

VOLUME NO. 38

OPINION NO. 40

TAXATION AND REVENUE - Delinquent television district taxes,
collection of;

TELEVISION DISTRICTS - Taxes, method of collecting;

TELEVISION DISTRICTS - Delinquent taxes as personal obligations;

MONTANA CODE ANNOTATED - Sections 7-13-2528, 7-13-2529.

HELD: Normal debt collection process is the proper means
for enforcing collection of television district
taxes.

17 September 1979

Ted Cowan, Esq.
Sanders County Attorney
Sanders County Courthouse
Thompson Falls, Montana 59873

Dear Mr. Cowan:

Your predecessor in office, Mr. Robert Fletcher, requested my opinion concerning the proper means for enforcing the collection of television district taxes. The taxes in question provide funds for the construction, operation and maintenance of television and FM translator facilities serving areas of the State which have organized as television districts in accordance with Title 7, chapter 13, part 25, MCA, as amended by 1979 Montana Laws, chapter 479.

A television district is a special improvement district. See 1961 Mont. Laws, ch. 198. A television district tax therefore is not a "tax" in the strict sense but a special assessment imposed to defray the cost of a specific benefit. Such assessments are justified where "the particular property charged derives a special benefit substantially commensurate with the burden imposed upon it." Parker v. Yellowstone County, 140 Mont. 538, 545, 374 P.2d 328, 331 (1962), quoting from Stettheimer v. City of Butte, 62 Mont. 297, 300, 204 P. 1039, 1040 (1922). These attributes differentiate special assessments from general real and personal property taxes. See Vail v. Custer County, 132 Mont. 205, 217, 315 P.2d 993, 1000 (1957).

A television district tax differs from other kinds of special assessments in that other assessments are commonly imposed against property and the statutes authorizing them usually provide that the assessments are secured by liens on the property assessed. For example, see § 7-13-2406(2), MCA (garbage and ash collection district assessments); § 7-13-2310, MCA (county water and sewer district taxes); and § 7-13-233, MCA (refuse disposal district fees). Television district taxes, however, are expressly imposed against persons, owners of residences located within the district who have not claimed an exemption under section 7-13-2529, MCA, rather than property, and there is no provision for a lien to secure payment of the tax.

Section 7-13-2528, MCA, as amended, contains the only reference to the collection of television district taxes:

(2) The budget, together with the list of such persons residing in the district and subject to the special tax after all exemptions have been allowed as provided in this part, shall be presented by September 1 to the board of county commissioners, who shall levy the tax requested by said trustees. *** In preparing the budget, the board of trustees shall...specify the tax to be levied on property owners for these services. The tax shall be certified to the county clerk and recorder and entered on the assessment books as against such persons and collected by the county treasurer as all other taxes are collected.

While the above statute can be read to provide direction as to the time and manner of television district tax collection, it cannot be read to authorize a special remedy, such as imposition of a lien upon assessment, to enforce collection of the tax. As a general rule a court will not insert what has been omitted in construing a statute. Dunphy v. Anaconda Company, 151 Mont. 76, 80, 438 P.2d 660, 662 (1968). Proceedings dealing with tax collection, in particular, are in invitum and must be stricti juris. Vail v. Custer County, supra, 132 Mont. at 212, 315 P.2d at 997.

Absent a legislative declaration that a lien exists on property owned by a person against whom television district taxes are imposed, and in view of the fact that such taxes are imposed against specific persons directly, the proper remedy for nonpayment of television district taxes should be in personam rather than in rem.

THEREFORE, IT IS MY OPINION:

Normal debt collection process is the proper means for enforcing collection of television district taxes.

Very truly yours,

MIKE GREELY
Attorney General