

board of the several counties, in proportion to the value of such property in each county. Section 8 of act.

This board derives all its powers from the act in question. It is a specially created body, of special powers, and has none other than such as are expressly granted to it by the statute and such as are necessarily implied from those expressly given. There is nowhere any necessary implication in the act that the board shall have power to apportion the value of railroad property between school districts, or any other species of municipal or quasi-municipal districts subordinate, territorially, to counties. The board, therefore, in my opinion, has no such power. It cannot be said that such a power must be implied, for otherwise there would be no method of assessing for special district school taxes, because, as I shall endeavor to point out, such is not the case.

Powers not clearly given in such an act will not be read into it. Thus it will not be implied that such a board may raise or lower any individual assessment.

Wells, Fargo & Co. vs. Board of Equalization.

San Francisco, etc., railroad company, vs. Board of Equalization, 80 Cal. 12. Where the statute directs an equalization among the congressional districts it will not be implied that it may equalize among the counties.

All of the cases are to the effect that the authority of such boards must be strictly pursued, and that their powers will not be extended by implication.

It may well have been the intention of the legislature to provide that the property of a railway company in the Territory should be assessed as an entirety by a central authority, and that the same authority should equitably apportion the total value between the several counties through which the line extends. This much the legislature has clearly expressed. It may have been the further intention of the legislators that the same authority should make a like apportionment among the various school districts, towns and cities. Or it may be that if the legislature had only thought of that part of the subject, it would have so legislated. But the act contains no trace of legislation, and neither the assessors nor the courts can supply it. "If we depart from the plain and obvious meaning, we do not in truth construe the act, but alter it. We supply a defect which the legislature could easily have supplied, and are making the law, not interpreting it. A *casus omnisus* can in no case be supplied by a court of law, for that would be to make a law." It will make no difference if it appears that the omission on the part of the legislature was a mere oversight, and that without doubt the act would have been drawn otherwise had the attention of the legislature been directed to the oversight at the time the act was under discussion."

The territorial board therefore had no power to make an assessment except for the purposes of territorial and a county taxation. School district taxation is no more territorial or county taxation than is the taxation in and by cities and towns for their municipal purposes. A school district in this county is a part of the county only in the same sense that Salt Lake city is. The act renders it impossible

that the board should legally assess for special school district taxes because it has withheld power to make the necessary apportionment. The act has also in expressed terms indicated the kinds of taxes for the purposes of which the board may assess, viz: "Territorial," and "county" of which school district taxes are neither.

You, as assessor, are given explicit authority, and it is made your duty to assess for this purpose by a statute which was passed and went into force subsequently to the act providing for the Territorial board, viz., the school law of 1892. Section 83 of that act (p. 119, laws of 1892), provide for the voting of a special district school tax, not exceeding 2 per centum, "of all the taxable property in the district." It will be contended that railroad property in the district is not taxable. The section further provides: "The county assessors and collectors are hereby constituted the assessors and collectors of all district school taxes." Section 84 provides that: "The county assessor shall assess for such special tax at the time and in the manner provided by law for assessing Territorial and county taxes."

This does not limit you to such property only as you are authorized by law to assess for Territorial and county taxes. It limits you only to assessing at the same time and in the same manner at and in which you assess property in general for Territory and county taxes. Nothing could be more definite and explicit than the language of these sections in making railroad property subject to the special school taxes and in imposing upon the county assessors the duty of assessing that property. If it were not so, the legislature would be guilty of providing for the ordering and collecting of taxes for which it had created no means of assessing. The legislature is presumed to be acquainted with its previous legislation and at the same time it enacted the school law of 1892 it knew that in the act creating the Territorial board it had conferred no power on the board to assess for special district school taxes. Aside from the explicit language of the act, therefore, it is to be presumed that the legislature intended to vest this power in the county assessors, in order that its legislation might not be nugatory.

It is true that in the case of the Union Pacific railroad company vs. Ryan (113 U. S. Sup., 516), under an act providing for the assessment of railroad property by a territorial board of equalization, it was decided that a city under its charter power to assess and tax for its municipal purposes all property within its limits, had no power to make its own assessment of railroad property, but that such assessment could legally be made only by a territorial board for all purposes. But what were the provisions of the act creating the board? They are thus stated in the language of the supreme court: "It places the power of assessing the value of the whole line (so far as it lies within the Territory) including the rolling stock, in the hands of the board of equalization; and after they have fixed such valuation, and ascertained what it amounts to per mile for the whole length within the Territory, such valuation per mile is certified by the territorial auditor to the clerks of the

several counties through which the road passes, specifying the number of miles in each county, so as to give to each the pro rata share, and then the county commissioners divide and adjust the number of miles, and the amounts, falling within each taxing precinct, township and school district, to be entered on their respective lists of taxable property."

The act contained, in other words, precisely the provisions which are absent from our act, viz: For an apportionment of the territorial boards, valuation among all the "taxing precincts, townships and school districts." The court held that a city was, under the law of Wyoming, a "taxing precinct" within the meaning of the act in question, and that, therefore, of course, the assessment made by the territorial board and the apportionment made by the county commissioner was blinding.

In the Wyoming case, moreover, the railroad assessment act, containing a general repealing clause, was passed subsequently to the city charter; while in the case at hand the act providing for the assessment of special school district taxes of the county assessors, was passed subsequently to the act creating the territorial board.

Yours very truly,
WALTER MURPHY,
County Attorney.

ANALYSIS OF THE LABOR AND CAPITAL QUESTION.

THERE appeared recently in the New York *Telegram* an article from the pen of Moses Openholmer, on the labor question. It is remarkable for the clearness of its statement of the situation, while its prescription for the cure of the evils it depicts is conspicuously absurd. It is here reproduced:

"Homestead is but an incident of the tremendous struggles for a new adjustment of the relations between capital and labor. Within less than one year we have witnessed the violent outbreaks in Tennessee, in Cour d'Alene, in Homestead, occurring among a class of toilers drawn largely, if not mainly, from the native-born element supposed to be much more law abiding and conservative than the much abused 'ignorant foreigners.' Within the last decade we have seen tremendous strikes and lockouts among the railroad men, the miners, the iron workers, the telegraph operators, the dock laborers, the building trades, and so forth, all indicating to the student of social relations the growing unrest of the working masses in this country, all emphasizing the fact that our free political institutions—if truly free they are—have not as yet secured to the toiling millions that happiness the pursuit of which is guaranteed to them as a sacred and inalienable right.

"The events at Homestead show with a glaring light that at present capital can successfully call on the whole civil and military force of the State to back it up against its striking employees. The letter and the spirit of the laws plainly sustain that position. Mr. Frick, the chairman of the Carnegie Company, represents but the logical and consistent position of his class. Capitalists go into business to make profits—the more the better. Everything else is subordinate to this highest aim. They buy the necessary labor power according to the law of supply and demand. They claim the right to make the terms and conditions according to circumstances, with the sole view to the success of their business. They are buyers; if the