

January 2, 1946.

Mr. Chester E. Onstad
County Attorney
Powder River County
Broadus, Montana

Dear Mr. Onstad:

You have requested my opinion concerning the distribution of the money collected from personal property and automobile taxes located within the limits of the Town of Broadus. You advise me that the Town of Broadus was incorporated after the period for making the budgets in the year 1945 and that the town made no provision in its budget for these taxes.

I assume from the facts you gave me that a levy was not made by the Town of Broadus for personal property and automobile taxes.

Section 2239, Revised Codes of Montana, 1935, as amended by Chapter 107, Laws of 1939, makes it the duty of the county treasurer to collect the taxes on personal property which are not a lien upon real property and provides in part:

"For the purpose of determining the taxes due, on such personal property, the treasurer must use the levy made during the previous year, if the levy for the current year has not been made."

It would appear from the above quoted that the levy for the previous year would fix the rate and as there is not a levy on which to fix the rate, the county treasurer would be at a loss to know what taxes are due for municipal purposes. Our Supreme Court in *State ex rel. Bennett v. State Board of Examiners*, 40 Mont. 59, 104 Pac. 1055, said:

"There cannot be an imposition of a tax without the rate or amount being fixed. An undetermined tax is no tax."

The treasurer of your county, if no levy was made by the Town of Broadus, could not collect any money for the town on personal property and as a consequence would not be authorized under the law to distribute any funds collected on personal property to the town treasurer. The levy made by the county commissioners on personal property should be distributed to the

Opinion No. 109.

Taxation—County Treasurer—Cities and Towns, Taxation—Distribution of Funds—Personal Property, taxes—Automobile Taxes.

Held: A county treasurer may not collect taxes on personal property or motor vehicles for an incorporated town when the town has not made a levy for the previous year on such property because it was incorporated after the time for making a budget and fixing tax levies.

various funds by the county treasurer without allocating any of the funds to the Town of Broadus. The time and method of distribution were considered by this office in Volume 20, page 49, Report and Official Opinions of the Attorney General.

If a levy was made by the Town of Broadus, but the budget did not provide for the expenditure of the money, the county treasurer must collect the taxes due the town and distribute them to the town treasurer and such funds will be available as cash on hand at the time a budget is made in 1946 for the town.

It is therefore my opinion that a county treasurer may not collect taxes on personal property or motor vehicles for an incorporated town when the town has not made a levy for the previous year on such property because it was incorporated after the time for making a budget and fixing tax levies.

Sincerely yours,
R. V. BOTTMLEY,
Attorney General