

January 24, 1940.

Mr. Claude A. Johnson
County Attorney
Red Lodge, Montana
Dear Mr. Johnson:

You advise this office that since the first of the year there have been automobile licenses procured in another county by residents of Carbon county, who keep their automobiles in Carbon county. The question involved is, what remedy has Carbon county to collect such license fees.

The automobile must be assessed, taxed and licensed in the county where the automobile is habitually used, or has its business situs as on the first day of January. (Opinion No. 215, Volume 17, and No. 189, Volume 18, Opinions of the Attorney General.) The owner of the automobile must make application to the county treasurer of the county where the automobile is owned or taxable for registration and accompany the application with the required fee. (Section 1, Chapter 72, Laws of 1937, amending Section 1759, R. C. M., 1935.)

"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.)"

Opinion No. 138, Volume 16, Opinions of the Attorney General.

Opinion No. 190.

Motor Vehicles—Licenses—Payment of, to What County—Counties.

HELD: The owner of a motor vehicle who pays registration license fee to the wrong county does so at his peril.

The county properly entitled to the registration license fee may collect from the owner who has paid to the wrong county, or may file claim for refund from the county collecting, or sue for an accounting.

If the automobile owner fails to heed the law, he is subject to payment of the license fee and tax anew. To hold otherwise would permit fees and taxes to be indiscriminately paid in any county not entitled to the same. A collection of the fees and taxes anew from the automobile owner by the proper county is not an exclusive remedy. The proper county may compel an accounting from the other county by claim, or claim and suit, if necessary. (Valley County v. Thomas et al., 109 Mont. 345.)