

Penalties—Interest—Taxes—Delinquent Taxes — School Districts—Limitations—Counties.

A school district is entitled to penalty and interest on delinquent taxes and recovery thereof may be had from the county back to 1923.

April 11, 1928.

Hon. John Hurly,
Attorney at Law,
Glasgow, Montana.

My dear Mr. Hurly:

You have requested my opinion whether a school district is entitled to its pro rata share of penalty and interest collected upon district levies where the taxes are paid after becoming delinquent.

It is the view of this office that the school district is entitled to its pro rata share of penalties and interest by virtue of the rules of law announced in the case of *State ex rel City of Wolf Point vs. McFarlan*, 78 Mont. 156.

You have also asked regarding the statute of limitations. This office has recently had occasion to investigate this question in a suit that is pending in Yellowstone county brought by the city.

While the question is not free from doubt, we reached the conclusion that the applicable statute is section 9030 R. C. M. 1921 as upon an implied contract for money had and received.

The only authority, however, that we were able to find that seemed to sustain our contention was the case of *Strough vs. Board of Supervisors*, 23 N. E. 552. I believe as to school district funds the penalty and interest could not go back of 1923 because, as you have pointed out, prior to that time by section 2175 R. C. M. 1921 the penalty belonged to the county and this section was expressly held by the supreme court in the *Wolf Point* case not applicable to city funds.

However, it is my opinion that it applies to school district funds.

Very truly yours,

L. A. FOOT,
Attorney General.