

VOLUME 37

OPINION NO. 108

MOTOR VEHICLES - Proper school district for taxation;
PERSONAL PROPERTY - Proper school district for taxation;
SCHOOL DISTRICTS - Proper school district for taxation of
personal property; TAXATION AND REVENUE - Proper school
district for taxation of personal property; REVISED CODES OF
MONTANA, 1947 - Title 84-406 and 53-114; 17 OP. ATT'Y GEN.
NOS. 215; 18 OP. ATT'Y GEN. NO. 189; 32 OP. ATT'Y GEN. NO.
15.

HELD: Where personal property is owned by the resident
of one school district but used and kept the
majority of the time by a resident of another
school district the proper tax situs is the school
district where it is habitually kept when at rest.

27 January 1978

Thomas A. Budewitz, Esq.
Broadwater County Attorney
Broadwater County Courthouse
Townsend, Montana 59644

Dear Mr. Budewitz:

You have requested my opinion on the following question:

Whether a motor vehicle owned by a resident of one
school district and used by a resident of another
school district is properly assessed for taxes by
the district of the owner's residence or that of
the district of the user.

The facts stated in your request are: a resident of one
school district within your county owns jointly, with his
wife, a motor vehicle. The vehicle is used by a daughter
who lives and works in another school district. The
daughter uses the car in both school districts but it is
used and kept the majority of the time in the district in
which she lives.

The applicable section of the taxation laws dealing with
assessment of property is 84-406(3), R.C.M. 1947, which
reads in pertinent part:

(3)(a) the department [of Revenue] or its agents must ascertain and assess all motor vehicles...in each county...and the same shall be assessed to the persons by whom owned or claimed or in whose possession or control such vehicle was at 12 midnight of January 1 or the anniversary registration date thereof, whichever is applicable, in each year.

The answer is found in Valley County v. Thomas, 109 Mont. 345, 92 P.2d 345 (1939) and a previous opinion by this office, 32 OP. ATT'Y GEN. NO. 15.

Valley County, supra, construed the predecessor to section 53-114, R.C.M. 1947. The current section uses essentially the same language construed in Valley County:

Every owner of a motor vehicle operated or driven upon the public highways of this state shall, for each motor vehicle owned..file, or cause to be filed, in the office of the county treasurer where the motor vehicle is owned or taxable an application for registration upon a blank form to be prepared and furnished by the registrar of motor vehicles. The application shall contain:

(a) name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable. (Emphasis added.)

This statute contemplates a difference between an owner's domicile and the tax situs of his property.

Valley County, supra, at 387 said:

Tangible personal property is usually considered to be owned and taxable where it is habitually kept when at rest, rather than where it is temporarily kept or where it is used during the working hours of the day.

Your question is answered by the Attorney General's opinion cited above:

In the Montana case, Valley County v. Thomas, (supra) the court held that the situs of motor vehicles for the purpose of licensing and taxation is the habitual situs of rest as distinguished

from its temporary situs or its situs of employment.... While this habitual situs is usually the residence or domicile of the owner, under the proper set of facts the permanent or habitual situs might be somewhere else....

For example, a farmer might own a vehicle which he keeps at his home in one county during the winter and then at his farm in another county during the summer. Assuming that he keeps his vehicle at home for more than six months, it would be taxable in that county not in the county where the farm is located....

Once determination is made as to which county should properly tax and license the motor vehicle, a determination of which school district should receive the tax would be made in the same manner.

The holding is stated as follows:

Therefore, it is my opinion that you correctly stated the rule when you said "between school districts, vehicles should be taxed in the school district in which they are kept a majority of the time. As between counties, motor vehicles should be licensed and taxed in the same manner. Thus, under the proper circumstances, the residence of the owner may not be the determining factor. (Emphasis supplied.)

In 18 OP. ATT'Y GEN. NO. 189, it was said:

As a factual matter automobiles are ordinarily used and situated in the county of the owner's residence and domicile...but where the automobile has a business situs or is habitually used in another county, it is assessed, taxed and licensed therein.

And in still another, 17 OP. ATT'Y GEN. NO. 215:

In determining where the automobile is situated... the actual situs of the property shall govern. The old rule, as declared by the maxim, "mobilia sequuntur personam," has not been adopted by the state of Montana. The rule used to be that the situs of the property was presumed to be at the

domicile of the owner. Such rule has not been adopted by our state legislature, nor approved of by our court.

A person may be domiciled in one county and his automobile and other property may be situated in another county. The county where the automobile is situated, regardless of the owner's domicile, shall be the determining criterion. (Emphasis added.)

While the latter two opinions dealt with the question of the proper county for taxation purposes there is no distinction between the proper county and the proper school district in the present context.

THEREFORE, IT IS MY OPINION:

Where personal property is owned by the resident of one school district but used and kept the majority of the time by a resident of another school district the proper tax situs is the school district where it is habitually kept when at rest.

Very truly yours,

MIKE GREELY
Attorney General