

Taxes Delinquent, Distribution Of. Delinquent Taxes, Distribution Of. Distribution, of Delinquent Taxes.

Where delinquent taxes have been collected by the county treasurer neither the city nor the state are entitled to any share or part of the 10% penalty or the 50c collected as publication fee.

February 14, 1912.

Hon. C. E. Kump,
State Examiner,
Helena, Montana.

Dear Sir:

I acknowledge receipt of your letter of the 10th inst., submitting the following questions relative to the distribution of delinquent taxes collected by the county treasurer on property situate within a city:

1. Should the county settle with the city only for the original taxes? Or—
2. Should the city be entitled to a portion of the penalty, publication fees and interest?
3. In what proportion should the distribution be made to the city, county and state?

Code Section 3866 (Pol. Code 1895) makes it obligatory upon the county treasurer to collect for the use of the county an additional 10 per cent where taxes have become delinquent. Code Section 3925 (Pol. Code 1895) in making provision for the distribution of taxes collected after the same had become delinquent provides that "the original tax and 20 per cent paid in redemption must be apportioned between the state and county, etc." This provision would indicate that the State should receive a portion of the penalty but the penalty therein referred to is a 20 per cent penalty, for which there is no provision of law. However, if the "20 per cent" means 10 per cent, then the two sections are in conflict for said Sec. 3866 (Codes of 1895) says that the penalty must be collected for the use of the county. However, by the act approved March 7th, 1899, said section 3866 was amended and the words "must be collected for the use of the county" are retained in the section as the same is amended, and this section as amended is now carried forward in the Codes of 1907 as Sec. 2622 and as it is in conflict with said section 3925, codes 1895, (now Sec. 2681 of the Revised Codes of 1907) it must be construed as amending Sec. 2681 for it is the later enactment. Under this law then as it stood prior to the act of February 20, 1907, the county is entitled to all of the penalty and the state and city are entitled only to the original tax with what interest may have been collected thereon. Chapter 24, Laws of 1907, (Act of Feb. 20, 1907) relates to the duty of the county treasurer in the collection of taxes levied by cities and provides for distribution of delinquent taxes collected "pro rata in the same proportions as provided in Section 3925 and Section 3926 of the Political Code" (1895) now sections 2681 and 2682, Revised Codes, but as said section 2681 was amended by implication by the Act of March 7th, 1899, it must be held that the reference is to the section as amended rather than to the

section as it originally stood, and that it does not, therefore, have the effect of granting to the city or state the right to share in the distribution of the 10 per cent penalty authorized by section 2622. The 50 cents provided for in section 2635 is paid to the county and neither the state nor the city is entitled to share in any distribution thereof.

Hence, in the distribution of collected delinquent taxes the city and state are entitled to receive the original tax and the interest collected thereon, but neither the city nor the state are entitled to any share or part of the 10 per cent penalty named in Sec. 2622 or the 50 cents named in Sec. 2635, Revised Codes.

Yours very truly,

ALBERT J. GALEN,

Attorney General.