

Gentlemen:

You have requested my opinion whether a county treasurer can demand mileage from the county for the collection of personal taxes and license fees, and, if so, what is the legal rate per mile.

The general rule of law is that public officials can only claim compensation and fees for services rendered where such compensation or fee is provided by law and where none is provided, the rendition of such services is deemed to be included in their compensation, and that statutes relating to the fees or compensation of public officers must be strictly construed in favor of the government, and such officers are only entitled to what is clearly granted by law. (State ex rel Matson v. O'Hern, et al, 104 Mont. 126, 142, 65 P. (2d) 619, and cases there cited.)

In answering your question, therefore, it is necessary to find some statute or constitutional provision providing for the allowance of mileage to the county treasurer in the collection of personal property taxes and licenses.

The constitution and statute makes it the duty of the county treasurer to collect taxes, both real and personal, as well as in some specific instances, to collect license fees. (Section 5, Article XVI, Constitution; Section 4727, Revised Codes of Montana, 1935.)

Taxes and license fees are payable at the office of the county treasurer and the procedure for the collection of delinquent personal property taxes, not a lien on real property, is set out in Chapter 200 of Volume One, Political Code of Montana, 1935, Sections 2238 to 2252.2 inclusive.

Section 2238 R.C.M., 1935, as amended by Chapter 6, Laws, 1939, and Chapter 136, Laws, 1943, in substance requires the Assessor, upon discovery of any personal property in the county, the taxes upon which are not a lien upon real property sufficient to secure the payment of such taxes, to immediately, and in any event not later than ten days thereafter, make a report to the treasurer setting forth the nature, amount and

Opinion No. 146

**County Treasurer—Taxes, Personal—
License Fees—Mileage.**

Held: "That there is no statutory authority for allowance of mileage to a county treasurer or his deputy for the use of his own automobile in the collection of personal property taxes not a lien on real property or licenses, except upon seizure and sale as provided in Section 2243, Political Code of Montana, 1935."

November 3, 1948

Board of County Commissioners
Silver Bow County
Butte, Montana

assessed valuation of such property, where the same is located, kind, description and character of such property, in such a definite manner that the treasurer can identify the same. Section 2239 provides that the county treasurer must collect the taxes by first notifying the taxpayer that the amount is due and payable at the office of the county treasurer, and, second, within thirty days from the receipt of such report, "levy upon and take into his possession such personal property . . . and proceed to sell the same, in the same manner as property is sold on execution by the sheriff." Section 2243, provides that "For seizing and selling personal property, the treasurer may charge . . . the sum of three dollars for the use of the county, and the same mileage as is allowed by law to the sheriff of the county, and reasonable expenses for seizing, handling, keeping or caring for any property so seized or sold." (Emphassi supplied)

I find no other statutes requiring the county treasurer to collect personal property taxes in any manner other than at his office, or by seizure and sale. In the latter case, the statute specifically provides for mileage.

In regard to licenses, Chapter 200 Volume One, Political Code of Montana, Sections 2410 to 2420, inclusive, provides generally for the collection thereof. Section 2415 requires the treasurer to make "diligent inquiry as to all persons . . . liable to pay licenses . . .", and Section 2414 requires the treasurer to "direct suit, in the name of the State of Montana as plaintiff, to be brought for the recovery of the license tax . . .", but, here again, as in the case of personal property taxes, there is no provision allowing mileage.

The procedure outlined in the statutes provides ample means for the collection of personal property taxes not a lien on real property and license fees. In statutes which declare a method of collecting taxes, the prescribed method is exclusive, if adequate. *State ex rel Tilman v. District Court*, 101 Mont. 176, 53 Pac. 2d 107. In the case of *State v. Nicholson*, 74 Mont. 346, 240 Pac. 837, the Supreme Court said:

"It is a general rule that, when the statute which creates the tax provides a special remedy for the collection, that remedy is exclusive."

and again in the same case the court said:

"The statutory procedure for collecting such taxes being adequate, it is exclusive."

The procedure outlined in the statutes above quoted for the collection of personal property taxes, not a lien on real property, by seizure and sale, and in the case of licenses by suit for recovery, being adequate and ample, must be exclusive. Having specifically provided these methods to insure collection, it cannot be said that the legislature intended that the county treasurer should make personal calls in collecting the same. Had they so contemplated, or intended, it is only natural to assume that they would have provided for mileage in such case, as they did in the case of seizure and sale.

It may be suggested that authority for mileage in this instance can be found under the provisions of Section 4884.1, Revised Codes of Montana, 1935, as amended by Chapter 121, Laws, 1941, and by Chapter 201, Laws of 1947. These statutes provide:

"Whenever it shall be necessary for any state or county officer or employee to use his own automobile in the performance of any official duty where traveling expense is allowed by law, such officer or employee, except sheriffs, shall receive not to exceed six cents (6c) per mile for each mile necessarily travelled unless otherwise specifically provided by law. . . ." (Emphasis mine)

It will be noted that this statute provides for mileage to county officers and employees who necessarily use their own automobile in the performance of some duty, "where traveling expenses is allowed by law." Therefore, before such officer or employee is entitled to mileage he must point to some other statute allowing traveling expenses for the performance of the duty. There being none in the instant case, no mileage can be allowed.

It is reasonable to assume that perhaps more of such taxes would be collected by personal calls. A county treasurer who used this means should be commended for his conscientious endeavor to bring into the treasury of the county the maximum taxes levied. I can see no just reason why, in doing so, he should not be allowed mileage. Especially is this so, in view of the fact that the treasurer is so inadequately paid for the important duties he is required to perform. So, too, by such method of collection, the county is undoubtedly greatly benefited, but it is not for this office to legislate, but only to interpret the law as made by the legislative branch of the government. Neither the court, nor this office, may read into a statute something which is not there, and they may not omit that which is there. *State v. Certain Intoxicating Liquors*, 71 Mont. 79, 227 Pac. 472; *Mills v. State Board of Equalization*, 97 Mont. 13, 33 P. (2d) 563.

In the case of *Franzke v. Fergus County, et al*, 76 Mont. 150, at 158, 245 P. 292, the Court said:

"The fact that the contemplated action may be in the best interest of the county is not an admissible argument. The doctrine of expediency does not enter into the construction of statutes."

It is, therefore, my opinion that there is no statutory authority for allowance of mileage to a county treasurer or his deputy for the use of his own automobile in the collection of personal property taxes not a lien on real property or licenses, except upon seizure and sale as provided in Section 2243, *supra*.

Very truly yours,
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