

**Assessment. County Commissioners, Authority Of. Statute  
of Limitations. County Treasurer, Notice To.**

1. The taxes on deposits of a bank owning no real property for the year 1903 cannot be collected after Nov. 30, 1905, because of the statute of limitations. The liability of the treasurer for failure to collect such tax is a question of fact to be determined from all the circumstances in the case.

2. An order made by the board of county commissioners on December 17th directing the assessor to make a supplemental assessment, is void and such assessment invalid, as the county commissioners can only make such orders while sitting as a board of equalization.

3. Real estate having been sold for taxes, although not of sufficient value to pay all the taxes due from the owner of the same, must be accepted in settlement of such tax and the county is entitled to a deed for the real estate if not redeemed by the payment of the full tax.

4. The fact that the county assessor, or deputy county assessor is also a deputy county treasurer is not sufficient to make the treasurer and his bondsmen liable for his failure to collect taxes on personal property which is not a lien upon real estate. Sec. 3940 as amended, must be strictly followed in order to make the treasurer liable for the failure to collect such tax.

Helena, Montana, July 16th, 1906.

Hon. William D. Clark, Chairman, Board of County Commissioners, Butte,  
Montana.

Dear Sir:—Your letter of July 5th, submitting additional inquiries in

relation to the matters discussed in our letter to you of June 26th, received.

First. As to the assessment of the Aetna Savings and Trust Company for the year 1903. You state that a representative of your board reported that said company had on deposit with the state treasurer on the first Monday in March, 1903, the amount afterwards assessed to it for that year and that the county treasurer was notified in relation thereto, as provided by Sec. 3940 as amended by the laws of 1903, page 225. This tax would become delinquent on November 30th, 1903, and as stated in our former letter to you, the state's right of action against the parties owing the tax, would be barred two years from that date, so there would appear to be no method by which you could enforce collection of such tax at this time. As to whether the county treasurer was guilty of "wilful failure or neglect" in the collection of this tax, such as to make him and his bondsmen liable, is a question of fact to be determined from all the circumstances in the case and which is a matter for you to take up with the county attorney in your county.

Second: As to the assessment of the State Savings Bank for 1903. You state that, after they had paid their taxes for that year it was found that they had a reserve fund of \$150,000.00 larger than was returned by them and upon which they had paid the tax, and that thereafter, on the 17th day of December, 1903, a supplemental assessment was made by order of the board. This assessment is invalid for the reason that the board of county commissioners have no authority to order a raise in the assessment or a supplemental assessment except during the time they are sitting as a board of equalization, and before such assessment can be made, the board must give the notice to the person whose assessment is to be raised or added to in the manner provided by Sec. 3789 of the Pol. Code. The power of the board to order assessments has been considered by our supreme court in 72 Pac. pp. 659, to 662, and also in 81 Pac. p. 13.

Third. As to the Aetna Banking and Trust Company tax for 1904. As the real estate owned by this company was sold for the taxes and no seizure of personal property made prior to such sale, all that you can now do is take deeds in the name of the county for such property at the proper time, unless the property is redeemed by payment of the tax, penalties, etc.

The fact that county assessors, during the time they are making assessments of property are also deputy treasurers and authorized by the treasurer to make collection of taxes and receipt for the same is not, in our opinion, a sufficient notice to the county treasurer, under Sec. 3940 as amended, to make him and his bondsmen liable for wilful failure and neglect to collect the tax. In order to successfully maintain an action against the county treasurer and his sureties, under Secs. 3940 and 3941 for wilful failure or neglect to collect taxes, a strict compliance with the provisions of such sections must be had. It is provided in Sec. 3940 that the assessor must make a report to the treasurer setting forth the nature, amount, and assessed valuation of such personal property, where the same is located, and the name and address of the owner, claimant, or

other person in possession of the same. This should be a written report and served upon the treasurer.

Your question relating to the assessment of mining stock owned in the county, where the property representing the value of such tax is situated outside of the state, will be answered later in a separate opinion.

Very truly yours,

ALBERT J. GALEN,  
Attorney General.