

Taxes, Educational Institutions Liable for Special Improvements. Improvement Tax, Educational Institutions Liable for.

The exemption of educational institutions from taxation applies only to general taxes for revenue purposes and does not exempt such institutions from the payment of taxes for local improvements specially benefitting such property.

Helena, Montana, December 27, 1909.

State Board of Examiners,
Helena, Montana.

Gentlemen:

I am in receipt of a letter from the state accountant, submitting the

following proposition for an opinion:

"When I was recently at the Montana agricultural college, at Bozeman, President Hamilton handed me the enclosed notices from the city treasurer of Bozeman, dated Sept. 20, 1909, for \$117.95 and \$107.22, respectively, requesting me to submit them to you for an opinion as to the liability of the college for payment of these special improvement taxes which were assessed for improvements of streets adjoining the college property."

This question has never been passed upon by our supreme court. In the case of *City of Butte v. School District No. 1*, 29 Mont. 336, our supreme court held that a tax levied to pay the cost of street sprinkling could not be collected from a school district for a school house situated in the sprinkling district. Such opinion was based upon the proposition that

"the school property is not materially enhanced in value for educational purposes by the ordinary street sprinkling."

In that opinion the court made the following statement: "Whether the defendant would be liable if property were materially benefited by sidewalks, or other improvements, permanent in character, is not here decided."

An examination of the authorities, however, from other jurisdictions, shows that the great weight of authority is to the effect that where property is materially benefited by sidewalks, or other improvements, permanent in character, that it is liable for special improvement assessments levied for the purpose of making such permanent improvements.

The case of *San Diego v. Linda Vista Irrigation District*, 35 L. R. A. (Cal.) 1, contains a very exhaustive collection of authorities upon this question. The general rule is stated in such note as follows:

"The constitutions which provide for the exemption from taxation of certain property or classes of property have universally been interpreted to intend only the exemption from general taxation, i. e., burden taxes, and taxes for revenue. They are construed strictly and deemed not to intend exemptions which are not directly expressed or necessarily implied. All presumptions are against the exemption of private property being within the exemption named and in favor of public property being therein. Exemptions from from taxation is not then, of necessity, exemption from 'assessment' for local improvement. * * * It may be the policy of the law to encourage education by exempting from general taxation property owned and used by educational institutions; but inasmuch as a provision of law exempting them from 'taxation' does not of necessity exempt them from 'assessment' for local improvement, no fundamental reason exists why they should not contribute to an improvement which enhances their value and is not a burden upon them because of the benefits they acquire."

See, also, the recent case of *City Street Improvement Co. v. Regents of the University of California*, 18 L. R. A. (N. S.) 451, which contains an exhaustive review of the cases decided since the one published in

35 L. R. A., in which the general rule is stated as follows in the foot note:

“An exemption from taxation in favor of school property does not extend to a special assessment for the payment of local improvements specially benefiting such property.”

As it appears from the questions submitted, these taxes were for special improvements on the streets adjoining the college property, I am of the opinion that the college is liable for the payment of such special improvement assessments.

Very truly yours,

ALBERT J. GALEN,

Attorney General.