

County Commissioners—Taxes—Compromise.

County commissioners are without authority to compromise actions to recover taxes paid under protest.

May 16, 1928.

Denzil R. Young, Esq.,
County Attorney,
Baker, Montana.

My dear Mr. Young:

You have sent me a copy of the resolution adopted by the board of county commissioners relating to the case of The Bank of Baker vs. Fallon County and Ollie State Bank vs. Fallon County, and you have requested my opinion whether it is legal for the county commissioners to compromise the actions in the manner described.

This office has adhered to the rule that the county commissioners are without authority to release or compromise the payment of taxes, by reason of the provisions of section 39 of article V of the constitution of this state.

See also an interpretation of this constitutional provision by the case of Sanderson vs. Bateman, 78 Mont. 235.

I observe also that the resolution, if I understand it correctly, amounts to more than a compromise of the actions pending. It amounts to a complete confession of the contention of the bank and if I understand it correctly the county would be compelled to refund moneys already paid for the first half and would receive nothing for the last half. However this may be, it is my opinion that the matter should be submitted to the court since the county has everything to gain and nothing to lose by the court action.

As stated before, I think the county commissioners are wholly without authority to effect such a compromise because of the constitutional provision above referred to until such time as the court declares this tax illegal, if in fact it is illegal. I think it is not the province of the county commissioners to substitute its judgment regarding the legality of the tax for that of the court.

Very truly yours,

L. A. FOOT,
Attorney General.