

No. 372

MOTOR VEHICLES, collection of unpaid fees not prerequisite to registration of—COUNTY TREASURER, delinquent automobile license fee need not be collected as condition to registration by

Held: The collection of unpaid registration fees for the previous year or years by the county treasurer is not a prerequisite to registration of a motor vehicle for the current year and the issuance of license plates therefor.

March 13, 1942.

Mr. W. W. Lessley
County Attorney
Gallatin County
Bozeman, Montana

Dear Mr. Lessley:

You have requested the opinion of this office on the following questions:

(1) On December 14, 1941, Joe Doe bought a new car. He used this car upon the highways of the state without securing 1941 license plates. On January 10, 1942, he made application for and was issued 1942 license plates. The Registrar of Motor Vehicles refuses to accept this application until the County Treasurer collects one half year's license fees for 1941. Does the County Treasurer have the right to demand payment of one half year's license fee?

(2) In March, 1941, John Doe, Jr., brought his car into Montana. He has 1941 Wyoming plates on his car and has been engaged in a gainful occupation, but did not secure 1941 Montana license plates. As soon as Mr. Doe, Jr., receives his title he will apply to the County

Treasurer for his 1942 license plates. Does the County Treasurer have the right to refuse this application until the 1941 license fee is paid?"

The license fees which are levied against automobiles are in the nature of a revenue measure; that is, they are taxes. (5 Am. Jur. 574). Such fees are also "taxes" within the definition of the word in the case of State ex rel. Pierce v. Gowdy, 62 Mont. 119, 126, 203 Pac. 1115. In the case of State ex rel. Tillman v. District Court, 101 Mont. 176, 53 Pac. (2nd) 107, 103 A. L. R. 376, the Montana Supreme Court said:

"The power of taxing officials exists only by virtue of the statute empowering them to act . . .
". . . No lien exists on property as such security for taxes unless the legislature has so declared . . ."

In the case of State ex rel. Kleve v. Fischl, 106 Mont. 282, 283, 77 Pac. (2nd) 392, it was held, with respect to delinquent personal property taxes upon automobiles, the right to collect delinquent taxes in any other manner than that prescribed by statute does not exist.

Adopting the premise the license fee is a tax, it follows the same can be collected only as provided by law. Section 1759, Revised Codes of Montana, 1935, as amended by Section 1 of Chapter 72 of the Laws of 1937, relates to payment of license fees on motor vehicles, and no place therein is there a requirement any unpaid registration fee should be collected before the County Treasurer should accept an application for registration. Neither is there any such provision in Section 1759.2, as amended by Section 3. of Chapter 72 of the Laws of 1937, which relates to issuance of receipt and assignment of number plates. To operate an automobile on the public highways of the state without proper license and registration constitutes a misdemeanor under Section 1759.5, Revised Codes of Montana, 1935, as amended by Section 1 of Chapter 154 of the Laws of 1937, and subjects the operator to the penalty provided for in Section 1760.10, Revised Codes of Montana, 1935. The legislature perhaps considered the penalty for violating Section 1759.5, as amended, would be adequate means of securing compliance with the registration laws and collection of license or registration fees. Probably, also, the obligation of delinquent registration fees still exists in view of the provisions of Section 1755.2 of the Revised Codes of Montana of 1935, notwithstanding an apparent inability on the part of the County Treasurer to demand the same as a prerequisite to registering an automobile for the current year.

It is my opinion the collection of unpaid registration fees for the previous year or years by the County Treasurer is not a prerequisite to registration of a motor vehicle for the current year and the issuance of license plates therefor.

Sincerely yours,

JOHN W. BONNER
Attorney General