

No. 108

**PER CAPITA \$2.00 POOR TAX—COUNTY COMMISSIONERS—ASSESSOR—TREASURER—AUTOMOBILE TAX—LICENSE FEE—PLATES**

**Held:** Under Chapter 165, Laws of 1941, County Commissioners may make levy at December meeting of any year to take effect January 1st of the following year, such poor tax to be collected by Treasurer at same time he collects tax on other property.

May 6, 1941.

Mr. John D. Stafford  
County Attorney  
Cascade County  
Great Falls, Montana

ATTENTION Mr. R. J. Nelson  
Deputy County Attorney

Dear Mr. Stafford:

You have asked whether a County Treasurer may require the payment of the per capita \$2.00 poor tax as a condition precedent to the payment of the current automobile tax and registration fee and the issu-

ance of the registration and license plates. As you state, if this could be done, it would save the county considerable money in collecting the per capita poor tax.

Heretofore the law has been otherwise and our Supreme Court said:

"The only provision commanding the payment of taxes is limited to the taxes assessed against the motor vehicle for the current year of registration."

"Since the relator met every requirement of the statute entitling him to registration and to obtain his license plates, the writ of mandamus was improperly denied. The judgment is reversed."

State ex rel. Kleve v. Fischl, County Treasurer of Lewis and Clark County, 106 Mont. 282, 77 Pac. (2nd) 392.

However, such procedure was authorized by Chapter 165, Laws of 1941, amending Section 4465.4, Revised Codes of Montana, 1935, said Chapter 165, Laws of 1941, being as follows:

"Section 4465.4. 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 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 dollars (\$2.00) at a meeting of the board of County Commissioners held in December of any year, to become effective as of January first of the following calendar year, and a tax on property not exceeding three-fifths ( $\frac{3}{5}$ ) of one percent (1%), which last mentioned levy shall be made at the time other tax levies are made on property, as provided by law, or either of such levies when both are not required, and to expend not to exceed five percent (5%) of any such levy for the collection of said tax, or of any part thereof. Whenever a resolution is adopted levying a per capita tax the Clerk of the Board shall immediately prepare and deliver copies thereof to the County Assessor and County Treasurer. The County Assessor after receiving such copy of resolution, when making an assessment of any property belonging to any person liable for the payment of such per capita tax must enter on the assessment list, and also on any statement given the taxpayer, showing the value of the property assessed, the amount of such per capita tax, and the County Treasurer when collecting the taxes on such property shall at the same time collect the amount of such per capita tax as shown on said statement."

It is noted such procedure is to be initiated at the December meeting of the Board of County Commissioners by resolution making the levy, the same to be effective as of January first the following calendar year.

Therefore, in my opinion, it is apparent the procedure set forth would not become operative until the Board of County Commissioners in its discretion passes such a resolution at its next December meeting, and under the terms of the statute the same would become effective the following January first.

Sincerely yours,

JOHN W. BONNER  
Attorney General