

Opinion No. 256**Cities and Towns—Disincorporation—
Title to Real Property—County Com-
missioners—Taxation—Debts,
Payment of.**

HELD: Where a town is disincorporated, real property owned by it passes to county for sale to pay debts.

Taxes may be levied by board of county commissioners to pay debts of disincorporated town without limitation as to special funds.

June 27, 1933.

You have stated that the board of county commissioners has passed a resolution disincorporating the town of Sweet Grass, in accordance with Chapter 3, Laws of 1931; that the town was the owner of Lot 7, Block 3 of the original townsite of Sweet Grass and that it has liabilities amounting to \$13,119.65 while its cash assets aside from the above named lot are \$446.11. You have submitted the question whether the title to the lot has passed to the county or to the State of Montana.

Section 4975, R. C. M. 1921, upon disincorporation of a city or town, provides: " * * * all moneys in the hands of the city or town treasurer must be paid to the county treasurer, which must be applied in payment of the indebtedness of such city or town, and **all other property** must be delivered to the board of county commissioners, which must be sold and disposed of for the purpose of paying such indebtedness." Inasmuch as the town was indebted as above stated at the time of disincorporation and the statute requires that the property of the city or town be applied to the payment of indebtedness, I am of the opinion that it was not the intention of the legislature that the title to the real property in case the city or town were indebted, should not revert to the State of Montana but rather to the county for the purpose of paying the indebtedness. It is not necessary, of course, to consider

what would become of the title to real property if the city or town were not indebted or if the sale of said property was not necessary for the purpose of paying debts.

You have also inquired "whether or not the commissioners have power to make a levy for the General Fund and Police Fund larger than necessary to pay the warrants against the same and apply the surplus to payment of warrants registered against the street and alley fund, which would greatly expedite payment of the latter." It appears that the registered warrants in the General Fund amount to \$53.10, and in the Police Fund to \$842.31, and in the Street and Alley Fund \$12,224.24.

Section 4974 R. C. M. 1921 as amended by Chapter 3 Laws of 1931 provides: " * * * the board of county commissioners * * * must provide for the payment of the indebtedness of the same, and thereafter annually levy a tax on all the property situated within the limits of such city or town until all of such indebtedness is paid. * * *." I have been unable to find anything in our statutes or decisions which bears directly on this point and since the town has been disincorporated, it would seem that the county commissioners, who are commanded to provide for the payment of the indebtedness by the levy of a tax for that purpose, in the absence of some express limitation, are not bound by the limitations imposed on cities and towns in levying taxes according to the different funds.