

Taxation—Poll Tax—Collection—Commission—County Commissioners.

The county commissioners have no authority to pay a commission of 5% for the collection of poll tax but may allow the county treasurer to expend not to exceed that amount in the collection of the same.

Mr. J. Justin Bourquin,
County Attorney,
Butte, Montana.

February 27, 1932.

My dear Mr. Bourquin:

You have requested my opinion as to whether under the provisions of subdivision 5 of section 4465, R.C.M. 1921, as amended by chapter 100, laws of 1931, the board of county commissioners may allow a commission for the collection of the poor tax.

Subdivision 5, supra, provides as follows:

“The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: * * *

“5. 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.”

In the case of Mutual Life Insurance Company of New York vs. Martien, 27 Mont. 437, the court held that the legislature had no power to vest any person other than the county treasurer with the power to collect

taxes, and in the case of *State vs. Gowdy*, 62 Mont. 119, the supreme court held that the poor tax was a tax as the term is used in the constitution and revenue measures generally, thereby reversing the former case of *Pohl vs. C. M. & St. P. Ry. Co.*, 52 Mont. 572.

In view of these decisions, if the statute in question was held to authorize the commissioners to employ other than the county treasurer to collect the tax it would be unconstitutional and void. However, I see no necessity to so construe it and I am of the opinion that the intent of the legislature was to authorize the county commissioners to allow the county treasurer to expend not to exceed 5% of the tax in the collection of the same. Such expense would, of course, be paid out of the poor fund upon the filing of the proper claims.

Very truly yours,

L. A. FOOT,

Attorney General.