

**Opinion No. 71.**

**State, subdivisions of—Montana Armory Board—Armory Board—  
Federal Tax—Tax, Federal.**

**Held: The Montana Armory Board is a subdivision of the State of Montana within the meaning of Section 3475 of Title 26, U. S. C. A., and as such, is exempt from the payment of the transportation tax therein provided.**

September 25, 1945.

Mr. James E. Hancock, Clerk  
Montana Armory Board  
Helena, Montana

Dear Mr. Hancock:

You have requested my opinion asking if the Montana Armory Board would be exempt from payment of the federal tax imposed under the provisions of Section 3475 of Title 26, U. S. C. A.

Section 3475, *supra*, imposes a tax of 3% of the amount paid for the transportation of property. The section contains an exemption which, insofar as pertinent here, reads as follows:

"The tax imposed under this section shall not apply to (1) amounts paid for the transportation of property to or from the government of a state, territory of the United States, or political subdivision thereof . . ."

If your board is exempt, it must be because of its status as a political subdivision of the state. The question, therefore, is whether the Montana Armory Board is a political subdivision of the state.

The Montana Armory Board was created by an act of the Twenty-sixth Legislative Assembly, 1939, Chapter 161, Laws of 1939. Section 2 of the act states:

"This board is hereby made a body politic and corporate, and shall have the name of 'Montana armory board.'"

Corpus Juris defines a political subdivision of a state as "a subdivision of a state to which has been delegated certain functions of local government." (49 C. J. 1077.)

Our Supreme Court has held that cities and school districts are political subdivisions of the state. In the case of *McNair v. School District No. 1 of Cascade County*, 87 Mont. 423, 425, 288 Pac. 188, the court said:

"A school district is a political subdivision of the state, created for the convenient dispatch of public business . . . It is a public corporation . . ." (See also *State v. Urton*, 76 Mont. 458, 248 Pac. 369; *State ex rel Fischer v. School District No. 1, Silver Bow County*, 97 Mont. 358, 34 Pac. (2d) 522; *State v. Cooney, et al*, 102 Mont. 521, 526, 59 Pac. (2d) 48.)

As to cities as political subdivisions of the state, our court has held that:

"Cities are but political subdivisions of the state for government purposes." (*State v. Stark*, 100 Mont. 365, 52 Pac. (2d) 890.)

In the case of *State ex rel Gebhardt v. City Council of Helena*, 102 Mont. 27, 37, 55 Pac. (2d) 671, the court said

with reference to a city as a political subdivision or agency of the state as follows:

"So far as municipal corporations of any class are concerned, whether incorporated pursuant to special or general law, when they exercise any power for purposes essentially public—purposes pertaining to the administration of general laws made to enforce the general policy of a state, they are deemed agencies of the state. When a municipality performs an act in compliance with the legislative mandate of the state, it exercises a governmental and not a corporate function." (Emphasis mine.)

Applying the above pronouncement of the law by our court as relating to the functions of a municipal corporation which gives them the status of an agency of the state or, as it may be said, a political subdivision of the state, to the Montana Armory Board, I think it may safely be said that board is an agency or subdivision of the state.

From a reading of the provisions of Chapter 161, Laws of 1939, the legislative act creating the board, it appears that it is made a body politic and corporate, and is authorized to "exercise powers for purposes essentially public—purposes pertaining to the administration of the general laws made to enforce the general policy of the state." It is a general policy of the state to provide and maintain a militia for the benefit of the public in protecting the state. This is provided by the general laws of the state. The purposes for which the Montana Armory Board was created, viz, "to purchase sites and construct buildings for armory purposes . . ." for the use and benefit of the militia, are "purposes pertaining to the administration of the general laws made to enforce the general policy of the state." This board, therefore, may be deemed an agency or subdivision of the state.

It is, therefore, my opinion that the Montana Armory Board is a subdivision of the State of Montana within the meaning of Section 3475, of Title 26, U. S. C. A., and as such, is exempt from the payment of the transportation tax therein provided.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General