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Legal Opinion 2017-003

TO: Mayor John Engen; Dale Bickell; Leigh Griffing; Steve Johnson; Marty Rehbein; Kirsten Hands; John Wilson; Kevin Slovarp; Mike Haynes; Lori Hart

CC: Attorney Department

FROM: Jim Nugent, City Attorney

DATE January 19, 2017

RE: Montana municipal special improvement district law provides that federal property is to be omitted from special improvement district assessments. City is to pay assessments for improvements in front of federal property

FACTS:

Regional counsel has expressed opposition to City of Missoula special improvement district (SID) 9000 assessments being made against the Missoula Federal Building/Post Office located on 200 East Broadway in Missoula. Further, because the United States did not pay the City of Missoula SID 9000 assessments, Missoula County sold the federal building at a tax sale to Capstoned Inc on September 12, 2014.

ISSUE(S):

May the City of Missoula impose special improvement district (SID) assessments on federal property?

CONCLUSION(S):

No. Pursuant to section 7-12-4173 MCA a Montana municipality may not assess municipal special improvement district assessments against federal property.

LEGAL DISCUSSION:

Montana municipal special improvement district laws are set forth in title 7, chapter 12, parts 41 and 42 MCA. Section 7-12-4173 MCA is entitled "STATUS OF FEDERAL PROPERTY WITHIN IMPROVEMENT DISTRICT" and provides that municipal special improvement district assessments may not be assessed against federal property. Section 7-12-4173 MCA provides as follows:

7-12-4173. Status of federal property within improvement district.

Whenever any lot, piece, or parcel of land belonging to the United States or mandatory of the government shall front upon the proposed work or improvement or be included within the district declared by the city council in its resolution of intention to be the district to be assessed to pay the costs and expenses thereof, said council shall, in the resolution of intention, declare that said lots, pieces, or parcels of land shall be omitted from the assessment thereafter to be made to cover the costs and expenses of said work or improvement. The cost of said work or improvement in front of said lots, pieces, or parcels of land shall be paid by the city from its general fund.

Note that the municipal resolution of intent for a municipal special improvement district is to note that federal property is omitted from the special improvement district assessments. Further, section 7-12-4173 MCA provides that the City shall pay the municipal special improvement district assessment for the assessment in front of the federal property.

It should also be noted that more generally Montana state law, subsection 15-6-201(1)(z) MCA exempts the United States from property taxes as well.

CONCLUSION(S):

No. Pursuant to section 7-12-4173 MCA a Montana municipality may not assess municipal special improvement district assessments against federal property.

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/s/

Jim Nugent, City Attorney

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