

**Collection — Taxes — Commission — New Counties — County Commissioners — Accountant — Public Policy — Witnesses.**

A person may not be employed by county commissioners to collect delinquent taxes due to one county from another upon the adjustment of indebtedness between the two on the creation of a new county.

An accountant may not be employed to receive a percentage of whatever may be recovered against a county as a result of a report by him to be submitted.

Jay G. Larson, Esq.,  
State Examiner,  
Helena, Montana.

October 8, 1925.

My dear Mr. Larson:

You have requested my opinion whether the board of county commissioners has authority to employ a person on a percentage basis, or otherwise, to collect delinquent taxes due to one county from another upon the adjustment between two counties arising by reason of the creation of a new county.

Delinquent taxes must be collected in the manner and by the person authorized by law to collect the same.

This is also true upon the creation of a new county. (County of Hill vs. County of Liberty, 62 Mont. 15.)

This office has heretofore passed upon this precise question regarding the collection of city taxes and held that no commission may be paid to anyone for their collection.

For the reasons set forth therein it is my opinion that no one may be employed on a contingent basis, or otherwise, to collect delinquent taxes due to one county from another upon the adjustment between two counties arising by reason of the creation of a new county.

You have also asked whether an accountant submitting a report of his findings may receive any percentage, or otherwise, if such report is the means of one county recovering delinquent taxes or moneys from another county.

This question depends upon whether the proposed agreement for such percentage is opposed to public policy. If it is opposed to public policy then it is illegal and void. The necessary result of the endeavors of the accountant, culminating in his report, is the assembling of evidence and possibly qualifying him as a witness in contemplated litigation.

An agreement with those objects in view, or either of them, the compensation for which is contingent on the successful termination of the litigation, is opposed to public policy and void.

The general rule is stated in 13 C. J., 448, as follows:

“Where, however, the compensation is dependent on the favorable character of the evidence secured, or on the favorable outcome of the proceedings in which it is to be employed, the con-

tract is ordinarily held invalid as subversive of public justice and tending to the encouragement of illegal or immoral acts." The same author on the same page also says:

"An agreement by a person to testify is not, in the absence of anything else, contrary to public policy, particularly where it does not appear that he is to receive more or less than the usual or ordinary witness fees. Where, however, his compensation is contingent on the success of the litigation, or he is to be paid more than his legal fees, or other elements occur which tend to show that his evidence may be improperly influenced, the contract is against public policy."

It is, therefore, my opinion that any agreement which has for its purpose the paying of an accountant a percentage of whatever is recovered, as a result of a report to be submitted by him, is void and unenforceable.

Very truly yours,

L. A. FOOT,

Attorney General.