

November 4, 1935.

Mr. Anthony Hork
County Clerk
Hamilton, Montana

Your letter of October 25 is as follows:

"The Board of County Commissioners would like an opinion on the following question:

"Can mining machinery and improvements be assessed by the county assessor on mining property that is not operating. The contention is that the Federal Laws prohibit this assessment and should not be assessed by the county."

Under Section 2088, Revised Codes, 1921, all machinery used in mining and all surface improvements upon or appurtenant to mines and mining claims, which have a value separate and independent of such mines or mining claims, are personal property and must be taxed as such. Section 2002 of the same code provides that the assessor must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants and all property in his county subject to taxation, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was, at 12 o'clock M., on the first Monday of March next preceding.

If, therefore, any person or corporation should own machinery used in mining and surface improvements upon or appurtenant to mines or mining claims at 12 o'clock M., on the first Monday of March of any year, and such machinery or improvements or both should have a value separate from and independent of such mines or mining claims, it then becomes the duty of the assessor to assess the same to such owner for that year, and this without regard to whether such mines be or be not in operation or such mining claims be or be not in course of development. (*Birney v. Warren*, 28 Mont. 64; *Hayes v. Smith*, 58 Mont. 306; 3 Opinions of Attorney General 166.)

We are not aware of any federal law which prohibits an assessment of this kind, and if by any possibility

Opinion No. 197.

Mines and Mining—Taxation—Machinery and Improvements of an Idle Mine, Assessment of—County Assessor.

HELD: Machinery and surface improvements upon or appurtenant to mines or mining claims, having a value separate from and independent of such mines or mining claims must be assessed by the County Assessor even though the mines are not in operation.

there be such a law it would be of
doubtful value.