

Opinion No. 111.

Cities and Towns—Taxation—Interest—Special Improvement Assessments.

HELD: Under Section 5245 R. C. M. 1935 and Chapter 51, Laws of 1937, a city may not charge interest on interest delinquent on special improvement assessments.

June 11, 1937.

Mr. F. C. Fluent
City Attorney
Butte, Montana

Dear Sir:

You have submitted to this office the following statement of facts and ask for my opinion as to the law upon the same.

It appears that the City of Butte has, for some years past, been collecting interest on special improvement taxes at the rate of six per cent per annum,

and that when any installment is past due the interest due upon said installment has been added to the principal and six per cent interest collected on the whole amount. It further appears that this procedure has been followed by virtue of such authority of law as is vested in the city under Section 5245, of Chapter 398, of the Revised Codes of Montana, 1935, which reads as follows:

"Upon all special assessments and taxes, levied and assessed in accordance with any of the provisions of this act, simple interest shall be charged at the rate of six per cent. per annum, and the treasurer, in collecting such special assessment taxes, if the same are payable in one installment, shall collect such interest as may be shown to be due thereon by the resolution levying such assessments; and if such assessment be payable in installments the treasurer shall, at the time of collecting the first installment, collect such interest as may be shown to be due on such assessment by the resolution levying such assessment, and thereafter he shall collect with each subsequent installment interest on the whole amount remaining unpaid."

The section above referred to has been amended by Chapter 51 of the 1937 Session Laws, which is as follows:

"Upon all special assessments and taxes, levied and assessed in accordance with any of the provisions of this act, simple interest shall be charged at a rate not to exceed six per cent (6%) per annum, and the treasurer, in collecting such special assessment taxes, if the same are payable in one installment, shall collect such interest as may be shown to be due thereon by the resolution levying such assessments; and if such assessment be payable in installments the treasurer shall, at the time of collecting the first installment, collect such interest as may be shown to be due on such assessment by the resolution levying such assessment, and thereafter he shall collect with each subsequent installment interest on the whole amount remaining unpaid."

While these tax assessments and the computation of interest were made under authority of Section 5245 of Chapter 398 of the Revised Codes of Montana, 1935, and while sections 2169.2, 2169.3, and all of Chapter 199 of the Revised Codes of Montana, 1935, have no relation to Chapter 398, supra, yet certainly by inference and implication it appears that special improvement taxes shall not, in reference to compound interest at least, be treated differently than delinquent taxes due the county, and the county is prohibited from charging compound interest upon delinquent taxes. However, it is not necessary to determine whether or not any other provisions of the law are in conflict with Section 5245 of the Revised Codes of Montana, because Chapter 51 of the 1937 Session Laws is the last legislative enactment upon the subject, and in the event of any conflict Chapter 51 would supercede all other former statutes. (It is our opinion that there is no conflict.)

It has been the policy of the legislature, through the extension of time for payments and otherwise, to liberalize the law in reference to the imposition of tax collections, and to make the burden just as light as possible upon the taxpayer. The legislature has recognized the economic conditions that have confronted the lot of the overburdened taxpayer, and has endeavored to lighten that burden as much as possible.

Under Chapter 51 of the 1937 Session Laws, the legislature has established a maximum rate of interest, not to exceed six per cent, that may be collected upon these special assessment taxes. Chapter 51 does not seek to establish a minimum rate.

Under section 5245 the city council was compelled to charge six per cent simple interest and not less. That section fixed not only a maximum, but also a minimum. Under the amendment only a maximum rate was fixed, and the city council may, by resolution, designate a lesser rate of interest than six per cent, and may even refuse to fix any rate of interest, and in that manner conceivably create more or less of a moratorium. However, the rate of interest shall be fixed at the time of the levying of such assessment, and the council can not decrease the rate for improvement dis-

tricts already created. Both section 5245 and Chapter 51 specifically provide that the interest charged shall be **simple** interest. The language positively forbids the compounding of interest. When the statute provides that there shall be collected with each subsequent installment interest on the whole amount due remaining unpaid, the language has reference to the fixing of a date on which interest can be computed, rather than authorizing the charging of interest on interest. (See *Glacier County v. Halvorson Mercantile Co.*, 93 Mont. 521.)

Therefore, it is my opinion that the City of Butte is without power or authority to charge interest upon interest, or to compound the interest. The City of Butte is entitled to charge only simple interest upon such unpaid special improvement assessments, and it is my view that it has acted erroneously and without authority in law in charging compound interest upon these unpaid special improvement assessments. This office cannot agree or concur in the opinion that you have rendered the city treasurer wherein you state that the city has the authority to compute the amount due the City of Butte by computing interest upon interest.