpayer by some \$283,000. At the same time the Board of Supervisors reduced other assessments in varying figures, entirely cancelling the assessment of one personal property taxpayer in the amount of some \$64,000, reducing the valuation of a railroad non-moveable property by \$13,360 and reducing some individual lots in variable amounts from \$50 to \$6,750. The total amount of reduction in assessed

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valuations of which we have information at the present time will indicate a reduction of \$377,180. The State tax rate is \$1.80 per \$100 of assessed valuation for 1961. This means a reduction in the state tax receipts of \$6,789.24. It would, therefore, appear obvious that the State of Arizona and the State Tax Commission have a distinct, practical and serious interest in these matters and can take official notice of them.

It is the opinion of this office that the Board of Supervisors does not have any authority to change the assessments on properties assessed herein. The law makes only two provisions for reduction of assessed valuation by a Board of Supervisors sitting as a Board of Equalization. One is under A.R.S. § 42-251, dealing with the reduction of assessed valuation when the property is destroyed. It does not appear that any of the property involved herein comes under the terms of that statute. The second situation under which assessments may be reduced are assessments of unsecured personal property valued at less than \$200 under the provisions of A.R.S. § 42-601 through § 42-611. It also appears that none of the personal property assessed herein would come under the terms of this article, and of course no real property would come under its provisions.

The basic reasoning behind our position is clear when the taxation statutes are so set forth so as to show their purpose and method of operation. The County Assessor is required to assess all property between the first of the year and the first of May, and then present his assessment roll to the Board of Supervisors by the 20th of May. The Board then in its June meeting considers this assessment roll to determine if any of the assessed valuations should be increased. In the event of an increase all those persons who would be affected by it are notified by June 20th. The Board of Supervisors as the Board of Equalization meets on the first Monday of July and remains in session for a week to consider any increases. Upon a completion of this meeting it certifies its abstract of the assessment roll to the State Tax Commission. Thereupon on or before the third Monday in July the Board of Supervisors must prepare a complete statement of its financial affairs and its estimate of expenses for the

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following year. Then not later than one week prior to the third Monday of August of each year, it must formally adopt its proposed budget. A.R.S. § 42-302. Meanwhile at the state level, the state expenditures and revenue for the preceding year are not known until the State Auditor has closed her books one month following the close of the fiscal year. The State Tax Commission then has before it the legislative appropriations and other fixed expenses, the amount of money remaining in the State Treasury at the end of the preceding year, and a compilation of the assessed valuations of all fourteen counties in addition to the valuations made by the State Tax Commission itself on certain types of property. The State Tax Commission sitting as the State Board of Equalization has the authority to raise the assessments from any county or any class of property within a county. On the second Monday of August of each year the State Tax Commission, then knowing the assessed valuation of the entire state and all of the proposed expenditures and the known or estimated sources of income, sets the state tax rate. A.R.S. § 42-301. It thereafter returns the abstract of the assessment roll to the counties with any changes that it as State Board of Equalization might have made. Not until then do the counties definitely know their own assessed valuations and, therefore, they cannot set their own tax rate until they get the abstract returned by the State Board of Equalization. At that point its assessed valuation is final and its own tax rate is set based upon the expenditures adopted at the previous budget meetings. A.R.S. § 42-304. Inasmuch as the tax rate is directly related to the proposed expenditures to be incurred by any taxing body for that year, it is obvious that any variation in the assessed valuation will upset this theoretically perfect balance.

Our statutes contain no way by which this assessed valuation once fixed can ever be changed except through the two sections noted above and through a protest filed in the court by an individual taxpayer challenging his assessment. The possibility of the change of an assessment by the tax-setting agency has been before the Supreme Court of this State only once. That case is Territory v. Gaines, 11 Ariz. 270, 93 Pac. 281 (1908). The Court noted specifically therein that after the Boards of Equalization perform their duty they have exhausted their functions and can no

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longer act. It held that the only powers possessed by such board are those expressly conferred by statute or necessarily implied therefrom. It stated that jurisdiction to remit or compromise taxes would have to be conferred in express terms carefully conditioned and may not be predicated on an inference and concluded that an attempted compromise at issue in that case was void. It also noted that prior to 1891 Boards of Equalization did have authority to compromise and that in Act No. 34 of the Laws of 1891 the following language was contained:

"That all rebates, adjustments, settlements or compromises heretofore made by the Boards of Supervisors, in the various counties, of tax values, tax assessments or taxes, upon any property or of any suit or proceeding for the collection of any transfer taxes, being the same are hereby ratified and confirmed, provided, however, nothing herein contained shall be construed or held to mean that said Board of Supervisors shall hereafter have any right, power or authority to rebate, adjust, settle, compromise or diminish any tax, taxes, tax values, assessments or levies or any suits or proceedings for the collection of any tax or taxes upon any property except as a Board of Equalization in a manner prescribed by law."

The Court noted that this was a curative act and therefore not reprinted in any revision or reprinting of the statutes, but also held that it was an implicit recognition by the Legislature that such compromises by the Board of Supervisors were without authority of law.

See Linville v. Cheney, 60 Ariz. 325, 137 P.2d 395 (1943) to the effect that the provisions of what is now A.R.S. § 42-403 are the only provisions authorized by the Legislature relative to the compromise of taxes by the Board of Supervisors. The compromise provisions of this statute depend upon a determination that (a) there are back taxes owed on the property, and (b) that the value of the real estate is not worth the amount of taxes, interest, costs and penalties. It is patently obvious that this situation does not exist here.

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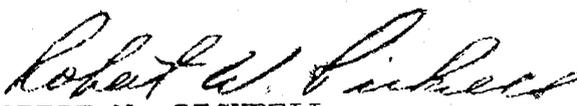
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It is also worthwhile to note that in Territory v. Gaines, supra, the issue was raised as to whether or not the territory had legal capacity to maintain an action against a county official to collect the taxes. The defendant in that instance was the tax collector of Cochise County. The Supreme Court specifically held that inasmuch as the state did receive revenue, it could maintain an action against a county official who was merely a collection agent for the state's interest insofar as the state's share of the taxes went.

It, therefore, seems abundantly clear that under the provisions of our taxing statutes and the cases which have construed them that the Board of Supervisors of the county in question was absolutely without authority to reduce the assessments by the sum of \$377,180 after the fixing of the tax rate and the levying of both state and county taxes. It is also clear that the state has a beneficial interest in the reductions to the extent of a potential loss of \$6,785.24 and that as the state agency responsible for the collection of all taxes due and owing to the state, that the State Tax Commission cannot suffer the apparent situation to continue without investigation and an attempt, including legal action if necessary, to recover the taxes owed it. It is our suggestion that this opinion be brought to the attention of the Board of Supervisors and that they be instructed to notify those taxpayers whose reductions were erroneously reduced of the fact that the reduction was erroneous and to consider themselves as liable for taxes in the original amounts as assessed against them. It is my understanding that one of the taxpayers involved has already taken this position and has offered to pay the full amount of its assessment, apparently believing that the reductions were without authority of law and being extremely unwilling to undergo any personal liability for the unjustified acts of the Board of Supervisors.

We trust that this will be of assistance to you.

  
ROBERT W. PICKRELL  
The Attorney General

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