

Dear Mr. Lessley:

You have requested my opinion as to the meaning of Section 5148, Revised Codes of Montana, 1935, as amended by Chapter 118, Laws of 1945, as amended by Chapter 97, Laws of 1947, as to the property upon which the special tax in such an established district is imposed.

Section 5148 is a part of Chapter 392, Volume 2 of the Codes of 1935, and as amended and now appearing in Chapter 97, Laws of 1947, is, in part, as follows:

"The board of county commissioners is hereby authorized to establish fire districts in any unincorporated territory, town or village whenever requested in writing so to do by the owners of fifty per cent (50%) or more, of the area included within the proposed district and who constitute a majority of the taxpayers who are freeholders of such territory, town or village, and whose names appear upon the last completed preceding assessment roll; and at the time of the annual levy of taxes may levy a special tax upon all property within such district for the purpose of buying apparatus, etc. . . ." (Emphasis supplied).

It is apparent from the language used in the foregoing quoted part of Section 5148, as amended, that the intent of the legislature was to impose the special tax upon "all property within the district."

The word "property" as used in our State Constitution for taxation purposes is defined in Section 17 of Article XII as follows:

"The word property as used in this article is hereby declared to include moneys, credits, bonds, stocks, franchises and all matters and things (real, personal and mixed) capable of private ownership, but this shall not be construed so as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed."

It is further noted that Section 16, Revised Codes of Montana, 1935, de-

**Opinion No. 105**

**County Commissioners—Fire Districts, Establishment of—Levy—Tax, Special.**

**Held:** Where a board of county commissioners establishes a fire district and makes the special levy as provided in Section 5148, Revised Codes of Montana, 1935, as amended, the levy is impressed upon all of the property as expressed in Section 17 of Article XII of the State Constitution, and Section 16, Revised Codes of Montana, 1935, and includes both real and personal property.

March 13, 1948

Mr. William Lessley  
County Attorney  
Gallatin County  
Bozeman, Montana

finer the word "property", unless otherwise apparent from the context, as follows:

"1. The word 'property', includes property real and personal. . . ."

In other counties of the state, which have established fire districts, they have impressed the special tax on all property, both real and personal within the district.

I cannot believe the legislature intended to make any distinction.

It is, therefore, my opinion that where a board of county commissioners establishes a fire district and makes the special levy as provided in Section 5148, Revised Codes of Montana, 1935, as amended, the levy is impressed upon all of the property as expressed in the above constitutional provision, and Section 16, Revised Codes of Montana, 1935, and includes both real and personal property.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General