

### **Cities and Towns—Disincorporation—Public Utilities.**

Section 4592, Revised Codes of 1921, construed as authorizing a town, upon its disincorporation, to maintain its lighting system.

Stuart McHaffie, Esq.,  
County Attorney,  
Ryegate, Montana.

My dear Mr. McHaffie:

You have requested my opinion as to whether the citizens of Lavina may disincorporate the town and at the same time maintain its lighting system.

Section 4974, R. C. M. 1921, provides for the disincorporation of a city or town whenever it appears by the census that the city or town has a population of less than 300 inhabitants; while Section 4975, R. C. M. 1921, provides for the payment of the debts of a disincorporated city or town.

The only provision of the statute which I find that might authorize the continuance of such lighting system is Section 4592. This section was intended to supplement the provisions of Chapter 17 of the Political Code, which deals with rural improvement districts, and to provide a means of maintaining improvement districts, such as storm sewers, lights or light systems, waterworks plants or sidewalks, or any other special improvements created under the provisions of this chapter. Since this lighting system has been created it would not be necessary to establish an improvement district for the purpose of creating the improvement, but I believe this section might be used for the purpose of maintaining an improvement already established by creating an improvement district for the purpose of maintaining such lighting system.

The section referred to (4592) reads as follows:

“Whenever any sanitary or storm sewers, lights or light systems, waterworks plants or sidewalks, or any other special improvements petitioned for, have been made, built, constructed, erected or accomplished as in this Act provided, it is hereby made the duty of the Board of County Commissioners, under whose jurisdiction the district was created, adequately and suitably to maintain and preserve said improvements and fully to keep the same in proper repair and operation, by contract, for such period of time or for the execution of a particular work or works, and in such way or manner as the Board shall deem suitable and proper; provided, that the Board shall not let any maintenance contract for a period to exceed three years. The whole cost of maintaining, preserving and repairing of said improvements in any improvement district shall be paid by assessing the entire district in the method provided by Section 4576 of this code. It shall be the duty of said Board to estimate as near as practicable the cost of maintaining, preserving or repairing the improvements in each district for each year beginning January first; and before the first Monday in September of each year the Board shall pass and finally adopt a resolution levying and assessing all the property within the district within an amount equal to the whole cost of maintaining, preserving or repairing said improvements within the district, and the same shall be proportioned as provided in Section 4576, supra. Said resolution levying assessments to defray the cost of maintenance, preservation or repairs of such improvements shall be prepared and certified to in the manner as near as may be to a resolution levying assessments for making, constructing and installing the improvements in said special improvement districts, and the money collected therefor shall be paid into a fund known as ‘Special Improvement District No..... Maintenance Fund,’ the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situate; and such fund shall be used to defray the expense of maintenance, preservation or repair of said improvements, and for no other purpose. Any special assessment levied and made for any of the purposes in this section mentioned, together with all costs and penalties, shall constitute a lien upon and against the property upon which said assessment is made and levied from and after the date of the final passage and adoption of the resolution levying the same, which lien can only be extinguished by payment of such assessment, with all penalties, costs and interest.

“The Board shall have the power not more than once in a year of changing, by resolution, the boundaries of any maintenance district. In all maintenance, preservation or repair work, the provisions of this Act as to contracts, bids and

bidders for construction work shall apply as near as practicable and the same shall be a guide for the proper execution of maintenance contracts.’

It is, therefore, my opinion that, should the town of Lavina be disincorporated, the lighting system of said town may be maintained.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.