

The special road and poor taxes levied, due and payable from an individual do not constitute a lien against any property unless it is so provided by statute. The statute you mention does not contain any provision that amounts due for such taxes are a lien upon personal property under this statute. Therefore, no such lien exists.

An investigation of this question leads to certain peculiar situations. Sections 1617, 1663 and 5219, R. C. M., 1921, provide for a special road tax. Probably Section 5219 has been repealed by Section 1617. Subdivision 5 of Section 4465, R. C. M., 1921, as amended by section 5, Chapter 100, Laws of 1931, authorizes the county to levy a tax, commonly called poor tax, not exceeding two dollars per capita. Section 2273, R. C. M., 1921, provides for a poll tax of two dollars per head and, in the same Chapter, Sections 2280 and 2281, R. C. M., 1921, provide for the seizure and sale of personal property to pay poll tax. Section 2273 was an amendment of Section 2692, R. C. M., 1907, same being amended by Chapter 261 of the Laws of 1921. This statute originally provided for a poll tax of two dollars on persons over the age of 21 years. By its amendment it included an additional tax upon bachelors. The law was held unconstitutional in the case of *State v. Gowdy*, 62 Mont. 119. It is to be noted that the provisions in relation to the collection of poll tax by seizure and sale of property are provisions relating to this tax which was held unconstitutional. It would therefore appear that the state legislature should, by appropriate legislation, set forth more definitely the procedure relative to the collection of such road and poor taxes as are authorized by law.

The matter of road and poll taxes has been considered in Opinions Nos. 48, 258, and 436, this volume.

Opinion No. 643

Taxation—Road Tax—Poll Tax —Lien of.

HELD: There is no lien upon personal property for special road and poll taxes.

November 16, 1934.

You ask the following question: "Will you kindly advise whether the special road and poor taxes of a personal property taxpayer are a lien against the property under Chapter 182, Laws of 1933."