

No. 112
TAXATION—PER CAPITA POOR TAX, when levied
and collected

Held: Under the provisions of Chapter 165, Laws of 1941, the per capita poor tax may not be levied during the year 1941 until December, to be effective and collectible in January, 1942.

May 7, 1941.

Mr. Oscar C. Hague
County Attorney
Hill County
Havre, Montana

Dear Mr. Hague:

I have your letter requesting an opinion on the following question:

May a Board of County Commissioners levy and collect a per capita tax prior to that time which is provided for under Chapter 165, Laws of 1941?

One phase of this question was answered in Opinion 108, Volume 19, Official Opinions of the Attorney General, dated May 6, 1941. The question considered there was whether a County Treasurer may require the payment of the per capita poor tax, levied under Chapter 165, Laws of 1941, as a condition precedent to the payment of the current automobile tax and registration fee and issuance of the license plates. In that opinion it was pointed out that, prior to the passage of Chapter 165, which amended Section 4465.4, Revised Codes of Montana, 1935, such tax could not be collected at the time of collecting the personal tax on motor vehicles and registration thereof. The opinion holds that such procedure was authorized by Chapter 165, Laws of 1941.

A Board of County Commissioners is one of limited powers and must in every instance justify its action by reference to the provisions of law defining and limiting these powers.

State ex rel. Lambert vs. Coad, 23 Mont. 131, 57 Pac. 1092;

Gillett vs. Cronin, 41 Mont. 293, 109 Pac. 144;

Morse vs. Granite County, 44 Mont. 78, 119 Pac. 286.

Section 4465.4, Revised Codes of Montana, 1935, prior to its amendment, read as follows:

“Section 4465.4. Poor and Indigent Persons. 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.”

The section did not specifically provide when such tax shall be levied, but provides only that the power to levy be exercised "under such limitations and restrictions as now provided by law." Under the law before the amendment, it was provided that the levy of taxes for county purposes be made "on the first Monday in August." (Section 2150, Revised Codes of Montana, 1935.) The per capita tax was therefore levied at the time provided by Section 2150.

The Legislature, in its session of 1941, amended Section 4465.4, Revised Codes of Montana, 1935, and specifically provided the time when the per capita tax of two dollars is to be levied. It provides "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" and further provides such tax "to become effective as of January first of the following calendar year."

Chapter 165, Laws of 1941, being a later enactment than Section 2150, repeals it to the extent of any inconsistency—specifically, the time of levying the per capita tax.

"A later statute repeals an earlier one if inconsistent therewith."
Territory vs. Gilbert, 1 Mont. 371.

"A statute repeals by implication all existing statutes plainly inconsistent therewith."

State vs. Dist. Court, et al., 41 Mont. 357, 109 Pac. 438.

In view of the holding in the case of State ex rel. Kleve vs. Fischl, County Treasurer, 106 Mont. 282, 77 Pac. (2nd) 392, to the effect that this per capita tax could not be collected at the time of registration and licensing of motor vehicles, and further, in view of the Opinion of the Attorney General found in Volume 18, No. 178, to the effect that such tax could not be then collected because not levied, it is reasonable to suppose the Legislature—in enacting Chapter 165—intended to correct this situation and to insure that persons liable for this tax, who—under the existing law—might escape payment thereof, could be compelled to pay under the provisions of the new Act.

Hence, in view of the plain language and intent of the Legislature, changing the time of levying the per capita tax, it is my opinion such tax may not be levied during the present year until December, and collection thereof may not be made until January, 1942.

Sincerely yours,

JOHN W. BONNER
Attorney General