

**Building Sites on Railroad Right of Way—Assessment
Of.**

Method to be followed in assessing building sites leased from railroad companies.

June 14th, 1919.

State Board of Equalization,
Helena, Montana.

Gentlemen:

I am in receipt of your letter of this date, inclosing letter from County Assesor of Treasure County, asking that you advise him as to the method to be used in assessing building sites leased from railroad companies on their rights of way, and used by the American Society of Equity for their elevators, and by the Great Western Sugar Company for beet dumps.

Section 2501 Revised Codes defines the term "real estate" as including the possession of, claim to, ownership of, or right to the possession of land.

The rights of way of railroad companies will be assessed to the railroads owning the same, and whether or not the possession of, or right to the possession of any part of railroad right of way for elevator or other sites should be assessed and taxed to the persons or companies having the possession or right of possession thereof depends on whether the same have any taxable value.

It will be found in most instances I believe that the right of way is occupied as an elevator site, or as a site for other purposes, under a permit from the railroad company, rather than under a lease, the term being indefinite and subject to termination by either party on notice, and without the payment of any rental, or at most merely a nominal rental. In such instances it is doubtful whether the possession or right of possession has any taxable value whatever. In some instances, however, the term of occupancy may be definite and certain and the rental required to be paid more than a nominal amount. In such a case unquestionably the possession and right of possession has some taxable value and should be assessed and taxed under Section 2501 as real estate. Just what value should be placed thereon for taxation is, however, somewhat difficult to determine. Such value will depend to a certain extent on the unexpired term of the lease or permit, that is the term for which it is to run, and the amount of the rent paid therefor, and whether or not other sites equally as good can be procured in the immediate neighborhood. All of these are matters

which should be considered by the assessor, and after considering all of them he should use his best judgment in fixing the value thereof for taxation.

Respectfully,

S. C. FORD,

Attorney General.