

Opinion No. 341.

**Taxation—Poll Taxes—Poor Poll Tax
—Road Poll Tax—Highways—Con-
tractors, Collection of Poll Tax
From—County Treasurer.**

HELD: 1. The only method provided for the collection of poll taxes imposed by Sections 1663, 4465.4 and 5219, R. C. M. 1935, is provided in Sections 2165.1, 2252.1 and 2252.2, R. C. M. 1935.

2. The County Treasurer may demand of contractors engaged in highway construction work, and who employ persons enrolled with the Federal Relief Agencies, that said contractors deduct from wages of said employees

(as directed by Section 1620, R. C. M. 1935) only the tax provided by Section 1617, R. C. M. 1935.

August 12, 1936.

Mr. Eugene L. Murphy
County Attorney
Choteau, Montana

We have your letters of June 17 and August 1, requesting an official opinion from this office concerning the duty of contractors engaged in highway construction work, and who employ persons enrolled with the Federal relief agencies, to deduct "poor and road taxes" from the wages of said employees and to pay the same to the county treasurer.

We presume that the "poor tax" to which you refer is the per capita tax which the county commissioners are authorized to levy pursuant to Section 4465.4 R. C. M. 1935. We find no statute which imposes any liability upon employers for the collecting of this tax; the only method provided for their collection being found in Section 2165.1, and Sections 2252.1 and 2252.2, R. C. M. 1935. The same is true of poll taxes for road purposes authorized and levied pursuant to Sections 1663 and 5219, R. C. M. 1935.

Section 1617, R. C. M. 1935, provides for "a general road tax of \$2.00 per annum on each male person over the age of twenty-one years, and under the age of fifty years, inhabitant within the county, and payable by each person liable therefor at any time within the year." Section 1619 requires employers to furnish lists to employees liable to pay the tax, and Section 1620, R. C. M. 1935, provides: "If any person required to pay the special road tax mentioned in this act does not pay the same and has no property subject to taxation, and the person owning the same is in the employment of any other person, the county treasurer must deliver to the employer a written notice stating the amount of tax due for such employee, and from the time of receiving said notice the employer is liable to pay said tax, and the tax so paid may be deducted by such employer from the amount then due or to become due to such employee."

Although the question was not passed upon by our Supreme Court in *State v. Gowdy*, 62 Mont. 119, 203 Pac. 1115, we do not think that the validity of Section 1617, supra, could be successfully attacked. (61 C. J. 1534; 26 R. C. L. 140; *Cooley on Taxation* (4th Ed.), Section 1772.) And since no exemptions are made in favor of the employees mentioned in your letter, we know of no valid reason why the imposition of the tax upon them is unlawful. We do not have here a case where the state imposes a tax upon the income of a federal officer or employee. (See *Pomeroy v. State Board of Equalization*, 99 Mont. 534, 45 Pac. (2d) 316.) They are, under the facts, in no sense federal officers or employees. (See *Helvering v. Powers*, 293 U. S. 214, 55 Sup. Ct. 171, cited in the *Pomeroy* case, supra.) We have here a head tax, which is not at all a tax on wages or salaries (see *Poorman v. State Board of Equalization*, 99 Mont. 543, 45 Pac. (2d) 307), and even if the persons mentioned in your letter were working directly for the United States government, it is clear that they would none the less be liable for the poll taxes. (61 C. J. 374.)

Since then the employees mentioned are liable for the tax, we know of no legal excuse for the contractors failing to comply with Section 1620, supra. That section simply provides a method for the collection of the tax from the employees; it does not tax or otherwise burden the employer, so that even if the contractors you mention are agencies or instrumentalities of the Federal government (which we do not understand them to be), they may nevertheless be amenable to its provisions. (61 C. J. 371.)

We have not overlooked Public Act No. 324 of the 73rd Congress, approved June 13, 1934, 48 Stat. 948, 40 USCA 276(b) and 276(c), and which we quote:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that whoever shall induce any person employed in the construction, prosecution, or completion of any public building, public work, or building or work financed in whole or in part by loans or

grants from the United States, or in the repairs thereof to give up any part of the compensation to which he is entitled under his contract of employment, by force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever, shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

"Section 2. To aid in the enforcement of the above section, the Secretary of the Treasury and the Secretary of the Interior jointly shall make reasonable regulations for contractors or sub-contractors on any such building or work, including a provision that each contractor and subcontractor shall furnish weekly a sworn affidavit with respect to the wages paid each employee during the preceding week."

It is our opinion that it was not the intention of Congress to prohibit the deductions required by Section 1620, supra, of our law. The obvious purpose of this act is to prevent and prohibit "shakedowns" and "kick backs" from the worker; accordingly the rule of *ejusdem generis* must be employed in the construction of the general phrase "or by any other manner whatsoever," and thus limit its meaning to acts related to the evil which Congress sought to correct. (19 C. J. 1255; Lewis' Sutherland Statutory Construction (2d Ed.) p. 814 et seq.; *Thaanum v. Bynum Irrigation District*, 72 Mont. 221, 232 Pac. 528.) We are strengthened in our position, to some extent, by the joint regulations promulgated by the Secretary of the Treasury and the Secretary of the Interior pursuant to the Act on June 15, 1935. These, we are advised, authorize the deduction of not more than \$1.00 per day from the wages of employees for board and lodging, and thus discloses the opinion of those officers that the Act does not prohibit all deductions.

We are further impelled to so construe this Act of Congress for the reason that to do otherwise would result in rendering it void in so far as it applies to the question here considered. This we should try to avoid. (12 C. J. 787.) Because, as we have said, Section 1617, supra, validly provides for the levying of a tax, and Section 1620 provides a lawful method

for its collection, Congress has no right to interfere. (Cooley on Taxation (4th Ed.) Section 117.)

In *State Treasurer v. Wright*, 28 Ill. 512, it was said: "* * * the power has been nowhere delegated to the Congress to interfere with the mode which a state may adopt to raise a revenue for its own purposes, or the manner or funds in which it shall be collected. This is a subject peculiarly belonging to the states, and wholly under state control, so that should it be deemed by the state expedient to collect this revenue for its own use, in the productions of its soil, no power on earth could interfere to forbid it * * *."

In *Whiteaker v. Haley*, 2 Ore. 128, cited by Judge Cooley, the court declared: "* * * the revenue is the life of the state, and for Congress to say when and where and in what manner it must be laid and collected, in other words, to say when a state should breathe, would be giving Congress the sole power of life and death over a state. What are the other rights worth, when that upon which its life depends is denied? Interference as to any one of the incidents of levying and collecting taxes, would as effectually take away state independence as it would to wholly deny the right."

It is therefore our opinion that the county treasurer may demand only the tax provided by Section 1617, R. C. M. 1935, from the contractors, as directed by Section 1620, R. C. M. 1935, and upon their refusal to pay, an action should be brought against them.