

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 45

INDIANS - Motor vehicle license fees;
MOTOR VEHICLES - Vehicle license fees, Indians;
MONTANA CODE ANNOTATED - Sections 61-3-321, 61-3-502.

HELD: An Indian person residing on his or her tribe's reservation is not required to pay the vehicle license fee imposed by chapter 614 of the 1981 Montana Laws, section 3.

18 December 1981

James A. McCann, Esq.
Roosevelt County Attorney
Roosevelt County Courthouse
Wolf Point, Montana 59201

Dear Mr. McCann:

You have requested my opinion on the following questions:

Will owners of automobiles and light trucks be obliged to pay light vehicle license fees provided for in chapter 614, Session Laws of 1981 (SB 355), if such owners are Indian persons residing within the exterior boundaries of a reservation?

On January 1, 1982, Montana's current property tax upon motor vehicles based upon vehicle value will be replaced with a license fee based upon vehicle age and weight. 1981 Mont. Laws, ch. 614, § 3. This new fee is "in lieu of a property tax and is in addition to the tax on new motor vehicles (61-3-502, MCA)." 1981 Mont. Laws, ch. 614, § 2. Similarly, the existing "registration or license" fee, § 61-3-321, MCA, is unaffected and will be collected in addition to the new fee. The money generated by the new fee will be distributed by the county in the same manner as the current personal property tax on vehicles. 1981 Mont. Laws, ch. 614, § 34.

It is well established that the State may not impose its current motor vehicle property tax upon vehicles owned by an Indian person residing on a reservation. Moe v. Confederated Salish and Kootenai Tribes, 425 U.S. 463,

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480 (1976). The Court noted that the State could nonetheless require a nondiscriminatory fee for registration and issuance of State license plates. Moe, 425 U.S. at 469. This is the fee required by section 61-3-321, MCA. In Washington v. Confederated Tribes of the Colville Reservation, 100 S. Ct. 2069 (1980), the Court invalidated the state's excise tax on motor vehicles, assessed annually at a percentage of fair market value. The state there argued unsuccessfully that Moe did not toll the tax because it was an excise tax imposed upon the privilege of using the vehicle within the state. The Court found no essential difference between the tax in Moe and Washington's excise tax. The Court did observe that the state "may well be free" to levy a tax based upon the actual amount of off-reservation use. Washington, 100 S. Ct. at 2086. Id.

The result of these cases is that Montana may not impose the vehicle license fee in chapter 614 upon vehicles owned by Indian persons who reside upon their tribe's reservation. The fee is not the license plate and registration fee approved by the dicta of Moe, since that separate fee is still in existence. § 61-3-321, MCA. Furthermore, the fee is not based upon an actual amount of off-reservation use, but rather is applied equally to all vehicles upon the basis of vehicle age and weight. It is more akin to a property tax than a registration fee. Indian persons who reside outside a reservation, or who are not members of the tribe occupying the reservation upon which they reside, are subject to the license fee. Washington, 100 S. Ct. at 2085.

The current procedures and documents used for establishing an Indian person's exemption from personal property tax can be used for the license fee in chapter 614. If an Indian person exempt from the fee wishes to register by mail, the appropriate documents evidencing tribal membership can be sent to the county by mail. 1981 Mont. Laws, ch. 614, § 5.

THEREFORE, IT IS MY OPINION:

An Indian person residing on his or her tribe's reservation is not required to pay the vehicle

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license fee imposed by chapter 614 of the 1981
Montana Laws, section 3.

Very truly yours,

MIKE GREELY
Attorney General