Special Improvement Districts—Liens—Taxes—Cities and Towns—Improvements—Assessment.

The assessments of a special improvement district in a city or town are not a lien upon the buildings situated upon the lots or parcels of land against which the assessments are made.

Clyde McLemore, Esq., November 5, 1925.
County Attorney,
Baker, Montana.

My dear Mr. McLemore:

You have requested my opinion whether buildings situated upon lots within a special improvement district of a city are liable for special improvement district assessments, whether the buildings be of a permanent character or otherwise.

By section 5238, R. C. M. 1921, the city council is authorized to assess the cost of improvements in a special improvement district against the district, "each lot or parcel of land" within the district to be assessed for a certain proportionate part of the cost, as the one or the other method of assessment as therein provided is adopted and pursued.

Section 5247 makes the assessment a lien "against the property upon which such assessment is made and levied."

The supreme court of New York had this precise question before it in the case of Elwood vs. The City of Rochester, 43 Hun. 102, 6 N. Y. St. Rep., 132. In that case the statutes involved were substantially the same as ours. The question was whether an assessment of "lots and parcels of land" authorized the assessment of mains and pipes of a gas light company and the poles and wires of a telegraph company. The court held that it did not, saying:

> "This contention has reference to certain water mains and service pipes owned by the city, and also the mains and pipes of certain gaslight companies, and the poles and wires of certain telegraph, telephone and electric light companies. We doubt whether those properties are intended by the charter to be made liable to local assessment for opening streets. That they are within the general designation of real estate, for certain purposes, is conceded. They are embraced by the term 'land,' as defined in the statute, which describes property liable to taxation. 1 R. S., 387, Sec. 2, as amended, laws of 1881, chap. 293. But that statute does not relate to local assessments. By the charter, the only property assessable for local improvements is 'lots and parcels of land.' Sections 190, 191, 199, 202, 206, 214. The term 'land' is there used, we apprehend, in its ordinary and popular sense. In one instance the word 'lots' is used alone, to express assessable property. Section 207. Looking at the reason of the thing, it is difficult to say that property of the kind under consideration can be directly benefited by the opening of a street. If the business office of the company owning the subterranean mains, or the poles and wires, is in the vicinity of the proposed street, it may be possible to affirm that such company receives some benefit from the improvement, but the fact supposed does not appear in this case, nor is the contention of the respondent put upon that ground. The decisions in this state, cited by the respondent's counsel upon this point, relate to property liable to general taxation. We think the property referred to is not assessable for local improvements under the terms of the charter."

Other cases reaching the same conclusion, under similar statutes are cited in the case of Ohio Electric Ry. Co. vs. City of Greenville, 143 N. E. 193.

As said by the supreme court of California in the case of Canty vs. Staley, 123 Pac. 252:

> "The words 'lot,' 'piece,' and 'parcel' apply peculiarly to the land itself and are never employed to describe improvements."

It is, therefore, my opinion that a special improvement district assessment is not a lien upon buildings situated on the "lots or parcels of land" against which the assessment and levy are made, and that such buildings are subject to removal by the owner thereof.

Very truly yours,

L. A. FOOT,
Attorney General.