

School Districts—Delinquent Taxes—Taxes—Interest—Penalty.

School districts are entitled to interest and penalty on delinquent taxes.

January 13, 1928.

Miss May Trumper,
Superintendent of Public Instruction,
Helena, Montana.

My dear Miss Trumper:

You have requested an opinion from this office relative to whether interest and penalty on delinquent school district taxes should be credited to the school district.

The statutory provisions relative to distribution of delinquent taxes are not clear with respect to school districts. Section 5214 provides that all moneys received from sales, redemptions, and from sales by the county, after deed given by the county treasurer, as provided by law, shall be credited to the state, county, and city or town, pro rata, in the same proportions as provided in sections 2234 and 2235 of this code.

Section 2234 provides that property sold to the county when re-

deemed, as herein provided, the moneys received on account of such redemption must be distributed as follows: The original tax and twenty per cent paid in redemption must be apportioned between the state and county in the same proportion that the state tax bears to the county tax, and the balance must be paid to the county.

In the case of *State ex rel. City of Wolf Point v. McFarlan*, 78 Mont. 157, the supreme court held that although section 2234 did not mention cities or towns, that under other provisions of the statute cities and towns were entitled to a pro rata share of the delinquent taxes.

The court also quoted the following general rule from 37 Cyc. 1594:

“Unless otherwise directed, interest, penalties, and costs collected on delinquent taxes follow the tax, and go to the state, county or city, according as the one or the other is entitled to the tax itself. But the legislature may change this rule and dispose otherwise of interest or penalties.”

I do not know of any provision of our statute which provides otherwise as to interest or penalty on delinquent school district taxes. If section 5214 were literally followed the school district would not receive any part of the tax whatever. Certainly the legislature did not contemplate this result by omitting school districts from this section.

Section 2235, referred to in section 5214, was amended by the session laws of 1927. This section applies only to sales of property by the county after tax deed has been acquired, and provides for the distribution of the proceeds to each fund or purpose for which taxes have been levied and would, no doubt, include school districts as well as any other public corporations of the state for which taxes are collectible by the county treasurer.

It is therefore my opinion that in the absence of any statutory provision requiring interest and penalty on school district taxes to be distributed otherwise, that they should be distributed to the school district in proportion that the tax bears to other taxes.

Very truly yours,

L. A. FOOT,

Attorney General.