

**Special Assessment, Fire District. Fire District, Special Assessment For. Railroad, Liability For Special Assessment of Fire District.**

The law relating to authority of county board to create fire limits, and Levy Special Tax Therefor, Considered and Construed.

December 23, 1915.

Hon. H. L. Wolf, Jr.,  
Malta, Montana.

Dear Sir:

I am in receipt of your letter of the 13th instant, submitting the question:

as to the liability of the Great Northern Railway company for special assessments levied in a fire district created by the Board of County Commissioners in an unincorporated town?

Chapter 16 of the Session Laws of 1915, amending Section 2081 of the Revised Codes, confers authority upon the Board of County Commissioners "to establish fire limits in any unincorporated town or village," and to levy a special tax therefor. If the phrase as used in the law "in any unincorporated town", means within the exterior boundaries of such unincorporated town, then it would be necessary first, to determine what the boundaries of such town are, and if the phrase does not confine the Board to the exterior boundaries of such unincorporated town, then the Board is apparently given free hand to use its own discretion in fixing the limits of such fire district. This office has attempted on several occasions to define the word "town", but has never met with success.

Opinions Attorney General, 1905-06, p. 317;

Opinions Attorney General, 1910-12, p. 209.

Sections 3202 and 3206 give a statutory definition and classification of towns, but the Supreme Court in construing these sections, held that they did not apply in all cases, but that "on the contrary, the true inference is that the term 'town', as used in the Code, is a term of varying significance, and so uncertain that a construction resting wholly upon it would be highly unsatisfactory." 47 Mont. 227. In this condition of affairs, it is absolutely impossible as a matter of law, to give any definition of an unincorporated town, much less to make any attempt to fix the exterior boundaries thereof. Hence, this question must be regarded more as a matter of fact than of law, and can be settled only by a court of competent jurisdiction. In *Farland v. Nill*, 27 Mont. 27, the Court laid down the general doctrine that a tract of land might be situate within the exterior boundaries of an incorporated town, and still not be a part thereof, but in view of the fact that an unincorporated town does not have any boundaries, it is hardly probable that a plat filed by a private individual would be binding upon the Board of County Commissioners in the exercise of the authority given to such Board by the provisions of Chapter 16 Session Laws of 1915.

Yours very truly,  
J. B. POINDEXTER,  
Attorney General.