

No. 337

**IRRIGATION DISTRICT COMMISSIONERS—COUNTY
TREASURER—AUTHORITY**

Held: Board of commissioners of irrigation district may not direct a county treasurer how he shall collect or not collect taxes or assessments of an irrigation district. The legislature has, in mandatory language, directed the county treasurer as to his duties therein.

January 6, 1942.

Mr. E. Gardner Brownlee
County Attorney
Ravalli County
Hamilton, Montana

Dear Mr. Brownlee:

You have submitted the following question for my opinion:

“May the board of commissioners of an irrigation district direct the county treasurer not to collect the assessments levied against lands in their district as follows, ‘That the county treasurer be permitted to accept the payment of county taxes without the district water charges for 1936 on the property of Thousand Acres Incorporated?’”

Your inquiry raises the question of the authority of the board of commissioners of an irrigation district under the laws of the state relative to irrigation districts.

Irrigation districts are creatures of the legislature. The commissioners of an irrigation district, therefore, have only such authority and power

as the legislature has granted; and when the commissioners of an irrigation district act, they must be able to point to the statutory authority therefor.

Our Supreme Court has stated, "The power to act without authority does not exist."

State ex rel. Bean v. Lyons, et al., 37 Mont. 354, 364; 96 Pac. 922.

"The fact that the contemplated action may be for the best interests of the county is not an admissible argument. The doctrine of expediency does not enter into the construction of statutes."

Franzke v. Fergus County, 76 Mont. 150, 156, 245 Pac. 962.

I find no authority in the powers granted commissioners of irrigation districts to direct the county treasurer in such a manner; in fact, the county treasurer is directed in mandatory language as to his duties in collecting the assessments of irrigation districts by Sections 7239 and 7240, Revised Codes of Montana, 1935, as follows:

"Section 7239. County treasurer as custodian of district funds.

The county treasurer of the county wherein the office of an irrigation district is located shall be the custodian of all funds belonging to the district, and he shall pay out such funds upon the order of the board of commissioners, except as to payments on bonds and interest, and payments under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States, as in Section 7174 provided, for which no order shall be necessary; such orders shall be signed by the president and secretary of the board, and shall bear the official seal of the district. Where such orders are for the payment of money for construction work, the same shall be accompanied by and attached to the written estimate of the engineer in charge of such construction work."

"Section 7240. Collection of taxes or assessments. On or before the second Monday in September of each year the board of commissioners shall furnish the county clerk in each county in which any of the lands of the district are situate a correct list of all the district lands in such county, together with the amount of the total taxes or assessments against said lands for district purposes, and the county clerk of each county shall immediately thereafter cause said assessment-roll to be entered in the assessment-book of said county of each year, and prior to the delivery of the duplicate assessment-book to the county treasurer. **The county treasurer of each county shall collect such taxes or assessments at the same time and in the same manner as county and state taxes.**" (Emphasis mine.)

Our Supreme Court has stated:

"While the district levies the tax to pay the interest on its bonds and to create a sinking fund, the county clerk is required to extend these taxes on the assessment-roll, and the county treasurer is required to collect the taxes at the same time and in the same manner as county and state taxes are collected (Sec. 7240), and these officers are compelled to perform these services for the district without additional compensation."

Crow Creek Irr. Dist. v. Crittenden, 71 Mont. 66, 71, 227 Pac. 63.

It is the general rule of law that, where the statutes provide a procedure for the collection of a tax or an assessment, such procedure is exclusive.

On this subject, our Supreme Court has held:

"Section 7242 provides: 'Delinquent sales of land for unpaid taxes or assessments shall be made in the same manner as for state and county taxes in the respective counties where such lands are situated,' etc.

"It thus appears that an irrigation district tax or assessment constitutes a lien upon the land, and that in collecting the same the treasurer must follow the method prescribed for the collection of state and county taxes, which are made a lien upon real property.

"It is the general rule that, when the statute which creates the tax provides a special remedy for its collection, that remedy is exclusive. (*Marion County v. Woodburn Merc. Co.*, 60 Or. 367, 41 L. R. A. (n. s.) 730, 119 Pac. 487; *Montezuma Valley W. S. Co. v. Bell*, 20 Colo. 175, 36 Pac. 1102; *Bergerman Bros. v. Beerbohm*, 34 Colo. 118, 81 Pac. 701; *Du Bignon v. Mayor etc. of Brunswick*, 106 Ga. 317, 32 S. E. 102; *Plymouth County v. Moore*, 114 Iowa 700, 87 N. W. 662; *Stafford County v. First Nat. Bank*, 48 Kan. 561, 30 Pac. 22; *Richards v. County Commrs.*, 40 Neb. 45, 42 Am. St. Rep. 650, 58 N. W. 594; *Cooley on Taxation*, 3d ed., p. 18; *Brule County v. King*, 11 S. D. 294, 77 N. W. 107; *City of Fairbault v. Misener*, 20 Minn. 396 (Gil. 347).

"An examination of our statutes discloses that the steps to be taken by the county treasurer in the collection of state and county taxes made a lien upon real property, are clearly and explicitly indicated. They are pointed out in Chapter 172, Part III, Revised Codes of 1921, as amended by Chapter 96 of the Session Laws of 1923. The requirements of these statutes are mandatory. The treasurer must advertise and sell the real property as therein commanded. He is not given the option to abandon a sale of the real property and pursue the personal property of the delinquent. The statutory procedure for collecting such taxes being adequate, it is exclusive."

State v. Nicholson, 74 Mont. 346, 351, 240 Pac. 837.

"However, as in the case of school districts, the county treasurer is made the treasurer of the district (Secs. 7239 and 7240, Rev. Codes 1921), and the irrigation district stands in the same position, and is subject to the same disabilities, as the school district with respect to funds in the county treasury."

State v. McGraw, 74 Mont. 164, 240 Pac. 817.

It is therefore apparent and it is my opinion the board of commissioners of an irrigation district does not have the authority to direct the county treasurer as to the collecting of assessments levied by the board of commissioners of an irrigation district; the legislature has directed the county treasurer as to his duties therein, in mandatory language, and the legislature is the supreme authority in such matters. The county treasurer must follow the method prescribed by the legislature in collecting such taxes or assessments at the same time and in the same manner he pursues in collecting county and state taxes.

Sincerely yours,

JOHN W. BONNER
Attorney General