

Municipal Improvements, Assessment for. Assessment for
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ments, Collection of. County Treasurer, Duty of With Respect
to Delinquent Assessments. Tax Sales.

Where taxes and municipal improvements assessments chargeable against the same property both become delinquent, it is the duty of a county treasurer to segregate the amounts and expose the property for sale for both in a single sale.

The county treasurer is ex officio collector of municipal improvement assessments. The county treasurer is not liable to the municipality for improvement assessments until collected by the county treasurer. There is but a single sale contemplated by law for the collection of delinquent taxes.

January 25th, 1914.

Hon. D. L. Blackstone,
County Attorney,
Chinook, Montana.

Dear Sir:

I am in receipt of your letter of the 21st instant, wherein you state:

"The town of Chinook has during the past two years created several special improvement districts and has constructed sewers, graded streets, built sidewalks and installed lights.

"The said town has in the year 1913 levied taxes under these several special improvement districts and delivered said assessment list to the county treasurer and required him to collect the taxes as the law provides.

"Certain lots in the town of Chinook have gone delinquent for both county taxes and special improvement taxes, and have been offered for sale and no person has offered to purchase them. Must the county bid in these delinquent lots for the full amount of the county tax and the special improvement tax? And if the county does so bid in this property, must the county pay over to the town of Chinook the amount of the special improvement tax as assessed. Some of the lots involved are not now worth the amount of the special improvement tax and may never become so, and if the county has to bid in the lots and pay the town assessments the county will lose practically the full amount paid."

Sec. 3358, Revised Codes of 1907, provides among other things for the collection of city and town taxes by the county treasurer. The preceding section relieves that official of this duty in certain instances where by city ordinance provision is made for their collection by the city treasurer. By reference to Sec. 3356, Idem, it is found:

"The county treasurer must collect such city or town taxes, including unpaid road poll taxes, at the same time as the state and county taxes with the same penalties and interest in case of delinquency. All publications for sales for delinquent taxes shall include such city or town taxes, there being but one sale for each piece of property, such sale to cover the aggregate of such city or town, county and state taxes with the penalties, interest and cost of advertising provided by law. All moneys received from sales, redemptions, and from sales by the county, after deed given by the county

treasurer as provided by law, shall be credited to the state, county and city, or town, pro rata, in the same proportions as provided in Secs. 2681 (3925) and 2682 (3926) of the Political Code."

It is thus made to appear that a county treasurer, in the collection of city or town taxes, is in effect made the agent of the municipality for that purpose.

In the case of *City of Kalispell v. School District No. 5*, 45 Mont. 221, our supreme court in considering special improvement assessments, said:

"These special assessments, though a species of taxation, are not taxes."

Hence, if there were no other provision made for their collection than is found in the sections of the code already referred to, the county treasurer would have no duty to perform in the premises, and the manner of the enforcement and collection of delinquent assessments would be left to the municipality. However, by the enactment of Sec. 27 Chap. 89, Session Laws of the Thirteenth Legislative Assembly, provision is made that:

"It shall be the duty of the city treasurer of every city whose taxes for general, municipal and administrative purposes are certified to and collected by the county treasurer, in accordance with the provisions of Sec. 3358, Revised Codes of Montana of 1907, on or before the first Monday of October of each year, to certify to the county treasurer of the county in which such city is situated all special assessments and taxes levied and assessed in accordance with any of the provisions of this act, and the county treasurer must collect the same in the same manner and at the same time as said taxes for general, municipal and administrative purposes are collected by him."

This enactment, in my judgment, has the force and effect of reading into Sec. 3356 of the code already referred to the words:

"Special assessments and taxes levied and assessed in accordance with the provisions of Chap. 89, Session Laws of the Thirteenth Legislative Assembly."

In view of the decision in the *Kalispell* case, *supra*, I am of the opinion that the lien created by special improvements is secondary and subordinate to the lien for taxes generally, but Sec. 3356, *supra*, forbids more than one sale for each piece of property. Hence, it becomes the duty of the county treasurer to add the amount of delinquent special improvement assessments to the amount of delinquent general taxes and to expose the property for sale for the entire amount. In so doing, however, the total should be segregated into the proper items to the end that no confusion may result, and the purchaser and delinquent owner of the property may have proper notice, and other matters relating to tax sales generally may be properly observed.

If there be no bidders at a tax sale, and the county is forced to purchase the exposed property, it need not pay anything to the

municipality unless or until there be redemption from or subsequent sale by the county when the amount realized will be properly segregated and distributed according to law.

Yours very truly,

D. M. KELLY,
Attorney General.