

RURAL SPECIAL IMPROVEMENT DISTRICTS - Whether a swimming pool constitutes a special improvement;
SPECIAL IMPROVEMENT DISTRICTS - Whether a swimming pool constitutes a special improvement;
MONTANA CODE ANNOTATED - Sections 7-12-2101, 7-12-2102(1), 7-12-4102(2)(b);
OPINIONS OF THE ATTORNEY GENERAL - 36 Op. Att'y Gen. No. 109 (1976).

HELD: The creation of a rural improvement district for the purpose of constructing and maintaining a public swimming pool is proper if the facility will specially benefit the property subject to the assessments associated with the district.

31 May 1985

Robert G. Dwyer
City Attorney
125 North Idaho Street
Dillon MT 59725

Dear Mr. Dwyer:

You have requested my opinion concerning a question which I have phrased as follows:

Whether section 7-12-2102(1), MCA, permits the creation of a swimming pool rural improvement district.

I conclude that a rural improvement district may be established under section 7-12-2102(1), MCA, for the

purpose of constructing and operating a public swimming pool. I do not, however, express any opinion as to whether the rural improvement district created in this matter is appropriate.

Section 7-12-2102(1), MCA, states:

Whenever the public interest or convenience may require and upon the petition of 60% of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts in thickly populated localities outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase devices intended to protect the safety of the public from open ditches carrying irrigation or other water and maintaining sanitary and storm sewers, light systems, waterworks plants, water systems, sidewalks, and such other special improvements as may be petitioned for.

While the term "special improvements" is not defined in section 7-12-2101, MCA, a substantial body of decisional law has developed in Montana and other jurisdictions which identifies the essential characteristics of a special improvement:

A local improvement has been defined to be a public improvement which, by reason of its being confined to a locality, enhances the value of adjacent property as distinguished from benefits diffused throughout the municipality. ... The primary purpose of the improvement is largely determinative and classification depends "upon the nature of the improvement and whether the substantial benefits to be derived are local or general in their nature."

Ruel v. Rapid City, 167 N.W.2d 541, 544 (S.D. 1969) (citation omitted); see Smith v. City of Bozeman, 144 Mont. 528, 536, 398 P.2d 462, 466 (1965) ("[t]he theory upon which a municipality may levy assessments for special improvements is that the property will be benefited by the improvements to the extent of the

burden imposed"); State ex rel. City of Great Falls v. Jeffries, 83 Mont. 111, 115-16, 270 P. 638, 639 (1928) ("[t]he theory upon which a municipality may levy assessments for special improvements is that the property charged receives a corresponding physical, material, and substantial benefit from the improvement ... [and] that the property assessed will be enhanced to the extent of the burden imposed") (citations omitted).

Whether a particular improvement is "appurtenant to specific land and bring[s] a benefit substantially more intense than is yielded to the rest of the municipality" must be determined, in the instance of a rural improvement district, by the board of county commissioners. Heavens v. King County Rural Library District, 404 P.2d 453, 457 (Wash. 1965) (en banc). The board's decision will not be set aside by a court except for fraud or manifest abuse of discretion. Stettheimer v. City of Butte, 62 Mont. 297, 300-01, 204 P. 1039, 1040 (1922); see also 36 Op. Att'y Gen. No. 109 (1976) at 563 (county commissioners' determination of whether locality "thickly populated" is binding absent fraud or abuse of discretion); see generally C. Rhyne, The Law of Local Government Operations 1001 (1980) ("[i]t has been held that the establishment and creation of [special improvement] districts is entirely a legislative matter with which the courts will not interfere, in the absence of fraud or arbitrary action"). I note that section 7-12-4102(2)(b), MCA, authorizes municipalities to establish special improvement districts for constructing swimming pools, and there appears no reason why such activity should, as a matter of law, be inappropriate for a rural improvement district.

While it is clear that a rural improvement district may be established for the purpose of constructing and operating a public swimming pool and that the board of county commissioners' determination that such a district is warranted will be subject to limited judicial review, this opinion should not be construed as concluding that the swimming pool here is a special improvement. That determination must be made after a careful factual analysis which, as a general matter, is not a proper function of my opinions. Your letter further suggests that there may have been several irregularities in connection with the creation of the rural improvement district. Again, this opinion should not be interpreted

as commenting on the validity of any objection which might be premised on such alleged irregularities or as indicating that the district was otherwise properly established.

THEREFORE, IT IS MY OPINION:

The creation of a rural improvement district for the purpose of constructing and maintaining a public swimming pool is proper if the facility will specially benefit the property subject to the assessments associated with the district.

Very truly yours,

MIKE GREELY
Attorney General