

**Opinion No. 84****County Treasurers—Fees for Overtime.**

HELD: A county treasurer is not permitted to charge fee for furnishing information regarding taxes, even though he works overtime.

February 23, 1933.

You have submitted the following questions: "May a county treasurer in the state of Montana legally charge a fee for furnishing information to a resident taxpayer as to whether or not the taxes on certain property be paid? In case of refusal to pay such fee, may a county treasurer refuse to furnish information relating to the tax records?"

There is no Montana statute which authorized a county treasurer to charge

a fee for furnishing information to a person inquiring about taxes on property in which he is interested. Fees are only collectable when expressly authorized by law and an officer demanding fees either from the public or the state or other governmental bodies must point to a particular statute authorizing them. (46 C. J. 1017, Section 244).

Section 2169, R. C. M. 1921, as amended by Chapter 96, Laws of 1923, makes it the duty of the county treasurer to mail notices to taxpayers showing the amount of taxes for the current year. The county treasurer has charge of the books and records which show the amount of taxes due, interest and penalty and the amount of the current taxes on all taxable property in the county. It is his duty to receive and collect tax money. Only from the county treasurer can taxpayers or persons interested learn the true status of any property in regard to delinquent and current taxes. It is therefore the duty of the county treasurer to furnish this information which is disclosed by his records, when required. Since he is not entitled to a fee, none having been provided by statute, he cannot refuse to furnish the information because no fee is paid. The salary paid to him is his compensation for this service. It is not the policy of the law that an official should use his official position for the purpose of private gain.

You state "there is never an argument with the treasurers in furnishing all the desired information to the individual taxpayer free of charge relative to taxes, but when mortgage companies send in large lists every few months, which may require a day or more to compile, the treasurers usually make up the lists after hours as their official duties will not permit time for compiling these lists during regular hours, and the parties desiring the information usually are willing to pay the treasurer for his services, with the pay retained by the treasurer for his own use."

If it is the duty of the county treasurer to furnish this information to the individual taxpayer free of charge, it is likewise his duty to furnish it to corporations free of charge. There should be no difference or distinction

between small and large taxpayers, between individuals, corporations, "mortgage companies", or anyone else. It is his duty to serve them all alike. If the county treasurer is too busy during regular office hours to discharge all of his duties, he cannot make a charge for performing his official duties after regular office hours. To permit a public officer to collect a fee where none is allowed by statute and to retain it, in addition to his salary, as a condition to the performance of his official duty on the theory that he was working overtime, would be countenancing and encouraging official corruption and certainly contrary to public policy.

The fact that large corporations are willing to pay in order to obtain either a service to which they are legally entitled, or a special service to which they are not entitled, is obnoxious on the ground that it tends towards favoritism; it may lead to a species of tipping in order to obtain a better or speedier service. Odious as such practice may be elsewhere, it should never be tolerated or permitted in public officers. If the payment of a special fee to an officer is for the purpose of obtaining the ordinary service he is, by statute, obliged to render, it is unnecessary: if the payment is for the purpose of obtaining a special service or privilege, it should not be tolerated. In either case it "encourages official corruption" and is contrary to public policy. Mechem's Public Offices and Officers, Sections 881 and 374; Throop on Public Officers, Sections 478 and 481; McQuillin, Municipal Corporations, Second Edition, Section 544; Evans v. City of Trenton, 24 N. J. L. 764, 767; City of Indianapolis v. Lamkin, (Ind.) 112 N. E. 833; Tyrell v. Mayor, etc., of City of New York, 53 N. E. 1111; Crosby County Cattle Co. v. McDermott, 281 S. W. 293; Frazier v. Dundy County (Neb.) 213 N. W. 271; Furnia v. Grays Harbor County, (Wash.) 291 Pac. 1111; Goldstein v. Berry, 251 N. Y. S. 47; 232 App. Div. 583; 46 C. J. 1017, Section 242.

For the foregoing reasons, it is our opinion that both questions which you have submitted should be answered in the negative.