

Northern Pacific, Assessment of Coal Lands. Coal or Mineral Rights, Assessment Of. Taxation, of Coal and Mineral Rights. Assessment, Coal and Mineral Rights.

Reservations of coal and mineral rights beneath the surface are property within the provisions of law relative to taxation of property.

July 29, 1912.

Hon. Desmond J. O'Neill,  
County Attorney,  
Roundup, Montana.

Dear Sir:

I am in receipt of your letter of July 25th, in which you state that the Northern Pacific Railway Company has sold considerable land in your county, reserving the coal and mineral rights beneath the surface, and requesting my official opinion as to whether or not this reservation is subject to taxation.

Sec. 2498 of the Revised Codes provides:

"All property in this state is subject to taxation except as provided in the next section."

Sec. 2499 of the Revised Codes (being also Sec. 2, Art. XII of the Constitution) reads as follows:

"The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, places of actual religious worship, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity are exempt from taxation, but no more land than is necessary for such purpose is exempt."

If the rights and mineral reserved by the Northern Pacific constitute property, and are not exempt, within the meaning of the above sections of our code, it is subject to taxation.

Sec. 17 of Art. XII of the Constitution (being Sec. 2501 of the Revised Codes), reads "The word 'property' as used in this Article is hereby declared to include moneys, credits, bonds, stocks, franchises and all matters and things (real, personal and mixed) capable of private ownership \* \* \*"

The supreme court of this state, in the case of Northwestern L. Ins. Co., v. Lewis and Clark county (28 Mont. 484) declared that this section "in its definition of that which may be subject to taxation is sufficiently comprehensive to include all matters and things, visible

and invisible, tangible and intangible, corporeal and incorporeal, capable of private ownership."

In the case of Cobban v. Meagher (42 Mont. 407), the same court in referring to this definition of property, states:

"We can conceive of no more comprehensive definition. It includes everything capable of private ownership. Whatever, therefore, is not by law exempt is taxable."

In view of the foregoing decisions, provisions of our statutes and constitution, the rights and mineral reserved by the Northern Pacific constitute property, and such property is no where exempted from assessment and taxation in this state, and is, therefore taxable.

Yours very truly,

ALBERT J. GALEN,

Attorney General.