

Road Tax. Residents.

No specific time is required wherein a man shall reside in the State before he is liable for a special road tax in the county in which he is then residing.

The burden of proof is on a resident to show that he has a fixed place of residence to which he intends to return.

If a man from whom it is sought to collect the tax has no fixed place of residence in any other state, or county within Montana, then he must pay road tax in the county in which he is temporarily residing.

Helena Montana, May 7, 1907.

H. C. Schultz, Esq.,
County Attorney,
Thompson Montana.

Dear Sir:—

I have your request for an opinion from this office relative to the collection of Road Tax, wherein you ask if there is any specified length of time required for a man to reside in a particular district before he can be compelled to pay a special Road Tax.

The law as to the collection of special Road Taxes provided for in Section II. Art. 3, Chap. XLIV. p. 70, Laws 1903, does not apply to one simply traveling through the State, but does undoubtedly apply to any man over the age of twenty-one years and under the age of fifty years, who has actually taken up a residence in the County.

Webster defines the word "Residence."

"1. The act of residing, abiding or dwelling in a place for some continuance of time; as the residence of an American in France or Italy for a year."

Synonyms are as follows: Abiding, Domiciliation, Stay, Habitation. Resident means:

"1. One who resides or dwells in a place for some time.

"2. A public minister who resides at a foreign court."

No specified time is required to bring a man within the provisions of the above mentioned law, and it is in no defense to the collection of such a tax that he has not voted, or has not declared his intention of remaining permanently in the State of Montana. The right to collect this special road tax as provided by our legislature, may be likened unto the right to tax goods of one who temporarily comes into the state to dispose of same at "Fire Sale," or the like. We may also illustrate it by citing the right of the State to require a license for carrying on lines of business, even though it is the intention of one temporarily engaged in such business to return to his home, or to go to some other State to permanently engage in that or some other kind of business.

You will understand that each case that arises must be settled upon the facts involved in that particular case, and it is very difficult to lay down the general rule that fits all cases.

I call your attention to the portion of Section 11, supra, which reads:

"Each person liable therefor residing therein at any time within a year."

You will also note that Section 20 of the same act provides that the receipt given by the Road Supervisor shall "certify therein that the special road tax for the current year has been fully paid." Sections 26 and 27 of the same Act provide no particular time that a man must work before he is made to pay the said road tax. When a man comes to this state to work on the construction of a new rail road, and actually goes to work, after having made arrangements for a place to sleep and eat, or, under such conditions begins work on one of the various irrigation projects in this State, or engages as an engineer for a few weeks

during the threshing season, then sub. div. 1. of Section 72 of the Political Code must be applied in determining whether he is "residing" in the county. If he can show that he has an established residence elsewhere to which he intends to return in seasons of repose when through with the labor or the special or temporary purpose for which he came to the county, then he is not "residing" in the county. The burden, however, is on such a person to show that he has such a fixed place of residence to which he intends to return.

On the other hand, if such a person has not a fixed place of residence, and will stop at whatever place he may find work when through with the work he is at present engaged in, then he may be designated as a person with no established residence to which he will return, and under such circumstances his residence would undoubtedly be where he is working or stopping at the time the tax is demanded. It is the policy of the law that he pay such special tax somewhere. He may use the highways while here; may claim the protection of our police power; may take up the time of our courts in litigation with our citizens; may become a patient at the county hospital; may be buried at the expense of the county in which he is at work, and he may be the recipient, while here, of many other of the rights and benefits that he may demand in common with one who has been born and reared in Montana. If, however, the one sought to be charged with this tax shows a receipt from some other county, or from some other State, then the comity due from one sovereign to another applies, and neither the County Treasurer or the Road Supervisor should collect the tax in such a case.

Yours very truly,
ALBERT J. GALEN,
Attorney General.