

**Railroad Grade, Assessment of. Assessment, of Railroad Grade.**

A railroad grade constructed upon a right of way, but upon which a railroad is not yet being operated, and which is entirely within one county, is to be considered a part of the land itself and should be assessed by county assessor at its full cash value, assessing the whole thereof as land.

April 25th, 1913.

Hon. G. M. Houtz,  
State Tax Commissioner,  
Helena, Montana.

Dear Sir:

I beg to acknowledge receipt of your communication under date the 22nd instant.

The constitution and statutes of this state provide that railroads operating in more than one county shall be assessed by the state board of equalization, otherwise they shall be assessed by the county assessor in the county in which they are located.

Art. 12, Sec. 16, of the Constitution.

Sec. 2556, Revised Codes.

Sec. 2509, Revised Codes.

Sec. 2508, Revised Codes.

Sec. 10, Chap. 75, Laws of 1913.

The property mentioned in your letter is therefore to be assessed by the county assessor of Teton County, for the reason that it is not as yet being operated for a railroad, and for the further reason that when completed the railroad will be wholly within Teton County.

All property in this state should be assessed at its full cash value (Sec. 2502), but the improvements and the land should be separately assessed. (Secs. 2502 and 2543.) The question is then presented, Is the grade erected upon the railroad right of way an improvement within the meaning of the statutes upon the assessment of property? The term is thus defined by the statute:

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

Sec. 2501, Subdiv. 3.

A grade is not included among the improvements expressly mentioned in the above definition, nor is it of a character similar to those improvements specially mentioned. "Buildings, structures, fixtures and fences" are structures erected upon the land which ordinarily are physically separable from the land and have a value separate and distinct from the value of the land itself. The general word "improvements," which is used in the definition, should be restricted in its meaning so as to include only those of the same general character as the improvements specially mentioned.

I am therefore of the opinion that the grade constructed upon

the right of way is not to be considered an improvement upon the land, within the meaning of the statute, but is rather to be considered a part of the land itself.

You are therefore advised that the assessor should make the assessment of the right of way at its full cash value, assessing the whole thereof as land.

Very truly yours,

D. M. KELLY,  
Attorney General