

Opinion No. 252**County Treasurer—Taxes—Payment by
Check—Exchange or Float Charges
—Banks and Banking.**

HELD: County treasurers, in accepting checks in payment of taxes, do so at their own risk, and if proceeds from collection thereof are insufficient because of exchange or float charges, the county cannot be charged with deficiency or protest fees.

State banks may charge exchange on outside check drawn in favor of county or city.

Banks are not required to give credit

to county for amount of check deposited or taken for collection until the money is received.

June 24, 1933.

You have submitted the following questions:

"1. Can the county pay exchange on checks, if so, from what funds shall it be paid?"

"2. Can banks authorized to do business in the State of Montana charge exchange on outside checks drawn in favor of Montana counties or cities?"

"3. Can the county treasurer pay from county funds protest charges on bank items that are protested?"

"4. Would it be permissible for the banks to withhold credit to the county until outside items have been paid, or would it be permissible for the banks to credit items as they are received and at the end of the quarter when settlement is made for interest on daily balance, to make an estimated deduction for the float items?"

Answering your first question, we have held that the county treasurer has no authority to accept anything in payment of taxes except money. (Opinion No. 221, this volume). Acceptance of a check on a bank is at most only a conditional payment and taxes are not paid until the check is paid. (61 C. J. 964, Section 1242). If the proceeds from the collection of the check are insufficient, the taxes are not paid in full. Since the county treasurer can only legally accept money in payment of taxes, he should not accept a check on a bank unless it will be sufficient, when paid, to pay the taxes in full. It follows that the county cannot be required to pay the express or float charges on checks in the absence of some statute authorizing it.

Answering your second question, I know of no law which prevents banks authorized to do business in the State of Montana from charging exchange on outside checks drawn in favor of Montana counties and cities. It is questionable whether the legislature could legally enact such a law but in the absence thereof such charge can be made.

Since the county treasurer cannot accept anything but money in payment of

taxes, he accepts checks at his own peril and risk and consequently the county, in the absence of statute, cannot be charged with protest fees and charges.

I see no reason why a bank, if it wishes to do so, may not choose either alternative proposed in your question No. 4. The bank may follow such practice as it follows with any other customer of the bank, or such other practice as may be mutually agreed upon. In making a deduction for exchange or float items, the county treasurer is not released from any loss which the county may have sustained by the acceptance of checks or the failure to collect taxes in full.