

VOLUME NO. 37

OPINION NO. 52

COUNTIES - Rural Special Improvement Districts; COUNTY COMMISSIONERS - Designation of RSID engineer; RURAL SPECIAL IMPROVEMENT DISTRICTS - Approximate estimate of cost of improvement; RURAL SPECIAL IMPROVEMENT DISTRICTS - Engineering fees; RURAL SPECIAL IMPROVEMENT DISTRICTS - Resolution of intention to create; REVISED CODES OF MONTANA, 1947 - Sections 16-1601, 16-1602, 16-1611, 16-1616, 16-1626.

- HELD: 1. The approximate estimate of engineering fees set forth in the resolution of intention does not operate as an absolute limitation upon the liability of the district for payment of engineering costs actually incurred.
2. The engineer designated by the board of county commissioners to supervise the work of an RSID has no authority to incur costs substantially in excess of the approximate estimate of the total cost of the improvement as stated in the resolution of intention to create such district.

3 August 1977

Robert L. Deschamps III
Missoula County Attorney
Missoula County Courthouse
Missoula, Montana 59801

Dear Mr. Deschamps:

You have asked for my opinion concerning the following question:

Whether the county must pay all engineering fees for a Rural Special Improvement District [RSID] as apparently contemplated by section 16-1616, R.C.M. 1947, or if the total engineering fees for an RSID are limited to the amounts set out in the Resolution of Intent specified in section 16-1602, R.C.M. 1947.

Chapter 16, Title 16 of the Revised Codes of Montana contains the provisions authorizing the board of county commissioners to create Rural Special Improvement Districts [RSID] for the purpose of providing improvements petitioned for by

residents of thickly populated localities outside the limits of incorporated towns and cities. Section 16-1601, R.C.M. 1947. As a part of their duties in creating an RSID, the commissioners are required to designate an engineer who is to have charge of the work involved in making the improvement. Section 16-1602, R.C.M. 1947. The compensation to the engineer for work done by him/her is denominated an incidental expense and required to be considered a part of the cost of making the improvement. Sections 16-1626(3) and 16-1616, R.C.M. 1947. Except for that part of the cost of any street, avenue or alley intersection that the board may elect to pay out of funds available for that purpose, the entire cost of the improvement is to be assessed against the entire district. Section 16-1611(1), R.C.M. 1947. It follows that the district is liable for the certified costs and expenses incurred by the district engineer in connection with the special improvement district. Section 16-1616, R.C.M. 1947.

Your question is whether the amounts set out for engineering fees in the resolution of intention operate as an absolute limitation upon the liability of the district for actual engineering costs of the district.

Section 16-1602, R.C.M. 1947, states:

Before creating any special improvement district for the purpose of making any of the improvements, acquiring any private property for any purpose authorized by this act, the board of county commissioners shall pass a resolution of intention so to do, which resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvements which are to be made, designate the name of the engineer who is to have charge of the work, and an approximate estimate of the cost thereof. (Emphasis added.)

The Montana Supreme Court, in determining the meaning of "approximate estimate" in the resolution of intention creating special improvement districts for cities and towns, stated:

The purpose of the estimate is to notify the property owner that the improvements will cost a certain amount of money ... If the estimate should bear no reasonable relation to the actual cost of

the improvements without giving any subsequent notice of intention to revise, then the whole purpose and intent of that portion of section 11-2204 which requires that an estimate of the cost be contained in the resolution of intention is lost. (Emphasis added.) Koich v. City of Helena, 132 Mont. 194, 200, 315 P.2d 811 (1957).

The Koich court went on to hold that the city council was without jurisdiction to accept bids for the construction of an improvement which would represent a "material deviation" from the resolution of intention of 7.5 percent over the approximate estimate of the total cost of the improvement. Koich, supra, pp. 202-203. In order to authorize such a substantial departure from the approximate estimate of the resolution of intention, the court found that the city would be required to publish a new resolution containing a revised estimate. Koich, supra, p. 203.

The RSID engineer is an appointee of the county commissioners who is statutorily empowered to incur costs incidental to his office. Section 16-1616, R.C.M. 1947. His/her ability to act is conferred by the implied acceptance (through failure to protest) of the resolution of intention by the property owners within the RSID. He/she may not incur costs of such magnitude as to defeat the notice function of the resolution of intention.

THEREFORE, IT IS MY OPINION:

1. The approximate estimate of engineering fees set forth in the resolution of intention does not operate as an absolute limitation upon the liability of the district for payment of engineering costs actually incurred.
2. However, the engineer designated by the board of county commissioners to supervise the work of an RSID has no authority to incur costs substantially in excess of the approximate estimate of the total cost of the improvement as stated in the resolution of intention to create such district.

Very truly yours,

MIKE GREELY
Attorney General