

County Treasurer, Extra Pay. Taxes Road and Poor, Collection Of. County Commissioners, Power Of to Grant Extra Pay.

1. The County Commissioners have no authority to allow to Treasurer extra compensation for doing that which the constitution prescribes as his duty to do.
2. County Commissioners have no authority to pay a corporation or clerks or agents for furnishing the names of employees liable for special road and poor taxes, but the Board may furnish the County Treasurer sufficient help at the expense of the county to enable him to collect special road tax.

Helena, Montana, Feb. 16, 1907.

Hon. James E. Murray,
County Attorney,
Butte, Montana.

Dear Sir:—

I am in receipt of your favor of the 11th inst. submitting for the consideration of this office the following questions, to-wit:

1. "Has the County of Silver Bow any right to pay, or authorize the payment of any commissions or percentage to the treasurer of the county, for the collection of Road and Poor Taxes?"
2. "Has the County of Silver Bow any right or authority to pay or authorize the payment of any commission or percentage to clerks or agents of corporations in whose employ are individuals liable for such taxes, for any aid or assistance they may give the tax collector in his efforts to secure such Road or Poor Tax?"

1. Under the provisions of both the constitution (Sec. 5, Art 16) and the Statute (Sec. 12, Chap. XLIV, 1903, and Sec. 3982 Political Code) it is the duty of the County Treasurer to collect the taxes. The Constitution makes no distinction between Road Tax, Poor Tax and Property Tax.

In Mutual Life Insurance Company vs. Martien, 27 Mont., 437, the Supreme Court said: "Examination of these sections does not disclose that either by implication or by express words the Constitutional Convention gave the legislature any power to make anybody but the County Treasurer a collector of taxes."

The section of the Constitution above cited creates the office of County Treasurer and makes it his duty to collect the taxes, while Section 4594, Political Code, fixes his salary for discharging the duties of his office, and the Board of County Commissioners have no authority either to increase or to diminish salary fixed by statute; nor can extra pay, in any form, be allowed the County Treasurer for doing that which the Constitution makes it his duty to do.

The Board of County Commissioners has no power except that given it by law, and this power is not given.

For an enumeration and discussion of the powers of boards of county Commissioners see Section 4230 Political Code;

Williams v. Commissioners 28 Mont. 360;

Board of Commissioners v. Bradford, 72 Ind. 455;

also the very recent case of Chase v. Board of Commissioners (Col.) 86 Pac. 1011.

2. By the provisions of Sections 26 and 27, Chap. XLIV, Laws 1903, it is made the duty of every employer, at the request of the Road Supervisor, to furnish a list of all persons employed by him liable for the payment of special Road Tax, and a penalty is fixed for the violation of this duty on the part of the employer. No compensation is provided by law for the employer for the discharge of this duty, hence none can be allowed him, and it is not within the power of the Board of County Commissioners to allow compensation, either by percentage or otherwise to an employer or to his clerks for the making and furnishing of this list, for this is a duty incumbent upon him by law. However, by Section 11 of this same Act, the Road Supervisors are made the agents of the County Treasurer to collect this special Road Tax, and this section also provides "The Board of Commissioners shall furnish the County Treasurer sufficient help at the expense of the County to enable him to collect such taxes under this section."

Under this provision the power seems to be conferred upon the Board of County Commissioners to devise ways and means for the collection of this special tax in the name of the County Treasurer, and the expense thereof is made a proper charge against the County. Discretionary power is thus given to the Board, which, however, has reference only to this special Road Tax.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.