

Opinion No. 258**Road Tax—Poll Taxes—Levy—County Commissioners.**

HELD: The board of county commissioners is required to make a per capita levy for road and poor poll taxes at the same time tax levies on property are made, to-wit, the second Monday in August each year.

June 30, 1933.

You have requested my opinion regarding the liability of employers of labor for, and the manner of collecting, road and poor poll taxes under the laws of Montana.

Section 1617, Revised Codes 1921, as amended by Chapter 2, Laws of 1933, among other things, provides:

“There is also established a general road tax of two dollars per annum on each male person over the age of twenty-one years, and under the age of fifty years, inhabitant within the county, and payable by each person liable therefor at any time within the year. The collection of these taxes shall be under the direction of the board of county commissioners; taxes from freeholders to be collected the same as other taxes, and from non-freeholders as commissioners may direct.”

Sections 1619 and 1620, Revised Codes 1921, are as follows:

“1619. Every employer having in his or its employment any person or persons liable for the special road tax of two dollars, mentioned in this act, must on or before the third Monday of March in each year, and monthly thereafter until the first day of October, furnish to the county treasurer a complete list of all the persons so employed, and if any such employer shall neglect or refuse to furnish such list, he shall forfeit to the county, in which said road tax is collectible, the sum of fifty dollars, to be recovered by an action brought in the name of the state in any justice court of said county, and the further sum of fifty dollars for each refusal or neglect to furnish such list after any demand shall have been made by the county treasurer. Upon the receipt of said lists it shall be the duty of said county treasurer to furnish to said em-

ployer furnishing such lists, printed special road tax receipt-books, with proper stubs containing memorandum of name, amount, and date attached.

"1620. If any person required to pay the special road tax mentioned in this act does not pay the same and has no property subject to taxation, and the person owing the same is in the employment of any other person, the county treasurer must deliver to the employer a written notice, stating the amount of tax due for such employee, and from the time of receiving said notice the employer is liable to pay said tax, and the tax so paid may be deducted by such employer from the amount then due or to become due to such employee."

From a reading of Section 1620 it is clear that if an employee who is required to pay a road tax under the provisions of Section 1617 should fail to do so and has no property subject to taxation, his employer following the receipt from the county treasurer of the proper written notice is liable for the tax and on payment of the same may deduct the amount thereof from whatever is due or may become due to such employee.

Statutes like the sections above quoted have been before the courts a number of times and have been almost always upheld. The claim of discrimination because of limitations in the matter of age and sex and of a deprivation of property without due process of law was brushed aside as being without force. (*Thurston County v. Tenino Stone Quarries*, 87 Pac. 634, 12 Ann. Cas. 314; *Sawyer v. Alton*, 4 Ill. 127; *Elting v. Hickman*, 72 S. W. 700; *East Portland v. Multnomah County*, 6 Ore. 62; *Kootenai County v. Hope Lumber Co.* 89 Pac. 1054; *Salt Lake City v. Wilson*, 148 Pac. 1104; *Bluitt v. State*, 121 S. W. 168; *Tekoa v. Reilly*, 91 Pac. 769, 13 L. R. A. (n. s. 901; *Short v. State*, 31 Ttl. 32), 29 L. R. A. 404; *Byrne v. Fulton*, 85 Mont. 329; 61 C. J. 1534, 1535).

Section 5, Article X of the Constitution, is as follows:

"The several counties of the state shall provide as may be prescribed by law for those inhabitants, who, by reason of age, infirmity or misfortune, may have claims upon the sympathy and aid of society."

Accordingly, Section 4465, Revised Codes 1921, as amended by Chapter 100, Laws of 1931, empowers the board of county commissioners, among other things, "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 dollars, and a tax on property not exceeding three fifths of one per cent, or either of such levies when both are not required."

Apparently, the board is required to make the per capita levy at the same time that tax levies on property are made, to-wit: on the second Monday in August of each year. (Section 2150, Revised Codes 1921, and subdivisions 5 and 13 of Section 4465, as amended; *State ex rel. Fadness v. Eie*, 53 Mont. 138; *People v. Ames*, 51 Pac. 426).

We may add that boards of county commissioners generally levy the per capita tax on all male inhabitants of the state over twenty-one and under sixty years of age, except paupers, insane persons and Indians not taxed, using, perhaps, as their guide Section 2273, Revised Codes of 1921, which was declared unconstitutional by the Supreme Court in the case of *State ex rel. Pierce v. Gowdy*, 62 Mont. 119.