

County Treasurer—Delinquent Taxes—Taxes—Notice—Penalty.

The County Treasurer in publishing the notice provided for in Section 2 of Chapter 96, of the Laws of 1923, should state that a penalty of five per cent will be added if the installment to be paid November 30th is not paid.

John T. Hays, Esq.,
County Attorney,
Red Lodge, Montana.

My dear Mr. Hays:

You have submitted to me the question of what penalty shall be stated in the notice provided for by Section 2 of Chapter 96, Session Laws of 1923, it appearing that there is a conflict between the penalty stated therein and that provided for in Section 1 of the said chapter.

Section 1 of said chapter, with relation to the penalty to be added in case taxes become delinquent, is as follows:

“A penalty of five per cent shall be added to all delinquent taxes.”

Section 2 of said chapter relating to publication of notice of delinquency, provides what the notice shall state, and among other things provides that if one-half of the taxes are not paid on or before 6 o'clock P. M. on the 30th day of November, that

“the whole amount of said taxes will be delinquent and will draw interest at the rate of one per cent per month from and after such delinquency, and ten per cent will be added to the amount thereof as a penalty,” etc.

The balance of the section provides for the addition of a five per cent penalty if one-half of the tax is not paid before 6 o'clock P. M. of the 31st day of May thereafter.

It is apparent that in drafting Section 2 of said chapter an error was made by inserting the word “ten” instead of “five” in speaking of the penalty to be added in case the whole of the taxes become delinquent at 6 o'clock P. M. on November 30th. That was the penalty to be added under the old law, and no doubt the old statute was used as a reference in the drafting of the new one, and there was a failure to substitute the word “five” for “ten” as it appeared in the old statute. However this may be, the Legislative intent is so apparent from a reading of the whole of Chapter 96, that there is little room for doubt that the word “ten” in Section 2 is there by mistake, and that it was intended that the penalty to be added was five per cent. Section 1 declares the law on the subject, while Section 2 is merely a direction to the Treasurer of what he shall do to inform the tax-

payers of what the law is. It would be an idle thing for the Treasurer to publish that he would add a penalty of ten per cent, when his authority to add a penalty fixes it at five. It will be observed upon reading all of said Section 2 that the failure to give the notice does not affect the legality of the tax.

It is both a common-law and statutory rule of construction of statutes that the intention of the Legislature must be discovered, and, if possible, pursued, and in the execution of this rule it is also true that:

“Legislative enactments are not more than any other writings to be defeated on account of mistakes, errors or omissions, provided the intention of the Legislature can be collected from the whole statute. Where one word has been erroneously used for another, or a word omitted, and the context affords the means of correction, the proper word will be deemed substituted or supplied.” Statutes 25 R. C. L. No. 227.

It is, therefore, my opinion that the County Treasurer in publishing the notice provided for in said Section 2, should state that a penalty of five per cent will be added if the installment to be paid November 30th is not paid.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.