

Opinion No. 48**Poll Tax—General Poll Tax—Road
Poll Tax—Poor Poll Tax.**

HELD: Inhabitants of special road districts paying poll tax must be given credit by County Treasurer. General poll tax cannot be collected from cities and towns which provide for like tax by ordinance. Sections 2273-2295 R. C. M. 1921, providing for imposition and collection of poor poll tax, are unconstitutional. Poor poll tax and road poll tax distinguished.

January 31, 1933.

You have submitted the following questions:

"1. Is the general road tax of \$2.00 per annum per person over the age of 21 years and under the age of 50 years to be levied against the inhabitants of special road districts that have levied the tax specified in section 1663? That is, if the special road district has provided for the tax of \$2.00 upon the inhabitants of special road district, can the county also levy the general road tax of \$2.00 specified in section 1617?

"2. If the incorporated cities and towns have levied the road poll tax specified in section 5219, can the county also levy the tax specified in section 1617?

"3. In reference to poll tax, is the poll tax provided by section 2273 to be levied upon the county in general or is it to be levied upon the inhabitants of the county with the exception of the incorporated cities and towns who have provided by ordinance for like poll tax, and does it apply upon the inhabitants of special road districts who have also made provision?"

"4. If the county has to levy its poll tax under subdivision 5 of Section 4465, can the county levy that tax upon the inhabitants of special road districts and incorporated cities and towns that have made provision for similar poll taxes?"

In answer to question 1, it is my opinion that the general road tax of \$2.00 per annum provided in section 1617, R. C. M. 1921, should be levied on each male person over the age of 21 years and under the age of 50 years inhabitant within the county. In the event, however, that a special road district has been created as provided by chapter 128 R. C. M. 1921 as amended by chapter 11, laws of 1929, it is made the duty of the district treasurer of said special road district to proceed to collect the road tax of \$2.00 as provided in Section 1663, R. C. M. 1921, as soon as possible beginning the first day of March in every year. Before the 15th day of August in each year he shall make a report to the county treasurer of the names of all persons who have paid their special road tax and the county treasurer shall credit all persons whose names appear on the assessment roll of the county with the amount so reported by the district treasurer.

In other words, the county treasurer shall collect the general road tax from all male persons of the age subject thereto, inhabitant within the county, unless the special road tax is collected by the district treasurer and reported before August 15 of each year. As stated in section 1652, the purpose of such special road districts is to provide for the proper care, supervision and maintenance of existing public highways within such districts by the people within those districts instead of being governed by the provisions of the general road district law. In our opin-

ion it was not the intention of the legislature, which, in 1917, enacted said chapter 128, and also amended the law as incorporated in section 1617 to impose a double poll tax for road purposes upon persons who might be inhabitant of special road districts. As stated above, however, the \$2.00 poll tax must be collected by the treasurer, if the \$2.00 poll tax is not collected by the district treasurer.

In answer to question 2, it is our opinion that section 5219, R. C. M. 1921, has been repealed by section 1617, R. C. M. 1921. This was also the opinion of Attorney General Galen. See Volume 3, page 198, Opinions of the Attorney General. Cities and towns may, however, proceed to make a like levy of \$2.00 for road, street and alley purposes under the provisions of section 1617 and in the event that they make such levy, in our opinion the county may not make a similar levy upon persons inhabitant of such cities and towns. Volume 11, Opinions of Attorney General, pages 105 and 195; State ex rel. City of Cut Bank v. McNamer, 62 Mont. 490.

In answer to question 3, it is our opinion that Section 2273 and all of Chapter 178, which includes sections 2273 to 2295, R. C. M. 1921, are unconstitutional. While in State v. Gowdy, 62 Mont. 119, the point involved was the second part of section 2273 which has been referred to as the bachelor tax and which was by the court in that case declared unconstitutional, the same reasoning applies with equal force to the first part of that section. The tax provided for in that section was for the exclusive use of the poor fund of the county. It is a poor poll tax. As was held in the case of State v. Gowdy, the enactment of section 2273 was not in the exercise of its police power by the legislature but was an invasion of the powers which have been delegated to the several counties by section 4, article XII of the constitution, and therefore unconstitutional. See Opinions of Attorney General, Volume 9, page 439; Volume 12, page 379.

In answer to your question 4, it is to be observed that the power is given under subdivision 5, section 4465, R. C. M. 1921, to levy a general poor poll tax to provide "for the care and maintenance of the indigent sick, or the other-

wise 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 * * * ". This poor poll tax is not to be confused with the road poll tax as provided for in sections 1617 and 1663. In our opinion neither cities and towns nor special road districts would be exempt from the poor poll tax if levied by the county by reason of the provisions pertaining to road poll tax provided for in the above named sections. Of course, neither cities and towns nor special road districts are authorized to levy poor poll taxes.