

Opinion No. 52.

**County Treasurer—Liability for
Neglect of Duty—Duty.**

Held: Mandatory duty is cast upon county treasurer to mail notices provided by Section 2 of Chapter 159, Laws of 1943, and there is a possibility liability for failure to do so.

May 3, 1943.

Mr. Frank J. Roe
County Attorney
Silver Bow County
Butte, Montana

Dear Mr. Roe:

You have requested my opinion regarding the duty of the county treasurer, under the provisions of Section 2 of Chapter 159, Laws of 1943, as it has reference to the mailing of notices to delinquent taxpayers. It is stated in your request the county treasurer is wholly unable to perform this duty, with other duties of the office without the employment of extra assistance, which the county commissioners refuse to furnish.

The section in question, insofar as your request is concerned, reads:

“It shall be the duty of the county treasurer of each county to mail notice to delinquent taxpayers to their last known address, advising them of their rights and the amount of de-

linquent taxes under the provisions of this chapter, within sixty days after the approval of this act."

There is no ambiguity in the wording of the section. The duty is clear and mandatory and is a ministerial nature. It would appear to be of equal rank and importance with other duties of the office and cannot be neglected merely to permit the performance of other duties.

The question then naturally arises as to the liability of the county treasurer in case of failure to perform the duty. Section 482, Revised Codes of Montana, 1935, provides:

"Every official bond executed by an officer pursuant to law is in force and obligatory upon the principal and sureties therein to and for the state of Montana, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity; and any person so injured or aggrieved may bring suit on such bond, in his own name, without an assignment thereof."

You will note a private person injured or aggrieved by the wrongful act or default of an officer may bring an action against such officer and the sureties on the official bond. This is merely a statutory statement of a rule of law generally prevalent, and stated in 43 Am. Jur., Sec. 278, page 90, as follows:

"A public officer who knowingly or negligently fails or refuses to do a ministerial act which the law or legal authority absolutely requires him to do may be compelled to respond in damages to one to whom the duty was owing, to the extent of the injury proximately caused by the nonperformance."

The same rule is set forth in 22 R. C. L. at pages 478 and 517.

It would appear in the event a taxpayer who was not notified, brought action against the county treasurer for damages, it would be necessary for him to show any damages sustained by him were proximately due to the failure to mail the notice, and the question of the liability of the county treasurer would then be one for a jury.

It is my opinion it is mandatory on the county treasurer to use all means

in an honest effort to comply with the duty imposed upon that office by the section.

Sincerely yours,
R. V. BOTTOMLY
Attorney General