

VOLUME NO. 40

OPINION NO. 45

FEES - Issuance of receipt for payment of refuse disposal district service fees;  
FEES - Time of assessment of refuse disposal district service fees;  
REFUSE DISPOSAL DISTRICT - Nonpayment of service charges subjects underlying real property to tax sale;  
MONTANA CODE ANNOTATED - Sections 7-13-231, 7-13-233, 15-16-101, 15-16-104, 15-17-101;

OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 22 (1983).

- HELD: 1. If a property owner fails to pay the refuse disposal district service fee required by section 7-13-231, MCA, the underlying real property is subject to a tax sale.
2. Tax notices for assessment of fees for operation of the refuse disposal district should not be sent to taxpayers in advance of actual commencement of service.
3. It is the responsibility of the county treasurer to issue a receipt to taxpayers who have paid property taxes but withheld payment of the refuse disposal service fee.

4 April 1984

Loren Tucker  
Madison County Attorney  
Madison County Courthouse  
Virginia City MT 59755

Dear Mr. Tucker:

You have requested my opinion on several matters concerning the financing of refuse disposal districts. As you are aware, the board of directors of a refuse disposal district is authorized by section 7-13-231, MCA, to defray the cost of maintenance and operation of the district by establishing a fee for service.

Your first question is whether the nonpayment of charges for services provided by the district subjects the underlying real property to a tax sale. Section 7-13-233, MCA, provides, in pertinent part: "If a property owner fails to pay this fee, it shall become a lien upon the property." Under section 15-17-101, MCA, all property in the county upon which delinquent taxes are a lien is subject to a tax sale. See generally 4 Sands & Libonati, Local Government Law § 24.51 (1983). I conclude, therefore, if a property owner fails to pay the fee for property that is receiving a service from

the refuse disposal district, the property is subject to the tax sale proceedings set forth in Title 15, chapter 17, MCA. You may wish to refer to 40 Op. Att'y Gen. No. 22 (1983) for a discussion of what "receiving a service" means in the context of the refuse disposal district statutes.

Your next question is whether the fees for operation of the refuse disposal district may be assessed in advance of actual commencement of the service. You note that notices of payments due were sent out in December, 1983, although service has not yet commenced. Section 7-13-233, MCA, sets forth the procedure for collecting the service fee:

Procedure to collect service charge. The month the service begins, the department of revenue or its agents shall insure that the amount of this fee is placed on the tax notices, to be collected with the tax. If a property owner fails to pay this fee, it shall become a lien upon the property.

The amount of the fee is to be included on the notice of property taxes and assessments due that is sent to each taxpayer pursuant to section 15-16-101, MCA. The fee is to be collected along with the other taxes and assessments included in the tax notice. Section 7-13-233, MCA, also provides that the schedule for the collection procedure commences in the month that the service begins. I conclude from the clear meaning of the statute that the tax notices should not be sent out until actual service begins.

You have also inquired about the county treasurer's responsibility to issue a receipt pursuant to section 15-16-104, MCA, when payment of real estate taxes is tendered but the refuse disposal district fee is withheld. Section 15-16-104(2), MCA, requires the county treasurer to "give a receipt to the person paying any tax, specifying the amount of the assessment and the tax paid, with a description of the property assessed." (Emphasis added.) I have already concluded that the fee for receiving service from the refuse disposal district is not due until service has commenced. Certainly, then, a receipt should be issued to those taxpayers who withheld payment of the refuse disposal service fee but paid other property taxes, since they were not yet

required to pay the service fee. Once refuse disposal service has commenced, I am of the opinion that a county treasurer must issue a receipt for payment of real estate taxes even if the refuse disposal assessment is withheld. The language of section 15-16-104(2), MCA, directs that a receipt be given for the payment of "any tax." Since real estate taxes would clearly be included in the phrase "any tax," payment of such taxes warrants the issuance of a receipt.

Your last question concerns whether the statutory scheme for creation of refuse disposal districts requires literal performance or substantial compliance. I regret that I cannot respond to this question other than in a very general fashion. While it is possible that noncompliance with statutorily-required procedures for setting up a refuse disposal district might result in the setting aside of the assessment or declaring the district invalid, such a result would depend upon the specific facts of the case. Several Montana cases have held that where the mode of exercising any power granted to a municipal corporation is pointed out in the statute granting it, that mode must be pursued in all substantial particulars. The need for literal compliance with the statutory procedure has been emphasized in these cases. See, for example, Smith v. City of Bozeman, 144 Mont. 528, 533, 398 P.2d 462, 465 (1965); Wood v. City of Kalispell, 131 Mont. 390, 393-94, 310 P.2d 1058, 1060-61 (1957). The general rule with respect to the scope of judicial inquiry, review, and relief, with respect to proceedings leading to public improvements, the formation of improvement districts, and special or local assessments, is limited, in the absence of fraud or bad faith, mistake, or of questions of the public or local character of an improvement, to unreasonableness, arbitrariness, and abuse of power, or discretion of the Legislature, municipal council, or other assessing authority, and such inquiry, review, and relief do not extend to the policy, wisdom, or motives of the Legislature or of the assessing authority. 70 Am. Jur. 2d Special or Local Assessments § 158 (1973); 13 McQuillen, Municipal Corporations § 37.255 (1971). See also Stevens v. City of Missoula, 40 St. Rptr. 1267, 1271, 667 P.2d 440, 444 (1983) (city's judgment as to special benefit and special improvement district boundaries is conclusive absent proof of fraud or mistakes which preclude the exercise of sound judgment).

THEREFORE, IT IS MY OPINION:

1. If a property owner fails to pay the refuse disposal district service fee required by section 7-13-231, MCA, the underlying real property is subject to a tax sale.
2. Tax notices for assessment of fees for operation of the refuse disposal district should not be sent to taxpayers in advance of actual commencement of service.
3. It is the responsibility of the county treasurer to issue a receipt to taxpayers who have paid property taxes but withheld payment of the refuse disposal service fee.

Very truly yours,

MIKE GREELY  
Attorney General