

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 109

COUNTIES - Responsibility for providing rural fire protection;
FIRE DISTRICTS - County responsibility for providing rural fire protection;
FIRES - County responsibility for providing rural fire protection;
NATURAL RESOURCES - County responsibility for providing rural fire protection;
PROPERTY, PERSONAL - Whether subject to fire district levy;
PROPERTY, REAL - Whether subject to fire district levy;
TAXATION AND REVENUE - Whether fire district formed after tax year 1986 is subject to property tax limitations;
TAXATION AND REVENUE - Whether the term "property" in section 7-33-2109, MCA, includes both real and personal property;
MONTANA CODE ANNOTATED - Sections 1-1-205, 7-33-2101, 7-33-2103, 7-33-2104, 7-33-2109, 7-33-2201 to 7-33-2210, 7-33-2201, 7-33-2202, 7-33-2209, 7-33-2401 to 7-33-2404, 7-33-2404, 15-1-101, 15-10-401 to 15-10-412;
MONTANA LAWS of 1987 - Chapter 351;
MONTANA LAWS of 1977 - Chapter 397;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 80 (1988), 42 Op. Att'y Gen. No. 75 (1988), 40 Op. Att'y Gen. No. 36 (1984);
REVISED CODES OF MONTANA, 1947 - Sections 28-601, 28-602.

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- HELD: 1. County governing bodies are not required to provide rural fire protection under sections 7-33-2201 to 2210, MCA.
2. The property tax limitations in sections 15-10-401 to 412, MCA, do not apply to trustee-operated fire districts established after tax year 1986 but do apply to county-operated fire districts established after tax year 1986.
3. The term "property" in section 7-33-2109, MCA, applies to all forms of real and personal property ordinarily subject to taxation by counties.

25 August 1988

Russell R. Andrews
Teton County Attorney
Teton County Courthouse
Choteau MT 59422

Dear Mr. Andrews:

You have requested my opinion concerning the following questions:

1. Are counties required to provide services for rural fire control under sections 7-33-2201 to 2210, MCA?
2. Are fire district tax levies under section 7-33-2109, MCA, exempt from the property tax limitations imposed under sections 15-10-401 to 412, MCA, when the district was formed after 1986?
3. Does the term "property" in section 7-33-2109, MCA, include both real and personal property?

I conclude that counties are not required to provide rural fire control under section 7-33-2202, MCA, and that the term "property" in section 7-33-2109, MCA, extends to all forms of property subject to ad valorem taxation by counties. Your second question has recently been answered by 42 Op. Att'y Gen. No. 80 (1988), which held that rural fire districts formed after 1986 and managed by a board of trustees are not subject to the

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property tax limitations in sections 15-10-401 to 412, MCA.

Fire protection services can be provided to rural areas in three ways by counties. First, a fire district may be formed by the board of county commissioners upon petition unless the board determines it to be supported by an inadequate number of signatures or if, prior to the required hearing on the petition, a sufficient number of its signatures are withdrawn to render the petition insufficient under section 7-33-2101, MCA. § 7-33-2103(1), MCA. Upon the district's formation, the board of county commissioners may contract with either other governmental or private entities to provide fire protection services or may appoint five trustees to manage the district. § 7-33-2104, MCA. The expenses associated with operating the district are paid through a special tax levy "upon all property" within such district. § 7-33-2109, MCA.

Second, sections 7-33-2201 to 2210, MCA, provide a framework for a county governing body to establish volunteer fire control crews and fire companies for rural fire control. Section 7-33-2201, MCA, states:

For the purpose of protection and conservation of range, farm, and forest resources and of the prevention of soil erosion, the county governing body may perform the functions provided in this part. [Emphasis supplied.]

The following section, however, reads:

The county governing body, with respect to rural fire control, shall carry out the specific authorities and duties hereinafter imposed:

- (1) The governing body shall:
 - (a) provide for the organization of volunteer rural fire control crews; and
 - (b) provide for the formation of county volunteer fire companies.
- (2) The governing body shall appoint a county rural fire chief and such district rural fire chiefs, subject to the direction and supervision of the county rural fire chief, as it considers necessary.

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(3) The county governing body shall, within the limitations of 7-33-2205 through 7-33-2209, protect the range, farm, and forest lands within the county from fire.

(4) The county governing body may enter into mutual aid agreements for itself and for county volunteer fire companies with federal, state, local, and other fire protection agencies, including governing bodies of adjoining counties.

§ 7-33-2202, MCA (emphasis supplied). Services rendered under these provisions are paid either from the county general fund or, when the general fund is fully budgeted, from a specific levy not to exceed \$15,000. § 7-33-2209, MCA.

Third, under 1987 Montana Laws, chapter 351 (codified in sections 7-33-2401 to 2404, MCA), boards of county commissioners are authorized to establish upon petition fire service areas which are then financed through special assessments. § 7-33-2404, MCA; see generally 42 Op. Att'y Gen. No. 75 (1988) (discussing property subject to fire service area assessments).

Your first question involves the proper interpretation of sections 7-33-2201 and 7-33-2202, MCA. Despite use of the mandatory "shall" in the latter section, it appears the Legislature did not intend to obligate counties to provide the services specified under that section. There are two reasons for this conclusion. Most importantly, these provisions must be read together, and, when so read, section 7-33-2201, MCA, serves to authorize county governing bodies to provide rural fire protection while section 7-33-2202, MCA, specifies those responsibilities which governing bodies have in discharging rural fire protection functions voluntarily undertaken. The present language of these sections was, in all material respects, adopted in 1977 Montana Laws, chapter 397, sections 12 and 13. The 1977 amendments replaced in section 28-601, R.C.M. 1947 (recodified as § 7-33-2201, MCA), the words "are hereby authorized to" with "may" and in section 28-602, R.C.M. 1947 (recodified as § 7-33-2202, MCA), the words "[t]he functions of the respective boards of county commissioners with respect to rural fire control shall be to carry out the specific authorities and duties hereinafter imposed" with the present introductory phrase. House Bill 68, §§ 12, 13 (Mont. 47th Leg.). These particular changes appear to have been adopted for syntactical rather than substantive purposes, and the prior provisions did not impose a mandatory duty on

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counties to provide rural fire protection. I further note that, although the 1977 amendments were part of a comprehensive modification to Montana's fire laws, no legislative history exists suggesting that the amendments to sections 7-33-2201 and 7-33-2202, MCA, pertinent here were intended to make mandatory what in the past had been permissive. See Jan. 10, 1977 House State Administration Committee Minutes at 1-2; March 5, 1977 Senate State Administration Committee Minutes at 3-5; Interim Study by Subcommittee on Fire Laws, Revision of Montana's Fire Laws (Dec. 1976).

To impose a mandatory duty on a county to provide those services identified in section 7-33-2202, MCA, moreover, could create unnecessary, and perhaps harmful, duplication of fire protection effort when a fire district or fire service area has been established. The Legislature hardly intended to require counties to provide protection already available, and yet that result arises if sections 7-33-2201 and 7-33-2202, MCA, are interpreted as mandating those services identified in the latter section. I therefore conclude that, as the literal wording of section 7-33-2201, MCA, suggests (County of Chouteau v. City of Fort Benton, 181 Mont. 123, 128, 592 P.2d 504, 507 (1979)), county governing bodies have discretion as to whether they provide rural fire protection but that, if they undertake to render such services, they must comply with section 7-33-2202, MCA.

Your second question has been answered in 42 Op. Att'y Gen. No. 80 (1988) where I held that a fire district, when managed by a board of trustees appointed pursuant to section 7-33-2104(2), MCA, is a taxing unit under sections 15-10-401 to 412, MCA. Nonetheless, the opinion further held that, because the limitations in the latter provisions are established with reference to a taxpayer's liability to a taxing unit for the 1986 tax year, those limitations have no applicability to a taxing unit formed after 1986. It should be emphasized that, if a new fire district is operated by the county and not a board of trustees, the county would constitute the taxing unit and would be subject to the property tax limitations in sections 15-10-401 to 412, MCA, since it imposed taxes in 1986.

Your last question involves the proper interpretation of the term "property" in section 7-33-2109, MCA. That term is not defined in the provisions authorizing creation of rural fire districts, but it is defined in section 15-1-101(1)(m), MCA, to include "moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable

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of private ownership." Since that definition applies specifically to matters of taxation and since section 7-33-2109, MCA, authorizes a fire district mill levy, it has particular relevance here. I also note that the general definition of "property" in section 1-1-205(3), MCA, encompasses both real and personal property unless the context requires otherwise. While I have construed the term "property" in other statutory provisions to include only real property (40 Op. Att'y Gen. No. 36 at 147 (1984), 42 Op. Att'y Gen. No. 75 (1988)), section 7-33-2109, MCA, does not support such a limiting interpretation.

THEREFORE, IT IS MY OPINION:

1. County governing bodies are not required to provide rural fire protection under sections 7-33-2201 to 2210, MCA.
2. The property tax limitations in sections 15-10-401 to 412, MCA, do not apply to trustee-operated fire districts established after tax year 1986 but do apply to county-operated fire districts established after tax year 1986.
3. The term "property" in section 7-33-2109, MCA, applies to all forms of real and personal property ordinarily subject to taxation by counties.

Very truly yours,

MIKE GREELY
Attorney General