

VOLUME 31**Opinion No. 17**

**COUNTY TREASURERS; Licenses; Drivers' license fees—LICENSES;
Drivers' licenses; disposition of fees—Sections 31-113;
31-135; 84-4401, R.M.C. 1947.**

**HELD: All drivers' license fees collected by a county must be remitted
to the State treasurer without reduction.**

June 13, 1966

The Honorable Henry H. Anderson
State Treasurer
State Capitol
Helena, Montana

Dear Mr. Anderson:

You have advised me that some county treasurers are withholding five per cent of the moneys collected from the sale of drivers' li-

censes to reimburse the county for the cost of selling these licenses. You wish to know if this may legally be done.

County treasurers act as the agents of the state highway patrol board in selling Montana drivers' licenses. Section 31-135, R.C.M. 1947. Moneys received from the sale of drivers' licenses are required to be deposited in the state general fund. Section 31-113, R.C.M. 1947.

Section 84-4401, R.C.M. 1947, requires the county treasurer, between the first and twentieth days of each month, to remit **all** moneys belonging to the state of Montana which were collected during the preceding month to the state treasurer.

Thus the question presented is, in the absence of statute, may the county treasurer deduct the cost of collection before remitting state moneys collected by him to the state treasurer?

In **State ex rel. Axen v. Meserve**, 78 N.W. 721 (Neb. 1899), it was held that a county treasurer could not deduct the cost of carriage involved in shipping state funds from the county seat to the state capitol. The court there pointed out that "a public officer must perform every service required of him by law, and he must look to the statute for his compensation. If it provides none, then the services are gratuitous."

A similar question was decided by this office in 1924, when Attorney General Rankin ruled that a county could not charge a commission for collection of city and town taxes. 10 Ops. Attorney General 282.

The sale of drivers' licenses by county treasurers and transmittal of the license fees to the state has been in force in Montana since 1935. (See Section 10 and 11, Chapter 185, Laws of 1935.) The present statutes governing this practice have remained virtually unchanged since 1947. Until this year, county treasurers have collected these fees and forwarded them to the state treasurer without reduction. The long history of acquiescence by the counties in the disposition of this revenue is persuasive evidence that the legislative intent was that these fees be deposited with the state without reduction. In view of this history, no responsible public official will wish to expose county treasurers to the liabilities prescribed by Section 84-4401 for the failure to timely forward state funds. The prudent course is to request this change in state fiscal procedures from the next legislature rather than to invite the penalties which may be attached to a revision of state-county responsibilities without legislative sanction.

It may seem harsh to require counties to collect state moneys without allowing them to retain some portion of these moneys to pay for the costs incurred in collection. However, as our Supreme Court pointed out in **Bignell v. Cummins**, 69 Mont. 294, 22 Pac. 797 (1923):

. . . the county is only a creature of the state. . . . The state may even confiscate the county property at pleasure.

The statutes constitute the charter of a county's power, and to them it must look for the evidence of any authority sought to be exercised.

Since the legislature has not authorized the counties to retain any portion of the drivers' license fees collected by them, it is my opinion that they may not do so and that all drivers' license fees collected by a county must be remitted to the state treasurer without reduction.

Very truly yours,

FORREST H. ANDERSON
Attorney General

FHA:vw