

Opinion No. 171.**Taxation—Per Capita Tax—
When Collected.**

HELD: The per capita poor tax may not be collected at the time application for motor vehicle license is made as such tax cannot be collected until after it is levied and such levy cannot be made until the second Monday of August.

November 30, 1939.

Mr. Maurice J. MacCormick
County Attorney
Deer Lodge, Montana

Dear Mr. MacCormick:

You have requested my opinion on the question whether the \$2.00 per capita poor tax, also called the poor poll tax, should be collected from owners of motor vehicles when the motor vehicle license fee and tax are paid.

Current taxes upon a motor vehicle must be paid when application for the motor vehicle license is made. (Chapter 72, Laws of 1937.) All motor vehicle registrations expire on December 31st of the year in which they were issued. Registration must be renewed annually and application for registration must be filed with the county treasurer not later than February 1st of each year. (Section 1759.1, R. C. M., 1935.) No person shall operate a motor vehicle upon the public highways without a license and unless such vehicle shall have been properly registered, etc. (Section 1759.5 Id., as amended by Chapter 154, Laws of 1937.) Authority to levy a per capita poor tax is given to the county commissioners by Section 4465.4, which reads:

“The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

“To provide for the care and maintenance of the indigent sick, or the otherwise dependent poor of the county; erect and maintain hospitals therefor, or otherwise provide for the same, and to levy the necessary tax therefor per capita, not exceeding two (\$2.00) dollars and a tax on property not exceeding three-fifths ($3/5$) of one per cent (1%) on either of such levies when both

are not required, and to expend not to exceed five per cent (5%) of any such levy for the collection of said tax, or of any part thereof."

Section 2150 Id., provides for the levying of taxes by the county commissioners on the second Monday in August:

"The board of county commissioners of each county must, on the second Monday in August, fix the rate of county taxes and designate the number of mills on each dollar of valuation of the property for each fund, and must levy taxes upon the taxable property of the county."

No authority is given to the legislature to levy a per capita tax for county purposes. See *State v. Gowdy*, 62 Mont. 119, 203 Pac. 1115. Assuming, however, that the county commissioners have authority to levy a per capita poor tax not exceeding \$2.00, the county commissioners cannot make such levy until the time fixed by the statute, to wit: the second Monday of August. The county treasurer may not anticipate that the county commissioners will make such levy, since it is not mandatory and is within the discretion of the commissioners (*State v. Gowdy*, supra). The county treasurer may not therefore collect the current per capita poor tax at the time the application is made for a motor vehicle license since at that time the levy has not yet been made and such tax does not exist. What we have said also applies to the per capita road tax of \$2.00, the legality of which we do not now pass upon. We call attention to an opinion which will be given to the State Board of Equalization in the near future.