

Opinion No. 71.**Special Improvement District
Warrants—County, Liability of—
Rural Improvement Districts—
County Treasurer—County
Commissioners.**

Held: A county is not liable for unpaid rural improvement district warrants resulting from the failure of the county officers to levy on all the property within the improvement district and to take the necessary steps for the collection of the assessments.

October 18, 1947

Mr. Bert W. Kronmiller
County Attorney
Big Horn County
Hardin, Montana

Dear Mr. Kronmiller:

You have requested my opinion concerning the liability of the county for special improvement district warrants which were issued in payment for improvements in a rural improvement district.

You advised me that the resolution of the County Commissioners creating the rural improvement district described the boundaries of the district as "The platted townsite of Wyola, Montana, as shown by the records on the file in the office of the County

Clerk and Recorder of Big Horn County, Montana." A resolution was not passed by the Board of County Commissioners in levying and assessing a tax upon all the property in the district as required by Section 4586, Revised Codes of Montana, 1935, and the assessments made by the County Treasurer did not cover all of the property within the platted townsite of Wyola. Also, the warrants issued by the commissioners did not comply with the provisions of Section 4593, Revised Codes of Montana, 1935, but did contain the limitation that the warrants would be paid "Out of any money in the treasury belonging to the Improvement District No. 1."

If all of the land within the townsite had been assessed the few outstanding warrants would be retired.

In answering your question it is important to observe two principles which are found in *Witter v. Phillips County*, 111 Mont. 352, 109 Pac. (2d) 56.

"It is, of course, elementary that, as a general rule, warrants payable out of a special fund cannot be made the general obligation of the county, but resort must be had to that fund only. . . .

"By Chapter 123, Laws of 1915, the boards of county commissioners were given power to create special improvement districts outside the limits of incorporated cities and towns in conformity with the provisions of Chapter 89 of the Laws of 1913. It is to be noted that the county was not obliged to create such districts. Counties were simply given the authority to do so in the event that they voluntarily chose to do so. It is our view that when the board of county commissioners chose to create the district, the county placed itself in exactly the same position as a city which creates such a district, and that it assumed the same duties and obligations that are assumed by the city when it creates a special improvement district."

The first of the above quoted rules applies under the facts given as the warrants in question, by their term,

were payable from the funds to the credit of the special improvement district.

The second rule places the county in the same position as a city which has created special improvement districts. This would make the case of *Gagnon v. City of Butte*, 75 Mont. 279, 243 Pac. 1085, applicable wherein the Court said in regard to the failure to collect delinquent assessments:

"The plaintiff, because of his interest in having the obligations paid, was required to know that which was being done or left undone in the premises by the city treasurer, and was afforded ample remedy under the law to compel the city treasurer to follow the mandates of the statute in the subjection of property embraced within the improvement district to the payment of the assessments levied. Consequent to the nature of the bonds and the law authorizing their issuance he had a special interest in seeing that the city treasurer made collection of all delinquent assessments within the improvement district or subjected the property benefited to sale where the owners thereof had failed to pay the tax, whereas the general taxpayers would in most instances, be entirely oblivious of the failure of the city treasurer to perform his simple duty in this respect and of possible consequences. Being in possession of all the facts, and directly affected by the inaction of the city treasurer, the plaintiff could have instituted proceedings at any time to compel the city treasurer to perform his duty after the assessments became delinquent; whereas ordinarily the general taxpayers would be in entire ignorance of the conditions existing."

The above stated rule would apply under the facts submitted in that the warrant holders could have compelled the board of county commissioners and the county treasurer to make proper assessments and collect the same. There is no question here of the diversion of funds, but a failure to assess and collect a sufficient amount to pay the warrants.

See: Broad v. City of Moscow
15 Ida. 606, 99 Pac. 101.

It is my opinion that a county is not liable for unpaid rural improvement district warrants resulting from the failure of the county officers to levy on all the property within the improvement district and to take the necessary steps for the collection of the assessments.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General