

Constitutionality—Chapter 79, Laws 1927—State Treasurer—Licenses—Collection—State Board of Equalization.

Chapter 79, laws of 1927, transferring to the state board of equalization the duty of collecting license taxes is not unconstitutional on the ground that the state treasurer must collect said licenses under the constitution.

Hon. W. T. Cowan,
Member of the Senate,
Helena, Montana.

February 12, 1931.

My dear Senator Cowan:

You have requested my opinion whether the provisions of chapter 79, laws of 1927 are contrary to the provisions of the state constitution which imposes upon the state treasurer the responsibility for the collection, as well as accounting, of all revenues which are imposed by the legislature.

There is no provision of our state constitution imposing upon the state treasurer the responsibility of collecting the state revenues. Section 1 of article VII of the constitution provides in part:

“The executive department shall consist of a Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, State Auditor and Superintendent of Public Instruction. * * * They shall perform such duties as are prescribed in this constitution and by the laws of the state. * * *”

No duties whatever are imposed upon the state treasurer under the constitution but his duties are defined by section 174, R.C.M. 1921. Paragraph 1 thereof provides as follows:

“It is the duty of the State Treasurer to receive and keep all moneys belonging to the state, and not required to be received and kept by some other person.”

Under the provisions of chapter 79 the tax therein named is required to be collected by the state board of equalization and turned over to the state treasurer at stated intervals.

It might be contended that section 10 of article XII imposes the duty of collecting state revenues upon the state treasurer. This provision is as follows:

“All taxes levied for state purposes shall be paid into the

state treasury and no money shall be drawn from the Treasury but in pursuance of specific appropriations made by law."

In the case of Mutual Life Insurance Co. of New York vs. Martien, 27 Mont., 437, in referring to this provision in connection with the provision that the county treasurer should be the collector of state taxes our court said:

"The only reasonable construction of the latter section of the constitution, in connection with the provision that the county treasurer shall be the collector, is that the collector shall collect and then pay into the State Treasury all taxes levied for state purposes."

I think this construction equally applicable to the situation presented here. It is true that this case, as well as other decisions of our supreme court, holds that the county treasurer must collect the county taxes but these decisions are not in point for the reason that a different constitutional provision is involved, that is, section 5 of article XVI, which provides in part:

"There shall be elected in each county the following officers: one county clerk, who shall be clerk of the board of county commissioners and ex officio recorder; one sheriff; one treasurer, who shall be collector of taxes * * *"

You have also called my attention to section 25 of article V, which provides:

"No law shall be revised or amended or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended or extended shall be re-enacted and published at length."

I fail to see where this provision has any application to chapter 79, supra, as this is neither a revision or an amendment but is a new enactment repealing all former acts in conflict therewith.

For the foregoing reasons it is my opinion that the provisions of chapter 79, laws of 1927, do not violate any constitutional provision and that the same is valid in all respects.

Very truly yours,
L. A. FOOT,
Attorney General.