

in which that obligation must be performed, and provides and names the person, firm or corporation responsible.

Section 2763 defines terms and specifies; That the word person, shall be held to include, "firm or corporation," and of course, whether the county is liable to undertake these obligations depends upon whether or not the definition of the word corporation includes that of county.

The word "corporation" has been used quite loosely in the statutes, and constitution.

Article 15, Section 18, of our constitution has reference to corporations other than municipal, and article 16 of the constitution in referring to counties, municipalities, corporations and offices, does not specifically define a municipal corporation, or state that a county is a municipal corporation.

Section 5900 defines a corporation as follows: "A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes."

Section 5901, specifies, "Corporations are either public or private."

Section 4293 defines county as follows: "A county is the largest political division of the State having corporate power."

The court has held in the case of *Hersey v. Neilson*, 47 Mont. 132, at page 142, that a county is an involuntary corporation for governmental purposes, and is in no sense a business corporation; that the powers and obligations of the county are such as the law prescribes or as necessarily implied. The court further says, on page 142, "Their functions are wholly of a public nature." Counties are subordinate agencies for the orderly government of the state within the scope of their authority, in other words, the county should be treated more in a class by itself, and as a sub-division of the state under the chapter dealing with forest fire protection. It is not mandatory upon the state to comply with this obligation and section 2778.1 gives the State Board of Land Commissioners discretionary powers, as to whether or not they wish to list any of their lands.

At the time of the enactment of this fire protection act the legislature

#### Opinion No. 19.

#### Counties—Tax Deed Lands—Forestry Protective Associations.

January 18, 1937.

Mr. Thomas D. Long  
County Attorney, Lincoln County  
Libby, Montana

Dear Sir:

You have requested an opinion from this office as to whether or not your county must list its lands with a regularly organized and functioning forest protection association, recognized by the State Forester, or with the United States Forest Service, and pay the premium for the protection afforded by them, or else, you ask, would the county be liable for the expense of putting out fires on its lands and other lands to which the fire spread from the county lands.

You state that your county is the owner under tax deeds of 18404 acres classified as timber land. Chapter 250 of the R. C. M., 1935, has application to this matter.

Section 2778.2 makes provision creating the obligation and the manner

contemplated that the State of Montana might own substantial tracts of this forest land in which ownership was more or less of a permanent nature. On the other hand, the legislature could not contemplate that the county would own tax deed land, or otherwise own such large tracts of land, amounting to over 18,000 acres. It was and is contemplated, that when counties acquire these tax deed lands, would dispose of the same as soon as possible and replace them on the tax rolls. It is the duty of the Board of County Commissioners to dispose of these lands in a certain period of time, or else lease the same.

Therefore, it is my opinion that the definition of the word "corporation" as used in Chapter 250 of the R. C. M., 1935 does not include, nor was it intended to include, the county. By reason thereof it follows that the county is not compelled to list its lands with these different agencies and your county is not authorized to insure these lands. It follows that your county would not be liable for damages from fire by failure or omission to so list its land and insure the same.