

Delinquent Taxes—Collection of—Appointment of Deputy County Treasurer.

The county commissioners have authority to allow the county treasurer to appoint an extra deputy, who would be authorized to do anything which the county treasurer might do in the collection of taxes, but such deputy must proceed in the manner provided by law for the collection of property taxes.

February 19, 1917.

Mr. Albert Anderson,
County Attorney,
Glendive, Montana.

Dear Sir:

I have your letter of recent date asking my opinion upon the proposition of whether or not the county commissioners have authority to employ a man for the purpose of collecting delinquent taxes and pay him a commission or salary and expenses.

Chapter VIII of title XII, part III of the Political Code provides the method for the collection of all property taxes. Section 2622 provides for the time at which all unpaid taxes become delinquent, and Sections 2629 and 2630 provide for the publication of delinquent taxes and the notice of sale, and the following sections up to and including Section 2656 provide for the manner of sale, and redemption of tax deeds, etc. The procedure under these sections relate to the sale of real property and the manner of the collection of taxes which are a lien upon real estate. Sections 2657 to 2663 relate to the seizure and sale of personal property by the county treasurer, for the purpose of enforcing payment of taxes due on personal property when the same is not a lien upon real estate. Section 2683 to 2685 also relate to the seizure and sale of property by the county treasurer.

Sections 2738 and 2739 provide for the collection of delinquent taxes in certain cases by civil actions in court.

By Section 2959 the County Treasurer is made collector of taxes, and no other person than the County Treasurer is authorized by law to collect taxes.

Section 3128 of the Political Code, which was formerly Section 4602 of the Political Code of 1895, as amended by Section 2 of Chapter 75 of the 1905 Session Laws, provides the number of deputies allowed the County Treasurer in counties of the several classes, but Section 3123 of the Political Code, which was Chapter 178 of the Session Laws of 1907, provides that the Board of County Commissioners in each county is authorized to allow the several county officers to appoint a greater number of deputies than the maximum number allowed by law when, in the judgment of the Board, such greater number of deputies is needed for the prompt and faithful discharge of the duties of all county offices, and to fix the salary of such deputies appointed in excess of the number fixed by law; provided such salary shall not exceed the maximum salary of deputies provided by law. Thus it would appear

that the Board of County Commissioners would have authority to allow your county treasurer to appoint another deputy, such deputy to be appointed by the treasurer and his salary to be fixed by the Board of County Commissioners, not in excess, however, of the amount provided by law. This deputy would be authorized to do anything which the county treasurer might do in the collection of taxes, but he would have to proceed in accordance with the foregoing provisions of the code which I have cited in the matter of collecting taxes upon real and personal property.

In this connection, I desire to call your attention to the following cases: Chase v. Board of County Commissioners, 37 Colo. 268, 86 Pac. 1011; State ex rel, Coleman v. Fry, 77 Kan. 540, 95 Pac. 392, and cases cited on page 393, where it is held that the contract by which the Board of County Commissioners undertakes to employ a private person in aid of the collection of taxes, which service the statutes makes it the duty of certain county officers to render, is ultra vires and void.

Respectfully,

S. C. FORD,
Attorney General.