

No. 424

SPECIAL ASSESSMENTS—COUNTY TREASURER—REDEMPTION—TAXATION

Held: Where any person, firm, co-partnership, corporation or association desires to redeem from tax sale and pay all subsequent taxes upon any lots, piece or parcel of real estate which are owned or in which such person, firm, co-partnership, corporation or association have some interest, he or it may redeem from tax sale any such lot or lots. If such lot or lots have been assessed and sold together with other lots, then it is the duty of the county treasurer to permit such redemption and payment; and it is the duty of the county treasurer to compute and apportion the tax that should have been assessed against the lot or lots sought to be redeemed, and upon which the taxes are sought to be paid, the same as if said lot or lots had been separately assessed.

June 13, 1942.

Mr. Bert W. Kronmiller
County Attorney
Big Horn County
Hardin, Montana

Dear Mr. Kronmiller:

You have submitted the following question for my opinion:

One owns a city block which consists of twelve separate city lots numbered from Lot 1 to 12 inclusive. Said block is situated within the City of Hardin and subject to the assessment and payment of several improvement districts of the City of Hardin, Montana. This block was assessed in one single assessment, instead of the lots being assessed each separately, according to the records of the county in the county treasurer's office. The improvement district assessments having become delinquent for the year 1940, the block was put up for tax sale and struck off to the county, certificate of sale issuing to the county in July, 1941. The block was again so assessed for the year 1941, and the 1941 assessments have not been paid. The owner of this block has requested that the block be segregated with the assessments and the owner be permitted to pay the assessments on the East Half of said block which consists of lots one to six, both inclusive; and he has tendered the county treasurer all money necessary therefor. May the county treasurer lawfully segregate the property and the assessment and permit the payment of the delinquent assessment?

In considering the question you have raised, it is necessary first to refer to Chapter 398, Volume 2, Revised Codes of Montana, 1935.

Section 5238, Revised Codes of Montana, 1935, provides the method for payment of improvements in part as follows:

"(a) The city council shall assess the entire cost of such improvements against the entire district, **each lot or parcel of land within such district . . . exclusive of streets, avenues, alleys, and public places . . .** In order to apportion the cost of any of the improvements herein provided for between the corner lot and the inside lots of any block, the council may, in the resolution creating any improvement district, provide that whenever any of the improvements herein provided for shall be along any side street or bordering or abutting upon the side of any corner lot of any block, that the amount of the assessment against the property in such district, to defray the cost of such improvements, shall be so assessed that each square foot of the land, embraced within such corner lot, shall bear double the amount of the cost of such improvement, that a square foot of any inside lot shall bear.

"(b) The city council shall assess the cost of such improvements against the entire district, **each lot or parcel of land within such district, bordering or abutting upon street or streets whereon or wherein the improvement has been made**, in proportion to the lineal feet abutting or bordering the same; provided, however, that this method of assessment shall not apply to assessments in improvement districts created under the provisions of Section 5228 of this code" (Emphasis mine.)

By the provisions of Section 5238, Revised Codes of Montana, 1935, one of two methods of assessment for paying the cost of improvements may be pursued by the city council, viz., by area, the city assuming or not, as it chooses, the cost of the street and alley intersections, or by foot frontage, apportioning the cost to each lot or parcel of land within the district bordering or abutting upon a street or streets whereon or wherein the improvement has been made.

Chicago, Milwaukee & St. Paul Ry. Co. v. Poland, et al, 54 Mont. 497, 520, 172 Pac. 541.

Section 5240, Revised Codes of Montana, 1935, provides:

"To defray the cost of making improvements in any special improvement district, or of acquiring property for the opening, widening, or extending any street or alley, or to defray the cost and expense of changing any grade of any street, avenue, or alley, the city council

shall by resolution levy and assess a tax upon all property in any district created for such purpose, by using for a basis for assessment one of the methods set forth in section 5238 of this code. **Such resolution shall contain a description of each lot and parcel of land, with the name of the owner, if known, and the amount of each partial payment to be made, and the day when the same shall become delinquent.**

"The payment of assessments to defray the cost of constructing any improvements in special improvement districts may be spread over a term of not to exceed twenty years, payments to be made in equal annual installments." (Emphasis mine.)

It is to be noted the emphasized portion requires such resolution shall contain a description of each lot and also each parcel of land, etc. Where the city block had been divided into lots with streets and alleys and is so designated on the official map or plat on file in the office of the county clerk, as in this case, each lot will be described in the said resolution and assessed accordingly.

The term "lot," as used in the homestead law, which limits the homestead in a city or town to a quantity of land not exceeding in amount one lot, means a city, town or village lot, according to the survey and plat of the city, town or village in which the property is situated, and is not synonymous with the words "tract" or "parcel."

Wilson v. Proctor, 28 Minn. 13, 8 N. W. 830;

Ford v. Clement, 68 Minn. 484, 71 N. W. 672.

The word "lot," as used in statutes in connection with the establishment of assessment districts for street improvements, means lots as shown by recorder plats of townsites or additions or subdivisions.

Colliers Estate v. Western Paving & Supply Co., 108. Mo. 362, 79 S. W. 947, 953.

Where the land is divided into separate and distinct lots, the tax for the benefits accruing to each of these should have been assessed thereupon separately.

In re Westlake Ave. v. City of Seattle, 40 Wash. 144, 82 Pac. 279.

Section 5238.1, Revised Codes of Montana, 1935, makes provision for the inclusion and assessment of unplatted pieces or parcels of land which are situated within a city in improvement districts, as follows:

"That whenever any unplatted, undedicated or unsurveyed lot, piece or parcel of land that separates one platted part of the city from another platted part of said city, lying wholly within the boundaries of any city or town, except land owned by the United States, shall abut or border upon any special improvement district, or be included within the boundaries of any special improvement district of such city or town, the council of such city or town may cause the same to be included within and made a part of such special improvement district, in the same manner as other property within such special improvement district and may assess the same for its proportionate share of the cost of making or maintaining such improvements in the same manner as other property within such special improvement district."

It will be observed the quoted statutes make provision for the assessment of each lot in accordance with its proportionate area, or each parcel which has not been platted into lots; or for the assessment of each lot abutting or bordering upon the street or streets and for each parcel of land not so platted into lots and which abuts or is bordering upon the street or streets and for each parcel of land not so platted into lots and which abuts or is bordering upon the street or streets. Whichever method of assessment is adopted by the city council, the assessment shall be

assessed against each platted lot and against each piece or parcel of land which has not been platted into lots. This is the evident purpose and intent of the law.

The Supreme Court of Iowa—having under consideration the question as to the land to be charged in improvement districts—held:

“The manifest intention is that the levy shall be made according to the subdivisions into which the land abutting the street only shall be assessed. Statutes authorizing special assessments are to be strictly construed.”

Knubs v. Sioux City, Iowa, 137 N. W. 944, 945.

Our Supreme Court has held:

“It is also well settled that the lien of the special improvement assessments extends to each lot or parcel of land separately and not jointly, and that when the assessments against one lot or parcel are paid or tax deed is issued to a lot or parcel, the lien is discharged.”

School District No. 1 v. City of Helena, 87 Mont. 300, 287 Pac. 164.

State ex rel. Griffith v. City of Shelby, 107 Mont. 571, 576, 87 Pac. (2nd) 183.

The whole theory and purpose of our law is to keep lands and property on the tax rolls and take tax deeds only as the last resort. For that reason, “Redemption statutes are construed with liberality.”

State v. Hays, 86 Mont. 58, 282 Pac. 32.

We now turn to Chapter 17, Laws of 1941, which is as follows:

“Whenever any person, firm, co-partnership, corporation or association shall desire to redeem from a tax sale and pay all subsequent taxes upon any lots, piece or parcel of real estate, which said person, firm, co-partnership, corporation or association shall own or hold a mortgage or other lien against or when such person, firm, co-partnership, corporation or association shall be the owner of or have some interest in such property, it shall be the duty of the county treasurer of the county in which such real estate is situated to permit such redemption and payment; and in case the said real estate shall have been assessed and sold, together with other real estate, or in case the tax assessed against any other property shall be a lien thereon, then it shall be the duty of said county treasurer to compute and apportion the tax that should have properly been assessed against the said real estate sought to be redeemed, and upon which the taxes are sought to be paid, the same as if said property had been separately assessed. Any personal property tax which is a lien upon said real estate shall be likewise computed and apportioned on the same percentage basis as the tax assessed against the real estate is apportioned.” (Emphasis mine.)

From the foregoing statutes and decisions it is my opinion that, where any person, firm, co-partnership, corporation or association desires to redeem from tax sale and pay all subsequent taxes upon any lots, piece or parcel of real estate which are owned or in which such person, firm, co-partnership, corporation or association has some interest, he or it may redeem from tax sale any such lot or lots. If such lot or lots have been assessed and sold together with other lots, then it is the duty of the county treasurer to permit such redemption and payment, and it is the duty of the county treasurer to compute and apportion the tax that should have been assessed against the lot or lots sought to be redeemed, and upon which the taxes are sought to be paid, the same as if said lot or lots had been separately assessed.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General