

Assessors—Treasurers—Taxes—Poll Taxes.

The county treasurer and not the assessor is the proper officer to collect poll taxes.

November 28, 1928.

State Board of Equalization,
Helena, Montana.

Gentlemen:

You have requested my opinion on the following question:

“Is the county assessor or the county treasurer the proper officer empowered by law to collect poll taxes?”

In the case of the Mutual Life Insurance Company of New York v. Martien, 27 Mont. 437, it was held that section 3940 of the political code, providing that the assessor must collect the taxes on all personal property when in his opinion said taxes are not a lien on real property sufficient to secure payment thereof, is unconstitutional and void, the legislature having no power to invest any person other than the treasurer with power to collect taxes.

The above case was dealing with personal property taxes only. The matter of poll taxes was at issue in the case of Pohl v. C., M. & St. P. Ry. Co., 52 Mont. 572. In that case it was held that the statute imposing a poll tax is a police regulation designed to carry into effect the provision of section 5, article X of the constitution, making it incumbent upon the counties of the state to care for their poor; that such an imposition is not a “tax” within the meaning of the constitution and statutes dealing with general taxation, and therefore not subject to the uniformity clauses of the constitution or other restrictions provided

for by such statutes, and that the act was proper and constitutional in providing that the county assessors should act as collectors of poor funds.

In *State v. Gowdy*, 62 Mont. 119, which is known as the bachelor tax case, it was held that chapter 261, laws of 1921, levying a per capita tax of \$3.00 in addition to a poll tax of \$2.00 for county purposes upon every male inhabitant of a given age who is not the head of a family, was invalid as in contravention of section 4, article XII of the constitution vesting the power to levy taxes upon persons and property of counties, cities, etc., in the municipal authorities, but prohibiting the legislature from doing so. In that case the court used the following language in referring to the case of *Pohl v. C., M. & St. P. Ry. Co.*, 52 Mont. 572:

“The decision is not viewed by us as correct in so far as it holds such tax warranted as a police regulation. There is nothing whatsoever in the title of the Act or in the body thereof to indicate an intention on the part of the legislature to exercise the police power of the state in the fixing of this exaction from county inhabitants for the protection of the public health, the public morals, or public safety, and upon no basis of reasoning are we able to perceive how the Act may be properly classified as an exercise of the police power. The police power derives its very existence from the rule that the safety of the people is the supreme law justifying legislation upon matters pertaining to the public welfare, the public health, or the public morals.
* * * We are of the opinion that the object of section 4 of article XII of our Constitution was to relegate to the several counties the whole subject of taxation for county purposes, and that thereby the legislature is denied authority to impose any tax on the inhabitants of a county for county purposes.”

It is therefore my opinion that the case of *Pohl v. C., M. & St. P. Ry. Co.*, 52 Mont. 572, was reversed in the case of *State v. Gowdy*, 62 Mont. 119; and that the latter case in effect held invalid and unconstitutional chapter 178, sections 2273 and 2295, inclusive, inasmuch as the legislature levied taxes therein for county purposes; and that the existing authority now for the levying and collecting of poll taxes is vested in the counties under authority of subsection 5 of section 4465, R. C. M. 1921, and that the county treasurer is the proper officer to collect said taxes as you will note that the case holding that the assessment was a police regulation, and not a tax has been overruled; and that the act providing that the assessor should collect same declared unconstitutional.

Very truly yours,

L. A. FOOT,
Attorney General.