

Cities and Towns — Taxes — Claims — Counties — County Treasurer—Poll Tax—Road Tax.

The road poll tax levied by a city through an ordinance belongs to the city though the same be collected by the county treasurer and credited to the road fund of the county.

L. Q. Skelton, Esq.,

February 7, 1925.

State Examiner,

Helena, Montana.

My dear Mr. Skelton:

You have requested my opinion as to whether the city of Cut Bank may collect from the county of Glacier special road taxes for the years 1922, 1923 and 1924, collected by the county and credited by it to the road fund of the county.

You have called my attention to the fact that the city of Cut Bank in 1915 passed an ordinance imposing an annual road poll tax of two dollars upon all male inhabitants of the town between the ages of 21 and 45 years, which ordinance is still in full force and effect. This ordinance was, no doubt, passed by virtue of subdivision 49, section 5039, R. C. M., 1921.

Section 1617, R. C. M., 1921, imposing the road poll tax upon the male inhabitants of a county imposes the tax upon male persons between the ages of 21 and 50 years and exempts cities and towns which, by ordinance, provide for the levy and collection of a like tax within such city or town for road, street and alley purposes.

Section 5219, R. C. M., 1921, also imposes a tax upon the male inhabitants of a city or town between 21 and 45 years of age.

Section 1617 has been held by a former attorney general to repeal section 5219 as well as subdivision 49 of section 5039, R. C. M., 1921. (Vol. 3, opinions attorney general, p. 198.)

By section 5214, R. C. M., 1921, the county treasurer is required to collect taxes levied by cities and towns including road poll taxes when the city does not provide for the collection of its own taxes. I assume

from the case of *State vs. McNamer*, 62 Mont. 490 that the city of Cut Bank had not during the time in question provided by ordinance for the collection of its own taxes.

In my judgment, the ordinance in question is valid and the tax collected from persons between the ages of 21 and 45 belongs to the city of Cut Bank. I do not believe that the failure of the city to impose the tax upon all male inhabitants between 21 and 50 years of age instead of between the ages of 21 and 45 years of age affects the validity of the ordinance.

It is, therefore, my opinion that the money collected from male inhabitants of the city of Cut Bank between the ages of 21 and 45 years belongs to the town of Cut Bank, and that mandamus lies to compel the county treasurer to account for the same to the city treasurer. (*State vs. McNamer*, 62 Mont. 490.)

I express no opinion as to whether the statute of limitations runs against such a claim, or, if so, as to when the bar of the statute may be successfully interposed.

Very truly yours,
L. A. FOOT,
Attorney General.