

**Opinion No. 77.****Taxation—Property—County Assessor.**

HELD: 1. Buildings constructed on leased ground are to be assessed as real property.

June 15, 1939.

Mr. Joseph Lester  
County Assessor  
Butte, Montana

My dear Mr. Lester:

You have asked if buildings which are constructed on leased ground are

to be assessed as personal or real property.

Section 2001, Revised Codes of Montana, 1935, provides:

"All taxable property must be assessed at its full cash value. Land and the improvements thereon must be separately assessed."

Section 1996, Revised Codes of Montana, 1935, defines improvements as follows:

"\* \* \* The term 'improvements' includes all buildings, structures, fixtures, fences, and improvements erected upon or affixed to the land, whether title has been acquired to said land or not \* \* \*."

The separate assessment, however, cannot in the least affect the character of the improvements or their ownership. If they constitute real property the assessment does not and cannot convert them into personalty. (*Outer Harbor Dock and Wharf Co. v. City of Los Angeles*, (Calif.), 193 Pac. 137.)

Property is either real or personal (Section 1996, R. C. M., 1935) and real property consists of "1, Land, 2, That which is affixed to land \* \* \*" (Section 6667, R. C. M., 1935). In the absence of a showing to the contrary, buildings permanently resting on foundations are a part of the realty. (*Hauf v. School District*, 52 Mont. 395.) Fixtures include "things imbedded in the land, as walls, or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws." (Section 6669, R. C. M., 1935; *Shipler v. Potomac Copper Co.*, 69 Mont. 86.) Therefore, buildings erected on land although separately assessed are to be assessed as real property and where the right of removal is reserved to the lessee in a lease, he will be regarded as the owner of real property for the purpose of taxation. (*People ex rel Van Nest v. Tax Commission*, 80 N. Y. 573. See also 16 O. A. G. 35, 365.)