No. 95

SPECIAL IMPROVEMENT ASSESSMENTS— TAX DEED

Held: Where special improvement assessments are levied before county takes tax deed, the special assessments against the property payable after the execution of said deed are liens against the said property, where property is sold by county to indviidual. No opinion is expressed herein under same facts where county continues to own the property.

April 23, 1941.

Mr. Wilbur P. Werner
County Attorney
Glacier County
Cut Bank, Montana

Dear Mr. Werner:

You have submitted the following:

> "On lots 9 and 10 of Block 4 of the original townsite of Cut Bank, Montana, the taxes were delinquent from 1923 until 1938. In 1936, in addition to the normal taxes, there was also levied a special improvement tax against these two lots. On the first day of October, 1923, a tax sale certificate was issued to Glacier County on the 1922 taxes. On August 1, 1938, a tax deed was taken by the County and on March 15th, 1940, the property was sold to an individual. The City of Cut Bank now requests the County Treasurer of Glacier County to collect and remit the special assessments for the years 1939, 1940, and presumably for the year 1941 and thereafter."

It will be observed that your question requires an interpretation of Chapter 100, Laws of 1929, which was amended by Chapter 76, Laws of 1933, and again amended by Chapter 63, Laws of 1937, the pertinent part to your inquiry remaining the same as in Chapter 100, and is as follows:

> "Section 2215.9. **Effect of Deed.** The deed hereafter issued under this or any other law of this State shall convey to the grantee the

absolute title to the lands described therein as of the date of the expiration of the period of redemption, free of all encumbrances and clear of any and all claims of said defendants to said action except the lien for taxes which may have attached subsequent to the sale and the lien of any special, local improvement, irrigation and drainage assessments levied against the property payable after the execution of said deed, and except when the land is owned by the United States or this State, in which case it is prima facie evidence of the right of possession accrued as of the date of expiraiton of such period for redemption."

It is noted the words therein, "The deed issued under this or any other law of this state," have been held to amend Section 2215, Revised Codes of Montana, 1935.

Our Supreme Court in considering this Act has held:

"The judgment, insofar as it attempts to restrain the city treasurer from asserting liens for assessments (special improvement district assessments) levied in September and July, 1929, and payable after the execution of the tax deed to relator, conflicts with that chapter . . . and to that extent is void."

State ex rel. Costello v. District Court, 86 Mont. 387, 284 Pac. 128.

In construing Section 2215.9, Revised Codes of Montana, 1935, as amended by Chapter 100, Laws of 1929, and Section 9 thereof, in considering similar facts, our Court stated as follows:

"So far as the facts here are concerned, then, it would seem clear that the application of Chapter 100 is not retroactive but prospective" and,

"It must be understood that what we have said would not apply to improvements made or obligations incurred prior to the enactment of Chapter 100, supra; but we specifically limit what we have said above in connection with the constitutional provision, to those cases where the improvements were made and the obligations incurred after the enactment of Chapter 100."

And again in the same case, the court said:

"However, it is equally well settled that the Legislature has full power to waive the priority of the lien of general taxes or to postpone it to the lien of special assessments, such as the assessments in this matter."

Cascade County v. Weaver et al., 108 Mont. 1, 10, 90 Pac. (2nd) 164.

The facts as submitted by you are that the county acquired a tax sale certificate in October, 1923, and then delayed taking the deed for fifteen years, until August 1, 1939. The county then sold the lots on March 15, 1940. The special assessments were first levied in 1936, and—applying the above decisions to these facts—it becomes apparent the special improvement assessments would attach as they became payable after the execution of the tax deed, August 1, 1938, and in that event it follows the 1939 and 1940 special improvement assessments would be liens against the property.

However, it is understood no opinion is expressed herein in regard to similar facts where the fee to the real estate remains in the county. In that event, other reasoning might apply; and—in considering that question—our Supreme Court, in the only decision we have been able to find on that particular phase, stated as follows:

"If it be conceded that the rules which apply to parcel A do not apply to parcel B, now owned by the county, we do not see how the county treasurer can collect the special assessment. We do not know

of any law which authorizes the county to pay it. Surely it cannot be urged that the county must offer its own property at tax sale to pay the same."

State ex rel. City of Billings v. Osten, 91 Mont. 76, 82, 5 Pac. (2nd) 562.

Sincerely yours,

JOHN W. BONNER
Attorney General