

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 93

ANNEXATION - Conclusive presumption of annexation of land to municipality;

CITIES AND TOWNS - Conclusive presumption of annexation of land to municipality;

MUNICIPAL CORPORATIONS - Conclusive presumption of annexation of land to municipality;

MUNICIPAL GOVERNMENT - Conclusive presumption of annexation of land to municipality;

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PROPERTY, REAL - Conclusive presumption of annexation of land to municipality;

STATUTES - Retroactivity;

MONTANA CODE ANNOTATED - Sections 1-2-109, 7-2-4210, 61-8-402(5).

HELD: Section 7-2-4210, MCA, applies to tracts or parcels of land on which municipal taxes have been paid without protest for seven years, even when a portion of the seven-year period passed prior to the 1981 enactment date of that section.

30 June 1988

John Houtz
Forsyth City Attorney
P.O. Box 1230
Forsyth MT 59327

Dear Mr. Houtz:

You have requested my opinion on the following question:

Does section 7-2-4210, MCA, apply to tracts or parcels of land shown on municipal maps as being within municipal boundaries, on which municipal taxes have been paid without protest for seven years, when a portion of the seven-year period passed prior to the 1981 enactment of that section?

Section 7-2-4210, MCA, enacted in 1981, provides:

A tract or parcel of land that has been shown on municipal maps or plats as being within municipal boundaries but is later found to have been improperly or unofficially annexed is conclusively presumed to be annexed and may be so recorded if municipal taxes have been paid on the tract or parcel without protest for a period of 7 years.

In the fact situation presented, a landowner paid, without protest, municipal taxes on a parcel of land for at least seven years, 1980 through 1986. He protested paying municipal taxes in 1987. The landowner believes his land cannot be conclusively presumed to be annexed to the City of Forsyth. Although he paid taxes for at least seven years before registering a protest, he argues that the year or years prior to the enactment of

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section 7-2-4210, MCA, may not be included in a calculation of the seven-year period. He contends that any application of the statute to his land would make the law retroactive and that section 1-2-109, MCA, which provides that no law is retroactive unless expressly so declared, precludes retroactive application.

In my opinion, section 7-2-4210, MCA, applies to the landowner and his land, and such an application of the law is not retroactive.

"A statute is not made retroactive merely because it draws upon antecedent facts for its operation." Cox v. Hart, 260 U.S. 427, 435 (1922).

The application of section 7-2-4210, MCA, to situations such as the one raised here is analogous to the application of section 61-8-402(5), MCA, regarding revocation of a driver's license, to a situation where a person refuses to take a blood alcohol test within five years of the first refusal. In Stiffarm v. Furois, 42 St. Rptr. 1227, 704 P.2d 75 (1985), the Montana Supreme Court upheld application of that statute even though it drew upon facts which occurred prior to its amendment. In Stiffarm, the petitioner's driver's license was revoked upon a second refusal to submit to a chemical test within five years of a previous refusal. The court upheld application of the amended law to Stiffarm even though his first refusal occurred before the enactment of the amendment providing for a mandatory revocation upon a second refusal. The court held:

We are in accord with rulings from courts from other jurisdictions that an amended statute which is applied to a factual situation which occurred prior to the enactment of the amendment is not viewed as retroactive in application. [Citations omitted.]

42 St. Rptr. at 1229-30, 704 P.2d at 77. This reasoning is followed by the courts regardless of whether the statute in question has been amended or newly enacted.

In this case, section 7-2-4210, MCA, enacted in 1981, provides that payment without protest of municipal taxes on a tract or parcel of land for seven years results in a conclusive presumption that the parcel or tract has been annexed to the city. The fact that one or more of the seven years of payment without protest may have occurred prior to the adoption of the statute does not make it retroactive. The landowner paid municipal taxes without protest for at least seven years, six of those

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years following enactment of the statute. He thus clearly triggered the statute's application by actions following its enactment.

THEREFORE, IT IS MY OPINION:

Section 7-2-4210, MCA, applies to tracts or parcels of land on which municipal taxes have been paid without protest for seven years, even when a portion of the seven-year period passed prior to the 1981 enactment of that section.

Very truly yours,

MIKE GREELY
Attorney General