

VOLUME NO. 35

Opinion No. 62

COUNTY COMMISSIONERS — Authority to publish names of delinquent taxpayers; PRIVACY — Rights of individuals; TAXATION — Collection of delinquent property taxes. Article II, sections 9 and 10, Constitution of Montana; section 84-4117, R.C.M. 1947.

HELD: The publication by county officers of a list of delinquent taxpayers in a newspaper for purposes of embarrassment would be an excessive exercise of their statutory powers and an invasion of privacy in violation of Article II, section 10, Constitution of Montana.

January 18, 1974

Mr. James Oleson
Flathead County Attorney
Office of the County Attorney
Kalispell, Montana 59901

Dear Mr. Oleson:

You have requested my opinion on the following question:

May county officers publish in a newspaper a list of delinquent taxpayers in an attempt to embarrass them into paying their delinquent taxes?

Chapter 41, Title 84, Revised Codes of Montana, 1947, provides for the procedures to be employed by county officers in the collection of delinquent property taxes. Publication of the names of individual delinquent taxpayers is authorized in two instances.

Section 84-4117 (1), R.C.M. 1947, provides for the **publication of delinquent property owner** and their property subject to taxation in a newspaper **where a public sale of such property is contemplated.**

Section 84-4117 (2), R.C.M. 1947, provides for the compilation of a **delinquent list** of all persons and property whose taxes are in arrears. This list is to be maintained on **file in the office of the county treasurer** and is subject to public inspection and examination.

There is no other statutory authority for publication of delinquent taxpayers.

A county, being an involuntary corporation for governmental purposes, has only such powers as the law prescribes or as arise by necessary implication therefrom. **Helena Gun Club v. Lewis and Clark County**, 141 Mont. 490, 379 P.2d 436 (1963). A county must derive its powers by express, direct grant from the legislature. **Plath v. Hi-Ball Constructors, Inc.**, 139 Mont. 263, 362 P.2d 1021 (1961).

Since the legislature has enacted specific procedures to be followed by county officers in the collection of delinquent property taxes, it is apparent that county officers would be acting in excess of their express legislative grant of power if they were to publish a list of delinquent taxpayers in a newspaper for the purpose of embarrassment.

The right of privacy is a relatively recent constitutional provision. The Constitution of Montana, Article II, section 10, specifically protects an individual's right to privacy except in cases of compelling state interest. The facts, as stated in your inquiry, do not suggest that any such "compelling state interest" is present to justify the publication of a list of delinquent taxpayers in a newspaper for purposes of embarrassment.

THEREFORE, IT IS MY OPINION:

Publication by county officers of a list of delinquent taxpayers in a newspaper for purposes of embarrassment would be an excessive exercise of their statutory powers and an invasion of privacy in violation of Article II, section 10, Constitution of Montana.

Very truly yours,

ROBERT L. WOODAHL
Attorney General