

situation where the owner has no real estate subject to the tax lien for the taxes upon his automobile).

Chapter 72 of the 1937 Session Laws provides:

“ * * * The applicant shall, upon the filing of said application, (1) pay to the county treasurer the registration fee, as provided in Section 1760, Revised Codes of Montana, 1935, and shall also at such time (2) pay the taxes assessed against said motor vehicle for the current year of registration (unless the same shall have been theretofore paid for said year) before the application for registration or re-registration may be accepted by the county treasurer. **The county treasurer is hereby empowered to make full and complete investigation of the tax status of said vehicle and any applicant for registration or re-registration must submit proof with respect thereto from the tax records of the proper county at the request of the county treasurer;** provided, that nothing herein shall be deemed to conflict with the provisions of Section 1756.6, Revised Codes of Montana, 1935, and the provisions hereof shall be construed in connection therewith.

“The amount of taxes on said motor vehicle shall be computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or re-registration and such determination shall be entered on the application form in a space provided therefor.

“**Motor vehicles are hereby declared to be assessable for taxation as of and on the first day of January in each year irrespective of the time fixed by law for the assessment of other classes of personal property, and irrespective of whether or not the levy and tax may be a lien upon real property within the State of Montana,** provided that in no event shall any motor vehicle be the subject of assessment, levy and taxation more than once in each year, viz., the first day of January in each year, which shall be the time of assessment for tax purposes of motor vehicles in stock, in dealers' possession or in dead storage, as well as in use, subsequent registrations, if any, of the

Opinion No. 214.

Taxation—Road and Poor Tax—Motor Vehicles—License Plates.

HELD: 1. Road and Poor Taxes do not have to be paid as a condition to issuance of Automobile License Plates.

2. Chapter 72, Laws, 1937, make no change in manner or time for collection of road and poor taxes.

December 20, 1937.

Mr. Homer A. Hoover
County Attorney
Circle, Montana

My Dear Mr. Hoover:

You have submitted the question as to whether or not the county treasurer may demand payment and collect road and poor taxes at the time the owner of a motor vehicle presents his application for registration and pays the taxes upon the motor vehicle. (In a

same vehicle in the same year not being subject to payment of taxes.

"The applicant for original registration of any wholly new and unused motor vehicle acquired by original contract after the first day in January of any year, and such vehicle shall not be subject to assessment and taxation for said vehicle until the first day in January of the year next succeeding, but nothing herein contained shall exempt such vehicle from taxation in the possession of any person on said assessment date.

"Upon accepting application for registration or re-registration of any motor vehicle which is subject to taxation in this state on January 1st in any year, and upon payment of taxes, the county treasurer shall stamp on said application: **"Taxes on this vehicle due January 1st of current year paid by applicant, prior applicant or owner and this vehicle is eligible for registration."**

The validity of Chapter 72, supra, was determined and upheld in the case of *Wheir et al., plaintiffs, v. E. S. Dye et al., defendants*, by the Supreme Court of the State of Montana, November 2, 1937, in court docket No. 7748. All other property is assessable at noon of the first Monday in March each year. (Sec. 2002.)

Section 1617 provides a general road tax of \$2.00 per annum on each male, over the age of twenty-one and under the age of fifty years, inhabitant within the county, and payable by each person liable therefor at any time within the year. The collection of this tax shall be under the direction of the Board of County Commissioners, and collected from non-freeholders as the commissioners may direct; and Section 1663 provides for the collection of a special road tax of \$2.00 per annum, etc. In reference to said section, your attention is called to the following significant language: " * * * It is hereby made the duty of the district treasurer to proceed to collect said special road tax as herein provided, as soon as possible, beginning the first day of March in every year."

Section 4465.4 authorizes, among other taxes, the imposition of a \$2.00 poor tax per capita.

Chapter 72, supra, provides when the motor vehicle shall be assessed,

and if said motor vehicle, on the first day of January, is subject to taxation in the State of Montana, upon payment of said assessed taxation, or property tax, and as a condition precedent thereto, the vehicle is subject to registration. Chapter 72 does not expressly incorporate or refer to poor and road taxes, but it does in substance expressly refer to the assessed valuation of the motor vehicle.

Section 1755.5 provides:

"Certificate of county treasurer to accompany application for registration. Any person making application to register a motor vehicle must send to the registrar of motor vehicles with said application a certificate from the county treasurer as provided in Section 1755.4, that the taxes on said motor vehicle have been paid, or are a lien on the real estate of the owner of said motor vehicle as the case may be, and the registrar must not issue a certificate of registration unless the applicant furnishes the county treasurer's certificate as herein provided."

Section 2252.1 provides:

"Treasurer's duty to collect road and poor taxes—seizure and sale of property—when road and poor tax must be paid. The county treasurer must demand payment of poor taxes, as authorized by Section 4465.4, and road taxes authorized by Sections 1617, 1663 or Section 5219, of every person liable therefor whose name does not appear on the assessment lists and on the neglect or refusal of such person to pay the same, he must collect by seizure and sale of any property owned by such person.

"These taxes shall be added upon the assessment lists to other taxes of persons liable therefor, paying taxes upon real and personal property and paid to the county treasurer at the time of payment of other taxes. And all personal property assessed against a person shall be liable for the payment of such taxes."

From a reference to said statutes it will be observed that Chapter 72 has not created a new or additional means to collect the property tax on automobiles, nor has it expressly created any new machinery to facilitate the

collection of road or poor taxes; it has only changed the time when payment of the property tax upon automobiles shall be made. While it is true that road and poor taxes are a lien upon property, which would include automobiles, yet the legislature, prior to the enactment of Chapter 72, expressly provided the method of foreclosure of such lien, which method shall be by seizure and sale, and that method, unless otherwise expressly provided for by Chapter 72, is exclusive. The board of county commissioners may, in their discretion, collect personal property taxes, which include poor and road taxes, from non-freeholders at any time of the year (Sec. 1617), but the manner of such collection has not been extended by Chapter 72 of the 1937 Session Laws, but is expressly provided for in Chapter 200, R. C. M. 1935.

If it were the intention of the legislature that an additional method for the collection of poor and road taxes be provided for, other than existed prior to the organization of the Twenty-fifth Legislative Assembly in the year 1937, that session of the legislature would have expressly so provided. It is an elementary rule of statutory construction, and so provided for by statute, that a court cannot insert in a statute that which is omitted, or omit that which is inserted.

The tax referred to in Chapter 72, *supra*, which is required to be paid as a condition precedent to the registration of the automobile, has reference to the assessed property tax upon said automobile, and has no reference or application to the poor or road taxes. Therefore, it is my opinion that your county treasurer shall not require payment of the road and poor taxes (but only the assessed property tax upon the automobile) as a condition precedent to registering said vehicle.