

**Taxes of Incorporated Towns and Cities, County Treasurer,
Duties Of.**

Where the county treasurer, under Section 4870, as amended by laws of 1897, page 224, collects taxes for incorporated towns or cities, he should settle with and turn the same over to the treasurer of such town or city when so directed by an order or resolution signed by the mayor and clerk of the town or city. Division 5 of Section 4350 of the Political Code does not apply to such taxes, as they are in no sense county moneys. Taxes levied by incorporated cities or towns distinguished from those levied by the county commissioners for volunteer fire companies.

Helena, Mont., Jan. 30th, 1906.

Hon. C. R. Stranahan, County Attorney, Boulder, Montana.

Dear Sir:—Your letter of the 22nd inst., in which you ask an opinion as to the authority of the county treasurer to turn over money collected by him pursuant to a tax levy made by an incorporated town or city for municipal purposes, received.

Sec. 4870 as amended by the laws of 1897, page 224, provides that county treasurers must collect the taxes levied by all cities or towns in their respective counties except where cities of the first and second class may provide by ordinance that the City Treasurer shall collect the same.

This money is, in no sense, county money, and belongs exclusively to the municipal corporation which made the levy upon which the taxes were collected by the county treasurer.

Therefore, division 5 of Section 4350 of the Political Code which provides that the county treasurer must "disburse the county moneys only on county warrants issued by the county clerk based on orders of the county commissioners does not apply.

Taxes collected for an incorporated city or town are not governed by sub-division 5 of Section 4350 any more than taxes levied by and collected for the state. Sec. 3990 of the Political Code provides that the county treasurer must settle with the State Auditor and pay over to the State Treasurer all money belonging to the State.

Where taxes are levied by the officers of a municipal corporation other than a county, and the county treasurer is by law authorized to collect such taxes for such corporation, he is simply the agent of the corporation for the purpose of collecting and disbursing the money and must account for and turn over the moneys so collected to the officer of the corporation authorized by law to receive the same.

The law does not expressly provide the manner of settling with and turning over to the town or city treasurer, the taxes collected for an incorporated town or city by the county treasurer, but division 1 of Section 4768 of the Political Code makes it the duty of the town or city treasurer to receive the moneys that go to the city or town, either from taxation or otherwise, and to pay the same out on warrant of the mayor drawn in accordance with law.

Therefore, in our opinion, it is the duty of the county treasurer to turn over to the treasurer of incorporated cities and towns of his county, all taxes collected by him pursuant to levy made by such cities and towns upon his receiving an order or resolution signed by the mayor and clerk directing him so to do.

The principle of law announced in the opinion given to you by this office on September 12, 1905, relating to taxes levied for volunteer fire department under Section 3237 of the Political Code does not apply, as suggested by you in your letter, to taxes collected by a county treasurer for a city or town pursuant to a levy made by the officers of such city or town. The taxes levied under Section 3237 for volunteer fire companies, is levied by the county commissioners and not by the officers of a separate and distinct municipal corporation.

The law does not authorize the treasurer of such volunteer fire companies to receive the taxes collected under such levy, and no provision is made by the Chapter relating to volunteer fire companies for the disbursing by the officers of such companies of the money collected under the tax levy made by the county commissioners. Therefore, the money so collected must remain under the control of the county commissioners and can only be paid out by the county treasurer as other moneys which are under the control of and disbursed by order of the county commissioners. There is a clear distinction to be made between taxes levied by the county commissioners for volunteer fire departments and taxes levied by a municipal corporation for municipal purposes.

Very respectfully,

ALBERT J. GALEN,

Attorney General.