VOLUME NO. 39 OPINION NO. 39

BUILDING CODE - Collection of demolition assessments;
COUNTY OFFICERS AND EMPLOYEES - Treasurer: duty to collect municipal assessments;
MUNICIPAL CORPORATIONS - Collection of special assessments;
TAXATION AND REVENUE - Collection of municipal assessments by county treasurer;
WORDS AND PHRASES - "Taxes";
MONTANA CODE ANNOTATED - Sections 7-6-4407(2)(a), 7-6-4413, 7-12-4181;
OPINIONS OF THE ATTORNEY GENERAL - 3 Op. Att'y Gen. at 198 (1909); 3 Op. Att'y Gen. at 199 (1909); 3 Op. Att'y Gen. at 201 (1909); 38 Op. Att'y Gen. No. 40 (1979).

HELD: The county treasurer must collect a properly certified special assessment that a city has imposed pursuant to an ordinance adopting the Uniform Code for the Abatement of Dangerous Buildings, unless the city has provided for the city treasurer to collect taxes under section 7-6-4413, MCA.

1 December 1981

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Dear Mr. Hull:

You have asked for my opinion on the following question:

> Must the county treasurer collect a special assessment that a city has imposed pursuant to an ordinance adopting the Uniform Code for the Abatement of Dangerous Buildings?

The Uniform Code for the Abatement of Dangerous Buildings [hereinafter referred to as U.C.A.D.B.] sets forth the procedure "whereby buildings or structures which from any cause endanger the life, limb, health, morals, property, safety or welfare of the general public or their occupants may be required to be repaired, vacated or demolished."

U.C.A.D.B. § 102(a). If required demolition is not performed by the building owner, the city may cause the building to be demolished and the lot to be cleared of materials, rubble, and debris. U.C.A.D.B. § 701(c)(3). Under sections 801(b) and 905, the city council may order that the costs of demolition be made a personal obligation of the property owner or be assessed against the property. If the city council chooses to make a special assessment, then, under section 909, "certified copies of the assessment shall be given to the assessor and the tax collector for [the city], who shall add the amount of the assessment to the next regular tax bill levied against the parcel for municipal purposes." Section 911 provides that: "[t]he amount of the assessment shall be collected at the same time and in the same manner as ordinary property taxes are collected...."

You have provided me with no facts concerning the procedure used by the city to adopt this ordinance or to make the special assessments that prompted your request. From the correspondence accompanying your request, it appears there is no dispute as to the validity of the provisions of the U.C.A.D.B. discussed above, nor as to the special assessments in question. The only question concerns the duty of the county treasurer to collect those assessments.

Section 7-6-4413, MCA, states:

> (1) Except in case of such cities of the first, second, and third classes as may provide by ordinance for the city treasurer to collect the taxes from [the corrected

> municipal assessment book], the county treasurer of each county must collect the tax levied by all cities and towns in his respective county.
>
> (2) The county treasurer must collect such city or town taxes, including unpaid road poll taxes, at the same time as the state and county taxes and with the same penalties and interest in case of delinquency.

The issue presented by your request is whether the term "city or town taxes" encompasses special assessments imposed by the city for the demolition of dangerous buildings. I conclude that it does.

For certain purposes, courts have recognized a distinction between ordinary property taxes and other assessments. See Vail v. Custer County, 132 Mont. 205, 216, 315 P.2d 993, 1000 (1957); Thomas v. City of Missoula, 70 Mont. 478, 482-83, 226 P. 213, 214 (1924) (dictum); 38 Op. Att'y Gen. No. 40 (1979). However, in other cases courts have ruled that the term "taxes" as used in a particular statute includes special assessments. See State ex rel. Wolf Point v. McFarlan, 78 Mont. 156, 162, 252 P. 805, 808 (1927); Thomas, 70 Mont. at 483, 226 P. at 215; First National Bank v. Sorenson, 65 Mont. 1, 6, 210 P. 900, 902 (1922). Whether the term "taxes" is to be construed broadly or narrowly "must be determined by reference to the intention of the Legislature, as that intention may be disclosed by the context, the purpose sought to be accomplished, the general scope of the act and related acts." Thomas, 70 Mont. at 483, 226 P. at 214.

The purposes of section 7-6-4413, MCA, are clearly to avoid needless duplication of the effort and cost of billing owners and collecting money and to provide taxpayers the convenience of a single bill. These purposes are best served by a broad interpretation of the term "taxes." The Montana Supreme Court held in McFarlan, 78 Mont. at 162, 252 P. at 808, that "assessments for special improvements...fall within the meaning of the words 'tax' and 'taxes' as employed in section 5214 [R.C.M. 1921 (the predecessor to section 7-6-4413, MCA)]." This holding was based in part on another statute explicitly requiring the county

treasurer to collect special improvement district assessments. See § 7-12-4181, MCA (formerly § 5251, R.C.M. 1921). However, even before that statute was adopted in 1913, two Attorney General's Opinions had held that county treasurers had the duty under the predecessor to section 7-6-4413, MCA, to collect all certified city assessments, either general or special. See 3 Op. Att'y Gen. at 201 (1909); 3 Op. Att'y Gen. at 199 (1909). Based on these consistently broad interpretations of the term "taxes" in section 7-6-4413, MCA, and the purposes of that provision, I find that the term includes special demolition assessments.

The county in this instance has expressed concern about "unnecessary exposure to liability" for the collection of the assessments in question. To allay that concern, I note that in collecting city taxes under section 7-6-4413, MCA, the county treasurer acts as an agent of the city. McFarlan, 38 Mont. at 160, 252 P. at 807. Of course, the county treasurer must exercise due care to collect only those city assessments that have been correctly certified by the city council to the county under sections 905 and 909 of the Uniform Code for the Abatement of Dangerous Buildings. The procedure for certification must be in accord with section 7-6-4407(2)(a), MCA, which requires the city clerk to certify to the county clerk a copy of the city council's resolution determining the amount of city taxes. Once the city taxes have been correctly certified, the county treasurer is responsible for following proper collection procedures. If there is any problem with the validity of the assessment, however, it is the city, not the county treasurer, that may be liable. See Sorenson, 65 Mont. at 4, 210 P. at 901 (challenge to city assessments dismissed as to the county); cf. McFarlan, 78 Mont. at 162, 252 P. at 808 (county treasurer not in a position to assert unconstitutionality of city assessments); 3 Op. Att'y Gen. at 198 (1909) (county to collect certified city poll taxes despite questions as to their validity).

THEREFORE, IT IS MY OPINION:

> The county treasurer must collect a properly certified special assessment that a city has imposed pursuant to an ordinance adopting the Uniform Code for the Abatement of Dangerous

Buildings, unless the city has provided for the city treasurer to collect taxes under section 7-6-4413, MCA.

Very truly yours,

MIKE GREELY
Attorney General