

OPINIONS OF THE ATTORNEY GENERAL

VOLUME 42

OPINION NO. 75

COUNTY COMMISSIONERS - Creation and taxation of fire service areas;

FIRE DEPARTMENTS - Creation and taxation of fire service areas;

FIRE DISTRICTS - Creation and taxation of fire service areas;

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TAXATION AND REVENUE - Taxation of temporary and permanent structures in fire service areas;
MONTANA CODE ANNOTATED - Sections 1-2-101, 7-33-2401, 7-33-2401(1), 7-33-2404, 7-33-2404(2).

- HELD: 1. The "property owners" in section 7-33-2401, MCA, are owners of real property in the fire service area.
2. The structures taxed under section 7-33-2404, MCA, include temporary structures that would be benefited by the fire service area.

18 March 1988

J. Allen Bradshaw
Granite County Attorney
P.O. Box 490
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Dear Mr. Bradshaw:

You have requested my opinion on the following questions:

1. What is the proper interpretation of "property owners" in section 7-33-2401, MCA?
2. What kinds of structures are subject to taxation under section 7-33-2404, MCA?

Your questions arise from legislation enacted in 1987 which provides for the creation of fire service areas in unincorporated locations. The purpose of this legislation is to enable smaller property owners in rural areas to form a district primarily aimed at protecting structures on their property rather than the property itself, and to tax themselves on those structures to pay for the district's operation. See Hearing on House Bill 579, before House Committee on Local Government, Feb. 9, 1987. Accordingly, the statutes provide for the fire service area to be created at the behest of the landowners and funded by assessments on their structures.

Your first question is whether the "property owners" in section 7-33-2401, MCA, are owners of real property or whether the term includes owners of personal property such as certain temporary structures. Section 7-33-2401(1), MCA, provides for the creation of a fire

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service area by the board of county commissioners upon receipt of a petition signed by at least 30 "owners of real property" or a majority of the owners of real property if there are no more than 30 such owners in the proposed service area. Subsection (2) of that section contains the procedure for establishing the fire service area and provides for protests from "property owners" in the area. Subsection (4) empowers the board of county commissioners to dissolve a fire service area and, in case of dissolution, places the responsibility of remaining debts and entitlements to remaining assets after dissolution of the service area on the "owners of property" in the area.

I conclude that the terms "property owners" and "owners of property" mean owners of real property. As previously indicated, the petition to create the service area must be signed by a number of real property owners; clearly the Legislature intended the creation and dissolution of the fire service area to involve the landowners in the proposed area. To interpret the remainder of that statute to permit participation of persons who own only personal property would be inconsistent with subsection (1), and with the legislative intent as well. A statute must be read and considered in its entirety. State ex rel. Cashmore v. Anderson, 160 Mont. 175, 500 P.2d 921, 926-27 (1972), cert. denied, Burger v. Anderson, 410 U.S. 931 (1973). An interpretation which defines "property owners" as owners of personal property is untenable when viewed in the context of the purpose of the statutory scheme--to provide fire service to structures. You suggest in your letter that certain temporary structures may be considered personal property; but there are many more kinds of personal property that are not the object of the fire service areas. Thus, to construe "property owners" to include owners of personal property would include in the procedure for its creation and dissolution, persons who have no purposeful connection to the object of the service area. In construing statutes, words employed should be given such meaning as is required by the context, and as is necessary to give effect to the purpose of the statute. In re Shun T. Takahaski's Estate, 113 Mont. 490, 129 P.2d 217, 220 (1942).

Your next question is whether temporary structures that are personal property rather than real property are subject to taxation under section 7-33-2404, MCA. That section, which provides for financing the fire service area, requires the board of county commissioners to establish a schedule of rates to be charged owners of "all classes of structures benefited by the fire service

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area." § 7-33-2404(1), (2), MCA. Section 7-33-2404(1), MCA, does not distinguish between temporary and permanent structures. I cannot construe such a distinction when the Legislature has failed to do so. See § 1-2-101, MCA. The only qualification of section 7-33-2404, MCA, is that the structure is benefited by the fire service area. The "classes of structures" referred to in section 7-33-2404(2), MCA, are enumerated in Title 15, chapter 6, part 1, MCA, which governs taxation of all taxable property and includes personal as well as real property. If the Legislature had intended to exclude temporary structures from taxation under section 7-33-2404, MCA, it would have done so. See § 1-2-101, MCA. Thus, any temporary structures, regardless of designation as real or personal property, must be taxed to finance the operation of the service area, as long as those structures would be benefited by the service area.

THEREFORE, IT IS MY OPINION:

1. The "property owners" in section 7-33-2401, MCA, are owners of real property in the fire service area.
2. The structures taxed under section 7-33-2404, MCA, include temporary structures that would be benefited by the fire service area.

Very truly yours,

MIKE GREELY
Attorney General