

License, Penalty. Penalty, for not Having License. Liquor License, Penalty for Doing Business Without. Penalty, Collection and Disposition of.

Where a penalty is collected under the provisions of Section 2780 for doing business without a license, the same should be accounted for and disposed of as a part of the money received for the license.

June 26, 1915.

Hon. H. S. Magraw,
State Examiner,
Helena, Montana.

Dear Sir:

I acknowledge receipt from you of a letter received by your department from the county treasurer of Mineral County, making inquiry as to the disposition to be made by him of the moneys collected under and by virtue of the provisions of Section 2780, Revised Codes, as a penalty for engaging in business prior to taking out license. It appears from the letter that the original license was \$165, and that the treasurer collected the penalty thereon of ten per cent, making \$181.50. The provisions of said Section 2780 authorizes the collection of the penalty, and provides:

“which said penalty must be added to the amount of said license and collected by the county treasurer at the time of the collection of the license.”

There does not appear to be any authority for collecting the penalty independent of the license, but the law specifically provides that the ten per cent shall be added to the amount of the license; that is, instead of the party being charged \$165 for the license, he is charged \$181.50 therefor. To give effect to the provision of the section that this penalty must be added to the amount of the license, such penalty must be regarded as a part of the purchase price of the license, and when it is once added, there is not any authority for it being segregated. Hence, the whole sum of \$181.50 is the amount received by the treasurer for the license, and is therefore license money, and the whole sum should be distributed by the treasurer as money received from the sale of licenses, and divided by him in the same manner that he would divide the original license fee; that is, he would have \$181.50 to divide and to account for as license money instead of \$165.

This, of course, is independent of the provisions of Sections 2750 and 8602, Revised Codes.

Yours very truly,
J. B. POINDEXTER,
Attorney General.