

Road Poll Tax, Paid in Cash. County Attorney, Authority to Hire Special Police. Special Police, Authority to Hire. Board of Equalization, Power of. County Treasurer, Eligibility to Re-election.

Road poll tax is to be paid for by county warrant and not by receipt for road work.

Counties are liable for necessary expenses incurred by county attorney in the prosecution of criminal business.

County boards of equalization have such powers only as are conferred by statute.

A county treasurer was appointed to fill a vacancy and afterwards elected to fill the same office for another term. Held: ineligible for re-election.

April 27, 1914.

Hon. Chas. Waterman,
Chairman, Board of Co. Com. Gallatin Co.,
Bozeman, Montana.

Dear Sir:

I am in receipt of your request for an opinion as follows:

"An answer of the following questions from your office will be greatly appreciated by the County Commissioners of Gallatin county:

1. Can the board of county commissioners authorize the issuance of a county warrant on the road fund, in lieu of the road receipt as repealed by the last legislature?

2. Is the county liable for the salary of special police within incorporate limits of cities or towns when said special police have been employed by the county attorney for the purpose of arresting offenders for fast or reckless driving of motor vehicles?

3. Can the local boards of county commissioners value and classify the lands within their respective counties in lieu of the commission appointed by the governor authorized by the last legislature?

4. Is a county treasurer eligible for re-election when he was appointed to serve a portion of an unexpired term and was elected for one term following, having served in all one term elected and less than one year appointed, immediately preceding?"

1. Section 1351, Revised Codes of 1907 provides that any person producing the road supervisor's certificate for labor done or for material furnished on any road or bridge by order of the road supervisor was to be allowed the same on his special road tax. This section, however, was repealed by Chapter 72, Session Laws of the 13th Legislative Assembly, and there is not to be found a similar provision in the new road law, but on the contrary, its provisions seem to indicate that the special road tax of two dollars per annum from each male person over the age of twenty-one years and under the age of fifty years resident within the county on the first day of March, shall be paid in money. Hence, if road work be done by persons subject to this tax, I am of the opinion that such work should be paid for by county warrants and not by the issuance of any receipt as was the custom prior to the repeal of Section 1351, supra;

2. On January 6, 1914, this office rendered an opinion to Hon. James Kane, County Auditor, Silver Bow county, Montana, to the effect that where was an agent, not an attorney or deputy, was appointed to the office of county attorney of Silver Bow county, at a salary of \$150 per month, and after performing services under the appointment he filed his claim therefor with the county auditor, it was held that the appointment was without authority of law, and that the claim should be disapproved; that if services were necessarily incurred by the county attorney in connection with criminal business arising in the county, the same might be paid for as expenses incident to the office of county attorney, under the authority of paragraph 2 of Section 3199, Revised Codes of 1907. Since the question you propound is analogous to the one decided by this office, a copy of the opinion referred to is herewith enclosed for your reference;

3. Under the Constitution (Art. XIII, Section 15), the board of county commissioners of each county shall constitute a county board of equalization, and the duty of the board shall be to adjust and equalize the valuation of taxable property within their respective counties. The duties of the board of county commissioners, sitting as county boards of equalization, are defined by the provisions of Sections 2572 et seq., Revised Codes of 1907, and the board has no authority other than as contained in the law referred to. The duty of assessing the property in the first instance rests with the county assessor, and the functions of the board are limited to ascertaining whether or not the assessments as returned by the assessor are just and proper;

4. By the provisions of Article XVI, Section 5 of the Constitution, no person shall hold the office of county treasurer for more than two consecutive terms, and it is my opinion that under this provision it becomes immaterial whether a county treasurer holds office by appointment or by election. Hence, under the facts as you state them, a county treasurer would be ineligible for re-election.

Yours very truly,

D. M. KELLY,
Attorney General.