

**Cities and Towns—Municipalities—Special Improvement
Districts—Reconstruction—Taxes.**

A municipality has no authority to make a levy against an improvement district for reconstruction of the sidewalks but may proceed to reconstruct the same under the provisions of Section 5242, R.C.M. 1921.

Fred L. Fahrion, Esq.,
Town Clerk,
Columbus, Montana.

May 27, 1930.

My dear Mr. Fahrion:

You have requested an opinion on the following question:

"An improvement district was created in 1917 for the purpose of constructing cement sidewalks, the cost to be paid in eight annual installments.

"Taxes were duly levied to take care of the warrants with accrued interest as they became due, but through delinquencies in tax payments, and also due to the fact that after creation of the district a part of the lands was bequeathed by will by one of the owners to the State of Montana and thereafter ceased to pay all taxes; there is at this time an outstanding warrant against the district which should have been paid long ago and for which there are no funds to make payment, it being a matter of doubt whether the delinquent lands will ever sell for enough to take up and pay the back taxes.

"The walks in this district are badly in need of repairs, the top surface being broken up and in such condition as to cause inconveniences and danger to pedestrians, and should be repaired, and it is the wish of owners of property within the district, who have kept their taxes paid up, that the necessary repairs be made.

"The points upon which we wish advice are as follows: Can the council cause the work to be done, and improvement district warrants drawn against the original district for the costs, with a tax to be levied against the property included in the original district exclusive of that bequeathed to the state, the proceeds of said levy to be applied to the payment of warrants so issued?"

In answer I quote the following:

"A municipality may be authorized and empowered to levy special assessments for the cost of reconstructing sidewalks, or curbs, although an assessment had been levied for the original construction thereof, and the property owners must bear the burden, whenever such reconstruction becomes necessary." (44 C.J. 512, par. 2856).

"It is upon the theory that such construction may be a special or peculiar benefit to an abutter notwithstanding an earlier special assessment for the construction which has become outworn, and, whatever the obligation of the municipality to the traveling public, it owes no duty to the abutter, growing out of the original assessment, to reconstruct the sidewalks at its own expense." (Sayles vs. Pittsfield Public Works, 228 Mass. 93, 109 N.E. 829.)

However, I find no statute authorizing municipalities in this state to levy a special assessment for reconstruction purposes except as to street parkings. Section 5242, R.C.M. 1921, under general powers of cities and towns, provides:

"To regulate and provide for the construction or repair of sidewalks and foot pavements, and if the owner of any lot fails to comply with the provisions of the ordinance within such time as may be prescribed thereby, the council may contract for the construction and repair of such sidewalks or pavements, and the

city or town may pay for the same, and the amount so paid is a lien upon the lot, and may be enforced or the amount may be recovered against the owner by a suit before any court of competent jurisdiction."

Because of the fact that our statutes do not authorize a special levy for reconstruction purposes it is my opinion that a municipality has no authority to make such levy against an improvement district, but may proceed to reconstruct the sidewalks under the provision of Section 5242, *supra*. In view of this fact it becomes unnecessary to discuss the other questions submitted by you.

Very truly yours,
L. A. FOOT,
Attorney General.