

**Taxes—Special Improvement Assessments—Assessments  
—Liens—Delinquent Taxes.**

A sale of property for delinquent special improvement district assessments does not extinguish the lien when the property does not bring sufficient at the sale to discharge the lien.

February 10, 1928.

E. C. Clapper, Esq.,  
Mayor,  
Cut Bank, Montana.

My dear Mr. Clapper:

You have requested my opinion whether special improvement district assessments remain a lien upon the property after the property has been sold for delinquent taxes and a tax deed issued therefor. This is a question which has never been passed upon by the supreme court of this state.

Section 5247 R. C. M. 1921, in speaking of these assessments, provides that they constitute a lien upon the property, and in providing for the duration of the lien, this section contains this clause: "which lien can only be extinguished by payment of such assessment with all penalties, costs, and interest."

The general rule of law is that in the absence of a statute to the contrary, the sale of property in the manner provided by statute for delinquent taxes merges and extinguishes the tax lien upon a valid sale of the property.

See: *Gould v. City of St. Paul*, 139 N. W. 293;  
*Klatt v. City of Detroit*, 127 N. W. 409;  
*Smith v. Van Dyke*, 17 Wis. 214;  
*McQuillin on Municipal Corporations*, sec. 2109.

However, under statutes containing a clause practically identical with our statute above quoted, it has been held that the lien is not extinguished when the property is sold for a less sum than the amount required to pay the assessments in full.

See: *Allegheny City's Appeal*, 41 Pa. St. 60;  
*Hartford v. Bank*, 63 Atl. 658.

Our legislature, by the enactment of chapter 85, laws of 1927, has provided that when property is sold for delinquent taxes for a less sum than the aggregate of all taxes and assessments, the proceeds shall be prorated. This, however, does not in my opinion undertake to provide that the lien for special improvement district assessments shall be discharged or extinguished on such pro-rating. To hold that this chapter would have such effect would be equivalent to holding that this chapter impairs the obligation of contracts if it were held to apply to special improvement district assessments made prior to its passage.

Hence, while I am not free from doubt on the question, it is my opinion that the sale of property for delinquent taxes and the issuance of a tax deed to either the county or an individual does not extinguish the lien of special improvement district assessments unless the property is thereafter sold by the county or was sold to an individual originally for a sufficient amount to pay the assessment in full with all penalties, costs, and interest.

Very truly yours,

L. A. FOOT,  
Attorney General.