

Taxation—Cities and Towns—Special Assessments—Collection—Payment.

Under Chapter 78, Laws of 1929, the right of semiannual payment of taxes is abrogated insofar as special assessments for special improvements in cities and towns are concerned. Only the instalment that is due according to the resolution of the council must be paid in full on November 30th.

Walter R. Knaack, Esq.,
County Attorney,
Shelby, Montana.

October 21, 1929.

My dear Mr. Knaack:

You have requested an opinion whether Chapter 79, Laws of 1929, requires the collection of all special assessments for special improvements in cities and towns in one sum on November 30th and thereby preventing the payment of said special assessments in instalments over yearly periods.

In 1923 the legislature, by Chapter 96 of the Session Laws of that year, enacted that all taxes levied and assessed in the State of Montana should be payable one-half on or before the 30th day of November of each year and the other half on the 31st day of May of the following year. The Montana Supreme Court in the case of *Thomas vs. City of Missoula*, 70 Mont. 478, 226 Pac. 213, held that special improvement assessments levied by the city were embraced within the term "taxes" and therefore special improvement assessments payable in any year could be paid in semiannual instalments the same as general taxes could be so paid. Since this decision any instalment of special improvement assessments could be paid one-half in November and the other half in May of the following year.

At the last session of the legislature there was enacted Chapter 78 of the Session Laws of 1929, amending Section 5251 R.C.M. 1921 as theretofore amended relating to the collection of special improvement assessments within incorporated cities and towns and it there provided

that "all special assessments or instalments of special assessments in cities and towns duly and regularly levied by resolution, according to law, shall be payable on or before 6:00 o'clock p. m. on the 30th day of November of each year * * * ." To make Chapter 96 of the Session Laws of 1923 conform to this change the said Chapter 96 was also amended by the last legislature by Chapter 79, Laws of 1929. By this last amendment it is provided that all taxes levied and assessed in the State of Montana "except special assessments made for special improvements in cities and towns" shall be payable one-half on or before the 30th day of November of each year and the other half on or before the 31st day of May of the following year. It was also provided in said Chapter 79 that "special assessments, or instalments of special assessments, made for special improvements in towns and cities, duly and regularly made and levied by resolution, according to law, shall be payable on or before 6:00 o'clock p. m. on the 30th day of November of each year, * * * ."

From the foregoing it would appear, and it is my opinion that the object of the amendatory legislation was to withdraw the right of the semiannual payment of taxes insofar as the right heretofore existed with relation to special assessments for special improvements in cities and towns and to require whatever assessment is due and payable in any particular year to be paid in full on or before November 30th of that year.

As stated above, the object sought to be accomplished by the amendment was the abrogation of the rule heretofore in existence that special improvement assessments were payable in semiannual instalments. The amendments, although couched in somewhat ambiguous terms, did not intend to, and do not accelerate the payment of the deferred annual instalments when the special improvement assessments are by the resolution of the city or town council levying the same, payable in yearly instalments, and have nothing to do with any of said special improvement assessment instalments, except that which is payable in the particular year according to the resolution of the city council. If an entire special improvement assessment is by the resolution of the council made payable in one sum for this year then that sum would have to be paid in full on or before November 30th, but if only one instalment of said assessment is due this year according to the resolution, then only that instalment need be paid on or before November 30th, and the subsequent instalments remain to become due and payable in future years according to the resolution of the council.

The above construction is fortified by that provision of Chapter 78, Laws of 1929, above referred to, which provides "when one payment becomes delinquent, all payments shall at the option of the city or town council, by appropriate resolutions duly adopted become delinquent, * * * ." This is a distinct recognition of the preservation of the status of the deferred instalments so long as the current instalment is paid on or before November 30th.

It is therefore my opinion that by the amendments the legislature has withdrawn the right of semiannual payment of taxes insofar as

that right previously existed with relation to special improvement assessments for special improvements in cities and towns and that any assessment that is due in its entirety according to the resolution of the council levying the same must be paid in full on or before November 30th; but if according to said resolution the special assessment is payable in yearly instalments over a period of years, then only that instalment that is due in any one year according to the resolution need be paid in that year, but the instalment that is due must be paid in full on or before November 30th, leaving the other deferred instalments to be paid in like manner in the years in which they become due according to said resolution, unless, because of failure to pay the current instalment the council declares all the remaining instalments due.

Very truly yours,

L. A. FOOT,
Attorney General.