

June 19, 1953.

Mr. Irving C. Pearson
County Attorney
Deer Lodge County
Anaconda, Montana

Dear Mr. Pearson:

You have asked my opinion upon the following question:

“Can the Board of County Commissioners remit interest and penalties for failure to pay taxes in cases where it is made to appear that a hardship

would result?”

It is a fundamental principle in the law that a board of county commissioners has only those powers expressly conferred upon it by the Constitution and the statutes, and those necessarily implied from the powers granted. Where a reasonable doubt is present as to the existence of a particular power, the doubt must be resolved against its existence. (Sullivan vs. Big Horn County, 66 Mont. 45, 212 Pac. 1105; Strange vs. Esval, 67 Mont. 301, 215 Pac. 807; Ainsworth vs. McKay, 55 Mont. 270, 175 Pac. 887.)

The powers granted to boards of county commissioners over the collection and remission of taxes are extremely limited. Article XVI, Section 5 of our Constitution provides that there shall be in each county “one treasurer who shall be collector of the taxes.” It has been held in the case of Mutual Life Insurance Company vs. Martien, 27 Mont. 437, that the legislature has no power to vest any person other than the county treasurer with the power to collect taxes. Pursuant to the constitutional provision a great many statutes have been passed specifically outlining the duties of the treasurer in the collection of taxes. Section 84-4115, R. C. M., 1947, charges the treasurer with the collection of delinquent taxes. Sections 84-4117 through 84-4122, R. C. M., 1947, provide for the collection of unpaid taxes through tax sale by the treasurer. Sections 84-4201, et seq., outline the treasurer’s duties in the collection of personal property taxes. The only statutory provision permitting the board of county commissioners to make remission of any taxes, interest or penalties

Opinion No. 29.

Taxation—Boards of County Commissioners, Powers of—County Treasurer, Duties of—Penalties and Interest, Remission of.

HELD: 1. It is the duty of the County Treasurer to collect all taxes plus all penalties and interest for delinquencies.

2. The Board of County Commissioners has no power to forgive payment of taxes, penalties, or interest; or to remit taxes, or interest and penalties for failure to pay taxes, unless they have been paid more than once, or erroneously or illegally collected.

is contained in Section 84-4176, R. C. M., 1947, as amended by Section 1, Chapter 71 Laws of 1951. That section provides in part as follows:

"(1) Any taxes, percentum and costs, heretofore or hereafter, paid more than once or erroneously or illegally collected, . . . may, by order of the board of county commissioners, be refunded by the county treasurer. . . ."

It should be noted that this statute makes exactly the same provision for the remission of taxes, percentum and costs. The statute was construed in the case of *Yellowstone Packing Company vs. Hays*, 83 Mont. 1, 268 Pac. 555, where it was said:

"The language employed in the statute appears to be plain and without any ambiguity; therefore it must be construed and applied in accordance with its apparent meaning. It speaks for itself, and by it the board of county commissioners of a county is permitted to refund only such taxes as have been 'paid more than once, or erroneously or illegally collected.' . . ."

It was held in 19 Opinions of the Attorney General 349, No. 219, that this statute is "so plain, explicit and mandatory." Under this statute the board of county commissioners has no power to remit taxes, penalties or interest unless they have been paid more than once or erroneously or illegally collected, and, unless one of these conditions be shown to exist, the commissioners have no more power to remit penalties and interest than to remit the tax itself.

Since there is no other statutory authorization for remission of taxes by the board of county commissioners, the board has no power to remit penalties and interest for any cause other than those specified in Section 84-4176, *supra*.

It is therefore my opinion that it is the duty of the County Treasurer to collect all taxes plus all penalties and interest for delinquencies.

It is further my opinion that the Board of County Commissioners has no power to forgive payment of taxes,

penalties, or interest; or to remit taxes, or interest and penalties for failure to pay taxes, unless they have been paid more than once, or erroneously or illegally collected.