

Opinion No. 160.**County Commissioners—Cities and Towns—Tax Levies, No Supervision of—Levies.**

HELD: The Board of County Commissioners has no power to supervise city officers or the tax levies of city and town councils even though the levy be excessive.

August 27, 1935.

Mr. Thomas Dignan
County Attorney
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You have asked for an opinion on the following question submitted to you by your county treasurer:

"Must the county commissioners adopt the city levies as adopted by the city councils, even though they be in excess of the legal limit, or may they refuse to adopt the illegal levies, and return the budgets to the cities for correction?"

Section 5039 R. C. M. 1921, as amended by Chapter 115, subdivision 2, Laws of 1925, gives power to the city or town council "to levy and collect taxes for general or special purposes on all property within the town or city subject to taxation under the laws of the state."

Section 5216 R. C. M. 1921, as amended by Chapter 49, Laws of 1925, provides: "The Council must on or before the second Monday of August of each year, by resolution, determine the amount of the city or town taxes for all purposes, to be levied and assessed on the taxable property in the city or town, for the current fiscal year and the city or town clerk must at once certify to the county clerk a

copy of such resolution and the county treasurer must collect said taxes as in this chapter provided: Provided, that in cities where the council has provided by ordinance for the collection of such taxes by the city treasurer, the city clerk must certify a copy of such resolution to said city treasurer."

Section 5214 R. C. M. 1921, makes it the duty of the county treasurer of each county to collect the tax levied by all cities and towns in his county, except as otherwise provided therein.

I do not find any statute which gives power to the county commissioners to supervise city officers or the tax levies of city and town councils. In the absence of such statute I must conclude that they do not have such authority. As stated in said Chapter 49, the city or town clerk must certify to the county clerk a copy of the resolution passed by the city or town council and the county treasurer must collect the taxes. The duties of the county clerk and county treasurer are purely ministerial. Apparently no action by the board of county commissioners is contemplated or required.