VOLUME NO. 40 OPINION NO. 36

FEES - Responsibility of mobile home park owners for refuse disposal district fees;
MOBILE HOMES - Responsibility of mobile home park owners for refuse disposal district fees;
REFUSE DISPOSAL DISTRICT - Responsibility of mobile home park owners for refuse disposal district fees;
MONTANA CODE ANNOTATED - Sections 7-13-201, 7-13-202, 7-13-204, 7-13-206, 7-13-208, 7-13-209, 7-13-211, 7-13-231, 7-13-233, 15-8-701, 15-8-705;
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 22 (1983).

HELD: Mobile home park owners, and not mobile home lessees, are responsible for payment of refuse disposal district fees under section 7-13-231, MCA.

2 March 1984

Keith D. Haker
Custer County Attorney
Custer County Courthouse
Miles City MT 59301

Dear Mr. Haker:

You have requested my opinion concerning the following question:

> Whether, in the case of trailer court owners and trailer court lessees, the authorized charge for services in a refuse disposal district as set forth in sections 7-13-231 to 233, MCA, calls for the assessment of the service charge against the trailer court owner and his real property, or whether such service

charge is to be made against each individual space lessee and his trailer home.

A response to your question requires review of sections 7-13-201 to 243, MCA, and 40 Op. Att'y Gen. No. 22 (1983).

Sections 7-13-201 to 243, MCA, set forth a detailed procedure for the formation of refuse disposal districts. Briefly summarized, that procedure involves (1) adoption of a resolution of intention to create the district by the involved board of county commissioners (§ 7-13-204, MCA); (2) transmittal of the resolution to affected municipal governments for concurrence or nonconcurrence (§ 7-13-206, MCA); (3) public notification of the resolution and municipal concurrence through publication of notice thereof in a local newspaper and through mailing copies of the notice "to every person, firm, or corporation having real property within the proposed district listed upon the last completed assessment list for county taxes" (§ 7-13-208, MCA); (4) a 30-day opportunity following newspaper publication for "any owner of property subject to be assessed for said service" to protest either the proposed service district or the associated fee (§ 7-13-209, MCA); and (5) a prohibition against further action by the board of county commissioners if protests against creation of the proposed district are "made by the owners of more than 50% of family residential units in the proposed district" (§ 7-13-211(1), MCA). Section 7-13-211(2), MCA, further requires the board of county commissioners to hold a hearing on an initially-proposed fee if objection to the fee "is made by owners of more than 50% of the family residential units in the proposed district." The term "family residence unit" is defined in section 7-13-202(3), MCA, as "the residence of a single family."

Once a refuse disposal district has been created, the board of county commissioners must appoint a board of directors for the district. The board of directors is authorized, after concurrence by the board of county commissioners, to increase service fees, subject to the notice and publication requirements in section 7-13-208(1) and (2), MCA, and the objection and hearing rights in sections 7-13-209 and 7-13-211, MCA. The service fee is "assessed to all units in the district that are receiving a service." § 7-13-231(2), MCA. The

Department of Revenue or its agents are obligated, during the month service commences, to "insure that the amount of [the service] fee is placed on the tax notices, to be collected with the tax. If a property owner fails to pay this fee, it shall become a lien upon the property." § 7-13-233, MCA.

The term "property," as used throughout sections 7-13-201 to 243, MCA, is not defined but clearly refers solely to real property. First, an expansive reading of the term "property" would include both real and personal property even though the benefit of the district's services principally flows only to real property. See 40 Op. Att'y Gen. No. 22 (1983). Such a broad interpretation thus conflicts with the general rule that, because "personal property can receive no special benefit from a public or local improvement," it is not subject to assessment for the service or improvement. 70 Am. Jur. 2d Special or Local Assessments § 49 (1973).

Second, the mailing required under section 7-13-208(3), MCA, is directed only to real property owners. Had the Legislature intended to subject other forms of property to the service fee assessment and lien provisions of section 7-13-233, MCA, it would presumably have required similar notice to personal property owners whose identities and interests are also listed in a county's assessment book. See §§ 15-8-701, 15-8-705, MCA.

Third, sections 7-13-209 and 7-13-211, MCA, expressly restrict protest rights to owners "of residential units." The purpose of protest rights is to permit those persons whose property interests will be directly affected by a proposed district to challenge its creation or the proposed service fee. The negative inference of not according protest rights to persons who own property other than "residential units" is that their property will not be directly affected by the district's formation or fees. Although a mobile home could arguably fall within the term "residential unit," a more logical and consistent construction of that term relates it to ownership of the real property on which residences or businesses are situated. Any other interpretation expands the term "property" beyond "real property" to include one form of personal property but not others--a result incompatible with the overall legislative scheme and lacking any substantial textual support in the statute. It is well established that a

"statute is to be construed in its entirety and [an ambiguous] phrase must be given a reasonable construction which will enable it to be harmonized with the entire statute," and that "statutory construction should not lead to absurd results where reasonable construction will avoid it." McClanathan v. Smith, 37 St. Rptr. 113, 116, 606 P.2d 507, 510 (1980).

The statute, read as a whole, thus establishes that the ter "property" is limited to real property. The service charges under sections 7-13-231 to 233, MCA, are, therefore, properly assessed only against the trailer court owners and their real properties.

Construing the term "property" in the statute as referring to real property is also directly supported by my opinion at 40 Op. Att'y Gen. No. 22 (1983). The question in that opinion was whether a property owner was "receiving a service" from a refuse disposal district even though choosing not to avail himself of the district's services. The opinion stated that "the benefit [of the district's services] does not go to the individual, but to the property itself," and that the "link [between the district's services and] property is underscored by the fact that unpaid service charge fees become a lien upon the property under the provision of section 7-13-233, MCA." This opinion clearly indicates that "property," as used in section 7-13-233, MCA, includes only real property. Last, the result in that opinion is consistent with the general rule, stated above, that personal property is not subject to assessment for public improvements which principally benefit real property.

THEREFORE, IT IS MY OPINION:

> Mobile home park owners, and not mobile home lessees, are responsible for payment of refuse disposal district fees under section 7-13-231, MCA.

Very truly yours,

MIKE GREELY
Attorney General