

Opinion No. 69

Taxation—Parking Meters—Exemption of City Property—Contract Statutes—Sections 13-702, 67-304, 67-306, 82-202, 84-801, Revised Codes of Montana, 1947—Constitution, Sections 2, 7, 17 of Article XII—Assessors—Ownership—Title—Evidence.

Held: 1. A provision in the sale contract that naked title is placed in the City upon delivery is not conclusive upon the status and taxability of the property.
 2. The County Assessor is under no obligation to differentiate the respective interests of contracting parties, his duty being to see that all owners of property bear a share of the tax burden.

February 29, 1952.

Mr. James D. Freebourn
 County Attorney
 Silver Bow County
 Butte, Montana

Dear Mr. Freebourn:

You have requested my opinion on the question of whether the County of Silver Bow may legally assess the parking meters installed in the City of Butte. You have enclosed with your request a copy of the contract between the City of Butte and the Duncan Meter Corporation. The contract provides in part:

"The Company agrees that title to the meters shall be vested in the City upon shipment, and that the Company shall not reacquire title thereto except by exercise by the company or the City of the optional cancellation provisions of the proposal and acceptance, or by reason of the failure of the City to perform its warranties and obligations; that upon complete payment of the purchase price the Company shall deliver to the City such written evidence as may be required to show full payment therefore."

You further inform me that the reason that title was placed in the City was to insure performance by the Company, and create a basis for a crim-

inal charge against the Company should they seek to remove the meters.

Section 7 of Article II of the Constitution of the State of Montana provides:

"The power to tax corporations or corporate property shall never be relinquished, and all corporations in this state, or doing business therein, shall be subject to taxation for state, county, school, municipal and other purposes, on real and personal property owned or used by them, and not by this Constitution exempt from taxation."

Section 17 of Article XII of the Constitution states in part:

"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 . . ."

Section 2 of Article XII of the Constitution 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 84-202, Revised Codes of Montana, 1947, provides in part:

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

In previous opinions it has been held that parking meters are personal property taxable by the County wherein they are situated. (See Volume 21, Opinions of the Attorney General, Opinion number 167, at page 230, and Volume 23, Opinions of the Attorney General, Opinion number 27 at page 72). The contracts analyzed in those opinions appear similar to the one now under construction except that here title is recited to be in the City and the word "rental" is studiously avoided.

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

"Title" and "ownership" are not synonymous terms. Ownership is generally recognized as being broader than

"title" Section 67-303, Revised Codes of Montana, 1947, defines ownership as absolute or qualified. Ownership is absolute when a single person has the absolute dominion over it, and may dispose of it according to his pleasure, subject only to general laws (Section 67-304, Revised Codes of Montana, 1947). It is qualified when it is shared with one or more persons; when the time of enjoyment is deferred or limited; when the use is restricted (Section 67-305, Revised Codes of Montana, 1947).

It can readily be seen that the City has but qualified ownership, that the City must perform further acts before ownership is absolute. Since taxation is the rule and exemption is the exception, it would appear contrary to the intent of the Constitution to allow the Company to reserve important incidents of ownership for practical purposes, while denying ownership when confronted with our laws of taxation. In *Northern Pacific Railway Company vs. Mjelde*, 48 Mont. 287, 137 Pac. 386, our court held:

"But the particular character of these property rights is not of consequence now. Every reservation is property, and all property in this state is subject to taxation."

The Supreme Court of the United States in *Burnett vs. Wells*, 289 U. S. 670, discussed the powers of government to tax in such situations. The holding in that case would appear applicable:

"Government in casting about for proper subjects of taxation is not confined to the traditional classifications of interests or estates. It may tax not only ownership, but any right or privilege that is a constituent of ownership. Liability may rest upon the enjoyment by the taxpayer of privileges and benefits substantial and important as to make it reasonable and just to deal with him as if he were the owner and to tax him on that basis."

It is also a general rule of law that evidence can be introduced to show the intent of the parties in determining who has title to property (Section 13-702, Revised Codes of Montana, 1947). From your letter it appears that title

is in the City as a security device. This is further substantiated by the contract itself which shows that upon payment in full other evidence of title is to be furnished by the Company.

The Supreme Court of Washington was confronted with a similar problem in *Chase National Bank vs. Spokane County*, 125 Wash. 1, 215 Pac. 374. The court held:

"The mere fact that the agreement asserted that title to the trucks was in the bank . . . did not of itself vest the absolute title in the bank, especially as the evidence showed that it was not intended to pass absolute title, but merely as security, and hence the trucks were subject to the State personal property tax."

In *Stewards Estate vs. The Commissioner of Internal Revenue*, 164 Fed. (2d) 434, that court also recognized the problem involved, and stated:

"Taxation is a practical matter, and in that field courts are not bound by legal refinements in the literal interpretation of contracts where there is evidence that they do not express the real intent of the parties."

I wish to also point out that the placing of title does not control in a situation such as this when the conflict is between the taxing power and one of the parties to the contract. The taxing officials are charged with the duty of seeing that exemptions are not extended by innuendo and indirect methods, their duty is to see that all bear a share of their tax burdens so that others do not have to pay increased taxes to cover the share of those that seek fictitious devices to secure unconstitutional exemptions. There is no obligation upon the officials to differentiate or segregate the respective interests of the contracting parties. Under section 84-401, Revised Codes of Montana, 1947, all taxable property is to be assessed at its full cash value. In *Commercial Credit Company vs. O'Brien*, 115 Mont. 119, 146 Pac. (2d) 637, the court stated:

"It is not the function, nor the duty of the public officials charged with the duty of making assessments and collecting taxes to unscramble the eggs . . . the jurisdiction of Montana

to levy and collect a tax . . . is not to be determined by the bookkeeping methods of either the owner or user of such intangibles within the state."

It is, therefore, my opinion that the parking meters are subject to assessment and taxation by the County of Silver Bow, and that the taxable status of the property is not altered by the agreement that title be placed in the City of Butte upon delivery.

Very truly yours,
ARNOLD H. OLSEN
Attorney General