

**Taxation—Penalty—Interest—Delinquent Taxes—Notice  
—School Districts.**

A school district is not liable for penalty and interest on delinquent taxes when it has not been notified of the fact that taxes are due.

W. J. Burton, Esq.,  
County Clerk and Recorder,  
Terry, Montana.

March 9, 1927.

My dear Mr. Burton:

You have requested my opinion whether penalty and interest may be collected on delinquent taxes due from a school district where through oversight notice of the tax was not given to the school district.

Under our statute, chapter 96, laws 1923, the county treasurer is required to give notice showing the amount of taxes due. Section 2 of this chapter also provides:

“Any failure to give either notice will not affect the legality of the tax.”

It should be observed that while this chapter also treats of the penalty and interest to be collected on delinquent taxes, it does not provide what the consequences shall be relative to penalty and interest upon failure to give notice.

The omission to make any provision with respect thereto, while expressly declaring that failure to give notice shall not affect the legality of the tax, is at least persuasive that the legislature intended that failure to give notice would affect the penalty and interest.

The authorities hold that the penalty cannot be enforced when the officer has failed to give the taxpayer the notice to which he is entitled.

City National Bank v. Goyle (Okla.) 155 Pac. 552;

Miller v. State (Okla.) 173 Pac. 67;

Trimmer v. State (Okla.) 141 Pac. 784;

Gachet v. McCall, 50 Ala. 307;

Hunter v. Borck (Ohio) 37 N. E. 714;

37 Cyc. 1544, Note 69.

It has also been held that interest on delinquent taxes comes in the nature of a penalty.

Coy v. Title Etc. Co., 212 Fed. 520.

It is therefore my opinion that penalty and interest on delinquent taxes due from a school district may not be collected where through mistake the school district has not been notified of the tax or the amount thereof as provided by law.

Very truly yours,

L. A. FOOT,  
Attorney General.