

**Poll Taxes—Right of Counties to Levy—Whether Women Liable for Poll Tax.**

The County Commissioners have authority, by virtue of Section 4465 of the Revised Codes of 1921, to levy a poll tax and may fix the ages in accordance with the provisions of Chapter 261 of the Laws of 1921, and need not include women within those ages.

John J. Cavan, Esq.,  
County Attorney,  
Jordan, Montana.

My dear Mr. Cavan:

You have requested an opinion from this office on the following question:

"Have they (the counties) the right to levy poll tax and must they levy it on all adults in the county, female as well as male?"

Subdivision 5 of Section 4465 of the Revised Codes of 1921 provides, in part, as follows:

"The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: \* \* \*

"5. To provide for the care and maintenance of the indigent sick, or the otherwise dependent poor of the county; erect and maintain hospitals therefor, or otherwise provide for the same; and to levy the necessary tax therefor, per capita, not exceeding two dollars, and a tax on property not exceeding one-fifth of one per cent., or either of such levies when both are not required. \* \* \*"

The term "per capita" means by the head or poll. It has been held that poll taxes, not being laid on property, are not within the constitutional requirement as to equality and uniformity or as to taxation by value, unless the principle of uniformity is violated by an arbitrary exemption of a certain class of persons from the tax.

37 Cyc. 767;  
26 R. C. L. 140.

In the case of *Town of Tekoa v. Reilly*, 47 Wash. 202, 91 Pac. 769, 13 L. R. A. (N.S.) 901, the court, in holding constitutional a law imposing a poll tax, and which did not include females, males of certain ages, and firemen, said:

"Uniformity and equality in taxation are relative terms. 'Perfect uniformity and perfect equality of taxation, in all the aspects in which the human mind can view it, is a baseless dream.' \* \* \* Perfectly equal taxation will remain an unattainable good as long as laws and government

and man are imperfect. \* \* \* The people of this state in adopting a constitution did not hope to attain the unattainable. They did not propose to send the tax gatherer to the almshouse, the orphan asylum, or the nursery. Nor did they propose to lay a tax on the inmates of these institutions. In other words, they fully understood that, if a street or road poll tax should be imposed, certain classes of persons would of necessity be exempt from the imposition. This much was conceded in the *Ide Case* (*State v. Ide*, 35 Wash. 576, 77 Pac. 961), for there the court said: 'It is conceded by counsel for appellant that the uniformity rule in taxation usually prescribed by law does not preclude the legislature from selecting and classifying in a proper and reasonable manner the subjects of taxation, and that rule is so firmly established that the citation of cases in support of it is entirely unnecessary.' If the legislature may select and classify the subjects of the tax in a reasonable and proper manner, how is a court to determine the reasonableness or appropriateness of the classification made? If, up to the time of the adoption of the Constitution, a street or road poll tax had never been imposed on a female or a minor in the territory of Washington or elsewhere (to our knowledge), would a reasonable and proper classification require their inclusion or exclusion? \* \* \*

"It must be apparent that a street poll tax imposed on minors or females without regard to property or ability to pay would be unjust and oppressive in the extreme. The burden of paying the tax for the entire household would ordinarily fall on the head of the family. Such a tax would lack both equality and uniformity, and was never contemplated by the framers of the Constitution."

In that case the court upheld a classification levying a poll tax upon all male inhabitants over 21 and under 50 years of age, outside the limits of any incorporated city or town.

In *Salt Lake City v. Wilson* (Utah), 148 Pac. 1104, it was held that a poll tax, levied on male persons only, was not unconstitutional because it did not include females.

See, also:

*Thurston County v. Tenino Quarries*, 44 Wash. 351, 12 Ann. Cas. 314;

*Bluitt v. State*, 121 S. W. 168;

*Elting v. Hickman*, 72 S. W. 700; ....

*Pohl v. Chicago etc. Ry. Co.*, 52 Mont. 572.

Section 1 of Chapter 261 of the 1921 Laws provides, in part, as follows:

"Section 1. That said Section 2692 of the Revised Codes of Montana be and hereby is amended to read as follows:

"Section 2692. Every male inhabitant of this State over twenty-one and under sixty years of age except paupers, insane persons and Indians not taxed, must annually pay a poll tax of Two Dollars (\$2.00)."

While this section of the statute was held unconstitutional by the Supreme Court of this State in the case of *State ex rel Pierce v. Gowdy*, 62 Mont. 119, 203 Pac. 1115, in so far as it attempted to levy the tax by legislative act, I am of the opinion that the section may be resorted to for the purpose of ascertaining the legislative intent as to the ages between which the tax would be authorized.

It is my opinion, therefore, that the Commissioners may, by appropriate resolution, levy a poll tax and fix the ages in accordance with the provisions of Chapter 261 of the Laws of 1921, and need not include women within those ages.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.