

Opinion No. 31

**CITIES AND TOWNS; Alleys as public highways—HIGHWAYS;
Alleys—SECTION 53-122, REVISED CODES
OF MONTANA, 1947.**

HELD: City alleys are public highways and must be considered as such for the purpose of dividing automobile registration fees between cities and counties in the pro rata manner provided by Section 53-122, R.C.M., 1947.

February 7, 1964

Mr. Robert L. Woodahl
Teton County Attorney
Choteau, Montana

Dear Mr. Woodahl:

In 1963 the legislature amended Section 53-122, R.C.M., 1947, to provide for the division of motor vehicle registration fees between cities and counties. The pertinent provision of that statute, as amended, reads as follows:

“(c) The net license fees derived from the registration of motor vehicles shall be by the registrar of motor vehicles transmitted to, and paid over to the county treasurer of the county from which the registration fee came, such fees, excepting apportionment to the city road fund, to be used by said county for the construction, repair and maintenance of all public highways, except state and federal highway, within the boundaries of said county, including city streets forming component parts of arterial highways within the corporate cities of less population than thirty-five thousand (35,000), according to the federal census of 1930, within the boundaries of said county, other than any corporate city entitled to receive or expend the ‘city road fund,’ within the boundaries of said county.

“If any dealer, or motor vehicle, house trailer, trailer, or semitrailer is originally registered six (6) months after the time of registration as set by law, the registration or license fee for the remainder of such year shall be one-half ($\frac{1}{2}$) of the regular fee above given.”

You wish to know if an alley is to be considered a “public street and highway” for the purpose of dividing the license fees in the pro rata manner provided by the statute.

Section 32-103, R.C.M., 1947 defines public highways in the following terms:

"As used in this act, "public roads and highways of this state" shall mean all streets, roads, highways, and related structures as have been, or shall be built and maintained with appropriated funds of the United States and which have been, or shall be built and maintained with funds of the state of Montana, or any political subdivision thereof, or which have been or shall be dedicated to public use or have been acquired by eminent domain."

This section has been construed to include city streets as public highways. *City of Helena v. Helena Light & Railway Co.* 63 Mont. 108, 207 Pac. 337 (1922). A City alley dedicated to public use would also come within this definition of public highways. Section 12-215, R.C.M., 1947 provides:

"Whenever the meaning of a word or phrase is defined in any part of this code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears."

It is therefore my opinion that city alleys are public highways and must be considered as such for the purpose of dividing automobile registration fees between cities and counties in the pro rata manner provided by Section 53-122, R.C.M., 1947.

Very truly yours,

FORREST H. ANDERSON
Attorney General