

**Taxes, Payment of Under Protest. Improvement District,
Payment of Taxes Under Protest in. County Treasurer, Duty
of When Tax Paid Under Protest.**

In an improvement district established by a city or town, the city treasurer is the proper custodian of taxes paid under protest, and the county treasurer is not governed by the provisions of Section 2742, Revised Codes.

Helena, Montana, March 8, 1909.

Hon. John S. Baker, County Clerk, Dillon, Montana.

Dear Sir:

I have your letter of February 25, wherein you submit, under a statement of facts, two questions of law:

First: Is the County Treasurer entitled to hold money paid under protest on an improvement district taxes until the determination of suit for the redemption of same; and,

Second: If the treasurer is entitled to hold said money, how long may he retain it without accounting to the city, provided no suit is brought, or agreement reached, between the city and the taxpayer.

In your letter you allude to Section 2743, of the Revised Codes of Montana, and state that the County Treasurer holds that section to be authority for his retention of the taxes paid under protest. I suppose you intended to refer to Section 2742, which provides for the disposition of taxes paid under protest. The sections of the code which should be consulted in this case I believe to be Section 3367 and 3373; also 3382, 3383 and 3397. If all of these sections of the code are complied with in the establishment of the improvement district, and to the making of the improvement, then the objection raised by the taxpayers in this particular case; that is, that the improvement was not of any benefit to their property, would be of no weight, for the reason that the chapter authorizing cities to establish improvement districts provides the method and the time of making objections to the establishment of improvement districts, and when once established according to law the presumption is that all of the property in the improvement district is equally benefitted, and no individual property holder therein can be afterward heard to complain that his property is not benefitted. (*Hopkins v. Butte*, 16 Mont. 103.)

The other objection which is made by these property owners is that the sidewalk constructed in front of their property is not exactly on the established grade of the city. The remedy for this is not by refusal to pay the cost of construction, but under several decisions of the supreme court of this state it is held that an action would lie against the city for damages. (See Sec. 3441, Rev. Code; also, *Less v. City of Butte*, 28 Mont. 27 *Holland v. City of Butte* and *O'Donnell v. City of Butte*, 28 Mont. 34, 35; also Art. III., Sec. 14, Const.)

Under the statement of facts which you make, I believe it is the duty of the County Treasurer to pay over to the City Treasurer the money

collected on account of the special taxes.

Section 2742 of the Revised Codes provides that the County Treasurer shall hold taxes paid under protest and not make accounting to the State Treasurer until after suit. However, in this particular case the City Treasurer is the custodian of the money, and as such City Treasurer is under no obligations to cover any portion of the city taxes into the state treasury.

The policy and intention of Section 2742 is to prevent money being paid by the county to the state where taxes are illegally or erroneously collected, because there is no way for the county to reimburse itself from the state, except by an act of the legislature.

Very truly yours,

ALBERT J. GALEN,

Attorney General.