July 20, 2006

Mr. Blaine C. Bradshaw
Granite County Attorney
P.O. Box 489
Philipsburg, MT 59858-0489

Re: Letter of Advice on Annexing Property Adjacent to a Fire District

Dear Mr. Bradshaw:

You have requested a letter of advice from the Attorney General regarding a question arising from Mont. Code Ann. § 7-33-2125. Specifically, you asked the Attorney General to determine whether the phrase "majority of the taxpaying freeholders" means (1) a majority of the total landowners; or (2) a majority of the land. In my opinion the answer under this particular statute is both.

Montana Code Annotated § 7-33-2125(1)(a) states that adjacent territory that is not already a part of a fire district may be annexed by the following manner:

> A petition in writing by the owners of 50% or more of the area of privately owned lands of the adjacent area proposed to be annexed who constitute a majority of the taxpaying freeholders within the proposed area to be annexed and whose names appear upon the last-completed assessment roll must be presented to the board of trustees of the district for approval.

For purposes of statutes like this one, a "freeholder" is one who holds title to or the beneficial interest in title to the land in question. State ex rel. Stephens v. City of Hamilton, 161 Mont. 1, 504 P.2d 283 (1972). A "taxpaying" freeholder obviously is one that pays taxes on the land it owns within the area to be annexed.

In my view the plain language of the statute requires that the annexation petition be signed by persons representing at least 50% of the freeholders in the area proposed to be annexed ***and*** who in number total a majority of all freeholders within the area ***and*** whose names appear on the tax assessment roll. Unless all three conditions are satisfied, the petition is insufficient.
You also inquire as to the counting of freeholders in situations where the fee is held in joint tenancy or other multiple ownership. These statutes do not answer

this question, but the Montana Supreme Court has held in an analogous situation that the agreement of all joint owners of a parcel is required to commit the interest represented by that parcel to the annexation.

In Buckley v. Wordal, 262 Mont. 306, 865 P.2d 240 (1993), the issue was whether sufficient protests had been received to block the creation of a rural special improvement district for the improvement of a road. The statute, Mont. Code Ann. § 7-12-2112 (1991), provided that the creation of the district could be blocked if a "protest is made by the owners of property in the district to be assessed for more than 50% of the cost of the proposed work" filed written protests. The statutes further defined "owner" to include the holder of the fee simple title. Mont. Code Ann. § 7-12-2110 (1991). The County disallowed certain protests submitted on behalf of property owned in joint tenancy where all of the joint tenants had not signed the protest. The Montana Supreme Court upheld the County's action, holding that one joint tenant could not bind the other with respect to a protest unless the protesting joint tenant held an effective power of attorney. 262 Mont. at 316-17.

While the statutes at issue in Buckley have changed somewhat since that decision, and the issue is not entirely free from doubt, in my view the case stands for the broad proposition that for the purpose of supporting or opposing the creation of districts or similar actions, the ownership of a parcel held in joint tenancy is unitary, and all joint tenants must concur before the property can be deemed to have voted on a question. Thus, I disagree with the conclusion you reached in your hypothetical case in which ten people own in joint tenancy a parcel of land to be annexed into the Valley Rural Fire District. You posited that it would take concurrence of at least 6 of the owners (a majority of the ten), to request such annexation. Assuming that the parcel constituted the only land to be annexed, it would be my opinion, following the reasoning of Wordal, that the owners of the parcel could not be said to be in support of annexation unless all ten voted in favor.

I acknowledge that in the present circumstance the Buckley rule would appear to give no weight to the views of some joint tenants who are technically "freeholders" and whose names appear on the tax rolls. However, an approach that counts each joint tenant as a single "freeholder" seems to me to be fraught with the possibility for mischief. Under that rule, an opposing landowner could manipulate the outcome of an RSID petition by conveying property into a joint tenancy with enough joint tenants to make up more than 50% of the freeholders, at least in a situation where the owner could get the names on the tax roll in time. It appears to me more likely that the legislature intended the ownership of each parcel to be viewed and evaluated as a unit rather than giving an unfair and

ultimately artificial advantage to the position of a parcel that by design or happenstance has more than one record owner.

I do agree with your view that property owned by a corporation may be voted by the corporation through its officers. Such property has only one owner, the corporation, and the corporation generally acts only through its officers or agents as authorized by its articles and bylaws.

Given the lack of clarity in this area, I suggest you discuss this problem with your local legislators to see if legislative action might bring further certainty to these questions.

This letter of advice may not be viewed as a formal opinion of the Attorney General.

Sincerely,

CHRIS D. TWEETEN
Chief Civil Counsel

cdt/jym