

Poor Tax—Refunds.

Where poor tax is collected from a person temporarily in the county for the purpose of working or other reason it should be refunded to the county of his residence providing he produces a receipt showing payment.

Mr. Sherman Smith,
County Attorney,
Helena, Montana.

December 18, 1931.

My dear Mr. Smith:

You have requested an opinion on refund of poor tax assessed against John Forzley by Lewis and Clark county. Mr. Forzley was employed by the Phoenix Utility Company in Lewis and Clark County and while so employed was required to pay a poor tax of \$2.00.

Mr. Forzley was temporarily in the county for the purpose of working on the gas line then being constructed. He subsequently returned to his home in Great Falls, Cascade county, which town and county is his permanent place of residence and the place where he pays his property tax. He was also assessed with \$2.00 poor tax and paid it. He now presents a receipt and requests a refund of \$2.00 from Lewis and Clark county. In my opinion it should be refunded to him.

The tax in this case is collected by authority of subdivision 5 of chapter 100 of the session laws of 1931 amending section 4465, R.C.M. 1921, and is as follows:

“To provide for the care and maintenance of the indigent sick, or the otherwise dependent poor of the county; erect and maintain hospitals therefor, or otherwise provide for the same, and to levy the necessary tax therefor per capita, not exceeding Two (\$2.00) Dollars and a tax on property not exceeding three-fifths ($\frac{3}{5}$) of one per cent (1%) on either of such levies when both are not required, and to expend not to exceed five per cent (5%) of any such levy for the collection of said tax, or of any part thereof.”

The term “per capita” means “by the head or poll.” This section contains no limitation as to any class, age or condition. Section 2273 R.C.M. 1921 limited the class subject to a poll tax to “every inhabitant of this state over twenty-one and under sixty years of age except paupers, insane persons and Indians not taxed.”

In an opinion by former attorney general Rankin, found in volume 9, Opinions of Attorney General, page 445, it was held that while this section (section 2273) had been declared unconstitutional by the supreme court of this state in the case of *State ex rel. Pierce v. Gowdy*, 62 Mont. 119, 203 Pac. 1115, in so far as it attempted to levy the tax by legislative act, that the section could be resorted to for the purpose of ascertaining the legislative intent as to the ages between which the tax would be authorized and need not include women within those ages.

In an opinion by former attorney general Albert J. Galen, found in

volume 2, Opinions of Attorney General, at page 139, it was held that the word "inhabitant" as used in this section must be construed as "resident" and this is abundantly supported by authority. In 31 Corpus Juris, 1194 we find the following:

"'Inhabitant' has been variously defined as meaning a dweller; a dweller in a place; a dweller or householder in any place; a permanent resident; a person coming into a place with an intention to establish his domicile or legal residence; a resident; a resident or dweller in a place, in opposition to a mere sojourner or transient person; * * *."

If resort may be had to section 2733 for the purpose of fixing the age and sex, it may also be resorted to for the purpose of determining who is included. Certainly, "inhabitant" as used here had never intended to include every sojourner in the county or state for whatever purpose.

It is apparent from the facts that Mr. Forzley was not an inhabitant of Lewis and Clark county at the time the poll tax was collected but that he was an inhabitant of Cascade county where he paid his poll tax with his property tax. He should not be required to pay his poll tax twice any more than he should be required to pay his property tax twice. It is therefore my opinion that refund should be made to him.

Very truly yours,

L. A. FOOT,

Attorney General.