

Opinion No. 42.**Licenses — Collection of — County
Treasurer, Duties, Skating Rinks—
Cities and Towns, Power to
License.**

HELD: 1. The power to license skating rinks is found in Section 2438, R. C. M., 1935.

2. The collection and distribution of such licenses is governed by sections 2410 and 2420, R. C. M., 1935.

3. Cities and towns may also license skating rinks and collect and distribute such licenses as provided by ordinance.

April 7, 1939.

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

Dear Sir:

You have asked if the license for skating rinks provided by Section 2438, Revised Codes of Montana, 1935, is to be collected by the county.

Section 2438 is as follows:

“Every keeper of a roller or ice skating rink or merry-go-round in cities or towns of three thousand people and upward must procure a license and pay therefor the sum of fifty dollars per quarter; and in towns of one thousand and less than three thousand people, thirty dollars per quarter; and in towns of less than one thousand inhabitants, ten dollars per quarter.”

This act was approved March 16, 1895, as Section 4077 of Article II, Chapter XIII, Part III, Title XII of the Codes of 1895. Said Chapter XIII was entitled, “Licenses.” Article I of said Chapter XIII relates to general provisions in regard to licenses and Act II of said Chapter is entitled “Classification of Licenses.” Various

businesses and occupations were licensed under said Article II, Chapter XIII and the procedure for collection of the license tax is found in Article 1. It was the duty of the county clerk to print and prepare the licenses and deliver them to the county treasurer who collected the license money. All money collected for such licenses was paid into the county treasury, 75% for the use of the county and 25% to be paid over to the state treasurer for the use of the state. (Section 4050, Pol. Code, 1895.)

Chapter XIII of Part III, Title XII of the Political Code was carried into the Revised Codes of Montana, 1907, as Sections 2746-2780, and Section 4050, Pol. Code of 1895, as amended by Chapter 67, Laws of 1905, (erroneously cited as Chapter 76, Laws of 1905, in the History to Section 2420, Revised Codes of Montana, 1935), became Section 2756, Revised Codes of Montana, 1907. The only change was in the proportion of the money that was to go to the county and to the state. The section was again amended by Chapter 54, Laws of 1921, and appears as Section 2420, in R. C. M., 1935. It is apparent from this short history that Chapter 220 of the Political Code of 1935, entitled "General Provisions concerning Licenses" governs Section 2438 that is before us, and when the word "Chapter" is used in Section 2410-2420, Revised Codes of Montana, 1935, it refers to Chapter XIII of Part III, Title XII of the Political Code of 1895, and not merely to the sections under said Chapter 220.

Then the procedure for the collection and distribution of the license tax provided by Section 2438 is found in Section 2410, et seq.

It is the duty of the county clerk to prepare blank licenses for the county treasurer and after affixing his official seal thereto deliver them to the county treasurer, (Section 2410). Before the commencement of any business to be licensed, including the keeping of a skating rink, a license must be obtained from the county treasurer, (Section 2413) and it is the duty of the county treasurer to make diligent inquiry as to all persons liable for such license tax. (Section 2415.) The license tax so collected is to be paid into the county treasury and it is the duty of the county treasurer to retain

50% for the use of the county and to pay 45% of the money collected to the state treasurer for the use of the general fund and 5% to the state treasurer for the use of the state bounty fund. (2420.) On failure of a person required to be licensed to take out such license, the county attorney is directed to bring suit for recovery by Section 2414.

You have also inquired as to the right of the city to license a skating rink. Section 2413 provides:

"* * * No license issued under this chapter authorizes any person to carry on any business within the limits of any incorporated city or town having power by its charter to impose or levy city or town license taxes, unless such person, in addition to the license provided by this chapter, also procures the license required by the ordinance or orders of such city or town."

So that the city is authorized to levy such license tax as it sees fit in addition to that levied by Section 2438, and the proceeds from such license are to be paid into the city treasury and into the funds provided by law.