

Opinion No. 109

**Board of Equalization, Authority of—
Taxation—Rural Electric Co-operatives—Property, Class of**

Held: The property assessment of rural electric co-operatives must be determined as follows:

- (1) 7% of the true value of all lines and equipment used exclusively in rural areas;
- (2) 7% of the true value of all lines and equipment used exclusively to service governmental agencies and political subdivisions, regardless of where located;
- (3) 7% of true value of all lines and equipment used exclusively to service other persons not to exceed in number a figure equal to 10% of the corporation's members;
- (4) 7% of the true value of that portion of the plant and equipment used in generating electricity for those above mentioned, figured on a percentage of service given to those above mentioned as compared to others not in such classes;
- (5) 40% of the true value of that portion of the plant and equipment used in generating electricity for that portion of the persons served who do not fall within the three classes set forth in subsection (d) of Section 3 of Chapter 172, figured on a percentage of service to those who do not come within such classes;
- (6) On all lines and equipment wherein mixed service is included as above enumerated the tax shall be divided according to the percentage of service given to those in the classes and those outside the same as determined in

**respect to the plant and
generating equipment.**

April 17, 1948

Mr. Sam D. Goza, Chairman
State Board of Equalization
Capitol Building
Helena, Montana

Dear Mr. Goza:

You have presented for an official opinion the matter of what class for taxation a certain Rural Electric Cooperative should be assessed in, where its generator is situated in an incorporated city of this state of over 2500 inhabitants and it is servicing in one operation the inhabitants of such incorporated city of over 2500 persons as well as rural areas and rural members.

You specifically ask:

1. In what class said property of said concern be placed for taxation purposes?
2. Does this Board have authority under the law to sever said property for taxation purposes, so that the property within such city be assessed at 40% of its true and full value as being in Class 7, and assess the property in the rural areas at 7% of its true and full value as being in Class 5?

Section 1999, Revised Codes of Montana, 1935, as amended by Chapter 130, Laws of 1937, Chapter 107, Laws of 1941 and Chapter 286, Laws of 1947, specifically places all property of a corporation organized as Rural Cooperative Electric Companies under Class 5, thus to otherwise tax any property owned and used by the corporation an exception must be found. In this instance we must look to the law under which the corporation is incorporated in order to determine the proper application.

As stated in your request, Section 2 of Chapter 172, Laws of Montana, 1939, the chapter under which this corporation is incorporated, states such corporation may service rural areas, which areas as defined by the act, does not include cities of over 2500. However, by looking at the rest of the act, particularly Section 3,

which designates the powers of such corporations the implication is that such corporations have fairly broad and additional powers. See the following sub-sections of said Section 3, as follows:

"(d) To generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and to distribute, sell, supply and dispose of electric energy in rural areas to its members, to **governmental agencies and political subdivisions**, and to **other persons not in excess of ten per centum (10%) of the number of its members**. . . . (Emphasis supplied).

"(h) To construct, purchase, take receive . . . maintain, and operate, . . . electric transmission and distribution lines or systems, electric generating plants, . . . lands, buildings, structures, dams, plants and equipment, and any and all kinds and classes of real or personal property whatsoever, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;

"(k) To construct, maintain, and operate electric transmission and distribution lines along, upon, under and across all public thoroughfares, including without limitation, all roads, highways, streets, alleys, bridges . . . subject, however to the same requirements in respect of the use of such thoroughfares and lands as are imposed by the respective authorities having jurisdiction thereof upon corporations constructing or operating electric transmission and distribution lines or systems;

"(c) To do and perform any and all other acts and things and to have and exercise any and all other powers which may be necessary, **convenient** or appropriate to accomplish the purpose for which the cooperative is organized." (Emphasis supplied).

In construing the above enumerated powers, in view of Section 31 of said Chapter 172, which reads as follows:

"This act shall be construed liberally. The enumeration of any object, purpose, power, manner, methods or things shall not be deemed to exclude like or similar

objects, purposes, powers, manners, methods or things", every doubt as to the extent of the corporation's power must be resolved in favor of the corporation.

In view of the law it seems plain that the corporation may have plants and equipment in any locality, on or out of cities or towns, regardless of the size. The location of the plant or equipment is immaterial, the only question arising in this matter is the use made thereof. There is nothing contained in the said Chapter 172 which makes any activity of corporations organized thereunder penal, thus, nothing is made unlawful which is not of itself unlawful, and would be so by any other corporation. Thus any expansion of service by such corporation beyond the powers set forth in the law would merely be ultra vires acts, which, of course, is not pertinent to this opinion, save as they may affect the taxable status of the corporation.

The exceptions given corporations of this kind under Section 1999, Revised Codes of Montana, 1935, as finally amended by Chapter 286, Laws of 1947, are generally held in such instances to apply to that which is done within the powers expressed and not to that portion which is beyond the powers. See in this respect Cooley Taxation, Vol. 2, Fourth Edition, page 1461, Sec. 696, as follows:

"An exemption of the capital stock or property of a corporation does not ordinarily extend to property owned or held by the corporation in excess of its powers."

See also, *Evangelical Baptist Benevolent and Missionary Society v. City of Boxtton*, 78 N.E. 407, as follows:

"In the present case the plaintiff is given the general right to hold property to the amount of \$350,000, and then it is provided generally that same shall be exempted from taxation. The intention was to provide that the corporation could hold property to a given amount and to exempt that amount from taxation. It follows that all above that amount however, and whenever acquired is liable to taxation."

Thus in line with the above the property used within the contemplation of the act would be assessed at 7% of its true and full value, whereas the portion of the property used to service persons beyond the act would be assessed at 40% of its true value. Therefore, to determine the question herein involved it is necessary to give further consideration to the act to determine the extent of service contemplated by the act.

It seems clear from the wording and punctuation of Subsection (d) of Section 3 of said Chapter 172, that such organizations may, within the powers expressly granted, sell and distribute to 3 distinct groups, namely (1) Members in rural areas; (2) Governmental agencies and political sub-divisions, regardless of where located; and (3) Other persons not exceeding 10% of its members, regardless of where this 10% may be located.

In determining the persons to be served under the third group some consideration must be given to who may become members. Section 8 of said Chapter 172 is rather loose and not very restrictive. However, from reading the act as a whole and particularly Subsection (d) of Section 3, it must be concluded that members are presumed to be located in rural areas.

Therefore, it is my opinion that the property assessment of this corporation must be determined as follows:

(1) 7% of the true value of all lines and equipment used exclusively in rural areas;

(2) 7% of the true value of all lines and equipment used exclusively to service governmental agencies and political sub-divisions, regardless of where located;

(3) 7% of the true value of all lines and equipment used exclusively to service other persons not to exceed in number a figure equal to 10% of the corporation's members;

4) 7% of the true value of that portion of the plant and equipment used in generating electricity for those above mentioned, figured on a percentage of service given to those above mentioned as compared to others not in such classes;

(5) 40% of the true value of that portion of the plant and equipment used in generating electricity for that portion of the persons served who do not fall within the three classes set forth in subsection (d) of Section 3 of said Chapter 172, figured on a percentage of service to those who do not come within such classes;

(6) On all lines and equipment wherein mixed service is included as above enumerated the tax shall be divided according to the percentage of service given to those in the classes and those outside the same as determined in respect to the point and generating equipment.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General.