

Poll Tax, Collection Of.

Section 3967, Political Code, in so far as it provides that the assessor shall collect poll taxes is unconstitutional. The provision of that section as to what person shall collect the tax does

not affect the legality of the tax. Article 16, Section 5, of the constitution provides that the treasurer shall be the collector of taxes. It is, therefore, his duty, under the constitutional provision, to take the necessary steps to collect the poll tax provided for in Section 3960.

April 28, 1905.

Hon. N. B. Smith, County Attorney, White Sulphur Springs, Montana.

Dear Sir:—Your letter of the 20th instant, requesting an opinion upon the constitutionality of Section 3967 of the Political Code, to hand.

Under the decision of our supreme court in the case of Mutual Life Insurance Company of New York v. Martien, Assessor, 71 Pac. 470, said Section 3967, in so far as it attempts to authorize the assessor to collect taxes is unconstitutional. However, Section 3967 is unconstitutional only in so far as it names a person other than the treasurer to collect the tax. The poll tax provided for by Sections 3960 to 3982 is not effected by such decision, and is a valid tax.

Article XVI, Section 5, of the constitution provides that the treasurer shall be the collector of taxes; it is, therefore, his duty alone to take the necessary steps to collect the poll taxes in the county in all cases. Where the same are not a lien upon real property or where the person's name does not appear upon the assessment book, he or his deputy should summarily collect as provided by Section 3967, Political Code.

The method pursued in some of the counties is for the county treasurer to make a written appointment of the assessor as a deputy county treasurer, and the assessor, as such deputy treasurer, upon collecting this tax gives a receipt signed by the county treasurer and by himself as deputy treasurer; or perhaps a better method is for the county treasurer to appoint a special deputy for the purpose of collecting the poll tax from all persons liable therefor, whose names do not appear upon the assessment list, as provided in Section 3967. The latter method is followed in several counties of the state.

The secretary of state informs me that the session laws of 1905 will be published about May 15 and that he will then forward copies to the county attorneys of the State.

Yours very truly,

ALBERT J. GALEN,
Attorney General.