

tory for the county assessor to extend the city taxes on the tax rolls under the following circumstances.

"Heretofore, the City of Butte has had an ordinance, as provided by Section 5214, Revised Codes of Montana, 1935, by which the city treasurer collected the city taxes. On May 16, 1945, the city council of the City of Butte passed, and on May 17th the Mayor approved, an ordinance repealing the former ordinance insofar as the collection of taxes by the city treasurer is concerned, and placed this duty on the county treasurer. This ordinance becomes effective June 16, 1945."

After a full consideration of all the statutes applicable to the assessment, levy and collection of taxes, (both city and county) I am forced to disagree with your conclusions that there is no duty on the county assessor to extend the city taxes on the assessment rolls.

Section 1 of the ordinance in question, a copy of which you have furnished with your opinion, provides as follows:

"All taxes levied by the City of Butte, Montana, upon all property within the city, and subject to assessment and taxation for municipal purposes, either real, personal or otherwise, shall be collected by the County Treasurer of Silver Bow County, State of Montana, as provided by the general laws of the State of Montana, relating to the collection of city and town taxes by County Treasurer."

By Section 2 of the ordinance, the city has retained with the city treasurer the duty of collecting "all special taxes and assessments . . ." only.

Section 5214, Revised Codes of Montana, 1935, provides, insofar as applicable here, as follows:

"The county treasurer of each county must collect the tax levied by all cities and towns in his respective county, except in case of such cities of the first and second and third classes as may provide by ordinance for the city treasurer to collect the taxes from such corrected assessment book. The county treasurer must collect such city or town taxes, including unpaid road poll-taxes, at

Opinion No. 47

Taxation—Cities and Towns—County Assessor, duties relative to computing and extending city taxes on assessment roll.

Held: Under the statutes, it is the duty of the county assessor to compute and extend the taxes on personal property, using the last year's levy, before final delivery of the personal tax rolls to the county treasurer. After the city council makes the current year's levy on real estate in the City of Butte, and the city clerk certifies the resolution to the county clerk, the assessor must compute and extend the taxes on the assessment roll before final delivery to the county treasurer.

June 15, 1945.

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

Dear Mr. Roe:

You have submitted to me your opinion rendered to the board of county commissioners of Silver Bow County on the question whether it is manda-

the same time as the state and county taxes with the same penalties and interest in the case of delinquency . . ."

Section 5203, Revised Codes of Montana, 1935, provides:

"The council has power to levy, collect, and equalize annually taxes on all property in the city or town taxable for state and county purposes, and may by ordinance provide for the levy, assessment, equalization, and collection of the same."

Section 5204, Revised Codes of Montana, 1935, provides:

"Until the passage of such ordinance the levy, assessment, equalization, and collection of municipal taxes are, and the proceedings for such purposes must be, as provided in this chapter."

After June 16, 1945, the date when the ordinance becomes effective, the City of Butte, therefore, will not have provided by ordinance for the collection of taxes for general and municipal purposes. Assuming then that the ordinance is valid, it follows the collection of such taxes for the City of Butte must be by the county treasurer as provided by law. It may be noted the ordinance provides for the collection of these taxes only. The levy and assessment of such taxes therefore remain with the city and the proceedings therefor must be as provided by law, or ordinances of the city.

It is informative in deciding the question here considered to study all the statutes relating to levy, assessment and collection of taxes in both counties and cities and towns. However, it is only necessary to call attention here to those specific statutes which I deem pertinent in arriving at my conclusion.

It is clear the real estate taxes may not be computed or extended on the assessment roll until the same have been levied.

Section 5216, Revised Codes of Montana, 1935, provides:

"The council must on or before the second Monday in August of each year, by resolution, determine the amount of the city and town taxes for all purposes, to be levied and assessed on the taxable property in the city or town, for the current fis-

cal year and the city or town clerk must at once certify to the county clerk a copy of such resolution and the county treasurer must collect said taxes as in this chapter provided. Provided, that in cities where the council has provided by ordinance for the collection of such taxes by the city treasurer, the city clerk must certify a copy of such resolution to said city treasurer."

Before the amendments to the several statutes pertaining to the subject of levy, assessment and collection of city and county taxes, a question arose between the city clerk and city treasurer of the City of Butte as to whose duty it was to extend the taxes on the assessment list. In the case of *State ex rel City of Butte v. Johnson, County Clerk*, 16 Mont. 570, 572, 41 Pac. 706, the court, after reviewing the applicable statutes, said:

"Under this view of the law, the assessment was not made or completed until the 12th day of August, 1895, the date of the resolution of the city council fixing and levying the amount of taxes to be levied and assessed for said year. If the assessment was not made until the date of the resolution of the city council, then, under section 4872, supra, it became and was the duty of the city clerk to certify the action and resolution of the city council to the city treasurer, whose duty it then became to collect the city taxes. No section of the law to which our attention has been called requires the city clerk to certify the resolution of the city council fixing, assessing and levying city taxes to the county clerk. It is the duty of the county clerk, on or before the first Monday in October, to make a duplicate of the corrected Assessment Book for each town or city in the county, which must contain a copy of the Corrected Assessment Book for such town or city. Such duplicate book must be made in a book furnished by the city or town clerk of each city or town in the county, and ruled in columns, specifying the different funds, so that the city or town treasurer may extend the same, and collect the taxes. Sections 4867, 4868, Political Code. These sections seem conclusive that it is the duty of the city treasurer, and

not the county clerk, to extend the city taxes on the tax list or book."

The City of Butte, not now having provided by ordinance for the collection of taxes for general municipal and administrative purposes by the city treasurer, there is no duty on the city clerk to certify the resolution to the city treasurer. His duty in such case is to certify only to the county clerk.

Prior to amendment, under the provisions of Section 2160, Revised Codes of Montana, 1935, the county clerk was required, after the assessments were equalized, to compute and extend the taxes on the corrected assessment list, and under the provisions of Sections 2161 and 2163, Revised Codes of Montana, 1935, before amendment, the county clerk was required to deliver the original assessment book to the county treasurer with his certificate attached thereto on or before the third Monday in October.

However, by Chapter 167, Laws of 1943, these sections were amended so that now the county clerk is required to deliver to the assessor, within five days after the second Monday in August, the corrected assessment list (Section 2161, Revised Codes of Montana, 1935) and the assessor must then compute and enter or extend the assessment and deliver the book to the county clerk on or before the second Monday in October (Section 2160, Revised Codes of Montana, 1935). The county clerk must then charge the county treasurer with the full amount of the assessment and deliver the book to the county treasurer before the third Monday in October.

Cooley on Taxation (2d Ed.) page 423 (which is quoted by the Supreme Court in the Johnson case, supra) states:

"The subjects of taxation having been properly listed, and a basis for apportionment established, nothing will remain to fix a definite liability, but to extend upon the list or roll the several proportionate amounts as a charge against the several taxables. When that is done, but not until then, will a liability for any particular sum be fixed. When the sum to be raised is settled, and the assessment is completed, the calculation of the percentage of the tax, and the determination of the sum

chargeable to each taxable are clerical acts, and may be performed by any one."

In the Johnson case, supra, the court in holding it was the duty of the city treasurer and not the city clerk to extend the taxes, observed at that time there was no section of the law requiring the city clerk to certify the resolution of the council fixing the levy to the county clerk but such certification was made to the city treasurer. This fact, together with the requirement that the county clerk furnish a duplicate of the Corrected Assessment Book to the city, impelled the court to conclude the purpose of the certification and furnishing of the corrected assessment book was to enable the city treasurer to make the computations and extend the amounts on the book which he was required to collect. Such duplicate assessment book is not required to be furnished to cities whose treasurer is not required by ordinance to collect the taxes. (Section 5211, Revised Codes of Montana, 1935.)

Since the amendments to Sections 2160, 2161 and 2163, Revised Codes of Montana, 1935, noted above, there is a provision as to who shall make the computation and extend taxes which the county treasurer is required to collect. There is also a provision the city clerk shall certify the resolution of the city council fixing the levy to the county clerk. (Section 5216, Revised Codes of Montana, 1935.)

From inquiry I am informed the above procedure is that which has been and is now being followed by county assessors in those counties where the treasurer collects the city taxes.

It is therefore my opinion under the statute, it is the duty of the county assessor to compute and extend the taxes on personal property, using the last year's levy before final delivery of the personal tax rolls to the county treasurer.

It is further my opinion after the city council makes the current year's levy on real estate in the city of Butte, and the city clerk certifies the resolution to the county clerk, the assessor must compute and extend the taxes on the assessment roll before final delivery to the county treasurer.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General