

Cities and Towns, Powers of in Relation to Improvement Districts. Improvement Districts, Power of Municipality to Extend. Water Mains, Extension of Beyond Improvement Districts. Public Service Commission, Powers of in Relation to Improvement Districts.

Neither the city council, nor the Public Service Commission has power to order the connection of water pipes to a water main constructed by a special improvement district to give service to persons outside of such district.

Helena, Montana, November 29, 1916.

Hon. Railroad and Public Service Commission,
Helena, Montana.

Gentlemen:

Some months ago you submitted for our consideration a proposed rule by the City of Big Timber, in which they proposed to make a charge of \$15 to each consumer for connecting with water mains laid and paid for under a special improvement ordinance. The consumers desiring to connect with the water mains in the improvement district, lived outside of such district and paid none of the assessment levied for improvement purposes.

The question here is one relating more to the power of municipal corporations than to the powers of the Commission. It becomes important to inquire what are the rights of the parties involved. One author has said:

"It is a fundamental rule that an assessment or taxes for local benefits should be distributed among and imposed upon all standing in like relations. Hence, one street cannot be improved at the expense of the property owners of another."

McQuillan Municipal Corporation, Sec. 2021.

The water mains already laid and paid for in the district in question, belong to the public composing that district. Theirs has been the burden, and the benefit should be theirs also. Doubtless when laid the main was intended for the dual purpose of domestic supply and fire protection. The inhabitants of the district are entitled to everything they have paid for. If it had been suggested or known at the time the district was originally formed that persons living outside the district would be allowed to connect with the main, undoubtedly it would have been insisted that they be included in the district, and bear their portion of the expense. It is possible also that the inclusion of the property now in need of service, would have involved such an expense that sufficient protest would have been made to have foreclosed the formation of a district at all. Hence, the rights of the inhabitants of the district must be judged in the light of conditions existing at the time of its formation.

The proposed connections if made, would be tantamount to the extension of an existing district. I find no authority in the law of this

are found in Section 3415, Revised Codes, 1907. It provides that:

“Whenever the council of any city or town desires to construct or acquire a system of water works, or to lay extensions to water mains, it may create a special improvement district in the manner hereinafter provided. * * * *”

It is well established by the decision of our Supreme Court that city councils have only such power as is granted them by the legislature.

Milligan v. Miles City, 51 Mont. 374.

Unless, therefore, the power is found in the statute, it does not exist.

The provisions of Section 3413, Revised Codes of 1907, being the only statute upon the subject, and no authority being found for making connections for property outside a district, and the general principle state allowing this to be done. The provisions of law upon the subject being that the inhabitants of a district are entitled to have the full benefit of their investment. I am of the opinion that the council cannot order connections made. They are limited to forming a district under the provisions of Section 3413.

Your commission under the broad powers given by Chapter 52, Laws of 1913, might order that more service be given by the utility if conditions warrant it, and if such an order would be reasonable under the circumstances. The Commission, however, would be limited in the same manner as the city or town, so far as the rights of inhabitants of existing districts are concerned.

Yours very truly,

J. B. POINDEXTER,

Attorney General.