

VOLUME NO. 37

OPINION NO. 139

NOTE: This Opinion Replaces and Overrules 37 OP. ATT'Y GEN. NO. 108, Issued 27 January 1978; MOTOR VEHICLES - Proper school district for taxation; PERSONAL PROPERTY - Proper school district for taxation; SCHOOL DISTRICTS - Proper school district for taxation; TAXATION AND REVENUE - Proper school district for taxation; REVISED CODES OF MONTANA, Sections 84-406 and 53-519; REVISED CODES OF MONTANA, 1935 -

Section 1759.5. ATTORNEY GENERAL'S OPINIONS - Vol. 36, No. 11 cited; Vol. 32, No. 15 and Vol. 37, No. 108 expressly overruled.

HELD: The proper situs for taxation of a motor vehicle is that school district wherein the owner makes his permanent residence at the time of registration.

21 April, 1978

Thomas Budewitz, Esq.
Broadwater County Attorney
Broadwater County Courthouse
Townsend, Montana 59611

Dear Mr. Budewitz:

You have asked me to reconsider 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 user.

I have previously held, at 37 OP. ATT'Y GEN. NO.108, that the proper situs for taxation of a motor vehicle is the school district wherein the vehicle is habitually kept when at rest. In that opinion I relied on a holding by former Attorney General Anderson 32 OP. ATT'Y GEN. NO. 15, which in turn relied on the case of Valley County v. Thomas, 109 Mont. 345 (1939). In that case the Montana Supreme Court held that the county of situs of a motor vehicle for the purpose of licensing and taxation is the county which is the habitual situs when at rest as distinguished from its temporary situs or its situs of employment. Relying on the Valley County case by analogy, Attorney General Anderson held that "between school districts, vehicles should be taxed in the school district in which the vehicle habitually comes to rest or where they are kept a majority of the time." 32 OP. ATT'Y GEN. NO. 15.

It appears however, that the holding in Valley County supra, was impliedly overruled with regard to county situs by the amendment of section 1759.5, R.C.M. 1935 (sec. 1, ch. 73, L.1941) which in part added the following language:

No person shall purchase or display on such vehicle any license plate bearing the number assigned to any county..., other than the county of his permanent residence at the time of application for and issuance of said license plates.

Substantially the same language is presently contained in section 53-119, R.C.M. 1947.

Based on the foregoing language of section 53-119, R.C.M. 1947, my predecessor held: "the county in which a motor vehicle must be licensed is that county wherein the owner makes his permanent residence at the time of application for registration." 36 OP. ATT'Y GEN. NO. 11.

Although section 53-119, R.C.M. 1947, does not expressly apply to the determination of the proper school district situs for taxation it is my opinion the same rule should be applied to both counties and school districts. Section 53-119, R.C.M. 1947, serves as an expression of legislative intent for the purpose of determining taxation situs of motor vehicles.

This opinion expressly overrules and replaces 37 OP. ATT'Y GEN. NO. 108 and overrules 32 OP. ATT'Y GEN. NO. 15.

THEREFORE, IT IS MY OPINION:

The proper situs for taxation of a motor vehicle is that school district wherein the owner makes his permanent residence at the time of application for registration.

Very truly yours,

MIKE GREELY
Attorney General