

Opinion No. 78**Cities and Towns, Powers of With Respect to Special Improvement Districts—Special Improvement District Revolving Fund, Must Be Maintained for the Benefit of All Districts.**

Held: 1. A City does not have the power to establish a separate account in its Special Improvement District Revolving Fund to be used only as aid to designated Special Improvement Districts. The fund must be maintained for the benefit of all Special Improvement Districts.

January 6, 1950.

Mr. W. A. Brown
State Examiner
State Capitol
Helena, Montana

Dear Mr. Brown:

You have requested my opinion concerning the legality of a separate account in a City's Special Improvement District revolving fund. You advised me that a bid was submitted with the following conditions:

"The City will establish a separate account in its Special Improvement District revolving fund, to be used only for the purpose of making loans or advances to said Improvement District Numbers 121 and 122 funds, sufficient to make good any deficiency in said funds for the payment of principal and interest on said bonds as such payments become due. The City Council will provide funds for said account by annually making a tax levy and/or transfer from the general fund, in the maximum permitted by the provisions of RCM, 1935, Section 5277.2, until there shall be accumulated in said account the sum of at least \$35,000.00 over and above any amounts required to meet deficiencies in said District Funds for the payment of principal or interest due on or before the first day of January next following; and thereafter additional tax levies or transfers shall be made each year in amounts at least sufficient to maintain said account at all times at such level."

Section 5277.1 to 5277.5, Revised Codes of Montana, 1935, as amended (now Sections 11-2269 through 11-2273, Revised Codes of Montana, 1947) provide for the creation of a revolving fund for the

protection of special improvement bond holders. Under the provisions of Section 5277.3 as amended by Chapter 179, Laws of 1945 (now Section 11-2271, Revised Codes of Montana, 1947) money from the revolving fund may be loaned to a Special Improvement District for the purpose of paying any deficiency in either principal or interest which has become due and which has not been paid by reason of the lack of funds in the Special Improvement District fund. The Constitutionality of Special Improvement District Revolving funds was upheld in *Stanley v. Jeffries*, 86 Mont. 114, 284 Pac. 134.

The answer to your question is found in Section 5277.1, Revised Codes of Montana, 1935 (now Section 11-2269, Revised Codes of Montana, 1947) which reads as follows:

"The City or Town Council or Commission of any City or Town which has heretofore created, or may hereafter create, any Special Improvement District or Districts for any purpose, may in its discretion, as to such District or Districts hereafter created, and shall, as to such district or districts hereafter created, in order to secure prompt payment of any Special Improvement District bonds or warrants issued in payment of improvements made therein, and the interest thereon as it becomes due, create, establish, and maintain by ordinance a fund to be known and designated as "Special Improvement District Revolving Fund."

This Section in providing that the City or Town "shall, as to such Districts or District hereafter created, create, establish, and maintain by ordinance a fund to be known and designated as "Special Improvement District Revolving Fund," has precluded the passage of an ordinance limiting the protection of the revolving fund to bond holders of specified Improvement Districts. In other words all bond holders of improvement districts which are established after the enactment of Section 5277.1 are entitled to the benefits of the revolving fund and a City Council which attempts to limit the application of the revolving fund to bond holders of specified Districts exceeds its authority. Our Supreme Court in *Wibaux Improvement Co. v. Breitenfeldt*, 67 Mont. 206, 215 Pac. 222, defined the rules of construction of a statute pertaining to the powers of a City in the following language:

"There is not any principle of law more firmly established than this: That a City or Town in this State has only such authority as is conferred by law, either in express terms or by necessary implication, and whenever there is a reasonable doubt as to the existence of a particular power the doubt will be resolved against the municipality and the right to exercise the power will be withheld."

The requirement of the bid that the City maintain a balance of \$35,000.00 in the revolving fund for the benefit of the two Improvement Districts might result in a violation of Section 6, Article XIII of the Montana Constitution. In *Hanson v. City of Havre*, 112 Mont. 207, 114

Pac. (2d) 1053, it was held that the revolving fund does not come within the contemplation of Section 6, Article XIII of our Constitution, which prohibits indebtedness in excess of three per cent of the taxable property of a City, for the reason that special Improvement Districts may merely borrow from the fund and the City receives a lien as security. However, the provision, in the bid under consideration, of a fixed amount which must be available for specified Districts creates a contract obligation between the purchaser of the bonds and the city and results in an indebtedness within the meaning of Section 6, Article XIII of the Constitution.

It is therefore my opinion that a City does not have the power to establish a separate account in its Special Improvement District Revolving fund to be used only as aid to designated Special Improvement Districts.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.