

Northern Pacific Lands, Reservation of Coal and Mineral Rights Under. Coal and Other Minerals, Reservation of by N. P. Ry. Co. Reservation of Coal and Mineral Rights, by Northern Pacific.

Coal and other mineral rights reserved by the Northern Pacific Railway Company underlying lands deeded by it to purchasers are taxable and should be assessed and taxed to the Railway Company at the full cash value of the property reserved.

June 12th, 1913.

Hon. C. R. Tisor,
County Attorney,
Miles City, Montana.

Dear Sir:

I beg to acknowledge receipt of your communication under recent date, requesting my opinion upon the question of whether the reservation by the Northern Pacific Railway Company of coal and other minerals underlying the surface of the granted lands was assessable and taxable under the law of this state. This question has heretofore been before this department, and Hon. A. J. Galen rendered an opinion thereon on July 29th, 1912, to the effect that such a reservation was property within the meaning of Sec. 17, Art. XII, of the Constitution, and was, therefore, taxable.

Opinions Attorney General, 1910-12, 493.

On August 8, 1912, Mr. Galen reversed this holding, and held that while the reservation constituted property within the meaning of Sec. 17, Art. XII, of the Constitution, it was exempt from taxation under the provisions of Sec. 3, Art. XII, of the Constitution.

Opinions Attorney General, 1910-12, 497.

Sec. 17 of Art. XII of the Constitution (also Sec. 2501 of the Revised Codes) declares:

"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."

Speaking of this definition, the supreme court of this state in *Cobban v. Meagher*, said:

"We cannot conceive of any more comprehensive definition. It includes everything capable of private ownership. Whatever, therefore, is not by law exempt is taxable."

Cobban v. Meagher, 42 Mont. 407.

Sec. 2 of Art. XII of the Constitution specifies what property is exempt from taxation. A bare reading of this section discloses that the reserved mineral rights referred to in your communication are not within the meaning of this section. Sec. 16 of Art. XII of the Constitution declares:

"All property shall be assessed in the manner prescribed by law, except as is otherwise provided in this constitution."

I think there can be no doubt but that the right reserved constitutes property within the meaning of the constitutional definition. The rule is thus stated in *Cyc*:

"Moreover the mining rights in land may be severed by grant or conveyance from the surface rights or from the general ownership in fee, and thereupon become separately taxable to their owner as real estate."

37 *Cyc*. 775, and cases cited.

See also *Wolf County v. Beckett*, 105 S. W. 447; 17 L. R. A. (New Series), 688 and Note.

Consolidated Coal Co v. Baker, 26 N. E. 651; 12 L. R. A. 247.

In the case last cited the Supreme Court of Illinois, discussing the divided ownership which is created by such a reservation, used this language:

"The parties have created two distinct properties in the same land, one holding one property right in the land and the other a distinctively separate property interest therein. The statute, as before said, when read in view of the constitutional provision quoted, would require the assessment to be made in the name of the person or corporations holding such property interests in the land. True, the total assessment must equal the value of the land augmented by the value of the coal or mine, but the assessment of each should be made separately according to the several holdings, to the end that each shall pay a tax in proportion to the value of his or her or its property. The coal thus conveyed or reserved by the grantors of the land is not personal property, and cannot be until it is severed. By the conveyance of it the interest in the land itself passes to the grantee, the ownership of portions of the constituents of the land falls within the designation of real estate for the purposes of taxation."

I am further of the opinion that Sec. 3 of Art. XII of the Constitution does not render the reservation in question exempt from taxation. Sec. 3 of Art. XII of the Constitution does not, as I read it, pretend to declare any property exempt from taxation, but simply declares a general rule for the taxation of mines and mining claims, and places an arbitrary value thereon for the purpose of taxation. There may be some question as to whether the mineral rights reserved by the Northern Pacific Railway Company should be taxed at their actual value or should be taxed in accordance with the provisions of Sec. 3 of Art. XII of the Constitution relating to the taxation of mines and mining claims. I am of the opinion that these reservations should be taxed at their actual value. The provisions of Sec. 3 of Art. XII of the Constitution that

"All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal or other valuable mineral deposits, after purchase thereof from the United States, shall be taxed at the price paid the United States therefor,"

Shows that this provision has application only to mineral ground "purchased" from the United States, and for which a price has been paid under the land laws of the United States relating to the disposition of mineral land. It cannot be extended, in my estimation, to include the grant made by congress to the Northern Pacific Railway Company. The case of Montana Coal & Coke Company v. Livingston (21 Mont. 59) is authority only for the proposition that coal lands acquired under the federal laws relating to the disposition of coal lands are taxable in accordance with the provisions of Sec. 3 of Art. XII. That case does not hold that minerals underlying the land granted to the Northern Pacific Railway Company are to be taxed in accordance with Sec. 3, Art. XII, above referred to.

You are therefore advised that, in my opinion, the mineral rights reserved are taxable and should be taxed to the railway company at the full cash value of the property reserved.

Yours very truly,

D. M. KELLY,
Attorney General.