

Taxes, Erroneous, Refund Of. Refund, of Taxes. County Commissioners, Duty to Refund Erroneous Taxes.

Where, through error of a county official, taxes are erroneously collected, it is the duty of the county commissioners to refund such taxes upon presentation of a proper claim therefor.

June 5, 1912.

Hon. Desmond J. O'Neill,
County Attorney,
Roundup, Montana.

Dear Sir:

I acknowledge receipt of your letter of May 22nd, relative to the payment of taxes in your county by one W. H. Glendenning, in an amount in excess of that properly chargeable to him. It appears from your letter that the officer of your county whose duty it was to extend the taxes upon the tax rolls committed an error in the amount of taxes due from Mr. Glendenning to the stock indemnity and bounty fund, such officer charging the amount due as \$91.60, whereas upon the valuation returned by the assessor the amount should have been \$9.60. It further appears from your letter that Mr. Glendenning paid this tax under protest, but that he has not availed himself of the provisions of Secs. 2742 and 2743 and brought suit for the return of the money unlawfully collected from him, and you ask whether the county commissioners of your county have authority of law to refund this tax after the time for suit has expired; and you also ask as to the possibility of the county recovering the amount back from the state should the county make the refund.

This condition has arisen through the negligence of one of the officers of your county. The county, in the collection of this tax, is acting as the agent of the state; that is, the county itself, and not any particular officer thereof. The officer collecting this amount has not received any benefit by reason of the payment, and if any refund is to be made, it should properly be made by the county, as such (*Holiday v. Sweet Grass County*, 19 Mont., 365).

Secs. 2742 and 2743 of the Revised Codes as amended by Chap. 135, Laws of 1909, makes provision for the payment of taxes under protest in case the same have been unlawfully levied or demanded. It appears, however, that Mr. Glendenning has not brought suit under these sections to recover the tax. Your letter fails to state whether he has, as yet, presented a claim to the county for the amount. Sec. 2669 of the Revised Codes gives direct authority to the board of county commissioners to refund taxes erroneously collected, and if a claim is presented to the board of county commissioners of your county within one year from the date of such erroneous collection (see Sec. 2945, Revised Codes) and the commissioners in the considering of such claim determine that the same is a just claim against the county, they may properly pay the same, irrespective of the fact that the claimant has not seen fit to avail himself of the provisions of Secs. 2742 and 2743 to

bring suit against the county.

Where a tax erroneously collected has been covered into the treasury of the state it is now without the jurisdiction of the county; nevertheless, by the provisions of Sec. 2669 it is the duty of the county to make the refund and the county must look for reimbursement to the legislature. It is the experience of this office that the legislature refuses to pass such appropriation acts, but this refusal in the past is not sufficient to warrant refusal on the part of the commissioners to refund the amount. The question presented to the county is, "were the taxes erroneously or illegally collected by it," and having determined that fact in the affirmative the only concern of the commissioners is to look to the law and its directions with regard to a refunding.

It is, therefore, my opinion that the board of county commissioners of your county have not only the authority, but it is their duty, to refund to Mr. Glendenning the amount of tax erroneously demanded and collected by its officer.

I return herewith the tax receipt and letter transmitted with your communication.

I also enclose you herewith copies of opinions of this office to County Attorneys Cotter and Greene relative to Chap. 92, Laws of 1911.

Very truly yours,

ALBERT J. GALEN,

Attorney General.