

Municipalities, Method of Taxation by. Taxation, in Municipalities. County Treasurer, Duty of in Collection of Taxes. Collection of Taxes, Duty of Treasurer in.

The County Treasurer is chargeable with, and must collect taxes as extended on the assessment rolls, and is without authority to make alterations therein at the request of a municipality whose levy was not certified as required by law.

October 14, 1915.

Hon. Frank A. Wright,
County Attorney,
Lewistown, Montana.

Dear Sir:

I have your letter of the 11th instant, setting forth among other things, the following:

"The town of Denton was incorporated in the latter part of August. On August 9th, a levy of thirteen mills representing a fire tax for this town as an unincorporated town, was approved. Subsequently the town was incorporated but up to this date there is nothing in the Treasurer's office showing that it was incorporated. All assessments were made, books handled, and some of the taxes collected, as though this town was unincorporated. Acting evidently under Section 3358 Revised Codes of Montana, the town council passed the resolution, a copy of which is attached to the Treasurer's letter, which presumably was passed on the 4th of October, 1915. The said resolution was not however handed to the Treasurer until the 8th day of October. At the present date taxes as assessed have already been paid by residents of the incorporated district.

"The question is, what duties must the Treasurer perform, if any, and if he is the only one who has to perform by reason of the said resolution, and if it is incumbent upon him to extend the books, and go to the expense of hiring extra help under the above circumstances at this time?"

The powers of municipalities respecting taxation are as defined in Article IX, Chapter 3, Title 3, Part 4, Revised Codes (Sec. 3342 et seq.), and it is fundamental that these powers operate as a limitation upon the authority of the municipality and are to be strictly construed and followed. Section 3342, as amended by Chapter 103, Laws of 1911, provides for an annual tax "and the council may distribute the money collected into such funds as are prescribed by ordinance." The fiscal year for municipalities begins on the first Monday of May in each year (Sec. 3359). During the last quarter in each fiscal year the council must pass an annual appropriation ordinance "in which ordinance there must be appropriated enough money to defray the expenses or liabilities of the city or town for the ensuing fiscal year, and there must be specified therein the amount appropriated for each separate object or fund, and the salary or compensation to be paid each officer of the city or town." Such ordinance becomes the basis, and is the condition

precedent, for the annual tax levy provided for by Section 3358. The statement of facts contained in your correspondence fails to disclose the passage of any such ordinance. Hence the resolution levying a tax is abortive. Furthermore, it does not appear by the certificate of the city clerk that the resolutions was ever approved by the mayor (Sec. 3265), the recital being "passed by the town council of Denton." The presumption cannot be indulged that the Mayor approved the resolution for he may have withheld his approval [Sec. 3250 (6)]. However, it is not necessary to dwell upon these technical points. They are adverted to simply to point out the defects in the proceedings of the town officials.

It is only necessary to refer to some of the statutory provisions relating to county officers to show that the county treasurer is without power to collect the proposed tax, but must proceed with the collection of taxes as the same are extended upon the assessment rolls now in his office. Section 2510 provides that the assessor must between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants and all property in his county subject to taxation, and Section 2543 points out the manner in which the county assessor must list property including

"city and town lots, naming the city or town and number of the lot and block, according to the city or numbering in such city or town and improvements thereon. The cash value of city and town lots, the cash value of improvements on city and town lots."

Section 2545 provides that on or before the second Monday of July of each year the assessor must complete his assessment book and must subscribe thereto under oath. And by the provisions of Section 2548, he must on the second Monday in July of each year, transmit to the State Board of Equalization a statement showing the things required of him by law. These things he must do under the penalties prescribed by Section 2539. On the third Monday of July in each year, the Board of County Commissioners are required to sit as a Board of Equalization, to examine the assessment book and equalize the assessment of property in the county, and the Board must continue in session for such purpose until its work is disposed of, but may not sit later than the second Monday of August (Section 2572), when the work of equalization is ended the assessment book is lodged with the county clerk who must add up the valuations and enter the total valuation of each kind of property, and the total valuation of all property on the assessment book (Sec. 2604). And he must compute and enter in his separate money column of the assessment book the respective sums in dollars and cents to be paid as a tax on the property enumerated in the assessment book, and foot up the column showing the total amount of such taxes, and the columns of total value of property in the county as corrected under the direction of the State Board of Equalization (Section 2608), and on or before the first Monday in October he must deliver to the county treasurer either the original or a duplicate of the original assessment book, supported by his affidavit to the effect that the assessment book conforms to the requirements of the county and

State Board of Equalization; that he has added up the columns of valuations, taxes and acreages required by law (Sec. 2609). With the book thus transmitted to the treasurer, that official is without authority in law to make any alterations. He is charged with the taxes as they appear on the book, and must account for all moneys as extended on the book at the time of its delivery to him. He is, therefore, powerless to do other than collect the taxes as set forth in the assessment book and he has no further duty to perform.

Yours very truly,

J. B. POINDEXTER,

Attorney General.