

VOLUME NO. 43

OPINION NO. 48

COUNTY OFFICERS AND EMPLOYEES - Duty of county treasurer to account for city SID assessments;

PUBLIC FUNDS - Duty of county treasurer to provide city with accounting of city SID assessments collected by county treasurer;

SPECIAL IMPROVEMENT DISTRICTS - Duty of county treasurer to account for city SID assessments;

MONTANA CODE ANNOTATED - Section 7-6-2111;

OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 117 (1988), 39 Op. Att'y Gen. No. 39 (1981).

HELD: A county treasurer, when remitting taxes to a city, must break out the amount received from taxpayers as payment for the city's special improvement district assessments.

December 12, 1989

David N. Hull
Helena City Attorney
City-County Administration Building
316 North Park
Helena MT 59623

Dear Mr. Hull:

You have requested my opinion on the following question:

Must a county treasurer, when remitting taxes to a city, break out the amount received from each taxpayer for payment of the city's special improvement district assessments?

Your letter of inquiry states that the county commissioners have advised the city that detailed information concerning the collection of the city's special improvement district (SID) assessments would no longer be provided to the

city when the county remits the monthly collections of payments for city taxes and assessments which have been collected by the county treasurer. Correspondence between the county and the city, which you have included with your inquiry, indicates that the county has installed a new computer system in the treasurer's office and intends to charge the city for the cost of providing detailed taxpayer information, by fund or SID number, on the collection of SID assessments.

A city council has statutory authority to create special improvement districts and to designate them by number. § 7-12-4102, MCA. To defray the cost of each improvement, the council must adopt one of several prescribed methods of assessment against the benefited property in the district. §§ 7-12-4161 to 4165, MCA. In cities where taxes for general, municipal, and administrative purposes are certified to and collected by the county treasurer in accordance with section 7-6-4407, MCA, the city treasurer has the duty to certify all assessments for each SID to the county assessor, and the county treasurer is required by law to collect all such assessments at the same time the city's other taxes are collected. § 7-12-4181, MCA.

Your question requires an interpretation of section 7-6-2111, MCA, which sets forth the duties of the county treasurer. That statute provides:

The county treasurer must:

- (1) receive all money belonging to the county and all other money directed to be paid to him by law, safely keep the same, and apply and pay them out, rendering account thereof as required by law;
- (2) keep an account of the receipt and expenditures of all such money in books provided for the purpose, in which must be entered:
 - (a) the amount, the time when, from whom, and on what account all money was received by him;
 - (b) the amount, time when, to whom, and on what account all disbursements were made by him;
- (3) so keep his books that the amounts received and paid out on account of separate funds or specific appropriations are exhibited in separate and distinct accounts, with the whole receipts and expenditures shown in one general or cash account;
- (4) enter no money received for the current year on his account with the county for the past fiscal year until after his

annual settlement for the past year has been made with the county clerk;

(5) disburse the county money only on county warrants issued by the county clerk, based on orders of the board of county commissioners, or as otherwise provided by law. [Emphasis supplied.]

Subsection (1) requires the county treasurer to receive all money "directed to be paid to him by law." Since section 7-12-4181(2), MCA, directs the county treasurer to collect all special assessments and taxes levied and assessed under parts 41 and 42 of Title 7, chapter 12, MCA, the county treasurer has a duty to receive the SID assessments and "apply and pay them out, rendering account thereof as required by law." § 7-6-2111(2), MCA. The accounting that is required by law is described in subsections (2) and (3), which impose certain accounting requirements upon the county treasurer with respect to "all such money," a term which refers back to subsection (1) and includes money collected for the city as well as money belonging to the county. In particular, subsection (3) requires the county treasurer to keep books in which the amounts received and paid out on account of separate funds are exhibited in separate and distinct accounts.

The county treasurer receives money as payment for the city's SID assessments as part of the total property tax payment of the taxpayer after an itemized tax notice, which breaks out the amounts due for SID assessments, has been sent by the county treasurer to the taxpayer. See § 15-16-101(2)(d), MCA. The amounts received for SID assessments would be "received and paid out on account of separate funds" and must be exhibited in separate and distinct accounts.

Having concluded that the county treasurer must so keep his books that the amounts received as payment of city SID assessments are shown in separate accounts, I further conclude that the county treasurer has a duty to provide the city with the accounting information which he is required by section 7-6-2111(2) and (3), MCA, to maintain. This duty arises from the express statutory directive to render account of the city's money at the time the money is paid out to the city. § 7-6-2111(1), MCA.

The word "render" means to provide, furnish, or give in answer to requirement of duty or demand. See, e.g., Dayton v. Ewart, 28 Mont. 513, 72 P. 420 (1903); Manufacturer's & Merchant's Insurance Co. v. Zeitinger, 48 N.E. 179, 181 (Ill. 1897). The duty of the county treasurer to render account of the moneys paid directly to him by members of the public has been imposed by statute since 1895 and has been recognized by the Montana Supreme Court in Gallatin County v. U.S.F. & G., 50 Mont. 55, 144 P. 1085 (1914).

In collecting city taxes and assessments, the county treasurer acts as an agent of the city. State ex rel. Wolf Point v. McFarlan, 78 Mont. 156, 252 P. 805 (1927); 39 Op. Att'y Gen. No. 39 at 159 (1981). In McFarlan, the Montana Supreme Court noted that there is no statutory provision for remuneration of the county treasurer for his services in collecting and paying over to a city the taxes and assessments which the city authorities cause to be levied; the county treasurer is a public officer, paid by the public, and the Legislature has the power to include among the duties of the county treasurer the duty of collecting, remitting, and accounting for moneys due the city. See also State ex rel. Cut Bank v. McNamer, 62 Mont. 490, 205 P. 951 (1922) (county treasurer has a duty to collect city taxes and immediately account therefor to the city).

It is true that the county treasurer is a ministerial officer, without authority other than that conferred on him by statute, either expressly or impliedly, and he is not required to perform any duties not imposed by law. Rosebud County v. Smith, 92 Mont. 75, 9 P.2d 1071 (1932); 42 Op. Att'y Gen. No. 117 (1988). I conclude, however, that subsections (2) and (3) of section 7-6-2111, MCA, require the county treasurer to break out the amounts received for the city's special improvement district assessments as part of his duty to render account to the city.

THEREFORE, IT IS MY OPINION:

A county treasurer, when remitting taxes to a city, must break out the amount received from taxpayers as payment for the city's special improvement district assessments.

Sincerely,

MARC RACICOT
Attorney General