

(See Webb v. Clark County (1928), 87 Ind. App. 103, 107, 159 N. E. 19.)

Therefore, the property described in your question would not be subject to real estate or *ad valorem* taxes.

OFFICIAL OPINION NO. 38

May 22, 1952.

Honorable Otto K. Jensen,
State Examiner,
State Board of Accounts,
Room 304, State House,
Indianapolis 4, Indiana.

Dear Mr. Jensen:

I have your request for an Official Opinion in which you ask the following question:

“Can the Trustees of the Town of Chesterfield levy a small *ad valorem* tax in addition to its regular tax levy to create a fund from which a guarantee of payment may be made in the event of a default by any person against whose property a special assessment has been levied in connection with the proposed project?”

I find only one statute which specifically authorizes the levying of a special tax for Barrett Bond purposes. This is Section 1 of Chapter 142 of the Acts of 1913 as last amended by Section 1 of Chapter 168 of the Acts of 1925, same being Burns' 48-2702. The provisions of this Act are too narrow to encompass payment of merely delinquent Barrett Bond assessments. However, Section 7 of Chapter 99 of the Acts of 1931 as last amended by Section 1, Chapter 213 of the Acts of 1951 provides for the creation of a “Special Assessment Delinquency and Deficit Fund.” In all cities and towns having Barrett Bonds outstanding this Section provides in part:

“* * * The common councils and boards of trustees of the various cities and towns shall also be authorized to appropriate and transfer from the general funds

of such cities and towns such amounts as they may deem proper or necessary to meet the needs of said fund. There shall be paid out of said fund any improvement bonds and interest coupons maturing after February 1, 1939, and for the payment of which assessments shall not have been collected, and upon the payment of such bonds, or interest coupons, from said fund, said city or town shall become the owner of such bonds and coupons and shall have all the rights now, or which may hereafter be, provided by law to enforce and collect the assessments remaining unpaid on account of which such bonds and interest coupons shall have been issued. * * * Provided, however, That nothing in this act contained shall authorize the taking up, purchase, or paying for, out of said fund, any such bonds or coupons issued on account of assessments, which have been finally approved, by the board of works or a court having jurisdiction, for a period of more than twelve (12) years; and Provided further, That the proceeds from all bonds and coupons, together with the cash belonging to said fund, as of January 1, 1939, may, in part or in whole, be transferred to the general fund of the city, or town, in an amount equal to all moneys which had been transferred from the general fund of the city, or town, to said fund, together with the total amount of all moneys for which certificates of indebtedness and/or bonds were issued, as is provided for in chapter 89 of the Acts of 1939, and for which the city, or town, has not already been subrogated."

It is to be noted that Section 48-4407 does not provide for the levying of a tax but merely provides for a transfer from the general funds. A proposed transfer for this purpose would seem to be a proper item to include in the regular budget from which the regular tax levy is determined.

At first it might appear that the transfer of such funds raised from general taxation might be improper and not within the power of the legislature to authorize.

In this respect, in the case of *Read v. Abe Rosenblum & Sons* (1944), 115 Ind. App. 200, 208, 58 N. E. (2d) 376, it was said:

"Appellants seek to charge the 'special assessment delinquency and deficit fund' with the amount of their unpaid bonds and coupons, apparently under that provision of the statute which authorizes the common councils and boards of trustees of the various cities and towns 'to appropriate and transfer from the general funds of such cities and towns such amounts as they may deem proper or necessary to meet the needs of such fund.' Here again, however, their position is untenable for the statutes specifically preclude 'the taking up, paying or enforcement of any such bonds or coupons issued on account of assessments, the collection and enforcement of which is barred by any statutory limitations.' (See § 48-4407, Burns' 1933, and Acts 1929, § 6, ch. 211.) The statute having run against both appellants and the municipality at the date of origin of the instant case, the proviso above quoted must prevail. What the attitude of this court on the question may have been had proper and timely action been taken is a matter not germane to the issues here presented and we do not discuss it."

However, the city or town is not completely divorced from public improvements constructed under Barrett Bond financing. As pointed out in the case of *Read et al. v. Beczkiewicz* (1939), 215 Ind. 365, 18 N. E. (2d) 789, when property owners who have signed waivers under the Barrett Law Act pay their entire assessment, the city becomes the principal obligor on the corresponding Barrett Bond or Bonds. It is to be noted further that provision is made in the above quoted portions of Burns' 38-4407 for the return of monies transferred from the general fund.

Therefore, it is my opinion that no tax may be levied to create a fund to guarantee payment of Barrett Bonds in the event of default, but that such a purpose can be effected by the transfer of monies from the general fund of the city or town to the "Special Assessment Delinquency and Deficit Fund."