

OPINION
64-389

September 25, 1964 (OPINION)

Mr. Lloyd Omdahl

Tax Commissioner

RE: Taxation - Penalties for Delinquent Trailer Tax - Disposition

This is in response to your letter in which you ask whether the penalty under section 57-55-03 of the North Dakota Century Code is to be deposited with the General Fund of the County or if it is to be considered as part of the tax under chapter 57-55 and distributed in the same manner as the tax thereunder.

Section 57-55-03 of the North Dakota Century Code, in substance, provides that a penalty of ten cents a day shall be added to the trailer tax for each day that the tax remains delinquent. The ten cents a day provision applies for the first fifteen days, thereafter two dollars for every thirty days or fraction thereof, not to exceed one hundred and fifty days. The tax on mobile homes pursuant to the provisions of section 57-55-05 is in lieu of personal property taxes.

The method of collection and disbursement is different than the collection and disbursement of general taxes. Section 57-20-22 of the North Dakota Century Code provides that all penalties on general taxes and interest on certificates of sale issued or deemed to be issued to the county shall belong to the county and become a part of general fund or of such other fund as the county commissioners may direct, except penalties and interest collected on the following items: (1) Taxes and parts of taxes due to townships, villages, cities, school districts, and park districts; (2) Hail indemnity taxes; and (3) Special Assessments for public improvements, which shall be paid to the municipality levying the same, or whatever other taxing district or agency thereof is entitled to the original amount of such taxes or assessments.

It is observed that the basic provision pertains to general taxes. The exclusion of hail indemnity and special assessments would seem to imply that the term "general taxes" has a broader meaning in this section than is normally ascribed to such term. Nevertheless, we are required to give to the term "general taxes" the meaning which is normally ascribed to such term. It would also appear that items numbered 2 and 3 would be excluded without specific mention of them under the exclusion provision because they are not "general taxes."

The method of collection, disbursement and the manner in which the tax is imposed leaves little doubt that trailer tax is anything else but a special tax. As such, it would not come within the provisions of section 57-20-22 of the North Dakota Century Code, which pertains only to penalties on "general taxes." The penalty in question becomes part of the tax and the collection and enforcement thereof comes within the provisions of chapter 57-55.

The 1941 Legislature also enacted what is termed in the title to the Act "A new military code for the State of North Dakota", which appears as chapter 221 of the 1941 Session Laws. Section 42 of that chapter provides as follows:

Each member of the North Dakota National Guard shall be exempt from the payment of poll tax, and any person who has served at least ten years as a member of the National Guard and who has a honorable discharge shall be forever exempt from the payment of poll tax."

This exemption now appears as section 27-01-27 of the North Dakota Century Code and prior to 1941 this exemption appeared in exactly the same language as section 9 of chapter 187, 1915 Session Laws (section 2422a2 of the 1925 Supplement to Compiled Laws of 1913).

When the Legislature enacted the new military code in 1941, it must be presumed to have known that the poll tax for road purposes had been repealed in 1931 and that the only "head" tax then in effect was the per capita school tax. The rules of statutory construction include the rule that the Legislature, in enacting this exemption for members of the National Guard, did not intend to enact a meaningless provision and that every provision enacted by the Legislature must be given effect if it is reasonable possible to do so.

It must also be presumed that the Legislature had an understanding of the meaning of the term "poll tax" as that term was understood by the courts, by the persons charged with administration of the provision, and by members of the public. In the case of *Aubol v. Engeseth*, 66 N.D. 63, 262 N.W. 338, 100 A.L.R. 853, the Supreme Court in its opinion filed September 2, 1935, considered the per capital school tax and the claim of the plaintiffs "that the defendants have, heretofore, and are now threatening again to assess, levy and collect from each of the plaintiffs herein a school poll tax in the sum of one dollar per year in violation of section 180 of the Constitution of the State of North Dakota." (emphasis supplied) That provision of the Constitution provides that:

The legislative assembly may provide for the levy, collection and disposition of an annual poll tax of not more than one dollar and a half on every male inhabitant of the state over twenty-one and under fifty years of age, except paupers, idiots, insane persons and Indians not taxed."

Although the Supreme Court did not consider whether the "per capita school tax" was or was not a "poll tax" within the meaning of Section 180 of the Constitution, it is clear that in denying the plaintiffs the relief they asked for that the Court did regard the per capita school tax to be in the nature of a poll tax since they would not have had to consider the meaning of the constitutional provision at all if they had determined that the per capita school tax was in fact not within the meaning of the term "poll tax."

It is therefore our opinion that the penalties incurred and collected are to be disposed of and distributed in the same manner as the tax itself under the provisions of chapter 57-55 of the North Dakota

Century Code.

HELGI JOHANNESON

Attorney General