

April 19, 1935.

Mr. Eugene Murphy
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You inquire as to the constitutionality of Chapter 73 of the Laws of 1935, which authorizes the payment of irrigation district assessments by a taxpayer without the payment of the general state and county taxes.

Although the general law requires the payment of all taxes at the same time, including special improvement taxes (Section 7240, R. C. M. 1921), the statute in question is a later statute and, therefore, will prevail in case of disagreement (59 C. J. 1051, 1052), and where one is a general statute and the other a special statute, the special statute will prevail (59 C. J. 1065). It is also a general rule that general taxes are superior to local improvement assessments and taxes. This rule as generally stated contains the provision that it is applicable unless the contrary appears by statute (State ex rel. Malott v. Board of County Commissioners, 89 Mont, 37, 77). However, in this case the question is not a question of the superiority or priority of either of the taxes. The privilege is given to the owner of lands within irrigation districts to pay his irrigation assessments in cases where he does not pay his general taxes. By virtue of this law neither the state nor the county is deprived of any right it has in collection of taxes which is given them under the constitution, or other laws, of this state. Any remedy for the enforcement of delinquent taxes still exists with the county or state.

I would, therefore, conclude that it is the duty of the county treasurer of your county to accept payments as authorized in this law. Laws regularly enacted and signed are presumed to be constitutional. If anyone believes this law unconstitutional and desires to test its constitutionality he may bring a suit for that purpose. Unless and until such a suit is brought and the court declares the law unconstitutional you and other officials should comply with its provisions.

Opinion No. 84.

Taxation—Irrigation District Assessments, Collection of—County Treasurer.

HELD: Under Chapter 73, Laws of 1935, it is the duty of the county treasurer to accept payment of irrigation district assessments from a taxpayer without payment of the general state and county taxes.