

VOLUME NO. 40

OPINION NO. 22

FEES - Property owner in refuse disposal district "receiving a service" for fee assessment even though not actually using facilities;

REFUSE DISPOSAL DISTRICTS - Property owner "receiving a service" for fee assessment even though not actually using facilities;

MONTANA CODE ANNOTATED - Sections 7-13-203 to 7-13-212, 7-13-231, 7-13-233.

HELD: A property owner is "receiving a service" for purposes of fee assessment under the refuse disposal district law whether or not he is actually making use of the facilities.

28 September 1983

John P. Connor, Jr.
Jefferson County Attorney
Jefferson County Courthouse
Boulder MT 59632

Dear Mr. Connor:

You have requested my opinion concerning the assessment of fees for refuse disposal districts. Section 7-13-231, MCA, provides in pertinent part: "This fee shall be assessed to all units in the district that are receiving a service, for the purpose of maintenance and operation of said district."

At the present time, the entirety of Jefferson County is included in a refuse disposal district and fees are assessed against all landowners within the district for refuse collection services and establishment and maintenance of a landfill. There are, however, some landowners of the district who are not availing themselves of the services of the district because they maintain their own landfill as permitted by the terms of the Solid Waste Management Act. The question is whether these nonusers are "receiving a service" so that they might be assessed a fee therefor. I conclude that they are.

The confusion in this matter arises when individuals choose not to receive the benefit available to them in a district. However, the benefit does not go to the individual, but to the property itself. As stated in American Jurisprudence 2d:

The benefit is presumed to inure not to the present use, but to the property itself. In other words, the proper measure of benefits accruing to property from an improvement is not limited to the use made of the improvement at the time the improvement is made, but extends to the use which could be made of the improvement in the future if the property were devoted to any use which might reasonably be made of it.

70 Am. Jur. 2d Special Local Assessments § 21.

This link to property is underscored by the fact that unpaid service charge fees become a lien on the property under the provision of section 7-13-233, MCA.

Because of the long-term capital expenditures required in the operation and maintenance of a refuse disposal district, its continued fiscal integrity requires a secure financial base. The Legislature provided an elaborate procedure to protect the landowner in the establishment of a refuse disposal district by requiring public notice, hearing on protest, automatic bar to proceeding by petition, and boundary adjustments. §§ 7-13-203 to 212, MCA. The procedural safeguards are at the front end, so that before major financial commitments are undertaken there is sufficient opportunity to carefully examine the propriety of the proposal. Once the boundaries of the district are established and financial commitments are made, however, it is not reasonable to allow individuals to unilaterally decide not to use the service.

There are apparently no Montana court cases interpreting this section of law. In California an analogous case arose where the plaintiff was included in a special improvement district but the sewage from his land would not flow through the new construction. The California court said:

For this court to hold now that appellants cannot be charged their prorated shares of the cost of new construction, merely because the sewage emanating from their properties will not flow into that part of the system, could defeat the very purpose for which the improvement district was formed and would impinge on the legislative body's prerogative to fix the district's boundaries.

Kalashian v. City of Fresno, 35 Cal. App. 3d 43, 110 Cal. Rptr. 429 (1973).

In the instant case there is no bar to any landowner within the district using its services except his own volition. Its availability to him or a successor in interest of the property is legally enforceable.

THEREFORE, IT IS MY OPINION:

A property owner is "receiving a service" for purposes of fee assessment under the refuse disposal district law whether or not he is actually making use of the facilities.

Very truly yours,

MIKE GREELY
Attorney General