

Opinion No. 52.

Rural Improvement Districts — Contractors to Be Paid in Warrants or Bonds—Assessments on Land Within Rural Improvement Districts.

HELD: 1. Contracts for making improvements in rural improvement districts must be paid in warrants or bonds of the rural improvement districts.

2. Where a rural improvement district is located within five miles of the boundary of an incorporated city or town, the cost of said district shall be assessed on an area basis.

3. Where a rural improvement district is located more than five miles from the boundary of an incorporated city or town, it is optional with the Board of County Commissioners whether the cost of the rural improvement district shall be assessed on an area basis or on a valuation basis. If the Board of County Commissioners elects to apportion the assessments for the cost of a rural improvement district on a valuation basis, the improvements on the land are not to be considered in the computation of the assessment for each lot or parcel of land.

January 12, 1954.

Mr. Henry L. Grant, Jr.
County Attorney
Stillwater County
Columbus, Montana

Dear Mr. Grant:

You have requested my opinion concerning two questions about rural improvement districts.

You ask: First, may the bonds of a rural improvement district be sold and the proceeds of the sale deposited with the county treasurer and payment made to the contractor from these funds as the work progresses; second, are the improvements on the real property within a rural improvement district to be considered in the computation of the assessment for the project?

Your first question is answered by Section 16-1621, R. C. M., 1947, which reads as follows:

"Whether provided in the call for proposals, or not, all contracts let under the provisions of this Act shall be payable in bonds or warrants issued under the provisions hereof, and the board of county commissioners may provide by contract with the person, persons or corporation doing the work, or making the improvement, or maintaining, preserving, or repairing the same, for the payment of which such warrants or bonds are issued, to deliver the said warrants or bonds in installments as the work progresses, or upon the entire completion thereof; provided, however, that no warrants or bonds must be delivered to such contractor or contractors in excess of the amount of work actually done at the time of the delivery; nor shall the total amount issued be in excess of the total cost and expense of the improvements, and no warrants or bonds shall be delivered or received in payment of a less sum than its face value. And when it becomes necessary to pay for private property taken for the opening, widening or extending of any street, avenue or alley, or to pay any amount awarded or covered on account of damages to any property caused by the making of any improvements, in money, in cases where the persons whose property is so taken or damaged, refuse to receive pay in warrants or bonds, then the board of county commissioners shall have the power, under such regulations as it may prescribe, to sell such bonds or warrants for not less than par, and devote the moneys derived therefrom to the payment of the damages assessed or agreed upon for such property or the damages thereto."

The above quoted language is not ambiguous and does not need interpretation. By the terms of this statute the warrants or bonds are to be delivered to the contractor as the work progresses or at the completion of the entire project. The latter part of the section states that payment for private property taken for the use of the improvement district may be paid for by warrants if the owner of the property will accept the same, but otherwise the warrants may be sold and the funds used to pay the claim. This is a recognition that the warrants or bonds are

the primary means of payment of obligations of rural improvement districts and the conversion of the warrants or bonds by sale into money is authorized in only one specified instance. The contractor doing the work is to be paid in warrants or bonds.

The rule in regard to the bonds or warrants of special improvement districts in cities or towns is different than that of rural improvement districts. Section 11-2232, R. C. M., 1947, makes it the duty of the city or town council to sell the bonds or warrants for cash and to use the proceeds of such sale in making payment to the contractor.

In answering your second question, it is necessary to consider Section 16-1611, R. C. M., 1947, which specifies the manner of assessing the property within the rural improvement district for paying the cost of the project. This section reads in part 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 that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places; or where said rural improvement district is located more than five (5) miles from the boundary of an incorporated city or town said assessment, may, at the option of the board of county commissioners, be based upon the assessed value of the lots or pieces of land within said district . . . "

From this quoted provision it is apparent that the cost of the rural improvement district shall be assessed on an area basis if said district is located within five miles of the boundary of an incorporated city or town. Where the rural improvement district is located more than five miles from the boundary of an incorporated city or town, it is optional with the board of county commissioners whether the assessment be made on an area basis or on a valuation basis. If the area basis is used, then, without regard to the valuation of the property and any improvements thereon, each lot or portion of land shall be assessed with that part of the whole cost which its area bears to the

area of the entire district. Judicial approval was given to the "superficial area" rule which the legislature had adopted as a basis for computing the assessments in special improvement districts in the case of *McMillan v. Butte*, 30 Mont. 220, 76 Pac. 203, and this case has been approved many times by later court decisions.

The valuation basis for determining assessments in rural improvement districts is peculiar to such districts, as it is not used for cities or towns. Apportionment of the burden of assessments upon property in proportion to its value has been recognized by many courts as a proper means of allocating the cost of the improvements. That such means may be inequitable is recognized in 48 Am. Jur. 619, where the text states:

"However, while, for the purpose of general taxation, value is the fairest basis for apportionment, it may not be so for the purpose of paying the cost of local improvements. Thus, of two lots equally benefited by the improvement, one might by reason of buildings or other improvements upon it be worth many times as much as the other, and on the basis of valuation be taxed for many times as much."

This unfairness is avoided in the statute under consideration as the "value of the lots or pieces of land" is used as the assessment basis. While it is true that for all general purposes buildings and improvements on land are considered a part of the real property, for taxation purposes in Montana Section 84-401, R. C. M., 1947, states that: "Land and the improvements thereon must be separately assessed." Having used the words "lots or pieces of land" in the statute under consideration, it is a reasonable assumption that the land without reference to the improvements thereon shall be used in apportioning the cost of the rural improvement district.

It is, therefore, my opinion that contracts for making improvements in rural improvement districts must be paid in warrants or bonds of the rural improvement districts.

It is further my opinion that where a rural improvement district is located

within five miles of the boundary of an incorporated city or town, the cost of said district shall be assessed on an area basis. Where a rural improvement district is located more than five miles from the boundary of an incorporated city or town, it is optional with the board of county commissioners whether the cost of the rural improvement district shall be assessed on an area basis or on a valuation basis. If the board of county commissioners elects to apportion the assessments for the cost of a rural improvement district on a valuation basis, the improvements on the land are not to be considered in the computation of the assessment for each lot or piece of land.