

Opinion No. 105.

Rural Improvement Districts—Assessment of Lots and Parcels—Improvements.

HELD: In assessing lots and parcels for the cost of rural improvements as provided by Chapter 353 of the Political Code, 1935, improvements, which are part of the lots and parcels, should be included as a part of the assessed value of the lots and parcels.

May 18, 1937.

Mr. Phil G. Greenan
County Attorney
Great Falls, Montana

Dear Mr. Greenan:

You have submitted the question whether the cost of a rural improvement district, created and established according to Chapter 353 of the Political Code, R. C. M. 1935, for the purpose of irrigation, should be paid for according to the assessed value of the lots and parcels of land in the district, with the improvements thereon included, or whether, in determining the value of the lots and parcels, the improvements should be deducted.

Originally, rural improvements were authorized by Chapter 123, Laws of 1915. This chapter provided that such improvements might be created and established according to Chapter 89, Laws of 1913, which authorized the creation of special improvement dis-

tricts by cities and towns. Section 14 thereof is now Section 5328, R. C. M. 1935, and provided that the cost of the improvements should be assessed according to the frontage of the lands, or, in other words, on the lineal feet basis. Chapter 123 was superseded by Chapter 126, Laws of 1917, which, in Section 11, provided that the costs should be borne by each lot or parcel, in such proportion as each lot or parcel bore to the entire district. In other words, the area method of assessing the cost against the lots and parcels was substituted for the lineal frontage method. Chapter 156 was amended by Chapter 67, Laws of 1919, but Section 11 thereof was not changed. The law was again amended by Chapter 147, and Section 11 thereof again provided that the cost of improvements should be in proportion to the area. The law was not changed in this respect when it was again amended by Chapter 133, Laws of 1929. In Chapter 131, Laws of 1935, the area method of assessing the cost was abandoned and the assessed value method substituted. Section 4584 reads as follows:

“ * * * The board of county commissioners shall assess the entire cost of such improvements against the entire district and each lot or parcel of land assessed in such district to be assessed with the percentage of the whole cost which its assessed valuation as determined by the last preceding assessment roll of the county bears to the total assessed value of **all the property** in the district; * * *.”
(Underscoring ours.)

° Since the lineal frontage basis, as well as the area basis for assessment, have been abandoned and the legislature did not see fit to deduct the value of the improvements from the assessed value of the lots or parcels, we are unable to advise that the value of such improvements should be deducted from the value of the lots or parcels or that such deduction may be justified. It would seem that by using the phrase “all the property,” the legislature intended to include improvements which have become a part of the lots and parcels. Furthermore, for the payment of the cost of constructing and maintaining “sanitary or storm sewers, light systems, water-works plants, water systems, sidewalks, and such other special

improvements as may be petitioned for," it would seem more just that such improvements should be included on the theory of benefits derived.

You have pointed out that a small tract of one acre, valued at \$60.00 per acre, and having a \$2500 residence thereon, would not be benefitted as much as a ten acre tract with a \$200 shack thereon, although the one acre tract would be assessed for more than the ten acre tract. In this connection, you add: "The water system is for irrigation purposes and not for drinking or household use." It may be questioned whether or not an improvement district, created for the purpose of irrigating lands, can properly be classified as a "water system" within the meaning of Section 4574, R. C. M. 1935. Perhaps such an irrigation system should be classified as an irrigation district, within the meaning of Chapter 84 of the Civil Code, R. C. M. 1935. We do not have all the facts before us and therefore do not pass upon that question but we suggest that you investigate that feature of it.