

Opinion No. 59.

**Public Officers—Duties — Liabilities—
Cities and Towns—City Engineer
—Water Collector.**

HELD: Although a city ordinance makes it the duty of the city engineer to collect water revenue, the city having for many years past not required of the city engineer that he discharge this function but has appointed a cashier or collector of water revenue to collect such revenue, there being a shortage in water collections made by such cashier or collector, neither the city engineer nor his bondsmen are liable for such shortage on the facts presented.

May 8, 1939.

Hon. W. A. Brown
State Examiner
The Capitol

Dear Mr. Brown

You have submitted the following:

"Among the city ordinances in force in the City of Havre is one identified as No. 255 which designates the City Engineer as Superintendent of Water Works and makes said City Engineer responsible for the enforcement of said ordinance and accountable for all of the general business transacted by the Water Department, including the receipts. A portion of said ordinance has been copied and is attached thereto.

"This ordinance was adopted years ago and has never been repealed,

but it seems at least as far back as 1926, and possibly back to 1920, the City council of Havre has never required the City Engineer to perform the duties provided for in the ordinance, but a cashier or collector of Water Revenue has been employed under appointment by the Mayor and approval of the Council and has handled all of the Water Department business.

"It has now developed that a shortage exists in the water collections, and we will appreciate your opinion as to whether or not it will be proper for us to charge this shortage against the City Engineer with the probability of requiring his bondsmen to make the shortage good."

On the facts stated, we do not think there is any principle of law which would make the city engineer, or his bondsmen, liable for any shortage resulting from the action of the cashier or collector of water revenue. Even assuming that the city engineer was negligent in discharging the duties prescribed by ordinance, a conclusion we are not compelled to reach on the facts presented, particularly in view of the action of the mayor and city council in appointing someone else to collect the water revenue, such negligence, if it existed, at most might be grounds for his removal from office. However this might be, neither the city engineer or anyone working under his direction or control, so far as appears from the statement presented, either collected or appropriated any water money. We do not think that either in law or in equity the city engineer could be made liable for the actions of anyone over which he had no control.