

Taxes—County Treasurer—Payment—Checks.

Taxes are not paid where check given county treasurer for them is not paid even though the lack of payment is due to negligence of the county treasurer in presenting the check for payment.

Mrs. Charles A. Burg,
County Treasurer,
Livingston, Montana.

September 6, 1932.

My dear Mrs. Burg:

I have your request for an opinion. You enclose a copy of an opinion from your county attorney.

In volume 10, opinions of this office, at page 387 you will find where it has been held that where a person gives to the county treasurer a check for taxes and the money is not actually received on the check the taxes are not paid and they still are a lien upon the property.

I am inclined to agree with the opinion of Mr. Arnold, county attorney of your county, in so far as the law would apply to the transaction of business between private parties, but it is my opinion that even if the county treasurer is negligent in presenting the check for payment, nevertheless, the taxes have not been paid unless the money is actually received on the check. The law only authorizes taxes to be discharged when they are paid and taxes can only be paid in money. When a treasurer accepts a check he can only do so with the understanding, express or implied by law, that the taxes will only be paid when the money is actually paid to the county treasurer. If a taxpayer tenders a check he merely authorizes the county treasurer to procure the funds with which to pay the taxes and if the county treasurer is negligent that is a matter between him, as an individual, and the taxpayer. Just what rights, if any, the taxpayer would have against the county treasurer as an individual for failure to present the check within a reasonable time would depend entirely upon the circumstances and does not concern the county treasurer in his official capacity and therefore I express no opinion upon that point, but it is my opinion that the taxes still exist and should be collected.

Very truly yours,

L. A. FOOT,
Attorney General.