

Opinion No. 154.**Taxation—Checks—Tax Receipts,
Cancellation of—County Treasurer—Clerk of District Court,
Deposit of Fees Collected by.**

HELD: 1. Since payment of taxes by check is unauthorized, the county treasurer may cancel any tax receipt issued upon tender of a check which check is not paid upon presentation; and this is true even where there has been negligence in presentation of the check for payment.

2. The treasurer, in accepting a check in payment of taxes, is not officially liable because he acts only as agent for the taxpayer to collect the money and does not act in his official capacity.

3. The treasurer is not authorized to accept the check of the clerk of the district court in lieu of money for the monthly deposit of fees collected by the clerk.

August 13, 1935.

Mr. H. H. Hullinger
County Attorney
Conrad, Montana

You have asked my opinion as to whether the county treasurer is liable in the following cases: (1) Where he accepted a check dated March 1, 1933, from a taxpayer for taxes, and failed to cash the same before the closing of the bank on March 4, 1933; (2) where he accepted a cashier's check dated March 1, 1933, from the clerk of the district court for the February fees of the clerk and failed to cash it before the closing of the bank on March 4, 1933; (3) where he accepted a check dated March 4, 1933, for a motor vehicle license but failed to

cash the check before the closing of the bank on the same day.

It is my opinion that the county treasurer is not officially liable in either case. Every tax has the effect of a judgment which is not satisfied until the taxes are paid or the property sold for the payment thereof. (Section 2152 R. C. M. 1921.) This office has repeatedly held that the acceptance of a check by the county treasurer is not payment of the taxes for which it was given until the check is presented and paid. (Volume 10, Opinions of the Attorney General, page 387; Volume 14, page 335; Volume 15, page 36, opinion to County Attorney Colton, dated January 21, 1933; Volume 15, page 174, opinion to Assistant State Examiner Hawkins, dated June 24, 1933; Volume 15, page 154, opinion to County Attorney Brower, dated May 25, 1933.) This office has held that this is true even though lack of payment is due to negligence of the county treasurer in presenting the check for payment. (Volume 14, Opinions of the Attorney General, page 335.) If a receipt is issued it may be cancelled and the books made to show that the taxes are unpaid. (Opinion to County Attorney Colton, *supra*.) A county treasurer can legally accept only money in payment of taxes. (See opinions to Hawkins and Brower, *supra*; also 61 C. J. 963, 964.)

If a taxpayer tenders a check to the county treasurer in payment of taxes he merely authorizes the county treasurer to procure the funds with which to pay the taxes and if the county treasurer is negligent that is a matter between him as an individual and the taxpayer. What rights, if any, the person tendering the check has against the county treasurer as an individual for failure to present the check within a reasonable time, would, of course, depend upon all the facts and circumstances. Since it does not concern the county treasurer in his official capacity, I express no opinion thereon.

For the reasons herein assigned, it is my opinion that the county treasurer is not officially liable where he accepted a check for the automobile license nor do I find any statutory authority giving the county treasurer

the right to accept and the clerk of the district court the right to tender a check in lieu of money for the monthly fees collected by the clerk, which are required to be deposited with the county treasurer in accordance with Sections 4864 and 4887 R. C. M. 1921.