

**Opinion No. 27****Taxation—Parking Meters—Personal Property—Conditional Sales  
Contract—Exemption of City Property—Contract.**

**Held:** 1. **Parking meters are personal property and are assessable and taxable to the vendor after having been installed in a city since under the contract of sale title to the property remained in the vendor.**

**A provision in the sale contract calling for reimbursement by the city to the vendor of any taxes paid by said vendor cannot alter the status and taxability of the property.**

May 27th, 1949.

Robert F. Swanberg  
County Attorney  
Missoula County  
Missoula, Montana

Dear Mr. Swanberg:

You have requested my opinion on the question of whether the County may legally assess the parking meters installed in Missoula in April of 1948 and collect tax for the year 1949. You have enclosed with your request a copy of the contract between the City of Missoula and the Duncan meter Corporation. The contract provides that the city must reimburse the contracting company for any taxes the company must pay on said meters.

I call attention to clause numbered 8 in the contract, which reads as follows:

"It is understood and agreed that the title to all said meters shall be and remain in The Meter Company until and unless the full agreed value thereof, as aforesaid, shall have been paid in cash to The Meter Company, including the rentals aforesaid."

Other portions of the contract refer to the payments as rental. (See clauses 1, 2 and 9).

Section Two of Article XII of the Constitution of the State of Montana states in part:

"The property of the United States, the State, Counties, cities, towns, school districts, municipal corporations and public libraries shall be exempt from taxation, . . ."

Section 1998, Revised Codes of Montana, 1935 states in part:

"The property of the United States, the State, Counties, cities, towns, school districts, municipal corporations, public libraries are exempt from taxation. . ."

The question becomes whether or not the City of Missoula owns the taxable property interest in the parking meters.

The terms of the contract specifically place the title to the meters in the vendor company.

In Volume 21, Opinions of the Attorney General, Opinion number 167 at page 230, Attorney General Bottomly held that a very similar contract did not transfer the taxable property interest to the City of Billings. Attorney General Bottomly cited *Automatic Voting Machine Corp. v. Maricopa County* (Ariz. 1937) 70 Pac. 2nd 447, which case held that voting machines let to a county under similar provisions were not property of the county, and therefore were not exempt from taxation.

In that case it was pointed out that where the contract was an option to purchase and not a conditional sales contract, the governmental unit was not owner of either legal or equitable title until the option was exercised.

Section 5070 of the Revised Codes of Montana, 1935, as amended by Chapter 18, Session Laws of 1939, and by Chapter 59, Session Laws of 1941, provides that every rental contract shall be deemed and construed to be a contract for sale. A later amendment by Chapter 153 of the Session Laws of 1947 did not carry forward the provision for construction of rental contracts, but this later amendment has been held not to have repealed that portion of Chapter 59 of the Montana Session Laws of 1941 (See Opinion Number 4, 23 Opinions of the Attorney General).

Construing the rental contract as a sale contract would alter the taxability of the parking meters only if said meters are considered to be real property (*Calvin v. Custer County*, 111 Mont. 162, 167, 107 Pac. (2d) 134; see further 156 A. L. R. 1301, at page 1304 citing other Montana cases in point).

These equitable rules do not apply to personal property. (*Bennett Bros. Co. v. Fitchett*, 24 Mont. 457, 62 Pac. 780; *Evans v. Silver Bow Motor Car Co.* 96 Mont. 156, 29 Pac. (2d) 381.

In the *Bennett Bros. Co.* case, *supra*, the court said, at page 467:

"Such contracts (conditional Sales) do not have the effect of a mortgage, nor is the situation of the parties with reference to the subject of the contract the same in the former as in the case of the latter. In case of a conditional sale the absolute ownership remains in the vendor, while the vendee holds possession as a bailee or lessee, as the case may be, determinable by the vendee before the contingency occurs." (Parenthesis supplied).

A reading of the contract in the light of the decisions of our Supreme Court in *Shipler v. Potomac Copper Co.* 69 Mont. 86, 220 Pac. 1097 and *Butte Electric Ry. Co. v. Brett*, 80 Mont. 12, 257 Pac. 478, clearly places these parking meters within the classification of personal property. Additionally, the nature of the meters themselves and the method of attachment and removal would prevent any conclusion that the meters could be permanent fixtures.

Only one question remains: "Can the provision in clause 7 of the contract compel a different view of the assessability and taxability of the parking meters?"

Clause 7 reads as follows:

"If at any time prior to the payment in full to The Meter Company of the agreed value, as aforesaid, of all said meters any taxes are levied on meters installed, such as personal property tax, sales tax or use tax, such taxes will be advanced by The Meter Company, and The City shall reimburse The Meter Company in full from the gross receipts of the meters, before the net revenue is computed for the purposes of paragraph four (4) hereof."

Attorney General Bottomly, in Volume 21 Opinions of the Attorney General, in Opinion Number 167, page 232, held that a similar clause in the agreement there considered would not operate to change the status of the property. I affirm and concur in that conclusion at this time.

It is my opinion that the parking meters are personal property not owned by the City of Missoula, and are consequently subject to assessment and taxation by the County of Missoula. It is further my opinion, that the status of the property is not altered by any agreement as to reimbursement by the city to the vendor company of any taxes paid by the latter company.

Very truly yours,  
ARNOLD H. OLSEN,  
Attorney General.