

**Taxation—Counties—Cities and Towns—Pro-rating—
Deeds.**

A county obtaining a tax deed must upon the sale of the property pro-rate the proceeds to the funds entitled and the county must stand the expense of the sale.

George W. Padbury, Jr., Esq.,
County Attorney,
Helena, Montana.

April 29, 1927.

My dear Mr. Padbury:

You have called my attention to substitute house bill 85 and have asked my opinion whether the legislature may confer upon the county the burden of the expense incident to acquiring title to property upon sales for delinquent taxes and thereafter upon the sale of the property by the county apportion the proceeds among the various funds in proportion to the tax due to each.

Substitute house bill 85 prohibits cities and towns from selling property for delinquent taxes and makes it the duty of the county treasurer

in selling property for delinquent taxes to include city taxes when the provisions of that bill are complied with.

The county, after acquiring title to property on sale for delinquent taxes, must sell the same as provided by chapter 85, laws of 1927, and if upon the sale there is not obtained a sum sufficient to discharge all tax obligations the proceeds "shall be prorated between such funds and purposes in the proportion that the amount of taxes and assessments accrued against such property for each such fund or purpose bears to the aggregate amount of taxes and assessments accrued against such property for all such funds and purposes." I do not believe there is any constitutional prohibition against such legislation.

The county would make the sale and incur practically the same expense were it not for the city tax. If any additional expense is incurred and the county obliged to pay the same it would involve no different principle than that arising by reason of section 4893 R. C. M. 1921, which requires county officers to render services to the state, county or any subdivision thereof without the payment of any fees.

This section has been held to exempt irrigation districts from the payment of any fees for filing and recording papers in the office of the county clerk and recorder. (*Crow Creek Irrigation Dist. v. Crittenden*, 71 Mont. 66.)

It is therefore my opinion that it is within the power of the legislature to require counties to conduct all sales for delinquent taxes of cities and upon the sale of the property by the county after obtaining a tax deed to require it to prorate the proceeds to all funds when the amount received at the sale is not sufficient to pay all the delinquent taxes, penalties and interest.

Very truly yours,

L. A. FOOT,
Attorney General.