Cities and Towns—Special Improvements—Assessments.

The superficial area rule is not proper in assessing against property for the construction of a sidewalk built in pursuance of Section 5244, R. C. M., 1921, under the circumstances stated.

Dean King, Esq.,
County Attorney,
Kalispell, Montana.

My dear Mr. King:

You have submitted to this office for my opinion the following question:

> "Where the ownership of two regularly platted city lots, one of which is a corner lot, is in two individuals, one owning the front portion and one the rear portion of the lots as they are platted, and where, under the provisions of Section 5244, Revised Codes of Montana, 1921, a sidewalk has been constructed along that part of the said lots which is the front thereof as the same are platted, may the entire lots be assessed for the cost of the construction of said sidewalk, and the amount thereof apportioned upon the 'superficial area' basis?"

Section 5244, R. C. M. 1921, provides in substance that the city council may order the construction of a sidewalk "in front of any lot or parcel of land" without the formation of an improvement district; that notice be given to the owner or agent of such property; that if the owner or agent fail for a period of thirty days to so construct such sidewalk the city council may construct the same or cause it to be constructed; "and shall assess the cost thereof against the property in front of which the same is constructed"; that the city council shall annually levy an assessment and tax against each lot or parcel of land in front of which sidewalks and curbs have been constructed by order of the city council.

It will be noted that the statute above uses the words "in front of any lot or parcel of land" in referring to the construction of sidewalks, and the words "property in front of which the same is consrtucted" in referring to the assessment that may be levied. As Section 6663, R. C. M. 1921, defines property as "the thing of which there may be ownership is called property," it would seem clear that in the statute the word property is used as referring to and synonymous with the words "lot or parcel of land."

Moreover, the use of the words **"lot or parcel"** of land clearly indicates that the intention was not to confine the operation of the statute to those lots which are regularly platted, and to apply only to those lots as a whole, but that it contemplated also irregular pieces of land and portions of lots where they were actually divided.

The words "in front" as used in the statute clearly mean immediately before or adjacent to the lot or parcel of land, and a sidewalk could, therefore, be in front of only one parcel of land, or one piece of property, and in this case the sidewalk is in front of that property or part of the lots which it immediately adjoins.

See Murray vs. City of Helena, 65 Mont. 485.

It is, therefore, my opinion that the statute clearly contemplates that the cost of construction of a sidewalk, under the circumstances, is to be borne by the lot or parcel or lots or parcels of land immediately adjacent to it, and that it would not be proper to charge the construction to the entire lots and to apportion it upon the basis of "superficial area."

Very truly yours,

L. A. FOOT,
Attorney General.