

Opinion No. 300.**County Commissioners — Powers —
Taxation — Duty of Bonding
Company to Pay Penalty
and Interest.**

HELD: Where a taxpayer paid money to the county treasurer for taxes before they became delinquent, and the county treasurer failed to account for same, the bonding company is required to pay the penalty and interest subsequently accruing.

July 15, 1938.

Hon. W. A. Brown
State Bank Examiner
The Capitol

Dear Mr. Brown:

You have submitted the following:

“Is it legal for the board of county commissioners to eliminate penalty and interest when making a settlement with the bonding company, on a former county treasurer’s shortage, for taxes due for the second half of 1936 and subsequent? Reference is made to Chapters 20 and 70 of the 1937 Session Laws.”

While no other facts are stated, we are advised by you orally that the taxpayer paid the amount of the tax to the county treasurer before taxes became delinquent, and that penalty and

interest have subsequently attached because of the failure of the county treasurer to apply the money received to the taxes. The records, therefore, show that the taxes, penalty and interest are now due.

The taxpayer has discharged his duty by paying the amount of the tax to the county treasurer. He cannot legally or equitably be required to pay either the taxes or penalty and interest which now appear due according to the records, and unless the bonding company is liable therefor, the county, state and school districts will suffer a loss.

The condition of the bond is that the county treasurer shall well, truly and faithfully perform all official duties then required of him by law (Section 475, R. C. M. 1935). The official bond of the county treasurer is intended to secure the public from loss by reason of the official delinquency of that officer. For that purpose the bond is given (*County of Silver Bow v. Davies et al.*, 40 Mont. 418, 429, 107 Pac. 81, quoting from *County of Waseca v. Sheehan et al.*, 42 Minn. 57, 43 N. W. 690, 5 L. R. A. 785). The attachment of penalty and interest follows directly upon failure to pay taxes and the failure of the county treasurer to apply the money of the taxpayer to the taxes on his property. It is a loss the public will suffer by reason of official delinquency, and, in my opinion, is covered by the bond which guaranteed faithful performance of official duties. Since there is an obligation of the bonding company to pay such loss, the county commissioners should not eliminate penalty and interest when making settlement with the bonding company.