

Governor on February 5, 1943, and will become effective as of July 1, 1943. The bill amends Section 4465.4, Revised Codes of Montana, 1935, as amended by Chapter 165, Laws of 1941, by deleting the words "and to levy the necessary tax therefor per capita, not exceeding two dollars (\$2.00)," and by inserting the words:

"and for said purpose to levy and collect annually, from each resident of the county, between the ages of twenty-one (21) and sixty (60) years a poll tax of two dollars (\$2.00)."

You will note the bill changes the amount of the tax from "not exceeding two dollars" to a definite tax of two dollars, and limits the tax to "each resident of the county between the ages of twenty-one (21) and sixty (60) years," whereas the original tax was a per capita applying to all persons in the county.

The general rule of construction applying to all statutes is that they are presumed to be valid and constitutional, and that the invalidity thereof must be shown beyond reasonable doubt. (*State v. State Board of Examiners*, 74 Mont. 1, 238 Pac. 316; *State v. Walker*, 70 Mont. 484, 226 Pac. 894; *State v. Pepper*, 70 Mont. 596, 226 Pac. 1108.)

Classification does not render a statute unconstitutional, and a classification appearing in a statute is presumed to be reasonable. (*State v. Loomis*, 75 Mont. 88, 242 Pac. 34.) Classification of persons according to sex or age for purpose of levying a poll tax is a proper exercise of legislative power and does not render the statute unconstitutional. (Vol. 9, Report and Official Opinions of the Attorney General, 445; 61 C. J. 1534.)

It is true that in *State v. Gowdy*, 62 Mont. 119, 203 Pac. 1115, the so-called "Bachelor's Tax Law," being a "poll tax" was declared unconstitutional, as in conflict with Section 4 of Article XII of the Constitution. It was held to be a direct tax levied by the legislature upon the inhabitants of a county, for county purposes. There may be some compulsion with reference to the tax here in question, in view of the provisions of subparagraph (b) of Section 8 of Chapter 129, Laws of 1939, making it the duty of the board of county commissioners in each county to levy the per capita tax provided by Section 4465.4, supra.

#### Opinion No. 21.

##### Taxation—Poll Taxes—Constitutional Law

Held: Chapter 23, Laws of 1943, is constitutional and the poll tax therein provided is a valid tax. Chapter 23, Laws of 1943, does not affect poll taxes levied for 1943. Chapter 23, Laws of 1943, applies to poll taxes for 1944 and subsequent years.

March 18, 1943.

Mr. R. F. Hibbs  
County Attorney  
Yellowstone County  
Billings, Montana

Dear Mr. Hibbs:

You have asked my opinion as to the constitutionality of Senate Bill No. 3, passed at the recent session of the legislature, and as to its effect on 1943 taxes.

Senate Bill No. 3 will appear as Chapter 23 of the Session Laws of Montana for 1943. It was approved by the

However, in view of the fact that in Vol. 18, Report and Official Opinions of Attorney General, 188, 192, the tax imposed by Section 4465.4, Revised Codes of Montana, 1935, was held constitutional, said opinion having been written after the effective date of subparagraph (b) of Section 8 of Chapter 129, Laws of 1939, and the amendments provided by Senate Bill No. 3 do not add any constitutional provisions, the further fact that there has been no suggestion of the unconstitutionality of the tax in question and a presumption of constitutionality follows from acquiescence (12 C. J. 798), and the duty of courts and this office to uphold the constitutionality of a statute, unless the unconstitutionality is shown beyond a reasonable doubt, it is my official opinion that the poll tax imposed by Senate Bill No. 3 is constitutional.

As to the effect of Senate Bill No. 3 on 1943 taxes: You will note Chapter 165, Laws of 1941, provided the board of county commissioners should levy the per capita tax provided therein at a meeting of the board held in December of any year, to become effective as of January first of the following calendar year. It is presumed this has been done. The levy has therefore been made and is effective as of January first covering the tax for 1943, at which time the tax was due by the individual to the county, and constituted an obligation or liability of such person to the county. Legislation subsequently enacted can not affect this obligation or liability, and the only way it can be discharged is by payment into the proper treasury. (Montana Constitution, Article V, Section 39; Yellowstone Packing Co. v. Hays, 83 Mont. 1, 268 Pac. 555.)

You will further note Senate Bill No. 3 becomes effective as of July 1, 1943, and that it also provides for the levy of the tax therein provided for by the board of county commissioners at a meeting held in December of any year to become effective as of January first of the following year, so that the tax provided by the bill will only apply to taxes for 1944 and subsequent years.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General