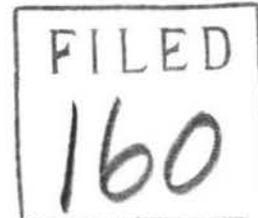


July 1, 1966

OPINION NO. 160
Answered by Letter-Mansur

Honorable Jack L. Duncan
Prosecuting Attorney for Iron County
Ironton, Missouri



Dear Mr. Duncan:

You requested an opinion from this office as follows:

"Are the following properly classified as personal property or as real estate for the purpose of County tax assessment: Stone crushers installed on specially constructed concrete foundations, and bolted thereto, designed for crushing granite rock from approximately three feet in diameter down to course gravel size, together with conveyor belt and roller systems for transporting large quantities of said rock from one crushing device to another, all of said equipment being used in a factory producing colored granules of granite of the diameter of course sand?"

It is assumed for the purposes of this opinion that the property mentioned herein is owned by the same person.

Statutory provisions for assessing and levying property tax is found in Chapter 137, V.A.M.S.

Real property for tax purposes is defined in Section 137.010, Subdivision [2] V.A.M.S. as follows:

"(2) 'Real property' includes land itself, whether laid out in town lots or otherwise, and all growing crops, buildings, structures, improvements and fixtures of whatever kind thereon,

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and all rights and privileges belonging or appertaining thereto;"

Taxable personal property for tax purposes is defined in Section 137.010, Subdivision [3] as follows:

"(3) 'Tangible personal property' includes every tangible thing being the subject of ownership or part ownership whether animate or inanimate, other than money, and not forming part or Parcel of real property as herein defined."

Section 137.010 (2), supra, defines real estate for taxation purposes as including "fixtures of whatever kind thereon."

A fixture is an article of the nature of personal property which has been so annexed to the realty that it is regarded as part of the land and partakes of the legal incidence of the freehold, and belongs to the person owning the land.

Whether an article is a fixture or not depends upon the facts and circumstances of the particular case. It is a well established rule that the elements of a "fixture" are commonly said to be annexation, adaption, and intent, with the latter ordinarily of a paramount importance at least in case of controversy of seller and purchaser.

These elements or tests all present a question of fact and are not ordinarily resolvable by law.

In determining the intentions of the person making the annexation, the court or jury is not bound by his testimony on this point nor by his secret or undisclosed purpose but may decide this issue from his acts and conduct and surrounding facts and circumstances. *Bastas vs. McCurdy*, 266 S.W.2d 49; *Crane Company vs. Epworth Hotel Construction and Real Estate Company*, 98 S.W.2d 795.

The above principle of law should be applied in determining whether the property in question is a fixture within the meaning of the above statute and should be assessed as part of the realty. It is obvious that these factual matters cannot be determined from the information submitted in the opinion request.

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Therefore, the ultimate conclusion as to whether property in question should be classified as a fixture cannot be reached until after these factual matters have been determined.

In 84 C.J.S., "Taxation" paragraph 73, page 185, it is stated:

"Generally speaking, where personal property has been annexed to realty so as to become a fixture in accordance with the rules considered in Fixtures §1 et seq, it is taxable as real property. The rule discussed in Fixtures §2, making the intention of the person making the annexation a test for determining whether the article has become a fixture, applies for tax purposes, and such intention must be determined by physical facts or reasonably manifested outward appearances without regard to the annexor's status as landlord or tenant. It has been declared that, in matters relating to taxation, rules more nearly conforming to those used in determining what constitutes fixtures as between grantor and grantee, vendor and vendee, or mortgagor and mortgagee, should apply rather than the rule used in determining what constitutes removable fixtures as between landlord and tenant. Where the tax statute itself sets up standards to determine whether or not property annexed to realty is taxable as realty, those standards, rather than the common-law rules defining fixtures, must govern. An agreement between private parties, whether express or implied, as to whether fixtures are to be considered personalty or realty, is not binding on the taxing authorities. * * *"

In Davis vs. Muga, 56 Mo. App. 311, the issue considered was the title to a steam boiler, engine and machinery, the building covering the machinery and also a rock crusher. The crusher itself weighed about 23,000 lbs., and was attached to two beams which rested on other beams as a foundation and was located about twenty feet from the building. Defendants executed a mortgage on the real estate which later was foreclosed and plaintiff became the purchaser of the property. In holding that the house, engine, boiler, building and rock crusher were fixtures and belonged to the plaintiff as part of the real estate, the Court stated, l.c. 315:

"It will be seen, that this is a controversy between the mortgagor and mortgagee--the question being, whether this stone mill, consisting of boiler, engine and machinery

and building, was personal property, or had it become a part of the realty by reason of its attachment thereto. If it was the latter, then plaintiff was entitled to it, and the judgment of the circuit court was correct; if the former, it was erroneous.

"By fixtures are meant those articles which were chattels, but which have become a part of the real estate by reason of being annexed or affixed thereto. But while this definition, in substance, is repeated in the books, there are scarcely any rules for determining when chattels become so annexed or fixed. Each case is made to turn largely on its particular circumstances. In controversies between landlord and tenant there is a most liberal indulgence towards the claim of the tenant. He is permitted to hold as chattels most any improvement he may place on the leased premises, and allowed to remove the same during his tenancy; conditioned, only, that in so removing he do not injure the freehold. This liberal treatment towards the tenant, comes, not only from the law's encouragement of industry and trade, but because it will be assumed that, in placing the chattels in that condition, it was the intention of the tenant at the time, to remove it and that the landlord so understood it.

"But as between vendor and vendee, heir and executor or administrator and mortgagor and mortgagee, there is no such indulgence towards him who annexes personal property to the land; a much stricter rule applies, and the presumption is the contrary of that given to the tenant. For it will there be presumed that the owner of the land intended the improvement as an accessory to the inheritance and as a lasting benefit thereto. It will not be presumed that the owner of the fee intended the work as a mere temporary improvement, to be by him taken away in case he should sell the land, or to be removed in case the mortgagee should foreclose.

"Under the old law, the principal test as to what was or was not a fixture, was said to be the nature of the physical attachment to the soil. But this theory has long since been exploded. 'And while courts still refer to the character of the annexation as one element in determining whether an article is a fixture, greater stress is laid upon the nature and adaptation of the article annexed, the uses and purposes to which' the land 'is appropriated at the time the annexation is made, and the relations of the party making it to the property in question, as settling that a permanent accession to the freehold was intended to be made by the annexation of the article.' 1 Wash., Real Property [5 Ed.], p. 22.

"Little fault, then, can be found with defendant's counsel when they so earnestly insist that the intention of the freeholder and mortgagor in erecting this stone mill should have great weight in determining its character, that is, whether or not Mugan intended the same as a permanent structure. But, as said by Henry, J., in State Savings Bank v. Kercheval (65 Mo. 682), 'the intention of the party making the improvement, ultimately to remove it from the premises, will not, by any means, be a controlling fact. One may erect a brick or stone house with an intention, after brief occupancy, to tear it down and build another on the same spot, but that intention would not make the building a chattel. The distinction which gives a movable object an immovable character, results from facts and circumstances determined by the law itself, and could neither be established nor taken away by the simple declaration of the proprietor,' citing, Snedeker v. Warring (2 Kernan 178). The same learned judge quotes further from Teaff v. Hewett (1 Ohio St. 511), where, in speaking of this intention of the party in making the article a permanent accession to the freehold, the Ohio court says, that such an intention as will be 'inferred from the nature of the article as fixed, the relation and situation of the party making the annexation, the structure and mode of annexation and the purpose and use for which the annexation has been made, is a

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controlling circumstance in determining whether the structure is to be regarded as a fixture or not."

The above principles of law should be applied in making the determination as to whether particular property should be assessed as part of the realty. In making this determination all relevant facts must be considered and determined before a legal conclusion can be reached as to whether this particular property is or is not part of the realty. Under the law the county assessor is vested with authority to make these factual determinations.

Very truly yours,

NORMAN H. ANDERSON
Attorney General

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