

Opinion No. 138.**Motor Vehicles—Licenses—Payment
To Wrong County—Counties—
County Treasurer.**

HELD: 1. The owner of a motor vehicle who pays the registration fee to the County Treasurer of a county other than that in which the motor vehicle is owned or properly subject to general taxes, does so at his own risk.

2. The obligation to pay the motor vehicle registration fee to the proper county is the obligation of the owners of the automobiles in question and not that of the county to which payment was wrongfully made.

July 13, 1935.
Mr. Eugene L. Murphy
County Attorney
Chouteau, Montana

Your letter to us, requesting an opinion upon the question of law involved, is in part as follows:

"The Board of County Commissioners of this county have authorized me to make collection of motor vehicle registration fees which were collected in Cascade County upon automobiles owned by residents of Teton County.

"The County Clerk presented a bill to Cascade County for such registration fees and this bill was refused payment by the Board of County Commissioners of Cascade County.

"It would seem that the only way of establishing this claim against Cascade County is either by suit against them or by a directory opinion from your office."

Section 1759, Revised Codes 1921, as amended by Section 1, Chapter 158, Laws of 1933, provides that every owner of a motor vehicle operated or driven upon the public highways of the state shall on or before the first day of February of each year file in the office of the County Treasurer of the county wherein such motor ve-

hicle is owned or taxable a verified application for registration thereof, and shall upon the filing of said application pay to said County Treasurer the registration fee prescribed by Section 1760, Revised Codes 1921, as amended by Chapter 38 of the Extraordinary Session, 1933-34.

The owner of a motor vehicle who pays the registration fee to the County Treasurer of a county other than that in which the motor vehicle is owned or properly subject to general taxes, does so at his own risk. Because he fails to obey the mandate of the law, such payment does not excuse payment to the right county treasurer. (37 C. J. 251; Fremont, E. & M. V. R. Co. v. County of Brown, 26 N. W. 194.)

Where taxes are involved, payment thereof must be made to the officer authorized to receive the same or his deputy. Payment to the wrong officer does not protect the taxpayer where such officer misappropriates the money. (61 C. J. 958; 3 Cooley on Taxation, sec. 1224.)

There is no distinction in principle between license fees and taxes so far as payment is concerned. Each, when due, must be paid to the proper officer.

It is our view, therefore, that the obligation to pay is that of the owners of the automobiles in question and not that of Cascade County.