

Opinion No. 40

**COUNTIES; Tax deeds; improvement district assessments — TAXATION; Tax deeds; effect on special improvement assessments—
SECTION 84-4170, REVISED CODES OF MONTANA, 1947.**

- Held:**
- 1. A county which acquires title to real property by tax deed is liable for the payment of installments of special improvement assessments which become due AFTER the execution of the tax deed.**
 - 2. The issuance of a tax deed extinguishes the lien for installments of special improvement assessments on the property which became due before the execution of the tax deed.**

April 11, 1962

Mr. Robert L. Woodahl
Teton County Attorney
Choteau, Montana

Dear Mr. Woodahl:

You have requested my opinion on the following questions:

1. Is a county which acquires title to real property by tax deed liable for the payment of special improvement district assessments on such property?

2. Does the sale of property for delinquent taxes extinguish the lien for special improvement district assessments levied by cities and towns?

In **Cascade County v. Weaver**, 108 Mont. 1, 90 Pac. 2d 164 (1939) Cascade County brought an action to quiet title to a certain lot in the city of Great Falls which had been acquired by the county by virtue of a tax deed proceeding. The city defended asserting a lien on the property for installments of a special improvement assessment which became due after the date of the issuance of the tax deed to the county. The court reviewed the Montana statutes and decisions on this subject and concluded that a county is liable for the payment of those installments of special improvement assessments which fall due after the issuance of a tax deed on the property.

The statute construed in **Cascade County v. Weaver** was Section 2215.9, RCM, 1935, which is now codified as Section 84-4170, RCM, 1947. In pertinent part, that statute provides:

"The (tax) deed . . . shall convey to the grantee the absolute title to the lands described therein as of the date of the expiration of the period of redemption, free of all encumbrances and clear of any and all claims of said defendants to said action except . . . the lien of any special, local improvement . . . assessments levied against the property **payable after the execution of said deed . . .**" (Emphasis supplied.)

In **Hartman v. Nimmack**, 116 Mont. 392, 154 Pac. 2d 279 (1944) our Supreme Court held that any installments of special improvement assessments payable before the issuance of a tax deed are extinguished by the execution of a tax deed. The opinion of Attorney General Foot, at 12 Report & Official Opinions of the Attorney General 223, which holds to the contrary was of course, overruled by this decision of the Supreme Court.

In view of the above cited cases, it is my opinion that:

1. A county which acquires title to real property by tax deed is liable for the payment of installments of special improvement assessments which became due **after** the execution of the tax deed.
2. The issuance of a tax deed extinguishes the lien for installments of special improvement assessments on the property which became due before the execution of the tax deed.

Very truly yours,
 FORREST H. ANDERSON
 Attorney General