

Cities and Towns—Counties—County Treasurer—Taxes.

The town council of Grass Range has no jurisdiction to collect special improvement district taxes but the County Treasurer should collect them.

Jerome G. Locke, Esq.,
Chairman Industrial Accident Board,
Helena, Montana.

My dear Mr. Locke:

You have asked whether the town council of Grass Range has any jurisdiction in the collection of unpaid special improvement district taxes.

You state that the Board holds about \$20,000 worth of special improvement district bonds of the town of Grass Range. The district was created in 1920 and embraces the entire town.

It appears that a great deal of the improvement district taxes and the general taxes on the property have been delinquent since the year 1920, and further that the County Treasurer has sold none of the property for delinquent taxes, with the possible exception of one or two lots, although there are delinquencies running back, in some cases, for four years.

The Mayor of the town of Grass Range wants to collect the back taxes, or so much thereof as may be obtained in order that the town will be in a better position to retire the special improvement bonds when they become due. He has asked what action the town council may take in the matter to accomplish this end.

The matter of levying and collecting taxes, including special improvement district taxes, is one entirely regulated by statute.

Section 5249, R. C. M. 1921, provides:

"All costs and expenses incurred in the construction of any improvements specified in this Act, in any improvement district, shall be paid for by special improvement district bonds or warrants."

And further provides the form of these bonds or warrants. The form, as provided in this section, contains the following provision:

"This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement districts, as described in said resolution hereinbefore referred to."

It appears from your statement that the whole town is included within the improvement district. The assessment, when made, is spread over a period of several years and paid in a number of equal annual payments.

Section 5251 provides as follows:

"It shall be the duty of the City or Town Treasurer of every city or town whose taxes for general, municipal and administrative purposes are certified to and collected by the County Treasurer in accordance with the provisions of Section 5216 of this code, immediately after the fifteenth day of September of each year, and at the same time the copy of resolution determining the annual levy for general taxes is certified by the City or Town Clerk to the County Clerk as required by said Section 5216, to certify to the County Clerk of the county in which such city or town 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 section also provides for the collection of general and special taxes by the City or Town Treasurer, where provision has been made by ordinance for such collection, and contains the following:

"When one payment becomes delinquent all payments shall, at the option of the city or town council, by appropriate resolutions duly adopted, become delinquent, and the whole property shall be sold the same as other property is sold for taxes."

Section 5216 provides:

"The council must, on or before the fifteenth day of September of each year, by resolution, determine the amount of city or town taxes for all purposes, to be levied and assessed on the taxable property in the city or town for the current fiscal year, and the City Clerk must at once certify to the County Clerk a copy of such resolution, and the County Treasurer must collect the taxes as in this chapter provided."

Section 5214 requires the County Treasurer of each county to collect the tax levied by all cities and towns in his respective county, except in case of such cities of the first and second and third classes as may provide by ordinance for the City Treasurer to collect the taxes, and is required to collect such city or town taxes at the same time as the state and county taxes, with the same penalties and interest in case of delinquency, and further provides:

"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 proportion as provided in Sections 2234 and 2235 of this code."

This section clearly requires the County Treasurer to sell for all city taxes at the same time as the sale is made for county and state taxes, and provides for the prorating of the receipts from the sale where the property is purchased by someone other than the county and for the prorating of the amount received by the county whenever the property is sold by the county, after having been purchased by it by reason of the failure to receive any bid when the property was offered for sale.

Section 2234 here referred to provides that whenever property sold to the county is redeemed, the money received on account of such redemption must be distributed as follows:

"The original tax and twenty per cent paid in redemption must be apportioned between the state and county, in the same proportion that the state tax bears to the county tax, and the balance must be paid to the county."

Section 2235 provides:

"Whenever the county has become the purchaser of any real estate sold for delinquent taxes, and the same has not been redeemed by the person entitled so to do, and the time for such redemption has expired, the Board of County Commissioners may at any time, by an order made and duly entered upon the minutes of its proceedings, sell the same at public auction; provided, however, that no such sale shall be made or confirmed unless the price offered shall be sufficient to discharge all accrued taxes to date of sale, together with interest and costs, but if the price so offered shall be the reasonable market value thereof, in the judgment of said Board of County Commissioners, then the said Board is authorized to accept said price so offered, and the chairman of said Board is authorized to execute a title therefor **vesting in the purchaser all the title of the state and county to the real estate so sold.** The money arising from such sale must be paid into the county treasury, and the Treasurer must settle for money so received as other state and county money."

Section 5214, in effect, reads into Sections 2234 and 2235 all city taxes whether for general or special purposes, requiring that the city be included in prorating the receipts from the sale of property, the same as the state and county, and, under the provisions of Section 2235, a deed by the county for property sold would convey to the purchaser the lien for city general and special taxes.

From the foregoing provisions, it is apparent that the County Treasurer should be required to sell these lots for city, county and state taxes. If no one offers to purchase the property at the sale, then the county should bid the property in for the amount of the total taxes, and, in case it is not redeemed, the county may sell the same for its reasonable market value in case it cannot secure a sufficient amount to discharge all accrued taxes to date of sale, and should apportion to the city its pro rata share of the receipts of said sale.

It is apparent that the town council has no jurisdiction in the collection of the special or general taxes levied by the town council, but that the County Treasurer should offer the property for sale, and, in case no other offer is received, the county would be required to purchase it. It follows that, if the property when sold by the county, after failure to redeem, does not bring sufficient to pay the special tax when prorated with other taxes, the special improvement district bonds cannot be paid, unless paid from some special fund, for which there is no statutory provision.

Very truly yours,

L. A. FOOT,
Attorney General.