

**Constitutionality, of House Bill No. 181. House Bill No. 181, Constitutionality of. Road Tax, Exemption of Certain Persons From the Payment of. Poll Tax, Exemption of Certain Persons from the Payment of. Honorably Discharged Soldiers, Etc., Exemption from the Payment of Road and Poll Tax.**

The provisions of House Bill No. 181 are in violation of the provision of the constitution which prohibits the enactment of local or special laws granting "special or exclusive privileges, immunity or franchises," and the classification made in said house bill is not warranted by the provisions of our State constitution."

March 3rd, 1913.

Hon. S. V. Stewart,  
Governor,  
Helena, Montana.

Dear Sir:

I am in receipt of your verbal inquiry respecting the constitutionality of House Bill No. 181, which, by its terms, provides that every person honorably discharged from the army or navy of the United States who served in the war of the rebellion, the war with Spain or the Philippine insurrection, or the Boxer uprising in China "shall be exempt from the payment of road tax or poll tax of every description."

The terms of this bill are broad enough to exempt all such persons from the payment of a property tax when levied for road purposes, and if that is its meaning it is in direct conflict with Secs. 1 and 2, Art. XII of the State Constitution. The tax referred to in the bill

is not confined to "head tax" or "poll tax," but appears to relate to head tax or poll tax of every description, and also to road tax of every description. There are two methods of raising money for road purposes; one is the special road tax provided for in Sec. 1344 of the Revised Codes, which is a poll tax or head tax, and, in addition to this, the regular or special levy for the purpose of raising money for the construction of roads or the payment of indebtedness as evidenced by bonds or otherwise theretofore contracted for the construction of highways or bridges. The phrase "tax of every description" would seem to be broad enough to include both these systems of taxation.

If, however, the bill is meant only to include the special road tax provided for in said Sec. 1344 and the poll tax or poor tax, the bill, in my judgment, is still violative of the provisions of our constitution, which prohibits the enactment of local or special laws or granting "any special or exclusive privilege, immunity or franchise whatsoever," as contained in Sec. 26, Art. V, of the State Constitution, and probably in violation of the provisions of Sec. 11, Art. 12, of the State Constitution.

Special privileges and immunities, unless based upon very reasonable classifications are almost universally held to be in violation of the "equal rights" clause of the constitution.

"The state, it is to be presumed, has no favors to bestow and designs to include no arbitrary deprivation of rights. Special privileges are always obnoxious, and discriminations against persons or classes are still more so."

Cooley's Const. Limitations, 7th Ed. 563.

Also Note at the bottom of p. 561.

Cooley on Taxation, Vol. 1, 292.

Sec. 6, Art. I, of the Iowa Constitution reads:

"All laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen or class of citizens privileges or immunities which upon the same terms shall not equally apply to all citizens."

Under this constitutional provision the Supreme Court of Iowa held void a statute exempting from the payment of a peddler's license all persons who had served in the union army or navy, etc., on the ground that the same was class legislation forbidden by the constitution.

State v. Garbrowski (Iowa) 82 N. W. 959.

To the same effect is the decision of the Indiana Supreme Court in State v. Indianapolis, 69 Ind. 373, 35 Am. Repts. 223.

And the Supreme Court of the State of Montana has heretofore passed upon a somewhat similar question in State v. Cudahy Packing Company, 33 Mont. 179.

This department has heretofore had occasion to consider the question relating to the exemption of property from taxation, and in an opinion addressed to the Hon. James E. Murray, County Attorney, Butte, Montana, under date of December 26th, 1907, held that

the only exemption from taxation, so far as property tax is concerned, are the exemptions authorized by Sec. 2, Art. XII., of the State Constitution.

I am, therefore, of the opinion that the classification made in House Bill No. 181 is not warranted by the provisions of our state constitution, and that the exemption therein contained would not be sustained by our supreme court.

Very truly yours,

D. M. KELLY,  
Attorney General.