

**Opinion No. 233****Taxes—Payment of—County Treasurer  
—Irrigation Districts.**

HELD: It is not lawful for a county treasurer to accept payment of irrigation taxes without requiring payment of the state and county taxes.

June 6, 1933.

It appears from your opinion, a copy of which you kindly mailed us, that the county treasurer of Phillips County propounded to you the following question: "Is it lawful for me as county treasurer to accept payment of irrigation taxes without requiring payment of the state and county taxes?" It further appears from your opinion that you answered the question in the negative. You now wish us to confirm, if we may, the view you expressed to the county treasurer, particularly as you have been subjected to much criticism on account thereof.

After due consideration, we entirely agree with the position you took in the matter. The last sentence of Section 7240, Revised Codes of Montana 1921, on which you evidently largely relied, provides that "the county treasurer of each county shall collect such taxes or assessments (against irrigation districts) at the same time and in the same manner as county and state taxes." But Section 1 of Chapter 71, Laws of 1923, is still stronger. It reads as follows:

"It shall be the duty of the County Treasurer of each county in which any irrigation or drainage district is located, in whole or in part, to collect and receipt for all taxes and assessments, levied by any such district, in the same manner and at the same time, and on the same receipt, as is required in the collection of taxes upon real estate for county purposes. Such county treasurer shall not collect or receive or receipt for any taxes or assessments levied for county purposes upon real estate situated wholly or in part within any irrigation or drainage district upon which an assessment for the purposes of such irrigation or drainage has been levied, unless the said assessment levied for such irrigation or drainage district purposes be paid at the same time."

Language could not be plainer than that. It leaves no room for construction. All taxes levied against the land must be paid at the same time. We may add here that general taxes are equal, if not superior, in dignity to irrigation district taxes or assessments. (State v. Board, 89 Mont. 37.)

In the case of Moore v. Gas Securities Co., 278 Fed. 111, which involved a question like that before us, the Circuit Court of Appeals of the Eighth Circuit held that a county treasurer may not lawfully demand, receive and receipt for all other taxes against the lands, leaving district taxes uncollected. (Booth v. Clarke, 244 Pac. 1099, dis. op. Julien v. Ainsworth, 27 Kan. 446.)

The law contemplates that taxes shall be paid in full as they fall due. They cannot be paid piecemeal. (Gray v. Boundary County, 290 Pac. 399; 61 C. J. 965; 3 Cooley on Taxation, Sec. 1253).

In conclusion, we think the law should be obeyed by all officers. Any attempt at evasion thereof would only lead to dangerous consequences.

NOTE: Chapter 71, Laws of 1923, supra, was amended by Chapter 73, Laws of 1935, to permit payment of Irrigation District taxes without payment of other taxes on the same real estate.