The Special Assessments of Municipal Corporations

Chester James Antieau
THE SPECIAL ASSESSMENTS 
OF MUNICIPAL CORPORATIONS*

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Probably no activity of municipal corporations has occasioned more litigation or occupied more time of administrative, legal and quasi-judicial officers than special assessments. A re-examination of underlying principles and recent case and statutory developments should prove profitable.

The principle special assessment areas of litigation are (1) whether the particular improvement is "local" so as to justify a special assessment; (2) the permissible procedures in determining the amount of assessment and in levying it upon the property; (3) the properties within the city subject to assessment; (4) what can be included in the cost of an improvement to be assessed; (5) limitations upon the amount of individual assessments; (6) appeal and relief from special assessments; (7) enforcement of assessments against delinquent property owners; and (8) municipal liability to investors upon special assessment obligations.

Municipal corporations have no inherent power to levy special assessments, nor is the power implied from the power to levy taxes or the power to make improvements. However, today municipal power to impose special assessments is regularly conferred by statutes and charters. And there are Eminent Domain statutes, such as the "Kline

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3 BURNS IND. STAT. ANN. (1950), Sec. 48-2701; GEN. STAT. KANSAS (1935), Sec. 12-601 ff.; MINN. STAT. (1945), Sec. 412.26, 428.01; MICHIGAN STAT. ANN., Sec. 5.2077; NEBRASKA COMP. STAT. (1929), Sec. 17-432 as amended by Laws, 1933, c. 136, 20; NEW MEXICO STAT. ANN. (1941), Sec. 14-3304; WYOMING COMP. STAT. ANN. (1945), Sec. 29-2001; IDAHO CODE (1932), Sec. 49-2401; SOUTH CAROLINA CONSTITUTION, Art. 10, 17 and CODE OF SOUTH
Law” in Wisconsin, authorizing municipalities to acquire property for a variety of purposes and to spread the cost of the improvement over the district benefited. It is the general rule that grants of power to municipalities to impose special assessments must be strictly construed and followed.5

A special assessment is not a tax within the constitutional limitations upon the amount of taxation.6 Nor is it a tax subject to the constitutional provisions requiring uniformity and equality of taxation.7 And constitutional requirements that all property be taxed in proportion to value do not ordinarily apply to special assessments.8

NECESSITY THAT THE IMPROVEMENT BE “LOCAL”

To justify a special assessment upon nearby property owners the improvement must be “local,” that is, it must benefit the adjoining property owners in a way and to a degree not enjoyed by the community as a whole.9 Sometimes it is said that the “primary” effect must be to benefit the immediate locality.10 The fact that there is some benefit to the general public does not prove that an improvement is not a “local” one which may properly be paid for by special assessment.11 The determination by municipal officials that an improvement confers local and special benefits will not be disturbed “in the absence of a clear showing that such decision was wholly arbitrary, merely capricious, or

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4 Wis. Laws (1931), Ch. 275 (as amended).
actuated by fraud or bad faith."\textsuperscript{12} Special assessments and general taxation may be combined in financing local improvements.\textsuperscript{13} The special assessment must, of course, be for a "public" improvement.\textsuperscript{14} Street improvements such as paving,\textsuperscript{15} widening,\textsuperscript{16} curbing and guttering,\textsuperscript{17} as well as planting shade trees,\textsuperscript{18} are almost always considered local improvements that can be paid for by special assessments. There is, nevertheless, some judicial reluctance to permit special assessments for boulevards\textsuperscript{19} and "white ways"\textsuperscript{20} of principal benefit to motorists and not the adjoining property owners. The cases are about evenly divided as to the propriety of special assessments for bridges and viaducts.\textsuperscript{21} Statutes frequently authorize the inclusion in paving contracts of provisions whereby the paving contractor guarantees to maintain the pavement for a period of years,\textsuperscript{22} and it is frequently held that special assessments can be levied for repaving and repairs,\textsuperscript{23} although there are many contra cases especially where there is a clear duty upon the municipality to maintain streets in repair.\textsuperscript{24} Many statutes permit


\textsuperscript{14} Altmar v. Kolburt, 45 N. Mex. 453, 116 P. (2d) 812, 136 A.L.R. 554 (1941); Irish v. Hahn, 208 Cal. 339, 281 P. 385, 66 A.L.R. 1382 (1929); Chamberlain v. Cleveland, 34 Ohio St. 551 (1878).


\textsuperscript{17} Manchester v. Straw, 86 N.H. 390, 169 A. 592 (1933); In re Burmeister, 76 N.Y. 174 (1879); Notes, 8 Ill. L. Rev. 340 (1914), 14 Ill. L. Rev. 523 (1920); Milwaukee, Wis., Charter (1934), Sec. 11.02.


\textsuperscript{19} Abar v. Detroit, 278 Mich. 228, 270, N.W. 277 (1936).

\textsuperscript{20} Utley v. St. Petersburg, 106 Fla. 692, 144 S. 53 (1932).


\textsuperscript{23} Wilson v. Inhabitants of City of Trenton, 61 N.J.L. 599, 40 A. 575 (1898); Shank v. Smith, 157 Ind. 401, 61 N.E. 932 (1901); City of Schenectady v. Trustees of Union College, 66 Hun. 179, 21 N.Y.S. 147 (1892); Morse v. City of Westport, 110 Mo. 502, 19 S.W. 831 (1892); Wilkins v. Detroit, 46 Mich. 120, 8 N.W. 701, 9 N.W. 427 (1881); Allen v. Davenport, 107 Iowa 50, 77 N.W. 532 (1899).

\textsuperscript{24} Crane v. W. Chicago Park Comrs., 153 Ill. 348, 38 N.E. 943 (1894); Brown v. Jenks, 98 Cal. 10, 32 P. 701 (1893); City of Portland v. Bituminous Paving Co., 33 Ore. 307, 52 Pac. 28 (1898); Boyd v. City of Milwaukee, 92 Wis. 456, 66 N.W. 603 (1896); Verdin v. City of St. Louis, 27 S.W. 447 (Mo., 1894);
special assessments for oiling and sprinkling streets, although there are cases recognizing the propriety of special assessments for such purposes, although probably as many cases are opposed. Practically everywhere the construction of sidewalks can be financed by special assessments, and there is statutory authority for the imposition of special assessments for removing snow and ice from walks, as well as for cutting weeds in vacant lots.

Neighborhood parks especially benefitting a restricted locality seem capable of being paid for by special assessments, and there is authority supporting special assessments for municipal parking lots. Although community waterworks may not justify special assessments, it is clear that local watermains may be thus financed. And an interesting case indicates that the cost of fire protection can be assessed against a local district.

People v. Maher, 56 Hun. 81, 9 N.Y.S. 94 (1890); Wreford v. Detroit, 132 Mich. 348, 93 N.W. 876 (1903); Mayor and Aldermen of Savannah v. Knight, 172 Ga. 371, 157 S.E. 309, 73 A.L.R. 1295 (1931) (enjoining assessment for street repairs where damage was done by buses permitted on street by city).


Milwaukee, Wis., Charter (1934), Sec. 11.24; Idaho Code (1947), Sec. 50-1147; Gen. Stat. Kansas (1935), 13-440; and see Milwaukee, Wis., Charter (1934), Sec. 11.03 (Assessments for Grading and Seeding Parkings).


Hughes v. City of Momence, 163 Ill. 535, 45 N.E. 300 (1896); Hewes v. Glos, 170 Ill. 436, 48 N.E. 922 (1897).

McCoy v. City of Sisterville, 120 W. Va. 471, 199 S.E. 260 (1938).
plants probably can not be financed by special assessments, such levies can be imposed to cover the costs of underground conduits, local lamps and wires, poles and conductors.

There is a rule in Pennsylvania that special assessments can be levied only for initial construction or installation of a permanent improvement and not for continuing maintenance or repair; an assessment for special benefits may be imposed only once for any given improvement.

**Assessment Procedure**

Statutes and charters customarily provide that most municipal improvements to be financed by special assessment may be initiated by petition of property owners affected. Where a petition is required and it is overlooked or defectively executed the assessment will be void. Whether the necessary signatures to a petition have been properly procured is something, according to the majority rule, that cannot be conclusively determined by a local board and, unless the contestant is estopped, may be inquired into in any proper judicial proceeding. There is a minority position that a finding by the governmental body that the petition is sufficient is not subject to collateral attack. And there are statutes making the conclusion of the council as to the adequacy of the petition final if not objected to within a limited time. Even under the majority position, the consummation of an assessment raises a presumption that the initiatory petition was sufficient.

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41 Zeigler v. Hopkins, 117 U.S. 683 (1886); Meritt v. City of Kewanee, 175 Ill. 537, 51 N.E. 867 (1898); Long v. City of Monroe, 265 Mich. 425, 251 N.W. 582 (1933) and see cases in following note.
Under other statutes the primary step is a preliminary resolution of intention or declaration of necessity by the governing body of the municipality or a statutory board, such as the Board of Assessment under Wisconsin’s “Kline Law.” Where resolutions are required by statute their satisfactory passage is jurisdictional. And it follows that an assessment including the cost of work not embraced in a resolution of intention is wholly void. Customarily the resolution must state the character, location and extent of the improvement. Sometimes notice must be given before the council or statutory body adopts such a resolution, but more commonly the resolution must be published and an opportunity provided to file protests thereto. Where such notice is not given a subsequent assessment is void. Virginia has an interesting statute providing for docketing an abstract of the resolution or ordinance, together with the estimated amount of assessment, in the office of the clerk charged with the recordation of deeds, and this constitutes notice to all purchasers of the property.

Frequently the preliminary resolution is followed by councilmanic creation of a district embracing all land benefited and enhanced in value by the improvement. This is the method set forth in Wisconsin’s “Kline Law.” Although in most communities city engineers and subordinate boards prepare the general outlines of the benefit district, it is the general rule that the governing body’s duty to demarcate


47 Wis. Laws (1931), Ch. 275 (as amended).

48 Shepard v. Missoula, 49 Mont. 269, 141 P. 544 (1914); Partridge v. Lucas, 99 Cal. 519, 33 P. 1082 (1893); Reliance Auto & Supply Co. v. City of Jackson, 244 Mich. 232, 221 N.W. 290 (1928).


50 Bass v. Casper, 28 Wyo. 387, 205 P. 1066, 205 P. 439 (1922); City of Chicago v. Iron Co., 293 Ill. 109, 127 N.E. 349 (1920); Evans v. City of Helena, 60 Mont. 577, 199 P. 445 (1921); Buckley v. City of Tacoma, 9 Wash. 253, 37 P. 441 (1894); Schwiesau v. Mahon, 128 Cal. 114, 60 P. 683 (1900).

51 W. Va. Code (1943), Sec. 563 (requires thirty days notice before a resolution of intention is passed).


54 Virginia Code (1950), Sec. 15-677.


56 Wis. Laws (1931), Ch. 275 (as amended).
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assessment districts can not be delegated.\textsuperscript{57} There must thus be final approval of any submitted plan by the municipal council or board of commissioners exercising its own independent judgment. Fixing the bounds of an assessment district is usually said to be in the discretion of the municipal legislature, and courts will generally not interfere with the outlines of the district\textsuperscript{58} unless they are unclear,\textsuperscript{59} or arbitrarily and unreasonably fixed without relation to benefit.\textsuperscript{60}

Soon after the petition is filed or the resolution passed according to typical statutes and charter plans, specifications and cost estimates are prepared and these must ordinarily be open for public inspection.\textsuperscript{61}

The United States Constitution is not violated by failure to afford a public hearing on the necessity of the contemplated improvement, so long as opportunity is given before the assessment is finally imposed,\textsuperscript{62} and similarly state constitutions probably will not require a hearing upon the legislative determination of necessity.\textsuperscript{63} However, statutes and charters often prescribe such a public hearing and then it is mandatory that it be properly noticed and held.\textsuperscript{64} Such notice must be in strict conformity to the statute or charter and customarily it must give full information as to the kind, character and location of the work and the materials intended.\textsuperscript{65} Similarly, any substantial change from the

\textsuperscript{57} Scofield v. City of Lansing, 17 Mich. 437 (1868).

\textsuperscript{58} Hildreth v. City of Longmont, 47 Colo. 79, 105 P. 107 (1909); Botts v. City of Valley Center, 124 Kan. 9, 257 P. 226 (1927); Roswell v. Bateman, 20 N. Mex. 77, 146 P. 950 (1915); Brown v. City of Saginaw, 107 Mich. 643, 65 N.W. 601 (1895). There is "a presumption of good faith and authority on the part of the municipalities in establishing such assessment districts." Petition of Auditor General, 300 Mich. 80, 1 N.W. (2d) 461 (1942).


\textsuperscript{63} Hodges v. Roswell, 31 N. Mex. 384, 247 P. 310 (1926); Stone v. City of Jefferson, 317 Mo. 1, 293 S.W. 780 (1927); Thayer Lumber Co. v. City of Muskogon, 132 Mich. 59, 115 N.W. 957 (1908); Note, 52 A.L.R. 883.


\textsuperscript{65} Phoenix Brick and Constr. Co. v. Gentry County, 257 Mo. 392, 166 S.W. 1034
published description of the contemplated improvement will invalidate the assessment. After the public hearing the council is frequently required to enact an ordinance or pass a resolution ordering the improvement and indicating the total amount to be assessed. Frequently these ordinances must be passed by more than simple majorities and publication requirements are common. The determination of the necessity for the improvement by the municipal authorities is generally conclusive and will not be disturbed by the judiciary, but when the occasional case of arbitrariness or fraud appears, the courts will interfere and enjoin the improvement. Statutes and charters very often require bidding before public improvement contracts are let and failure to advertise for bids will invalidate the assessment procedure.

Statutes and charters designate the council or board that is to determine the amount of individual assessments. In small communities it is often possible for the council itself to inspect properties benefited and calculate the amount of individual assessments, but ordinarily the task of inspecting the very numerous properties is delegated to a public officer or board instructed to prepare and return an assessment roll. So long as the council or other designated body examines, reviews and confirms the roll prepared by the subordinate the delegation will not be invalid, the courts theorizing that the

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67 WYOMING COMP. STAT. ANN. (1945), Sec. 29-2011; W. VA. CODE (1943), Sec. 565; MINN. STAT. A1945), Sec. 428-08; PAGE'S OHIO GEN. CODE ANN., Sec. 3825, 3879, N. MEX. STAT. ANN. (1941, Sec. 14-3311, 14-3320.
69 PAGE'S OHIO GEN. CODE ANN., Sec. 3842-2.
70 "The law having bested the function of determining the necessity for an improvement in the governing body of the city it follows that its determination is controlling and when made in good faith is not open to review by the courts." Palmer v. Mayor and Councilmen of Medicine Lodge, 123 Kan. 387, 389, 255 P. (1927); City o Venice v. State, 96 Fla. 527, 118 S. 308 (1928), noted in 27 Mich. L. REV. 588 (1929) (even where mayor and council were officers of the development assn.); City of Carbondale v. Reith, 316 Ill. 538, 147 N.E. 422 (1925); Shimmons v. City of Saginaw, 104 Mich. 511, 62 N.W. 725 (1895); Damron v. City of Huntington, 82 W. Va. 401 96 S.E. 53 (1918).
73 MINN. STAT. (1945), Sec. 428.10; MICH. STAT. ANN., Sec. 5.1826; Scofield v. City of Lansing, 17 Mich. 437 (1888).
74 MILWAUKEE, WIS. CHARTER (1934), Sec. 11.14.
examination in detail of several premises involves merely administra-
tive functions. There is no doubt that a prejudicial interest in the
person making the assessment should invalidate it, but the record
indicates the judiciary will not readily find such an interest. A public
official is not, because of his office, ineligible to be an assessor, and
the great weight of authority holds that the ownership of property in the
city, and even in the area affected, does not disqualify, although there
is in the latter instance a minority view, and statutes often disqualify
owners of property in the benefit district.

The officer making the initial determination of individual assess-
ments must customarily certify the basis used to assess, that each
parcel's benefit equals the amount of the special assessment thereon,
must state a description of the lots and premises and oftentimes a
valuation, and generally attest that the assessment was made in accord
with statutory and charter provisions. Where assessment rolls are
required, failure to properly prepare them will be fatal to a special
assessment. Where properly prepared the officer's certificate is usually
conclusive on how the assessment was made, although not as to the
extent of benefits. Either the returned assessment roll or the council's
own original determination of individual assessments must ordinarily be
published or at the least, notice must be given that the assessment has
been made and is on file at a city office.

It is everywhere admitted that where there has been councilmanic
delegation to subordinates or administrative boards there must be notice
and an opportunity to be heard before an assessment becomes final.

It is sometimes suggested that the federal constitution will not be

76 Warren v. City of Grand Haven, 30 Mich. 24 (1874); Auditor General v. 
Bishop, 161 Mich. 117, 125 N.W. 715 (1910).
77 City of Naperville v. Wehrle, 340 Ill. 579, 173 N.E. 165 (1930); Milwaukee,
Wis. Charter (1934) Sec. 11.29.
78 Note, 71 A.L.R. 540.
489, 177 P. 469 (1918); State ex rel. Dorgan v. Fisk, 15 N.D. 219, 107 N.W.
191 (1906); Corliss v. Highland Park, 132 Mich. 152, 93 N.W. 254, 610, 95
80 Shreve v. Cicero, 129 Ill. 226, 21 N.E. 815 (1889); Compare Powers, 29 Mich.
81 Cumberland Valley R. Co. v. Martin, 100 Md. 165, 59 A. 714 (1905); Licky
Kansas (1935), Sec. 12-608.
83 Weber v. Detroit, 158 Mich. 149, 122 N.W. 570 (1909); Adams v. Bay City,
86 Burns Ind. Stat. Ann. (1950), Sec. 48-2715, 48-2813, 48-3904; Wyoming
Lexington, 203 U.S. 323, 27 S.Ct. 87, 51 L. Ed. 204 (1906); Road Imp. Dist. v.
Glover, 86 Ark. 231, 110 S.W. 1031 (1908); Stuart v. Palmer, 74 N.Y. 183
(1878); Browning v. Hooper, 269 U.S. 396, 46 S.Ct. 141, 70 L.Ed. 330 (1926).
violated by the failure to give notice and hearing when the council itself imposes the individual assessments.\textsuperscript{87} It would be ill-advised, however, for any municipality to deny an affected property owner notice and hearing before imposing special assessments, and state constitutions and statutes, as well as local charters, regularly demand notice and hearing before the amount of the assessment becomes fixed.\textsuperscript{88} Constructive notice is generally adequate to support special assessment proceedings.\textsuperscript{89}

After notice the council, board of review,\textsuperscript{90} or court\textsuperscript{91} will hold hearings on the amount of the individual assessments and there is always the power to correct mistakes and usually the power to refer the roll back to the assessors or to annul and order a new assessment. It has been held that a special assessment hearing did not satisfy the demands of due process of law when the property owner was not permitted to make arguments and support them with proof,\textsuperscript{92} and another case held fatal a refusal to hear the property owner’s counsel.\textsuperscript{93} Customarily after proper hearing the governing body must by ordinance or resolution impose the assessments upon the benefitted property owners.\textsuperscript{94}


\textsuperscript{88}Wis. Laws (1935), Ch. 352; Armory Realty Co. v. Olsen, 210 Wis. 281, 246 N.W. 513 (1933); \textit{Burns Ind. Stat. Ann.} (1950), Sec. 48-2701; \textit{W. Va. Code} (1943), Sec. 560; \textit{Minn. Stat.} (1945), Sec. 412.29, 428.22; \textit{Page’s Ohio Gen. Code Ann.}, Sec. 3842-3. Joyce v. Barton, 67 Ohio St. 264, 65 N.E. 1001 (1902); St. Louis v. Ranken, 96 Mo. 497, 9 S.W. 910 (1888); Rudolph v. City of Homewood, 245 Ala. 648, 18 S. (2d) 563 (1944); Cincinnati v. Sherike, 47 Ohio St. 217, 25 N.E. 169 (1890); Boden v. Town of Lake. 244 Wis. 215, 12 N.W. (2d) 140 (1944); Note, 28 L.R.A. (n.s.) 1201, (Generally notice need not be given mortgagees or other lien holders; Mortgage Co. of Md. v. Lory, 100 W. Va. 310, 154 S.E. 136 (1930), noted in 37 W. Va. L.Q. 110 (1930) Fitchpatrick v. Botheras, 150 Iowa 376, 130 N.W. 163 (1911).


\textsuperscript{92}Londoner v. Denver, 210 U.S. 373, 28 S.Ct. 708, 52 L. Ed. 1103 (1907).


Although statutes frequently state that confirmed assessment rolls are final and conclusive, they are customarily interpreted so as to permit proof of fraud and absence of benefits. Courts are agreed, however, that in the absence of fraud or mistake the determination of the municipal authorities that benefits equal the amount of the assessment is conclusive.

Where assessment proceedings were invalid it has been held that the contractor could not recover even on the theory of implied contract. Today statutes regularly permit municipalities to make reassessments in the same manner as provided for original assessments in the event that the original was defective, and these are uniformly upheld. Curative acts of the legislature are also possible.

Statutes customarily permit municipalities at some stage of the assessment proceedings to issue assessment bonds, warrants or certificates of liability to pay for the improvement while the special assessments are being collected. Usually it is provided that the recital therein that the certificates were issued in compliance with all laws will be conclusive evidence of the facts so recited. And other statutes provide that "no error of informality in any action taken by any city in ordering or making any such improvement or the levy or making of any assessment...shall in any manner affect the validity of any such assessment bonds or certificates."

**Property Subject to Assessment**

Before there can be a valid municipal assessment against a piece of property, the city must have jurisdiction of the property to be assessed. Accordingly, in absence of specific statutory authority, a city has no power to include in an assessment district lands without the corporate

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95 MICHIGAN STAT. ANN., Sec. 5.1839.


99 MINN. STAT. (1945), Sec. 428.33; PAGE'S OHIO GEN. CODE ANN., Sec. 3902; GEN. STAT. KANSAS (1935), Sec. 14-409; MICHIGAN STAT. ANN., Sec. 5.1846; WYOMING COMP. STAT. ANN. (1945), Sec. 29-2042; (The wording of the statute is important on whether "jurisdictional" defects can be cured by reassessment). Compare Thayer Lumber v. Muskegon, 157 Mich. 424, 122 N.W. 189 (1909), with Crawford v. Detroit, 169 Mich. 293, 135 N.W. 314 (1912); Note, 83 A.L.R. 1190.


101 Curative Tax Legislation, 32 ILL. L. REV. 456 (1938).

102 NEW MEX. STAT. ANN. (1941) 14-3321.

103 MINN. STAT. (1945), Sec. 428.61. See also BURNS IND. STAT. ANN., Sec. 48-2711 (1950), and see short Statute of Limitation in MILWAUKEE, WIS., CHARTER (1934), Sec. 9.84.
limits. And, where the district has been created or exact rules for its delineation set forth by the legislature or in the municipal charter, there can be no assessment of property outside such confines. Similarly, where a council has created an assessment district assessors can not put on the assessment rolls property outside such area.

Sometimes state statutes specify the properties subject to special assessments for particular public improvements and they, of course, control. More frequently, however, the exemptions are set forth in state statutes or municipal charters. Regularly exempt from special assessments by municipalities, even in the absence of statutes, are properties owned by the United States Government, as well as those owned by the state in which the municipality is situated. County property is ordinarily exempt unless the contra legislative intent is clear. However, by the weight of authority, municipal property is subject to special assessments. Where public property is subject to special assessment the property can seldom be seized and sold for nonpayment of the assessment, but judgments can frequently be had against the governmental unit assessed, and often mandamus will lie to force the public officer to pay the assessment.

104 City of Des Plaines v. Boeckenhauer, 383 Ill. 475, 50 N.E. (2d) 483 (1943); City of Lawrenceville v. Hennessey, 244 Ill. 464, 91 N.E. 670 (1910); Newman v. Sylvester, 42 Ind. 106 (1875).


107 W. VA. CODE (1943), Sec. 569; Wis. Stats. (1933), Sec. 75.65.


110 Mt. Sterling v. Montgomery County, 152 Ky. 537, 153 S.W. 952 (1913); City of Big Rapids v. Mecosta County, 99 Mich. 354, 58 N.W. 358 (1894); City of McCook v. Red Willow County, 133 Neb. 380, 275 N.W. 396 (1937); Cf. Jefferson County v. Oskaloosa, 80 Kan. 587, 102 P. 1095 (1909), and Bd. of County Commrs. v. Shrader, 36 Ind. 87 (1871) upholding assessments.

111 Phoenix v. Wilson, 39 Ariz. 250, 5 P. (2d) 411 (1932); Long v. Monroe, 265 Mich. 251, 251 N.W. 582 (1933); Re Commercial St., 134 Misc. 120, 234 N.Y.S. 694 (1929); Newberry v. Detroit, 164 Mich. 410, 129 N.W. 699 (1911); Indianapolis v. City Bond Co., 42 Ind. App. 470, 84 N.E. 20 (1908).


Constitutional exemptions from taxation do not ordinarily include special assessments\textsuperscript{14} and hence, in the absence of statute to the contrary, cemetery,\textsuperscript{15} homestead\textsuperscript{16} and agricultural\textsuperscript{17} lands, church,\textsuperscript{18} private school,\textsuperscript{19} and charitable organization\textsuperscript{20} properties are subject to special assessments. Courts are not at all inclined to expand constitutional or statutory exemptions from special assessments.\textsuperscript{21} Notwithstanding some early doubts, railroad properties can be subject to local assessments, even for the paving of roads, on the same proof applicable to other properties, namely benefit.\textsuperscript{22} Although the cases are not in agreement there is the possibility that statutes and charters relieving particular properties subject to assessment for improvements from such burdens may be unconstitutional.\textsuperscript{23} There is also a conflict of authority as to the validity of conditions in a dedication of land to municipalities that remaining land owned by the donor shall not be subject to special

\textsuperscript{14} Logan v. City of Louisville, 283 Ky. 518, 142 S.W. (2d) 161 (1940); Jefferson County v. City of Birmingham, 235 Ala. 199, 178 S. 226 (1938); People ex rel. Auditor General v. Ingalls, 238 Mich. 423, 213 N.W. 713, (1927); City of St. John v. Stafford County, 111 Kan. 128, 205 P. 1033 (1922).

\textsuperscript{15} Baltimore v. Green Mt. Cemetery, 7 Md. 517 (1855); Garden Cemetery Corp. v. Baker, 218 Mass. 339, 105 N.E. 1070 (1914); Buffalo City Cemetery v. Buffalo, 46 N.Y. 506 (1871); Rock Island v. Chippianock Cemetery Assn., 328 Ill. 236, 159 N.E. 271 (1927). Note, 71 A.L.R. 322. However, some cases hold that where the land is perpetually set aside for cemetery purposes it is exempt from special assessments. Woodmere Cemetery Assn. v. Detroit, 192 Mich. 553, 159 N.W. 383 (1916); Mt. Auburn Cemetery v. Cambridge, 150 Mass. 12, 22 N.E. 66 (1859). Subject to assessment under Wis. Laws (1897), Ch. 93.


\textsuperscript{17} Allen v. Davenport, 107 Iowa 90, 77 N.W. 532 (1898).

\textsuperscript{18} Lefevre v. Denver, 2 Mich. 587 (1853); Atlanta v. First Presbyterian Church, 86 Ga. 730, 13 S.E. 252 (1890); Rensberg v. Parker, 192 Ark. 908, 95 S.W. (2d) 992 (1936); Rausch v. Trustees, 107 Ind. 1, 8 N.E. 25 (1886); Contra: Erie v. Universalist Church, 105 Pa. 279, (1884); First Presbyterian Church v. Fort Wayne, 36 Ind. 338, 10 Am. Rep. 35 (1871).


\textsuperscript{23} Oregon Rr. v. Berg, 52 Idaho 493, 16 F. (2d) 373 (1932). Note 105 A.L.R. 1169.
In general, contracts exempting certain properties from special assessments are properly deemed contra to public policy.\[^{126}\]

**WHAT CAN BE INCLUDED IN THE COST OF AN IMPROVEMENT TO BE ASSESSED**

Occasionally statutes specifically enumerate the items that may be included in the cost of improvements to be assessed.\[^{126}\] Generally the total amount assessed may include the cost of making estimates and plans, the charges of engineers and attorneys, surveying, printing, advertising for bids, preparation of assessment rolls, and general expenses of determining and levying the special assessments.\[^{127}\]

Sometimes, too, the amount may include the contractor's charge for promising to maintain the improvement in repair for a period of time.\[^{128}\]

And statutes sometimes authorize the inclusion of extra work not anticipated at the time of hearings on the contemplated improvement.\[^{129}\]

However, where an assessment includes costs of unauthorized work it will be set aside.\[^{130}\]

Note should be made of the frequent statutes limiting the percentages of cost of the improvement that can be spread over the benefit district.\[^{131}\]

**AMOUNT OF INDIVIDUAL ASSESSMENTS**

Often the amount of individual assessment is limited by law to a certain percent of the value of the property.\[^{129}\] These limitations may be waived.\[^{132}\] Although the United States Supreme Court is currently


Denying: Richards v. Cincinnati, 31 Ohio St. 506 (1877); Vrana v. St. Louis, 164 Mo. 146, 64 S.W. 180 (1901); Leggett v. Detroit, 137 Mich. 247, 100 N.W. 566 (1904).

\[^{125}\] Pittsburgh Co. v. Ogleby, 165 Ind. 542, 76 N.E. 165 (1905); Cleveland v. Edwards, 109 Ohio St. 598, 143 N.E. 181, 37 A.L.R. 1352 (1924).


Mann v. Downton Grove San. Dist., 281 Ill. App. 412 (1936); Roberts v. City of Los Angeles, 7 Cal. (2d) 427, 61 P. (2d) 323 (1936); Chamberlain v. Cleveland, 34 Ohio St. 551 (1878); Cuming v. Grand Rapids, 46 Mich. 150 (1881); County Securities v. Palmer, 3 N.Y.S. (2d) 382 (1938); Massengill v. Clovis, 33 N. Mex. 519, 270 P. 886 (1928); Scanlan v. Continental Inv. Co., 142 S.W. (2d) 432 (Tex. Civ. App., 1940).

Newberry v. Detroit, 184 Mich. 188, 150 N.W. 338 (1915). And see footnotes 21 and 22, supra.

\[^{127}\] WYOMING Comp. S.A. (1945), Sec. 29-2061.


willing to analogize special assessments to taxes and condemn them only if unreasonably arbitrary.\textsuperscript{134} The dominant state court rule requires that the amount of the assessment be not in substantial excess of the amount of the special benefit to the property improved.\textsuperscript{135} In determining the extent of special benefits, municipalities are not limited to present uses but can consider both customary and available uses.\textsuperscript{136} The benefits, nevertheless, must be actual or probable and not mere possibilities in the remote future.\textsuperscript{137}

A special assessment must be spread over the benefit district according to some fair and uniformly applied rule and in such a way as to show a compliance with the rule.\textsuperscript{138} From time to time courts deny the validity of various methods when automatically applied regardless of benefits,\textsuperscript{139} but an abundance of judicial decisions sustains the applicability of the front-foot rule to sidewalks, street improvements and other public works.\textsuperscript{140} Many cases, too, attest the propriety of assessing the cost of certain improvements, such as sewers, according to the square foot or area basis.\textsuperscript{141} Corner lots are usually chargeable with improvements on both sides,\textsuperscript{142} and the increased value to non-contiguous properties because of corner influence can be considered in

\textsuperscript{134}French v. Barber Asphalt Co., 181 U.S. 324, 21 S.Ct. 625, 45 L. Ed. 879 (1900).
\textsuperscript{135}Boden v. Town of Lake, 244 Wis. 215, 12 N.W. (2d) 140 (1944); Nakina Realty Co. v. City of Milwaukee, 249 Wis. 355, 24 N.W. (2d) 610 (1947); Driscoll v. Inhabitants of Northbridge, 210 Mass. 151, 96 N.E. 59 (1911); Stevens v. City of Port Huron, 149 Mich. 535, 113 N.W. 291 (1907) noted in 21 HARv. L. Rev. 533 (1908); Stockman v. City of Trenton, 132 Fla. 406, 181 S. 383 (1938). Note, 28 L.R.A. (n.s.) 1172. Under this rule statutory attempts to impose fixed percentages of costs upon owners are in peril. Detroit v. Judge of Recorders Court, 112 Mich. 588, 71 N.W. 149, 42 L.R.A. 638 (1897).
\textsuperscript{138}In re Realty Inv. & Sec. Corp., 185 Minn. 170, 240 N.W. 355 (1932) noted in 18 A. L. Rev. 800 (1932); Panfil v. Detroit, 246 Mich. 149, 224 N.W. 616 (1929).
\textsuperscript{140}Petersen v. City of Phillips, 189 Wis. 246, 207 N.W. 268 (1926); McKee v. Pendleton, 162 Ind. 667, 69 N.E. 997 (1904); Shoemaker v. Cincinnati, 68 Ohio St. 603, 68 N.E. 1 (1903); Ellis v. New Mexico Construction Co., 27 N. Mex. 312, 201 P. 487 (1921); City of Roswell v. Bateman, 20 N.Mex. 77, 146 P. 950 (1915); Allen v. Davenport, 107 Iowa 90, 77 N.W. 532 (1898). Note, 56 A.L.R. 941.
\textsuperscript{142}City of Louisville v. Colby, 262 Ky. 578, 90 S.W. (2d) 1036 (1936).
levying special assessments. In general, any municipal rule of apportionment of burden which is a reasonable method for the given type of public improvement is constitutional and the court will ordinarily not invalidate a method of assessment because it occasionally leads to the assessment of a particular lot for a sum larger than the exact benefit to that parcel.

Statutes often provide that the municipal determination of the amount of benefits is final and conclusive and the judiciary will ordinarily not substitute its judgment for that of municipal officers as to the amount of benefit, but when the amount is arbitrary or fraudulent courts have been willing to enjoin the enforcement and collection of individual assessments. The city council is presumed to have acted in good faith and correctly exercised its discretion in apportioning benefits and there is everywhere a presumption that the benefits were properly allocated.

**APPEAL AND RELIEF FROM SPECIAL ASSESSMENTS**

It is customary for local statutes and charters to specify the nature of the protest and relief from municipal assessments, and the failure to avail oneself of these means will almost always preclude attack upon the assessment elsewhere, although there is authority denying

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149 Wyoming Comp. S.A. (1945) Sec. 29-2007; Minn. Stat. (1945) ss. 412.30, 430.03; New Mex. S.A. (1941) Sec. 14-3332; Milwaukee, Wis., Charter (1934), Sec. 11.22; Wis. Laws (1945), ch. 352 (Appeal to Circuit Ct. exclusive remedy).
estoppel when the defect in the proceedings is jurisdictional.\textsuperscript{151} In accord with the general rule, failing to present an objection at the hearing prevents raising it later,\textsuperscript{162} and failure to object to the municipal authorities in proper form will bar attack in other form.\textsuperscript{163} Parties appearing at the hearing and objecting are customarily deemed to have waived any irregularities in notice and service.\textsuperscript{154} So, too, objecting on one ground waives other objections.\textsuperscript{155} And failure to appeal as provided by statute or charter will estop a property owner from other attack.\textsuperscript{156} Similarly, failure to appeal within the relatively short time periods provided by statute will bar later attack.\textsuperscript{157} The general rule requiring exhaustion of administrative appeals before seeking judicial relief finds abundant illustration in the field of municipal assessments.\textsuperscript{158}

One who petitions for a public improvement should be estopped to deny the necessity for the improvement,\textsuperscript{159} and to deny that the total


\textsuperscript{154} Domito v. Village of Maumee, 140 Ohio St. 229, 42 N.E. (2d) 984 (1942).


\textsuperscript{156} Brown v. Otis, 98 App. Div. 55, 90 N.Y.S. 250 (1904); Lovington v. Gregory, 287 Ill. 169, 122 N.E. 504 (1919); Stewart v. Detroit, 137 Mich. 381, 100 N.W. 613 (1904); Roberts v. City of Los Angeles, 7 Cal. (2d) 477, 61 P. (2d) 323 (1936); Peoples Inv. Co. v. City of Des Moines, 213 Iowa 1378, 241 N.W. 464, 79 A.L.R. 1310 (1932).

\textsuperscript{157} Colby v. Medford, 85 Ore. 485, 167 P. 487 (1917); Lytle v. Sioux City, 198 Iowa 484, 200 N.W. 416 (1924); State ex rel Johnson v. City of Dayton, 200 Wash. 91, 93 P. (2d) 909 (1939); Gates v. Grand Rapids, 134 Mich. 96, 95 N.W. 998 (1903).


\textsuperscript{159} Wiget v. City of St. Louis, 337 Mo. 799, 85 S.W. (2d) 1035 (1935); Utley v. City of St. Petersburg, 292 U.S. 106, 54 S.Ct. 593, 78 L. Ed. 1155, 1893); Owens v. Marion, 127 Iowa 469, 103 N.W. 381 (1905); City of Cincinnati v. Board of Education, 63 Oh. App. 549, 27 N.E. (2d) 413 (1940).

\textsuperscript{159} Note, 9 A.L.R. 634.
cost exceeds benefit, but not the constitutionality of the act under which the work was undertaken, the adequacy of the petition or other steps in the assessment proceeding, except irregularities in notice of hearing on the contemplated improvement, nor should a petitioner be estopped to attack the amount of his own assessment. A property owner may waive his right to contest an assessment by an express agreement such as a stipulation usually contained in agreements for delayed payments of the assessment. Here again, this is sometimes held not to constitute an estoppel to object to jurisdictional defects. A property owner who knows, or should know, work is being done on a public improvement to his benefit and that an assessment therefor is likely, and who fails to object thereto will ordinarily be estopped to attack the improvement or assessment. As elsewhere, when the defect is jurisdictional estoppel will probably not be applied.

Laches generally will bar attack upon special assessments and so, too,
payment of some installments without protest will often prevent later objection. 171

If a public improvement financed by a special assessment has been wholly or partially abandoned the clear weight of authority permits recovery of the assessments paid, 172 unless the particular property has been benefited by the partial completion. 173 Where an assessment is void, statutes generally permit recovery of assessments paid so long as payment was involuntary. 174 Absent a statute, however, recovery may be difficult. 175 Courts of equity will often in the event of invalid assessments grant injunctions restraining the municipal authorities from advertising for bids, letting contracts, going forward with the assessment proceedings, and collecting assessments. 176 So, too, equity courts have set aside invalid assessment proceedings and relieved property from liens. 177 Bills to quiet title have also been permitted when the assessment was improperly levied. 178 An aggrieved property owner will seldom be given a writ of prohibition to halt the levy or collection of a special assessment, 179 and the likelihood of getting a declaratory judgment to the effect that assessment proceedings are invalid is as yet uncertain, 180 although it seemingly should be available.

Generally, it is no defense to a special assessment that the property owner considers the public improvement to have been executed


179 LeConte v. Berkley, 57 Cal. 269 (1881). Note 115 A.L.R. 20

faultily.\textsuperscript{81} So long as the improvement was accepted by municipal authorities in good faith and there was substantial compliance with the contract a property owner will not be heard, but if there was fraud or mistake or if there was a deviation from the general character or location of the improvement, municipal acceptance will not prevent contest therefor by an assessed property owner.\textsuperscript{82}

**Enforcement Against the Property Owner**

Statutes and charters regularly indicate the method of enforcement of a special assessment against property owners, and the statutory method is almost always exclusive.\textsuperscript{83} Suits in assumpsit are common,\textsuperscript{84} as are provisions for putting the assessment on the city or county tax list and collecting it in the same manner as taxes.\textsuperscript{85} Practically everywhere unpaid assessments become a lien upon the property,\textsuperscript{86} and statutes making special assessment liens superior to contractual liens have been sustained as constitutional.\textsuperscript{87} The special assessment liens are regularly inferior to tax liens,\textsuperscript{88} and the cases are divided as to whether junior or senior special assessment liens are prior over the other,\textsuperscript{89} or whether there is any priority.\textsuperscript{90} The liens are ordinarily


\textsuperscript{82} McCain v. Des Moines, 128 Iowa 331, 103 N.W. 979 (1905); Gorman v. Johnson, 46 Ind. App. 672, 91 N.E. 971 (1910); Eiermann v. City of Milwaukee, 142 Wis. 606, 126 N.W. 53 (1910); Gage v. People, 200 Ill. 432, 65 N.E. 1084, 193 Ill. 316, 61 N.E. 1045 (1902); Eustace v. People, 213 Ill. 424, 72 N.E. 1089 (1905).


\textsuperscript{84} City of South Fulton v. Parker, 160 Tenn. 634; 28 S.W. (2d) 639 (1930); noted in 6 N. D. LAWY. 133 (1930); City Electric Co. v. Albuquerque, 32 N. Mex. 397, 258 P. 573 (1927); City of Sault Ste. Marie v. Minneapolis Rr., 192 Mich. 65, 158 N.W. 164 (1916).

\textsuperscript{85} PAGE'S OHIO GEN. CODE ANN., Sec. 3892.

\textsuperscript{86} N. MEX. S.A. (1941) ss. 14-3312, 14-3321; PAGE'S OHIO GEN. CODE ANN., Sec. 3842-3; IDAHO CODE (1945) Sec. 50-503; VIRGINIA CODE (1950) Sec. 15-676; WYOMING COMP. S.A. (1945) Sec. 29-2021; MICHIGAN S.A., Sec. 5.1840.


\textsuperscript{88} First Bk. & Tr. Co. v. Ralston, 222 Ind. 584, 55 N.E. (2d) 115 (1944); Fletcher v. Oshkosh, 18 Wis. 228 (1864); Mo. Real Estate & Loan Co. v. Burri, 202 Mo. App. 242, 216 S.W. 570 (1919); Bosworth v. Anderson, 47 Idaho 697, 280 P. 227 (1929). Note, 65 A.L.R. 1379.

\textsuperscript{89} Junior lien prior: Gould v. St. Paul, 120 Minn. 172, 139 N.W. 293 (1913); Woodill & Hulse Electric Co. v. Young, 180 Cal. 667, 182 P. 422 (1919); Jaicks v. Oppenheimer, 264 Mo. 693, 175 S.W. 972 (1915). Senior lien prior: Heller & Co. v. Duncan, 110 W.Va. 628, 159 S.E. 52 (1931); Parker-Washington Co. v. Corcoran, 150 Mo. App. 188, 129 S.W. 1031 (1910); Brady v.
suspended while the property is owned by the state or a political sub-
division and revived upon return of the property to private
ownership, although there is authority that governmental ownership extinguishes
liability and lien. The liens can generally be foreclosed and the
property sold by the municipality and under many statutes by the
certificate holders who have financed the improvement. The right to
foreclose will very often be barred by the state statute of
limitations, although there are holdings to the effect that the statute of limitations
does not apply to municipalities enforcing special assessments.

Although the effect of the contract clause of the United States Constitution
may today be no more than due process there remains the possibility
that statutes modifying the rights of special assessment lienholders may
be unconstitutional as impairing the obligation of contracts.

There is no constitutional possibility of making a non-resident
property owner personally liable for a special assessment, and many
cases deny the possibility of imposing personal liability for assessments
even upon residents, although there are contra cases. Contractual

Burke, 90 Cal. 1, 27 P. 52 (1891); Des Moines Brick Mfg. Co. v. Smith,
108 Iowa 307, 79 N.W. 77 (1899); Scott-McClure Land Co. v. City of Portland,

Hollenbeck v. City of Seattle, 136 Wash. 508, 240 P. 916 (1925), noted in 1
WASH. L. REV. 215 (1926); Citizens Trust and Savings Bank v. Fletcher
American Co., 207 Ind. 328, 190 N.E. 868 (1934), noted in 48 HARY. L. REV
1028 (1935); Willard v. Morton, 50 Wyo. 72, 59 P. (2d) 338 (1936).

Indianapolis v. City Bond Co., 42 Ind. App. 470, 84 N.E. 20 (1908); Raisch

Klatt v. Detroit, 162 Mich. 186, 127 N.W. 409 (1910); City of Pleasant

Burns Ind. STAT. ANN. (1950), Sec. 48-2711; WYOMING COMP. S.A. (1945),
Sec. 29-2034; N. MEX. S.A. (1941), Sec. 14-3314; Indianapolis v. City Bond
Co., 42 Ind. App. 470, 84 N.E. 20 (1908); Hann v. City of Clinton, 131 F.
(2d) 978 (10th Cir., 1942); 1 st Natl. Bank of Columbus v. City of Weiser,
30 Idaho 14, 166 P. 213 (1916); Ft. Scott Public Utility Co. v. Armour,
115 Kan. 152, 222 P. 93 (1924).

Raleigh v. Mechanics and Farmers Bk., 223 N.C. 286, 26 S.E. (2d) 573
(1943), discussed by Abbott, The Collectibility of Special Assessments more
than Ten Years Delinquent, 22 N.C. L. REV. 123 (1944); Altman v. Kilburn,
45 N. Mex. 453, 116 N. (2d) 212, 136 A.L.R. 554 (1941); Knoxville v. Gervin,
169 Tenn. 352, 89 S.W. (2d) 348, 103 A.L.R. 877 (1936); Read v. Abe Rosen-
blum & Sons, 115 Ind. App. 200, 58 N.E. (2d) 24 (1944); Notes, 113 A.L.R.
1165, 114 A.L.R. 399.

Seeck v. Lebanon, 148 Ore. 291, 36 P. (2d) 334 (1934); Note, 103 A.L.R.
885.

Assn. v. City of Birmingham, 316 U.S. 153, 62 S.Ct. 975, 86 L. Ed. 1341
(1942).


City of E. St. Louis v. Ill. Trust Co., 372 Ill. 120, 22 N.E. (2d) 944 (1939),
noted in 8 Geo. WASH. L. REV. 982 (1940); City of Brookings v. Natwick, 22
S.D. 322, 117 N.W. 376 (1908); Asberry v. City of Roanoke, 91 Va. 502, 22 S.E.
360 (1895); Craw v. Tolono, 96 Ill. 255, 36 Am. Rep. 143 (1880); Meyer v.
City of Covington, 103 Ky. 546, 45 S.W. 769 (1898); Taylor v. Palmer, 31
Cal. 240 (1866).

Burlington v. Quick, 47 Iowa 222 (1877); Shambaugh v. Bellar, 54 S.W.
(2d) 550 (Tex. Civ. App., 1932); Gest v. Cincinnati, 26 Ohio St. 275 (1875);
liability is sometimes created and this personal liability is of course valid. There are often provisions for going against other property of the resident owner, and the United States Supreme Court seemingly will not consider such procedure unconstitutional.

Where a special assessment proves insufficient, statutes customarily provide that the municipality may make additional pro rata assessments, but where the deficiency is due to non-payment by some property owners, others who have paid cannot be subjected to a re-assessment.

MUNICIPAL LIABILITY

Although there can, of course, be municipal liability by the terms of its contract with holders of assessment bonds, warrants or certificates municipalities are generally not liable upon assessment obligations payable out of a special fund when, through no fault of the city the fund proves inadequate. But a municipal corporation is liable to bond or certificate holders when it has collected special assessments and diverted these funds to other municipal purposes. And municipalities have been held liable where they refused or neglected to levy an assessment, where the assessment imposed was inadequate to cover

City of St. Mary's v. Locke, 73 W.Va. 30, 80 S.E. 841 (1913); In re Vacation of Centre St., 115 Pa. 247, 8 A. 56 (1886). The Ohio courts permit personal liability, but limit it to the extent of interest in the property assessed. Brown v. Russell, 20 Ohio App. 101, 151 N.E. 793 (1925).


Nickey v. Mississippi, 292 U.S. 393, 54 S.Ct. 743, 78 L.Ed. 1323 (1934), permitting resort to property other than that taxed to enforce collection of non-resident's ad valorem tax.

MINN. STAT. (1945), Sec. 412.28; MICH. S.A., Sec. 5.1845; JONES ILL. S.A., Sec. 21.2269; MCKINNEY'S N.Y. CONSOL. LAWS, ch. 53, Sec. 21.162. Re Lower Baraboo River Drainage Dist., 199 Wis. 230, 225 N.W. 331 (1929). Note, 63 A.L.R. 1179.


the cost of the improvement,209 where there was a deficiency because the assessment was levied upon exempt property210 or where they have after the assessment purchased the property themselves,211 where the amount imposed was partially invalid because in excess of benefits,212 as well as where the municipalities refused or neglected to collect the assessment.213 Occasional cases deny recovery against a city which has neglected to collect an assessment on the ground that the contract specifically negated any municipal liability.214 Although the cases are divided as to whether a municipality is liable when special assessment proceedings are defective,215 the majority and better cases recognize liability.216 When the property assessed has been seized and sold by either the investors or the city, municipalities are seldom liable for deficiencies.217


210 Barber Asphalt Pav. Co. v. Harrisburg, 64 F. 283 (3rd Cir., 1894); Bucroft v. Council Bluffs, 63 Iowa 646, 19 N.W. 807 (1894); Maher v. People, 38 Ill. 327 (1865); Leavenworth v. Laing, 6 Kan. 167 (1870); Chicago v. People, 56 Ill. 327 (1870); Louisville v. Leatherman, 99 Ky. 213, 35 S.W. 625 (1896).


212 Barber Asphalt Pav. Co. v. Denver, 72 F. 336 (8th Cir., 1896); Chicago v. People, 56 Ill. 327 (1870).

213 J. W. Turner Imp. Co. v. Des Moines, 155 Iowa 592, 136 N.W. 556 (1912); Atchison v. Leu, 48 Kan. 138, 29 P. 467 (1892); Rogers v. Omaha, 82 Neb. 118, 117 N.W. 119 (1908); Hauge v. Des Moines, 207 Iowa 1209, 224 N.W. 520 (1929). So, where the city has failed to take steps to collect, Hauge v. Des Moines, supra; Barber Asphalt Pav. Co. v. Denver, 72 F. 336 (8th Cir., 1896); Gray v. City of Santa Fe, 135 F. (2d) 374 (10th Cir., 1941), where the city failed to have the property struck off to it, as authorized by statute, when the county sold it at delinquent tax sale; Grand Lodge v. Bottineau, 58 N.D. 740, 227 N.W. 363 (1929), noted in 19 N.A. Mu. Rev. 55 (1930), where the city allowed paving certificates to be cancelled in a suit against it without defending on the ground that the contractor had performed; Wells v. Asphalt Pav. Corp. v. City of Marshalltown, 205 Iowa 1324, 214 N.W. 687 (1922), where the city cancelled the lien of the property owner; Ward v. Lincoln, 87 Neb. 661, 128 N.W. 24 (1910), where the city compromised for less than the amount due; Sheaffe v. Seattle, 18 Wash. 298, 51 P. 385 (1897), where the city lost jurisdiction to reassess; Barber Asphalt Pav. Co. v. Des Moines, 191 Iowa 762, 183 N.W. 456 (1921); McEwan v. City of Spokane, 16 Wash. 212, 47 P. 433 (1896).


216 Sleeper v. Bullen, 6 Kan. 183 (1870); Leavenworth v. Stille, 13 Kan. 539 (1874); Barber Asphalt Pav. Co. v. Des Moines, 191 Iowa 762, 183 N.W. 456 (1921); Riely v. City of Albany, 112 N.Y. 30, 19 N.E. 508 (1889); Barber Asphalt Pav. Co. v. Denver, 72 F. 336 (8th Cir., 1896); Portland Lumbering Co. v. East Portland, 18 Ore. 21, 22 P. 536 (1889); Louisville v. Hyatt, 5 B. Mon. 199 (Ky., 1844); Morgan v. Pointe Coupee, 11 La. 157 (1837).

Statutory remedies are generally exclusive and courts show no willingness to appoint receivers to take over and administer the municipality's assets.\textsuperscript{218} At times creditor suits for money judgments are denied on the ground that the proper remedy is mandamus.\textsuperscript{219} This writ is occasionally granted to force an assessment or assessments by municipal authorities,\textsuperscript{220} to compel collection of the assessment,\textsuperscript{221} to require municipal authorities to raise by taxation the amount of deficiency from a special assessment,\textsuperscript{222} and to order public officers to turn over to bondholders all payments received from property owners.\textsuperscript{223} Suits for accounting against the municipality are possible, as well.\textsuperscript{224} But there is little probability of personal liability upon municipal officers who fail to impose or collect special assessments,\textsuperscript{225} absent statutory responsibility.\textsuperscript{226}


\textsuperscript{219} Peake v. New Orleans, 139 U.S. 342, 11 S.Ct. 541, 35 L. Ed. 131 (1891); Pontiac v. Talbot Pav. Co., 94 F. 65 (7th Cir., 1899); Brood v. City of Moscow, 15 Idaho 606, 99 P. 101 (1908); Blanchar v. Caspar, 81 F. (2d) 452 (10th Cir., 1936).


\textsuperscript{221} People ex rel. Ready v. Mayor of Syracuse, 144 N.Y. 63, 38 N.E. 1006 (1894).

\textsuperscript{222} State ex rel. v. Brooklyn, 126 Ohio St. 459, 185 N.E. 841 (1933); Klemm v. Davenport, 100 Fla. 627, 129 S. 904 (1930), noted in 19 Nat. Mun. Rev. 849 (1930). Such a tax is not violative of bans on double taxation. Wickliffe v. City of Greenville, 170 Ky. 528, 186 S.W. 476 (1916); Colby v. City of Medford, 85 Ore. 485, 167 P. 487 (1917). See also Hallahan v. City of Port Angeles, 161 Wash. 353, 297 P. 149 (1931), upholding a compulsory local improvement guaranty fund built up by taxation of all property in the city.


\textsuperscript{224} Grand Carniolian Slovenian Catholic Union v. Rockdale, 314 Ill. App. 308, 41 N.E. (2d) 218 (1942).

\textsuperscript{225} Newman v. Sylvester, 42 Ind. 106 (1873).

\textsuperscript{226} Such as Burns Ind. Stat. Ann., Sec. 48-4410.