

Opinion No. 199**Taxes—Personal Property—Collection
—Time for Distribution.**

HELD: The time of distribution of taxes collected on personal property where same are not secured by a lien on real estate, under Chapter 122, Laws of 1933, is such time as the taxes are definitely and finally fixed in amount and not subject to rebate.

May 8, 1933.

You request a construction of Chapter 122, Laws of 1933, amending Section 2247 of the Revised Codes, relating to the rate of taxation of personal property and collection of same.

This law is designed to regulate the collection of taxes on personal property where same are not secured by a lien upon real estate, and in particular the amount of the same to be collected between the first Monday in March and until the levy is made in August. During this period of the year it is the duty of the County Treasurer to collect personal property taxes and at that time it cannot be definitely ascertained what the exact tax will be for the reason that the levy has not been made for that year. The prior law permitted the collection of taxes during this period according to the levy of the previous year.

In this law, as in the previous law, the only basis for the collection of taxes on such personal property between the first Monday of March and the second Monday in August is the levy for the previous year. On that basis the tax must be collected.

Under instructions from the Examiner's office these collections have been designated as unfinished business subject to correction when the levy is finally made in August. It would seem that the same procedure is contemplated under the present law. The only

objection to same, being contained in that portion of the law which provides that on collection the treasurer shall immediately distribute the money so collected, to the various and proper funds in his charge. This law further provides that in case of excess collections same may be remitted and ordered re-paid by the board of county commissioners.

Chapter 47 of the Laws of 1925, amending Section 2255 R. C. M. 1921, provides that the county treasurer shall settle monthly with the state treasurer for its portion of taxes collected. Also this money so collected may in part belong to cities, towns and school districts. The Supreme Court of this state has held in the case of *First National Bank v. Sanders County*, 85 Mont. 450, that if money is remitted to the state and then must be refunded by the county that same cannot be collected from the state. It has been held that where a legislature seeks to divert county funds from county purposes that such diversion is illegal. *Nashville v. Towns*, 5 Sneed (Tenn.) 186.

It would therefore seem that it was not the intent of the legislature that these taxes, the amounts of which are contingent, should be placed in funds and removed from the control of the county before the amounts thereof have been definitely settled.

You inquire if the procedure which has been previously authorized by you cannot be continued, that these funds be placed in a special fund denominated "unfinished business" until the amounts can be definitely settled. I believe we are justified in the conclusion that the time of collection of these accounts (whereupon they must be immediately distributed) should be held to be such time as the taxes are definitely and finally fixed in amount and not subject to rebate. In the interpretation of this law the word "immediately" is to be defined and applied to mean and to require a division of these collections as soon as the transaction is completed and the fund is not subject to withdrawal under the terms of this act.

Therefore, the procedure you have previously authorized whereby you consider these items unfinished business, may be continued under the present statute.

The law requires that an act be so construed as to render it constitutional, if possible. With the law construed as herein indicated, I believe it to be constitutional.