Section 2215 R. C. M., provides:

"All deeds * * * executed more than three years after any tax sale shall be deemed to convey to the grantee the absolute title to the lands * * * except the lien for taxes which may have attached subsequent to the sale, * * * ."

Under the above section it has been held that the tax deed extinguished the lien of these improvement districts, and that the deed conveyed the title free of all encumberances. (State v. Jeffries, 83 Mont. 111.) In the cases of City of Kalispell v. School District, 45 Mont. 221 and Ricker v. City of Helena, 68 Mont. 350, the court held that the city, as well as the county, was liable to pay special improvement district assessments. However, in those two cases the tax statutes were not in question, and it does not appear from those cases whether or not the property was acquired by tax deed. Section 2215 was amended by Section 2215.9, which provides:

"The deed hereafter issued * * * shall convey to the grantee the absolute title * * * free of all encumbrances * * * except the lien for taxes which may have attached subsequent to the sale and the lien of any special or local improvement assessments levied against the property payable after the execution of said deed. * * *"

This amendment was made to Section 2215 in the year 1929, as Section 9, Chapter 100 of the Twenty-First Legislative Assembly. Section 2215 was amended in the year 1929 to obviate and eliminate the situation as existed under Section 2215, as interpreted in the case of State v. Jeffries, 83 Mont. 111, exempting counties from improvement assessments. However, in the case of State v. Osten, 91 Mont. 76, the tax deed lands were acquired in the years 1926 and 1927, and the court held that to apply Section 2215.9 would be retroactive. It therefore is implied, that if the lands had been acquired by tax deed after the year 1929, the county would have been liable for the special improvement taxes. Your lots were acquired in the year 1931, and Section 2215.9 is applicable, and all liens which have attached subsequent to the date of sale

Opinion No. 36.

County Commissioners — Counties — Taxes—Special Improvement Tax—Liability of County for.

HELD: A County must pay improvement taxes on tax deed lands from date of purchase, provided, lands were acquired after March 1929; If acquired prior to that date, county need not pay such taxes.

February 6, 1937.

Mr. Eugune L. Murphy
County Attorney
Choteau, Montana

Dear Mr. Murphy:

You have requested an opinion from this office as to whether or not Teton County is liable to pay special improvement assessment taxes for the City of Choteau, by reason of the fact that the county, on October 31, 1931, acquired some lots by tax deeds; and whether or not it would be legal for the county to pay these assessments; and whether or not your board is authorized to sign an agreement whereby a special improvement district is created.

your county must pay. If these lots had been acqiured prior to the year 1929, your county would have come under the rule in the Jeffries case, and would not have been liable for the special improvements. It appears that your county will be compelled to pay quite a large amount of special assessments and it is a hardship upon the county, but if your board of county commissioners had complied with the law and disposed of this property immediately, which it is their duty to do, it would have escaped payment of these taxes. Section 2208.1 requires the board of county commissioners to advertise these tax lands within a period of six months. However, your county is not liable for improvement assessments that arose prior to October 31, 1931.

Your second question is, "whether or not the board is authorized to sign any agreement whereby a special improvement district is created."

Section 5229, R. C. M., 1935, provides in part:

> "In determining whether or not sufficient protests have been filed on a proposed district to prevent further proceeding therein, property owned by a county, city, or town shall be considered the same as other property in the district. The city council may adjourn said hearing from time to time."

Ricker v. City, 68 Mont. 350.

It is my opinion that your county is liable for special improvement district assessments levied from the date of the acquisition of these lots, that is, October 31, 1931, by reason of the fact that it acquired the lots after March, 1929, and that your county has the right to sign agreements for the creation of a special improvement district.