

County Treasurer, Apportionment Delinquent Taxes by to City. Taxes, Special Improvement District. How Collected When Delinquent. Special Improvement District Tax. When Paid Over to District. Improvement District. Payment of Delinquent Taxes to.

1. When property subject to special improvement tax is sold to the county treasurer and stricken off to the county, the county does not account to the district for the special tax,

the county acting only as agent, and pays money over only when it receives it.

2. Where special tax fails in amount, additional tax is necessary.

3. City cannot pay out of general funds, debts of special improvement district.

February 3rd, 1913.

Hon. H. S. Magraw,
State Examiner,
Helena, Montana.

Dear Sir:

I am in receipt of your letter submitting for the consideration of this department the following questions:

"1. When a county buys up delinquent taxes on city property upon which a special improvement tax has been levied, should the county pay the city the amount of the special improvement tax?

"2. Who pays the interest on bonds issued by special improvement districts, when the special tax levied therefor has for any reason failed?

3. Has the city any right to pay money out of the regular city funds for these improvement districts when the city is acting only as agent?"

1. The county in collecting the special improvement district tax acts only as the agent of the city, and has no authority to pay to the city any money on account of such taxes, until the same has been collected. If the taxes are not paid, the property is sold at the same time and in the same manner provided for the sale of property for delinquent taxes, and if there are no bidders at such sale, it is struck off to the county, but the county does not "buy it in delinquent taxes." It merely holds the property for the payment of those taxes and when it has succeeded in making collection, return is made to the city. It is true that the title to the real estate may eventually ripen in the county, but there is no authority in law for a county to buy from a city the interest which the city may own in certain property by reason of the non-payment of any city tax, either general or special. The county only makes return to the city when it has succeeded in collecting the tax in money.

2. The holders of bonds issued by improvement districts, have no claim whatsoever against any property, except that included within the district and must look only to the special taxes for the payment of the interest and principal of their bonds, although such bond holders may compel the levy of such tax and possibly may have the right in extreme cases to secure a decree from a court of equity for the sale of the property situated within such improvement district that is pledged for the payment of such bonds.

3. The money raised by the special tax is a special fund, which cannot lawfully be used for any other purpose than that for which it is created—neither is there any authority in law for a city to pay

out of any other funds either the principal or interest on bonds issued by the special improvement district.

Generally speaking, and as applicable to all of these questions, we may refer to the general statute covering this case. Under and by virtue of the provisions of Sec. 3437, Revised Codes, neither the holder nor owner of any of such special improvement district bonds has any claim against the city, and by the provisions of Sec. 3425, Revised Codes, the right of the owner or holder of such bonds to enforce collection of assessments against the property by an action at law or in equity is recognized. However, both these sections are repealed by Chap. 89, Session Laws of 1913, wherein it is provided that "the city council shall assess the entire cost of such improvements against the entire district," and provision is then made for equitable or pro rata division of this cost against the property situated in the district. To meet the interest and pay the principal of the bonds it is necessary that a specific sum be raised. If the first special tax levied fails for any reason to produce this sum, another special tax must be added, not against the property of the city, but against the property of the district.

Questions very similar to those above stated were considered by the Supreme Court of Indiana in *Quill v. City of Indianapolis*, 7 L. R. A. 681, wherein after a thorough discussion of the principles involved, the court said:

"Without summarizing further, it is enough to say the remedy of the holders of the bonds or certificates is confined exclusively to the special fund provided for, and to the collection of assessments by enforcing the lien upon the lots or parcels of ground assessed with the cost of the improvement. The city is in no way liable for the payment of the bonds, except out of the special fund to be accumulated from assessments made against the property benefited. According to the scheme promulgated in the statute, in case the assessments are paid without delinquency it is impossible for a single bond or certificate to mature in advance of the accumulation of a special fund devoted exclusively to its payment. If the assessments become delinquent, the remedy of the holders of the bonds or certificates is confined to the property. There is no liability against the city. The special fund provided for and the property are the sources from which the holders of the bonds and certificates must receive their pay, the city authorities acting merely as an agency for making and collecting the assessments, and as the custodian of the fund when the assessments are collected. In this they do not act as the agents of the city, but as special agents to accomplish a public end. *Montgomery Co. Comrs. v. Fullen*, 111 Ind. 410, 9 West. Rep. 651."

Quill v. City of Indianapolis, 7 L. R. A. 681.

Yours very truly,

D. M. KELLY,

Attorney General.