

rural fire district when the area seeking admission is in another county.

December 29, 1954.

Mr. Henry I. Grant, Jr.
County Attorney
Stillwater County
Columbus, Montana

Dear Mr. Grant:

You have requested my opinion upon the following question:

"Is it possible for an area lying and being contiguous to a rural fire district to become a part of that rural fire district when the area seeking admission is in another county?"

You mention further that the question was raised by the desires of certain inhabitants of Carbon County who wished to join a fire district within the boundaries of Stillwater County.

Section 11-2008, R.C.M., 1947, as amended by Section 1, Chapter 75, Laws of 1953, authorizes the Board of County Commissioners to establish and annex contiguous territories into existing fire districts, and also empowers the county commissioners to levy a ". . . special tax upon all property within such districts for the purpose of buying fire protection facilities and apparatus for such districts . . .". However, this statute clearly pertains to the annexation of territories and the taxation of the inhabitants therein within the boundaries of the county.

It has long been a general rule in this state that county commissioners can exercise only those powers conferred upon them by organic, constitutional, or statutory laws, or such as may arise by the necessary implication from an express power. (State ex rel. Gillett v. Cronin, 41 Mont. 293, 298, 109 Pac. 144; Roosevelt County v. State Board of Equalization, 118 Mont. 31, 162 Pac. (2d) 887; Judith Basin County v. Livingston, 89 Mont. 438, 298 Pac. 356.)

Nowhere in Section 11-2008, *supra*, and succeeding sections relating to fire districts and the taxation thereof is there any language from which it could be implied that the Board of County Commissioners of one county has the

Opinion No. 112.

Rural Fire Districts—County Commissioners' Powers — Annexation of Contiguous Territories—Taxing Jurisdiction of County Commissioners,

HELD: That an area lying and being contiguous to a rural fire district may not become a part of the

power to add contiguous territory which is part of another county to an established fire district within their county. Nor is there language from which it could be implied that the Board of County Commissioners of one county has the power to tax inhabitants of another county.

Such acts, if allowed, would be in direct contravention of the Montana State Constitution and an infringement of the constitutional authority granted to the county commissioners of the other county.

Article XII, Section 15 of the Montana State Constitution provides in part:

“The Board of County Commissioners of each county shall constitute the county board of equalization. The duties of such board shall be to adjust and equalize the valuation of taxable property **within their respective counties . . .**” (Emphasis supplied.)

Article XII, Section 4 of the Montana State Constitution provides:

“The legislative assembly shall not levy taxes upon the inhabitants or property in any county, city, town, or municipal corporation for county, town, or municipal purposes, but it may by law invest in the corporate authorities thereof powers to assess and collect taxes for such purposes.”

Section 16-1015, R.C.M., 1947, as amended by Section 1, Chapter 185, Laws of 1953, provides in part as follows:

“Taxation. **The Board of County Commissioners has jurisdiction and power** under such limitations and reservations as are prescribed by law: To levy such tax annually on the taxable property of the county, for county purposes as may be necessary to defray the current expenses thereof . . .” (Emphasis supplied.)

Thus, by referring to the cited statutes, 11-2008 and 16-1015, R.C.M., 1947, supra, together with the cited Montana State Constitutional provisions, it can be seen that the inhabitants of Carbon County are not within the taxing jurisdiction of Stillwater County, and further that the inhabitants of Carbon

County are not qualified to join a fire district within Stillwater County.

It is therefore my opinion that an area lying and being contiguous to a rural fire district may not become a part of the rural fire district when the area seeking admission is in another county.