

Opinion No. 4**Fish and Game Department—Taxation — Penalty and Interest Charges — Payments in Lieu of Taxes.**

HELD: No penalty or interest charges may be assessed upon payments in lieu of taxes made by the State Fish and Game Department.

March 31, 1955.

Mr. A. A. O'Claire
Warden
State Fish & Game Department
Sam W. Mitchell Building
Helena, Montana

Dear Mr. O'Claire:

You have requested my opinion upon the following question:

May statutory penalty and interest charges be added to payments in lieu of taxes made by the State Fish and Game Department, if such payments in lieu of taxes are made after the date upon which taxes are payable?

Chapter 1 of the Laws of 1951, set up a schedule of payments to counties by the State Fish and Game Department amounting to five cents per acre for each acre of land owned by the Department within the county. The act was passed, as its title stated, ". . . For the purpose of reimbursing said counties, either in whole or in part, for the loss of taxes on real property resulting from the acquisition of land for the use and benefit of the Fish and Game Commission . . ."

In 1953 this act was amended to provide that, instead of a payment of five cents per acre, the Fish and Game Commission should pay to the county ". . . a sum equal to the amount of taxes which would be

payable on county assessment of said property were it owned by and taxable to a private citizen . . . " (Chapter 188, Laws of 1953).

Section 84-4103, R.C.M., 1947, provides that penalties and interest shall be added to all property taxes which are not paid upon a fixed date. Your question is whether these penalties apply to the payments in lieu of tax provided for by Chapter 1 and Chapter 188, *supra*.

It is clear that the payments made by the Fish and Game Department are not taxes. Article XII, Section 2, of the Montana Constitution provides that, "The property of the United States, the state, counties, cities, towns, school districts, municipal corporations and public libraries shall be exempt from taxation . . ." Our Supreme Court has held that this provision in mandatory and self-executing, and prohibits the legislature from levying any taxes against property of the specified classes. (*Cruse vs. Fischl*, 55 Mont. 258, 175 Pac. 878.) Furthermore, the titles of Chapter 1 and Chapter 188, *supra*, specifically state that the payments are in lieu of taxes.

Section 84-4103, *supra*, applies, in its own words, to ". . . All taxes levied and assessed in the state of Montana . . ." (Emphasis supplied). There is no provision, either here or in other taxing statutes for the collection of penalties and interest upon other types of payments into the County Treasuries.

In interpreting statutes, the intention of the Legislature must be ascertained and given effect, and the clearest indication of legislative intent is the wording of the statute itself. When the purpose of the statute can be ascertained from its language, resort to other principles of statutory construction is unnecessary.

The intent of the legislature in enacting Section 84-4103, *supra*, a section which was in effect for many years before the state began making payments to counties in lieu of taxes, was to affix penalties and interest to taxes. The later invention of lieu payments to help counties with their financial problems could not have

been foreseen, so no intent to include them could have existed.

If Chapter 1, or Chapter 188, *supra*, had intended to place lieu payments within the tax system itself, the Legislature could easily have shown that intention. Instead, these acts specifically provide that the payments are not taxes. Further, it is recognized that the general tax statutes do not apply to these payments. Section 3, of Chapter 1, Laws of 1951, provides that the County Commissioners may allocate such portion of the payments from the Fish and Game Department as they see fit to any school district in which any of the land lies. This clearly indicates that the legislature did not consider the general acts on the subject of taxation and distribution of tax monies applicable to the payments in lieu of tax.

It is therefore my opinion that no penalty or interest charges may be assessed upon payments in lieu of taxes made by the State Fish and Game Department.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.