

VOLUME 31

Opinion No. 12

**MOTOR VEHICLES; Licenses, Registration—MOTOR VEHICLES; Reg-
istration, Fees—TAXATION; Motor vehicles, Registration fee—
COUNTY TREASURERS; Duties, Licenses, Collection of
motor vehicle registration fee. Chapter 245, Laws of
1965, Section 16-2405; 16-2601; 53-106(2);
R.C.M. 1947.**

HELD: The additional fifty cent registration fee authorized by amended section 53-106(2), R.C.M. 1947, must be collected by county treasurers and forwarded to the state treasurer as provided by law.

December 27, 1965

Mr. J. F. Disney
Acting Registrar of Motor Vehicles
Deer Lodge, Montana

Dear Mr. Disney:

You have requested my opinion as to whether it is mandatory for the county treasurers to collect the "additional fifty cent fee" authorized by Chapter 245, Laws of 1965, for motor vehicle registration?

Chapter 245, Laws of 1965, amended section 53-106 (2), R.C.M. 1947, by providing:

* * * Such registration plate and the required serial numbers and letters thereon shall be treated with a reflectorized background material or numerals and border according to specifications prescribed by the registrar. **An additional fee of fifty (50) cents per year for each registration of a vehicle shall be added to the registration fee.** Revenue from this fee shall be forwarded by the respective county treasurers to the state treasurer for deposit in the general fund of the state of Montana. * * * (Emphasis added.)

Examination of this amendment and the title to the Act indicates a legislative intent to authorize the use of reflectorized license plates and to increase the present motor vehicle registration fee by fifty cents. Legislative intent should always be given effect if possible. Moreover, the above quoted amendment states in no uncertain terms that the fifty cent fee **shall** be added to the registration fee. "Shall" is generally interpreted as mandatory, **State ex rel. McCabe v. District Court** (1938) 106 Mont. 272, 277, 76 P. 2d 634.

Section 16-2601, R.C.M. 1947, generally defines the duties of county treasurers. Included in the duties enumerated is the duty to "receive all moneys belonging to the county, and all other moneys by law directed to be paid to him, safely keep the same, and apply and pay them out, rendering account thereof as required by law". The provisions of this section are mandatory. **In re Farrell**, (1907) 36 Mont. 254, 92 P 785, and mandamus will lie to compel the performance of such duty. **Annot.** 58 A.L.R. 117.

The collection of this fee may be compared with the collection of a tax. Section 16-2405, R.C.M. 1947, provides that the county treasurer is collector of taxes. A tax collector is authorized **and required** to demand and enforce payment of all taxes committed to him for collec-

tion. He has no discretion in this area. 84 C.J.S. Taxation §657. He must pay over to the proper authorities all funds which come into his hands officially, regardless of whether the tax is a constitutional tax, or whether it is illegal or void, or improperly collected. 51 Am. Jur. Taxation §1000. A tax collector cannot escape liability for failure to comply with this duty by setting up the invalidity of the tax and denying the right of the body politic for which he is acting to receive the same. 51 Am. Jur. Taxation §1000.

There is no ambiguity in Section 53-106 (2), R.C.M. 1947, as amended. It clearly requires that an additional fee of fifty cents be added to the present registration fee and be forwarded to the state treasurer for deposit in the general fund of the State. The section is valid under every presumption of the law, **State v. Bowker** (1922) 63 Mont. 1, 205 P. 961, unless and until declared to be invalid by a court of competent jurisdiction. To avoid any conflict with Article XII, Section 1 (b), Constitution of Montana, I have advised the State Controller to create a new account within the general fund. The proceeds from this additional registration fee will be deposited in this account and no expenditures may be made therefrom without a legislative appropriation for the purposes enumerated in this constitutional provision.

It is therefore my conclusion that the additional fifty cent registration fee authorized by amended Section 53-106 (2), R.C.M. 1947, must be collected by county treasurers and forwarded by them to the state treasurer as provided by the law.

Very truly yours,

FORREST H. ANDERSON
Attorney General

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