

Opinion No. 462.**Taxation—Payment of Taxes—Special Assessments—Special Improvement Taxes.**

HELD: The owner of city or town property must pay his special improvement taxes, if any, at the same time he pays the first installment of his state, county, and municipal taxes.

The County Treasurer is not permitted to receive the latter without insisting upon payment of the former.

February 16, 1934.

Your letter which has been received is in part as follows:

"The County Treasurer of Custer County has requested my opinion concerning his right to accept general taxes without at the same time collecting special improvement taxes due to the City of Miles City for paving. In 1909 the Attorney General's office rendered an opinion, a copy of which I enclose with this communication, which indicates that the county treasurer has the right to accept only the general taxes. I write this letter to inquire whether or not your office concurs in the opinion rendered in 1909 as a guide for county treasurer in the collection of special improvement taxes.

"The City of Miles City has by appropriate ordinance directed that all special assessments be collected by the county treasurer, and such special assessments were, prior to the time the tax statements were prepared, duly certified by the city treasurer to the county treasurer.

"It was my opinion, until the opinion of the Attorney General rendered in 1909 was called to my attention, that special assessments so certified could not be segregated from general

taxes, but that all taxes for any one year should be collected by the county treasurer."

Without desiring to be facetious we are tempted to remark that much law has been written and much water has flowed down the Missouri since 1909 when the then Attorney General rendered his opinion.

Subdivisions (a) and (b) of Section 4, Chapter 158, Laws of 1933, provide:

(a) "All taxes levied and assessed in the State of Montana, except special assessments made for special improvements in towns and cities, and except taxes levied and assessed upon motor vehicles, shall be payable as follows: One-half ($\frac{1}{2}$) of the amount of such taxes shall be payable on or before five o'clock P. M. on the 30th day of November of each year, and one-half ($\frac{1}{2}$) on or before five o'clock P. M. on the 31st day of May of each year; provided, that unless one-half ($\frac{1}{2}$) of such taxes are paid on or before five o'clock P. M. on the 30th day of November of each year, then such amount so payable shall become delinquent and shall draw interest at the rate of two-thirds ($\frac{2}{3}$) of one per centum (1%) per month from and after such delinquency until paid and five per centum (5%) shall be added to the amount thereof as a penalty."

(b) "Special assessments, or installments of special assessments, made for special improvements in towns and cities, duly and regularly made and levied by resolution, according to law, shall be payable on or before five o'clock P. M. on the 30th day of November of each year, and in the event the same are not paid on or before said date, the same shall be subject to the same interest and penalty for non-payment as are or may hereafter be provided by the laws of the State of Montana for other delinquent taxes. The collection thereof shall be had and made as provided by Section 5251, Political Code, Revised Codes of Montana, 1921, as the same is now in force or may be hereafter amended."

Section 5214, Revised Codes 1921, is as follows:

"The county treasurer of each county must collect the tax levied by all cities and towns in his respective coun-

ty, except in case of such cities of the first and second and third classes as may provide by ordinance for the city treasurer to collect the taxes from such corrected assessment-book. The county treasurer must collect such city or town taxes, including unpaid poll-taxes, at the same time as the state and county taxes, with the same penalties and interest in case of delinquency. All publications for sales for delinquent taxes shall include such city or town taxes, there being but one sale for each piece of property, such sale to cover the aggregate of such city or town, county, and state taxes, with the penalties, interest, and cost of advertising provided by law. All moneys received from sales, redemptions, and from sales by the county, after deed given by the county treasurer as provided by law, shall be credited to the state, county, and city or town pro rata, in the same proportions as provided in Sections 2234 and 2235 of this code."

Subdivision (a) of Section 5251, as amended by Chapter 78, Laws of 1929, is as follows:

"It shall be the duty of the City or Town Treasurer of every city or town whose taxes for general, municipal and administrative purposes are certified to and collected by the County Treasurer in accordance with the provisions of Section 5216 of this Code, immediately after the second Monday of August of each year, and at the same time the copy of resolution determining the annual levy for general taxes is certified by the City or Town Clerk to the County Clerk as required by said Section 5216, to certify to the County Clerk of the county in which such City or Town is situated all special assessments and taxes levied and assessed in accordance with any of the provisions of this Act, and the County Treasurer must collect the same in the same manner and at the same time as said taxes for general, Municipal and administrative purposes are collected by him."

Our supreme court has held that the term "taxes" includes not only general and ad valorem taxes but assessments for special improvements in cities and towns as well. (*Thomas v. City of Missoula*, 70 Mont. 478; *State v. McFarlan*, 78 Mont. 156. See, also, *State v. Cooper*, 173 N. E. 725.)

Taking the provisions above quoted together, then, it is evident that the owner of city or town property must pay his special improvement taxes, if any, at the same time that he pays the first installment of his state, county, and municipal taxes. The county treasurer is not permitted to receive the latter without insisting upon payment of the former. (Thomas v. City of Missoula, *supra*; Moore v. Gas Securities Co., 278 Fed. 111; Julien v. Ainsworth, 27 Kan. 446; *dis. op.* in Booth v. Clark, 244 Pac. 1101.)

The law ordinarily intends 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.)