VOLUME NO. 43 OPINION NO. 78

FEES - Collection of annual fee established for refuse disposal district;
REFUSE DISPOSAL DISTRICTS - Collection of annual fee established for;
MONTANA CODE ANNOTATED - Sections 7-13-231, 7-13-233;
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 46 (1989), 42 Op. Att'y. Gen. No. 21 (1987), 40 Op. Att'y Gen. No. 45 (1984), 40 Op. Att'y Gen. No. 22 (1983).

HELD: The entire annual fee established for a refuse district may be collected on the tax notices due in the initial year of operation, even though services will be provided for only a portion of that calendar year.

November 30, 1990

John C. McKeon
Phillips County Attorney
P.O. Box 1279
Malta MT 59538-1279

Dear Mr. McKeon:

You have requested my opinion concerning the following question:

> May the entire annual fee established for a refuse disposal district be collected on the tax notices due in the initial year of operation, even though services will be provided for only a portion of that calendar year?

As you are aware, the board of directors of a refuse disposal district (the board) is authorized by section 7-13-231, MCA, to defray the cost of maintenance and operation of the district by establishing a fee for service. It is the duty of the Department of Revenue (the department) to collect this fee by placing the appropriate amount on the tax notices. § 7-13-233, MCA. Your question is whether the board may have the department assess, on the November 1991 tax notices, the entire annual fee which reflects 12 months of service in calendar year 1991, when service will not actually begin until completion of the refuse disposal site in July 1991.

The only statutory limitation on the method of collecting service fees is section 7-13-233, MCA, which requires the department to place the amount of the fee on the tax notices in the month service begins. Thus, no fee can be assessed in advance of actual commencement of the service. See 40 Op. Att'y Gen. No. 45 at 180 (1984). According to the facts you have presented, the refuse disposal site will have been in operation for several months when the tax notices are sent out in November 1991. The board's proposed method of fee assessment will therefore not conflict with section 7-13-233, MCA.

None of the statutes governing refuse disposal districts mandate that assessment fees accrue on a monthly basis only for those months in which services are provided. In fact, the nature of assessment fees is such that an annual charge for the first year of operation would be fully consistent with their intended purpose. Unlike taxes, assessment fees are levied against specific property according to the benefit actually conferred. Vail v. Custer County, 132 Mont. 205, 217, 315 P.2d 993, 1000 (1957); 43 Op. Att'y Gen. No. 46 (1989); 42 Op. Att'y. Gen. No. 21 at 76 (1987).

> [T]he dominant purpose of an assessment is not to require a property owner to pay the cost of a public improvement, but to require him to reimburse the city for an expenditure which enhanced the value of his property.

70A Am. Jur. 2d Special or Local Assessments § 21, at 1144.

In a prior opinion, Attorney General Greely held that refuse disposal fees go not to individuals but to the property itself, so that even nonusers must pay assessment fees. 40 Op. Att'y. Gen. No. 22 at 85 (1983). It follows that the benefit conferred goes not to the property owner personally, but to the property itself in that the availability of the service enhances the value of the

property. Accrual of such a benefit is not dependent upon actual use. I find no inconsistency between the board's proposed method of assessment and the purpose of the fee, which is to reimburse the county for enhancing the value of property.

THEREFORE, IT IS MY OPINION:

> The entire annual fee established for a refuse district may be collected on the tax notices due in the initial year of operation, even though services will be provided for only a portion of that calendar year.

Sincerely,

MARC RACICOT
Attorney General