City, Constitutional Limit of Indebtedness of. Special Improvement District, Indebtedness of Not a Part of City Indebtedness as a Whole.

The cost and charges for the improvement of certain described property in a Special Improvement District is not a part or portion of the city's indebtedness, as a whole.

Helena, Montana, Jenuary 4, 1909.

Mr. John P. Schmit, Register, State Land Office, Helena, Montana.

Dear Sir:

Your letter of November 14, transmitting on direction of the State Board of Land Commissioners, the transcript of the proceedings had by the city of Butte in reference to the establishment of Improvement District No. 50 therein, and matters relating to the issuance and payment of bonds to cover the cost and expense of certain contemplated improvements, was by me duly received. My. opinion is called for with respect to the legality of the proceedings as shown by the transcript, and the validity of the proposed bond issue.

I have made careful examination into the transcript, and acquainted myself with all of the proceedings as there shown, and give you as my opinion that all of the provisions of Part IV, Chapter III, Article X, of the Revised Codes of Montana have been substantially complied with and that the form of the bonds proposed to be issued and incorporated in the city ordinance, is in compliance with Section 3419 of the Revised Codes.

In considering the validity of the proposed bonds a serious question at once arose as to whether the constitutional limitation of the indebtedness of a city was to be applied and considered with respect to a Special Improvement District embraced within such city. In other words, where a city was up to its constitutional limit of indebtedness, or nearly so, the indebtedness of such a special improvement district should be considered as a part and portion of the indebtedness of the city as a whole.

The case of Burlington Savings Bank v. City of Clinton, 111 Fed. Rep. 439, while holding against the validity of bonds similar to this proposed issue is, in my opinion, to be distinguished because of the form and character of the bond.

Our court has never interpreted the law under which these bonds are proposed to be issued. However, in the case of Atkinson v. City of Great Falls, 16 Mont., 372, it is clearly indicated that where an assessment is levied against certain particularly described property for the purpose of meeting the costs and charges of special improvements for the immediate benefit of such property, that the indebtedness of the city is not thereby increased; and in the case of Quill v. City of Indianapolis, 7 L. R. A. 681, the validity of such Special Improvement District bonds is considered at length, and the reasoning of such opinion so clear and plain that we believe that case to lay down the correct rule of law.

See also: 28 Cyc, 1542-43.

Courtland Lumbering and Manufacturing Co., v. City of East Seattle, 22 Pac. 536;

Wilson v. City of Seattle, 27 Pac. 474;

Soule v. City of Seattle, 33 Pac. 384.

The transcript presented shows that the city has complied with the requirements of the statute in the establishment of this district, and under the terms of the statutes and the authorities above cited we believe the bonds issued in accordance with the ordinance are legal.

Very respectfully yours,

ALBERT J. GALEN,
Attorney General.