

**Taxes—Refunding Taxes—Erroneously and Illegally Collecting Taxes.**

When any tax has been erroneously collected by a county the board of county commissioners must refund such erroneous tax, and the state's portion of such tax must be refunded to the county, and that for such purpose the state auditor must draw his warrant for the same in favor of the county refunding the tax.

April 14, 1917.

Hon. William Keating,  
State Auditor,  
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 14th inst. with reference to refund of taxes erroneously collected on real estate in Fergus County, enclosing letter from W. W. Wheaton, County Treasurer, with reference thereto, and requesting an opinion as to the proper procedure in an instance of this nature.

Section 2669, Revised Codes, is as follows:

"Any taxes, percentum and costs, paid more than once, or erroneously or illegally collected, may, by order of the board of county commissioners, be refunded by the county treasurer, and the state's portion of such tax, percentage and costs, must be refunded to the county, and the state auditor must draw his warrant therefor in favor of the county."

In case of *Hayes v. Los Angeles County*, 99 Cal. 78, 33 Pac. 766, involving the construction of a California Statute similar to Section 2269, it was held that the word "may" meant "must" and that the board was compelled to refund taxes erroneously collected, the county

being reimbursed by the state for the portion of the state's taxes refunded by the county.

I am, therefore, of the opinion that when any tax has been erroneously collected by a county the board of county commissioners must refund such erroneous tax, and that the state's portion of such tax must be refunded to the county, and that for such purpose the state auditor must draw his warrant for the same in favor of the county refunding the tax.

However, before such warrant is drawn by the state auditor, he should require a certificate from the county treasurer showing the amount of the tax refunded, how the same was apportioned to the several state funds, and the order of the board of county commissioners ordering the refunding of the same.

Respectfully,

S. C. FORD,

Attorney General.