

Irrigation Districts—Taxation—Counties—Interest—Assessment.

Lands deeded to the county in an irrigation district are subject to further assessments.

Interest on delinquent taxes in an irrigation district does not cease when lands are deeded to the county.

Anthony Hork, Esq.,
County Clerk,
Hamilton, Montana.

May 13, 1926.

My dear Mr. Hork:

You have requested my opinion whether lands in an irrigation district that have been deeded to the county are subject to irrigation district assessments.

Irrigation district assessments are assessments levied according to benefits conferred on the property and are analogous to special improvement district taxes. (Cosman vs. Chestnut Valley Irr. Dist. Mont. 238 Pac. 879.)

Constitutional and statutory provisions exempting property from taxation have no application to special improvement district taxes. (*City of Kalispell vs. School Dist.*, 45 Mont. 221.)

Hence, the mere fact that the land is owned by the county does not prevent it from being subject to irrigation district assessments.

In section 582 of Page & Jones on taxation by assessment it is said:

"The fact that county property is exempt from general taxation, does not prevent the city from assessing it on the theory of benefits."

It is further said in the same section:

"Where the assessment of county property is permitted, the county is compelled to pay the amount of the assessment."

It will not do to say that the county is not liable for such assessments because no provision has been made for the payment of such assessments by a county. This is also true regarding school districts, yet the court in the case of *City of Kalispell vs. School District*, 45 Mont. 221, 230, in discussing this question, said:

"but the validity of the assessment does not depend upon the means by which the payment is to be enforced, and if the assessment is valid, and the proceeding by foreclosure of the lien is not available, because of the character of the property, the right will not fail because of failure of a specific remedy, but the courts will invoke any appropriate remedy to meet the exigencies of the particular case."

It is, therefore, my opinion that lands deeded to a county are subject to irrigation district assessments. This conclusion finds support in *State vs. Columbia Irrigation District*, 208 Pac. 27. It should be noted, however, that it is made the duty of the county commissioners to sell said lands within three months after the time named in section 2201 (section 7246 R. C. M. 1921).

You have also asked whether interest ceases on delinquent irrigation district assessments when deeded to the county.

Section 7240 R. C. M. 1921, in referring to irrigation district assessments, commands that the county treasurer:

"shall collect such taxes or assessments at the same time and in the same manner as county and state taxes."

Section 7242 provides that redemption shall be "the same as in cases where lands are sold for state or county taxes."

It is, therefore, apparent that the legislature intended that the procedure for the collection of irrigation district assessments shall be exactly the same as in the case of state and county taxes.

See also: *State ex rel. Spokane & Eastern Trust Co. vs. Nicholson* (Mont.) 240 Pac. 837.

When such lands are struck off to the county the county treasurer must issue debenture certificates in the sum provided for by section 7243, and the sum named "shall bear interest at the rate of one per centum per month from the date of said certificate until redeemed * * * or until paid from the proceeds of the sale of the lands and premises described therein, in manner provided for by section 2235 of these codes."

Section 7246 provides that when such lands are sold under section 2235 the proceeds shall be used to pay the holders of the debenture certificates the sums for which they were issued, together with interest, and further provides that "no lands * * * shall * * * be struck off or sold for a less sum than the amount of taxes and assessments * * * inclusive of interest thereon."

Hence, it is clear that interest on delinquent irrigation district assessments does not cease when the lands are deeded to the county. This is also apparent from section 2, chapter 89, laws of 1925, which authorizes the county to sell such lands to the irrigation district for the tax, together with penalty, *interest* and costs of publication and sale.

Very truly yours,

L. A. FOOT,

Attorney General.