

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 82

CITIES AND TOWNS - Authority to accelerate future installments of special assessments;  
CITIES AND TOWNS - Procedure to obtain tax deed prior to 1987;  
CITIES AND TOWNS - Requirement to continue funding SID fund from revolving fund and to continue levying city-wide property tax until SID bonds are discharged;  
COUNTIES - Tax collection for city taxes;  
DEEDS - Procedure for a city to obtain a tax deed prior to 1987;  
SPECIAL IMPROVEMENT DISTRICTS - Authority of city to accelerate future installments of special assessments;  
SPECIAL IMPROVEMENT DISTRICTS - Requirement of city to continue funding SID fund from revolving fund and to continue levying city-wide property tax until SID bonds are discharged;  
MONTANA CODE ANNOTATED - Sections 1-2-101, 7-12-4181 to 7-12-4183, 7-12-4201, 7-12-4202, 7-12-4205, 7-12-4206, 7-12-4221 to 7-12-4224, 15-17-303, 15-17-304 (1985);  
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 77 (1986).

- HELD: 1. When a city has established a revolving fund to secure payments on SID bonds, and when an SID fund does not have sufficient amounts to make payments on its bonds, the city must continue to make loans from the revolving fund to the SID fund, and must continue to levy the property tax in accordance with section 7-12-4222, MCA, until the obligations on all bonds and warrants in the SID are discharged.
2. A city whose taxes are collected by the county has statutory authority to accelerate future installments of special assessments when one installment becomes delinquent.
3. Prior to 1987 a city could not obtain a valid tax deed on property it received through a tax sale until the outstanding and delinquent assessments on the property were paid and discharged.

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10 May 1988

Eric F. Kaplan  
Deputy City Attorney  
P.O. Box 329  
Columbia Falls MT 59912

Dear Mr. Kaplan:

You have requested my opinion on the following questions concerning the city's special improvement districts:

1. If the city cannot pay the outstanding principal on SID bonds on or before their maturity date, for how long a period of time will the city be required to levy the tax required by section 7-12-4222, MCA?
2. If money borrowed from the revolving fund cannot be repaid by the SID fund due to the delinquencies on payments of assessments, can the city forgive or write off those loans?
3. Does the city of Columbia Falls have statutory authority to accelerate future installments of special assessments when one installment becomes delinquent?
4. Is the city required to recover outstanding and delinquent SID taxes on property it received through a tax sale and which it proposes to sell to a third party?

Your questions arise from a situation that is becoming increasingly common in this state: Subdividers, unable to market lots after a special improvement district (SID) has been created and SID assessments imposed, default on the payments of those assessments.

In 1980 the City of Columbia Falls created Special Improvement District No. 28 (SID 28) and subsequently sold bonds to finance the district's improvements. The maturity date of the bonds is 2001. A major portion of the SID is owned by a developer who, being unable to sell the lots, has defaulted on payment of the assessments. The failure to pay the assessments has resulted in a deficiency in the SID bond fund to such an extent that the city has been unable to make all the semi-annual interest and principal payments on the bonds and anticipates being unable to redeem them on or before the maturity date. The city established a special improvement district revolving fund and, in order to

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restore the deficiencies in the SID fund, has been levying a tax on the entire city under section 7-12-4222, MCA. However, even with the revenue from the revolving fund, the city is unable to meet its interest and principal payments on the bonds.

The complexity of your questions requires some explanation of the statutes governing SID bonds. Section 7-12-4201, MCA, authorizes the city to issue bonds to pay the cost of improvements in a special improvement district. The proceeds from the sale of the bonds are placed in a special improvement district fund used to pay the costs of the improvements. § 7-12-4205, MCA. The bonds are repaid with proceeds of assessments levied on property in the special improvement district, § 7-12-4206, MCA, and a lien is created on behalf of the bondholders on the assessed properties in the district, § 7-12-4202, MCA. The city may establish a revolving fund to assure prompt payment of bond interest and principal. § 7-12-4221, MCA. (In 1981, when the bonds in question were sold, the city was required to create a revolving fund, under section 7-12-4221, MCA, prior to its 1983 amendment.) The revolving fund is funded by loans from the city's general fund and by a tax on all taxable city property in an amount which would bring the balance in the revolving fund to no greater than 5 percent of the principal of the outstanding SID bonds and warrants. § 7-12-4222, MCA. In the event there is insufficient money in the SID fund to pay the interest and principal on the bonds, the revolving fund loans money to the SID fund for such payments. § 7-12-4223, MCA. Whenever the SID fund borrows money from the revolving fund, a lien arises on behalf of the revolving fund against all unpaid assessments in the SID and all money coming into the SID fund. § 7-12-4224, MCA.

With respect to SID 28, Columbia Falls established by resolution an SID fund. The resolution sets forth in detail the purposes of the SID, the bonds to be issued, and the manner of assessments and the collection thereof. The resolution further provides that the assessments are a lien upon the properties assessed and that any tax deed issued will not eliminate subsequent assessments on the property. A revolving fund was established by ordinance in 1953 to be used for all city SID's and is still in existence. The ordinance authorizes the city to levy a city-wide property tax and to borrow from the general fund. It provides that the city may borrow money from the revolving fund for any SID fund by resolution. The resolution pertaining to SID 28 incorporates the revolving fund. The resolution contains no provisions should default on payment of the bonds occur.

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Your first question concerns the obligation of the city to continue levying the city-wide property tax for the revolving fund to pay interest and principal on SID 28 bonds when it anticipates that the bonds will not be redeemed by their maturity date. Section 7-12-4222(1)(b), MCA, requires the city to levy a city-wide property tax in an amount necessary to meet the financial requirements of the revolving fund--but only up to an amount that would bring the balance of the revolving fund to 5 percent of the outstanding SID bonds and warrants secured thereby. Section 7-12-4221, MCA, provides:

Nothing herein shall authorize or permit the elimination of a revolving fund until all bonds and warrants secured thereby and interest thereon have been fully paid and discharged.

This language is clear and unambiguous and thus speaks for itself. Blake v. State, 44 St. Rptr. 580, 735 P.2d 262, 265 (1987). Consequently, until all the SID bonds have been paid and discharged, Columbia Falls must continue to supply the SID fund with money from the revolving fund and must continue to levy the city-wide property tax to fund the revolving fund. Because the city anticipates being unable to redeem all the bonds by their maturity date, it could conceivably be required to impose the annual city-wide tax indefinitely because the interest and principal on these bonds might never be fully paid.

Columbia Falls anticipates being unable to retire the bonds at any time in the foreseeable future, for various reasons including recent decline in marketability of the delinquent properties in SID 28. The Legislature has not provided authority for the city to terminate the loans from the revolving fund to the SID on this basis. I cannot construe such authority where the Legislature has failed to act. See § 1-2-101, MCA. I therefore conclude that the city is required to continue loaning money from the revolving fund to the SID fund and to continue levying the city-wide property tax for the revolving fund for those loans, until such time that the obligation on SID bonds has been discharged.

As I stated earlier, the revolving fund loans money to the SID fund for payment on the bonds, and it has a lien on all unpaid assessments and other money coming into the SID fund. §§ 7-12-4223, 7-12-4224, MCA. The revolving fund's only security is that lien. Hansen v. City of Havre, 112 Mont. 207, 114 P.2d 1053, 1056 (1941). In providing for the establishment of a

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revolving fund and its operation with respect to deficient SID funds, the Legislature placed upon the city a limited obligation with respect to SID debts to bondholders. In Stanley v. Jeffries, 86 Mont. 114, 284 P. 134, 138-39 (1929), the Court discussed the enactment of the provision authorizing the establishment of an SID revolving fund stating that the effect of the enactment would give bondholders greater security for payment on the bonds. The Court further observed that the enactment "modified the SID law to impose upon the general public, within the municipality, a conditional obligation to pay a small portion of the cost of erecting the public improvement, whereas it might have, lawfully, imposed a much greater burden on the municipality." Id.

It is well settled that SID bonds and assessments are not general obligations of the city but are secured by the properties assessed in the district. Hansen v. Havre, 114 P.2d at 1057; Guffin v. Opinion Pub. Co., 114 Mont. 502, 138 P.2d 580, 588 (1943); State ex rel. Truax v. Town of Lima, 121 Mont. 152, 193 P.2d 1008, 1010 (1948). Any loss due to uncollectible assessments or other deficiencies must fall on the bondholder and not the city. Guffin, 138 P.2d at 588. Section 7-12-4222, MCA, provides an additional, albeit limited, security on the bonds, and when the bond obligations are finally discharged, the revolving fund must be reimbursed by any remaining moneys in the SID fund.

In summary, until such time as the obligations on all bonds and warrants in the SID are discharged, the revolving fund must continue to loan money to the SID fund whenever deficiencies require such loans, and the city must continue to impose the property tax in accordance with section 7-12-4222, MCA.

This opinion does not address avenues of resolving the city's inability to redeem the SID bonds because any agreements with the bondholders concerning such resolutions would involve particular facts and negotiations between the city and the bondholders.

Your next question is whether the city can forgive or write off unrepayable loans made by the revolving fund to the SID fund. This question concerns a city's individual accounting practices and is therefore inappropriate for an Attorney General's Opinion.

Your third question is whether Columbia Falls may accelerate future installments of assessments on parcels of land whose installments are delinquent. I conclude that Title 7, chapter 12, MCA, authorizes the city to do

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so. Columbia Falls' assessments are collected by the county, thus the collections are governed by section 7-12-4181, MCA. However, sections 7-12-4182(1) and 7-12-4183(1), MCA, which govern collection of taxes by the city, are also relevant.

Section 7-12-4181, MCA, does not address the authority of the city with respect to collection of taxes and acceleration of future installments of assessments. Such authority is however provided in sections 7-12-4182(2) and 7-12-4183(2), MCA. Those subsections contain identical language which states in pertinent part:

When the payment of an installment of a special assessment becomes delinquent, all payments of subsequent installments may, at the option of the city or town council and upon adoption of the appropriate resolutions, become delinquent.

This language is unambiguous and requires no construction. Blake v. State, 735 P.2d at 265. The city's authority to accelerate under sections 7-12-4182(2) and 7-12-4183(2), MCA, is not conditioned upon its method of collecting taxes. Thus, although the authority is not included in section 7-12-4181, MCA, I conclude that the Legislature intended that authority to exist irrespective of the method of collection.

Your last question concerns the duty of the city to recover and discharge outstanding and delinquent SID assessments on property it received from the county through a tax sale and which it proposes to sell to a third party. Your concern focuses on the ability of the city, under the statutes in effect prior to 1987, to obtain a valid tax deed to the property in the following manner: The SID assessments on the property became delinquent and the city certified the delinquencies to the county, which in turn unsuccessfully attempted to sell the property at a tax sale. The property was then struck off to the county which assigned it to the city upon the city's payment to the county of all delinquent taxes including the SID assessments. In order to obtain the money to pay the delinquencies on the property, the city borrowed money from another SID fund because the SID fund connected to the property was deficient. The county returned to the city the SID assessments the city had paid to obtain the assignment of the property. The city placed this reimbursement into the SID fund from which it had been borrowed. The effect of this transaction was that the delinquent SID assessments on

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the property assigned to the city were not paid and discharged.

The property in question was assigned to the city by the county under former section 15-17-303, MCA. Under that statute, to obtain the assignment the city was required to pay the county the total amount of outstanding taxes due, including city SID assessments. See 41 Op. Att'y Gen. No. 77 (1986). Upon the county's return of the amount of the city assessments to the city, the city was expected to remit that amount into the SID fund to credit the assessments due on the property when assigned to the city; the city was further obligated to discharge any SID assessment which became due between the date of assignment and such remittance (§ 15-17-304, MCA (1985)). Thus, prior to 1987, the city, as assignee, was required to pay the delinquent and outstanding SID assessments, together with all associated interest and penalties on the assigned property in order to obtain a valid tax deed.

THEREFORE, IT IS MY OPINION:

1. When a city has established a revolving fund to secure payments on SID bonds, and when an SID fund does not have sufficient amounts to make payments on its bonds, the city must continue to make loans from the revolving fund to the SID fund, and must continue to levy the property tax in accordance with section 7-12-4222, MCA, until the obligations on all bonds and warrants in the SID are discharged.
2. A city whose taxes are collected by the county has statutory authority to accelerate future installments of special assessments when one installment becomes delinquent.
3. Prior to 1987 a city could not obtain a valid tax deed on property it received through a tax sale until the outstanding and delinquent assessments on the property were paid and discharged.

Very truly yours,

MIKE GREELY  
Attorney General