

Road Tax, Determining Liability For. Poll Tax, Determining Liability For.

The law does not expressly provide that employers must determine which of their employees are residents of the State and liable for special road and poll tax. They should, however, furnish a list of all employees to the public officials whose duty it is to collect such taxes, and assist the official in determining which of such persons are liable for the tax. And upon receiving

the amended list, containing only the names of those liable for the tax, it would be their duty to see that such tax is paid.

Helena, Montana, July 9, 1907.

Hon. Thomas Nelson Marlowe,
County Attorney,
Missoula, Montana.

Dear Sir:—

Your letter of the 6th inst., requesting an opinion of this office upon the following proposition received:

Inasmuch as laborers temporarily employed in the State of Montana, and who are not bona fide residents of the State, are held not to be liable for special road and poll tax, does it become the duty of the employer of such laborers, in furnishing a list of his men, to determine who are residents of the State and who are not, or must this be determined by the County Assessor or Road Supervisor?

In an opinion given by this office to Hon. D. M. Durfee, County Attorney, on April 20, 1907, we said:

“Section 72 of the Political Code lays down the rules for determining the place of residence of a person.

You are therefore advised that the word ‘inhabitant’, as used in Section 3960, means a resident of this State; and, that a person who is called into this State, or brought into this State for the purpose of labor, or other special or temporary purpose, and intends to return to some other State in seasons of repose, is not an inhabitant of this State.”

And in an opinion given to Hon. H. C. Schultz, County Attorney of Sanders County, on May 7, 1907, we said further.

“When a man comes to this State to work on the construction of a new railroad, 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 Subdivision 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. * * *. 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."

The above quotations and the law therein cited clearly lay down the rules for determining who are residents of the State and therefore liable for special road and poll tax.

The question then arises, of course, as to whose duty it is to determine such facts. The law does not expressly declare that the employer must determine which of his employees are residents of this State in furnishing a list to the Assessor or Road Supervisor, and in many instances it would no doubt be very difficult for him to determine such question.

In our opinion the Assessor in collecting special poll tax, or the Road Supervisors in collecting special road tax, should work in conjunction with the employer or his agent who has direct charge of the men employed. The employer could furnish to the Assessor or Road Supervisor a list of all men in his employ within the jurisdiction of such officers. Whereupon the Assessor or Road Supervisor, with the assistance of such a list of names, could interview the employees, and, under the rules for determining whether they were residents of this State, as laid down above, ascertain whether they were liable for such special road or poll tax. Whereupon he could strike out the names of the employees not liable for such taxes and furnish the employer with the amended list containing the names of only such employees as were found to be liable for the tax, and it would then become the duty of the employer under the law, to see that the tax was paid by these men whose names appeared upon the amended list.

We understand that the collection of these taxes is a very difficult matter to adjust, and the cause of such annoyance both to the public officials and to the employers of men, but by working together along the lines above mentioned we believe much annoyance could be saved the employers, and at the same time the State and County would be able to collect most of the special taxes from the persons liable for the same.

Very truly yours,

ALBERT J. GALEN,

Attorney General.