

Chapter 223

City Improvements and Works Generally

Chapter 223

LAW REVIEW CITATIONS: 4 WLJ 490.

223.005 to 223.020

ATTY. GEN. OPINIONS: Application to housing authorities and urban renewal agencies, 1964-66, p 18.

223.005

ATTY. GEN. OPINIONS: Specifying extraterritorial authority, (1970) Vol 35, p 383.

223.015

NOTES OF DECISIONS

In authorizing payment of compensation awarded in condemnation proceedings, this statute does not contravene Ore. Const. Art. I, §18 or Art. XI, §4, relating to eminent domain. Skelton v. City of Newberg, (1915) 76 Or 126, 148 P 53.

Prospective assessment is not an element of damages in a condemnation proceedings. Eugene v. Wiley, (1960) 225 Or 327, 358 P2d 286.

223.020

NOTES OF DECISIONS

City had power to appropriate water flowing from springs across defendant's land situated without its corporate limits. City of McMinnville v. Howenstine, (1910) 56 Or 451, 109 P 81, Ann Cas 1912C, 193.

FURTHER CITATIONS: Riggs v. City of Grants Pass, (1913) 66 Or 266, 134 P 776.

223.105 to 223.175

LAW REVIEW CITATIONS: 46 OLR 125-158.

223.105

ATTY. GEN. OPINIONS: Application to housing authorities and urban renewal agencies, 1964-66, p 18.

223.205 to 223.300

CASE CITATIONS: State Constr. Corp. v. Scoggins, (1971) 259 Or 371, 485 P2d 391.

ATTY. GEN. OPINIONS: Taxing property outside corporate limits under "limited annexation," 1950-52, p 164; construing bonding limit, 1964-1966, p 457.

223.205

NOTES OF DECISIONS

See also cases under ORS 223.210.

ATTY. GEN. OPINIONS: Validity and effect of acceptance of requests for instalment payment of assessments filed after the 10-day limit, 1948-50, pp 248, 250; inherent power of legislature to grant taxing authority to municipalities, 1950-52, p 129.

223.210

NOTES OF DECISIONS

1. In general
2. Constitutionality
3. Application
4. Operation

1. In general

The statute is a general law applicable to all cities not excluded from its operation. Ladd v. Gambell, (1899) 35 Or 393, 59 P 113; Stratton v. Oregon City, (1900) 35 Or 409, 60 P 905; Colby v. Medford, (1917) 85 Or 485, 167 P 487; Lovejoy v. Portland, (1920) 95 Or 459, 188 P 207; Fay v. Portland, (1921) 99 Or 490, 195 P 828; Fehl v. Medford, (1923) 107 Or 478, 215 P 180.

A municipal corporation cannot by amendment of its charter repeal this statute nor render it inoperative. Ladd v. Gambell, (1899) 35 Or 393, 59 P 113; Stratton v. Oregon City, (1900) 35 Or 409, 60 P 905; Fehl v. Medford, (1923) 107 Or 478, 215 P 180.

A municipal corporation may adopt this enactment by appropriate charter provision. Irving Real Estate Co. v. Portland, (1910) 56 Or 140, 107 P 955.

Acceptance of the statute by the property owner makes any ordinance providing a different method of payment inoperative so long as he keeps up his instalments. Colby v. Medford, (1917) 85 Or 485, 167 P 487.

A city charter is subordinate to the provisions of this Act in case of a conflict. Fay v. Portland, (1921) 99 Or 490, 195 P 828.

2. Constitutionality

Adoption of former Ore. Const. Art. IV, §1a, and Art. XI, §2, did not affect the validity of this statute. Colby v. Medford, (1917) 85 Or 485, 167 P 487; Lovejoy v. Portland, (1920) 95 Or 459, 188 P 207.

This law is not unconstitutional as amending the various city charters without setting them out at length. Hoffman v. Branch, (1893) 24 Or 588, 38 P 4.

Neither Ore. Const. Art. I, §32 or Art. IX, §1, relating to equality and uniformity of taxes and assessments, is violated by this Act, since neither of those sections apply to street improvements. Ladd v. Gambell, (1899) 35 Or 393, 59 P 113.

The fact that a property owner whose assessment is less than \$25 may be made to contribute by taxation to payment of bonds issued to cover assessments of more than \$25 does not render this statute unconstitutional. Id.

This Act does not violate Ore. Const. Art. XI, §5, which provides that legislature should restrict powers of municipalities incorporated by legislative Acts. State v. Melville, (1935) 149 Or 532, 39 P2d 1119, 41 P2d 1071.

3. Application

This statute deals only with assessments already made, and has nothing to do with the initiation of improvement projects or the levy of assessments. *Ladd v. Gambell*, (1899) 35 Or 393, 59 P 113; *Colby v. Medford*, (1917) 85 Or 485, 167 P 487; *Wilson v. Medford*, (1923) 107 Or 624, 215 P 184.

Assessments made for the construction of watermains, etc., cannot be paid in instalments under this Act. *Colby v. Medford*, (1917) 85 Or 485, 167 P 487.

This statute applies only to improvements financed by assessments on particular property. *Montague-O'Reilly v. Milwaukie*, (1921) 101 Or 478, 193 P 824, 199 P 605.

4. Operation

Invocation of this statute by the property owner results in creation of a contract that cannot be impaired by subsequent legislation. *Colby v. Medford*, (1917) 85 Or 485, 167 P 487; *Drainage Dist. 7 v. Bernards*, (1918) 89 Or 531, 174 P 1167; *Fehl v. Medford*, (1923) 107 Or 478, 215 P 180.

This statute operates as an option, which the owner may accept or ignore, as he pleases. *Colby v. Medford*, (1917) 85 Or 485, 167 P 487.

A city may provide a plan for payment that may be accepted by owners operating under this statute, but it cannot compel them to accept it. *Id.*

FURTHER CITATIONS: *Bechtell v. Salem*, (1961) 226 Or 1, 358 P2d 563.

ATTY. GEN. OPINIONS: Validity and effect of acceptance of requests for instalment payment of assessments filed after the 10-day limit, 1948-50, pp 248, 250; bancrofting county assessments for improvement, 1960-62, p 264.

223.215

NOTES OF DECISIONS

See also cases under ORS 223.210.

Defects in a supplementary assessment, made long after the application, are not waived. *Parker v. City of Hood River*, (1916) 81 Or 707, 160 P 1158.

The waiver herein referred to sets at rest the question of liability under the assessment. *Patterson v. City of Ashland*, (1920) 95 Or 233, 187 P 593.

An application forms a contract between the city and the property owner and the owner may not thereafter judicially challenge the assessment. *Bechtell v. Salem*, (1961) 226 Or 1, 358 P2d 563.

When a tax has been paid without compulsion, but with knowledge or means of knowledge of its invalidity, payment is voluntary and not recoverable although made under protest. *Id.*

223.220

NOTES OF DECISIONS

See also cases under ORS 223.210.

A property owner may accept the benefits of the plan, even though his assessment is in excess of the actual value of his property, so long as it does not exceed the valuation "as shown by the last tax roll." *Colby v. City of Medford*, (1917) 85 Or 485, 167 P 487.

FURTHER CITATIONS: *Bechtell v. Salem*, (1961) 226 Or 1, 358 P2d 563.

223.230

NOTES OF DECISIONS

A special assessment does not bear interest unless interest is provided for by law. *Mall v. Portland*, (1899) 35 Or 89, 56 P 654.

ATTY. GEN. OPINIONS: The state, acting through World War Veterans' State Aid Commission, as chargeable with interest on paying liens of a municipal corporation, 1942-44, p 159; validity and effect of acceptance of requests for installment payment of assessments filed after the 10-day limit, 1948-50, pp 248, 250.

223.235

CASE CITATIONS: *Bechtell v. Salem*, (1961) 226 Or 1, 358 P2d 563.

223.240

NOTES OF DECISIONS

The bonds are liabilities of the city that must be paid whether the assessments can be collected or not. *Colby v. City of Medford*, (1917) 85 Or 485, 167 P 487.

223.245

NOTES OF DECISIONS

A city issuing the bonds has the power to levy a tax for their payment even before adoption of the amendment expressly authorizing such levy. *State v. Melville*, (1935) 149 Or 532, 39 P2d 1119, 41 P2d 1071.

Mandamus will lie to compel a city council to levy a tax in order to pay interest on bonds issued under the statute. *Id.*

Power of a city to levy taxes to pay interest on bonds it has issued under this Act is not subject to charter tax limitation provisions. *Id.*

223.270

NOTES OF DECISIONS

Collection procedure following delinquency in making the payments contemplated by this statute is governed by city charter provisions. *Colby v. City of Medford*, (1917) 85 Or 485, 167 P 487.

This Act does not provide a method of collecting delinquent instalments, and the city is at liberty to employ its own lawful processes in that respect. *Wilson v. City of Medford*, (1923) 107 Or 624, 215 P 184.

The action by the city council prescribed by this section is a condition precedent to the taking of any steps to enforce collection of a delinquency instalment. *Seeck v. Lebanon*, (1934) 148 Or 291, 36 P2d 334.

223.285

CASE CITATIONS: *Wilson v. City of Medford*, (1923) 107 OR 624, 215 P 184.

ATTY. GEN. OPINIONS: Eligibility of savings and loan corporation, not operating as a bank, to become depository for city funds under statute, 1924-28, p 674.

223.295

NOTES OF DECISIONS

A debt limitation provision in a city charter does not prevent the city from proceeding under this plan. *Ladd v. Gambell*, (1899) 35 Or 393, 59 P 113.

Bonds issued pursuant to the provisions of this enactment are a general obligation of the municipality. *State v. Melville*, (1935) 149 Or 532, 39 P2d 1119, 41 P2d 1071.

The provisions of a city charter have no application to bonds issued under this Act. *Id.*

FURTHER CITATIONS: *Bechtell v. Salem*, (1961) 226 Or 1, 358 P2d 563.

ATTY. GEN. OPINIONS: Construing "one year next preceding" and "self-supporting" municipal utility, 1964-66, p 457.

223.387 to 223.399

NOTES OF DECISIONS

This Act is applicable to assessments levied prior to construction. Aloha Sanitary Dist. v. Wilkens, (1966) 245 Or 40, 420 P2d 74.

Sufficiency of procedure underlying special assessments is subject to judicial review. Bennet v. City of Oceanlake, (1967) 247 Or 539, 430 P2d 1004.

FURTHER CITATIONS: Wing v. Eugene, (1968) 249 Or 367, 437 P2d 836.

LAW REVIEW CITATIONS: 4 WLJ 574.

223.389

NOTES OF DECISIONS

City council determination that the improvement is for the benefit of the property assessed and in the amount of the assessment is conclusive upon the courts unless the city's action is arbitrary. Raz v. Portland, (1961) 226 Or 515, 360 P2d 549.

The city may use an area basis in making an assessment. Id.

The legislature has the power to guarantee to property owners the protection afforded by traditional court procedure as provided by this section. Boyle v. City of Bend, (1963) 234 Or 91, 380 P2d 625.

Imposition of a special assessment on property not specially benefited by an improvement unjustly deprives the owner of a property interest. Id.

Notice of the assessment and an opportunity to object required by this section apply if the city has not provided for such notice before fixing the amount of assessments. Brown v. Salem, (1968) 251 Or 150, 444 P2d 936.

When the city ordinance did not contain substitute provisions for notice prior to construction, the statutory provision for prior notice was not negated. Bennet v. City of Oceanlake, (1967) 247 Or 539, 430 P2d 1004.

When the prior notice required by this section was not given, the assessment lien was void. Id.

Notice of intention to make an improvement was required, not because of the demands of due process of law, but rather as a jurisdictional prerequisite to the city's exercise of power under its charter. Brown v. Salem, (1968) 251 Or 150, 444 P2d 936.

FURTHER CITATIONS: Yettick v. City of St. Helens, (1960) 224 Or 580, 356 P2d 553; Sisters of St. Mary, Inc., v. City of Beaverton, (1970) 4 Or App 297, 478 P2d 412.

LAW REVIEW CITATIONS: 4 WLJ 573-583.

223.399

CASE CITATIONS: Boyle v. City of Bend, (1963) 234 Or 91, 380 P2d 625; Bennet v. City of Oceanlake, (1967) 247 Or 539, 430 P2d 1004; Brown v. Salem, (1968) 251 Or 150, 444 P2d 936; Gilbert v. Eugene, (1970) 255 Or 289, 465 P2d 880.

LAW REVIEW CITATIONS: 4 WLJ 573-583.

223.401

CASE CITATIONS: Wing v. Eugene, (1968) 249 Or 367, 437 P2d 836.

223.405 to 223.485

CASE CITATIONS: Wing v. Eugene, (1968) 249 Or 367, 437 P2d 836; Brown v. Salem, (1968) 251 Or 150, 444 P2d 936.

LAW REVIEW CITATIONS: 4 WLJ 490.

223.410

NOTES OF DECISIONS

This section applies to correction of an error. Wing v. Eugene, (1968) 249 Or 367, 437 P2d 836.

223.510 to 223.590

CASE CITATIONS: State Constr. Corp. v. Scoggins, (1971) 259 Or 371, 485 P2d 391.

ATTY. GEN. OPINIONS: Application to housing authorities and urban renewal agencies, 1964-66, p 18.

223.510

NOTES OF DECISIONS

The remedy provided by this section is available for collection of delinquent instalments under the Bancroft Bonding Act, so long as relief is not barred by limitations. Seeck v. City of Lebanon, (1934) 148 Or 291, 36 P2d 334.

223.520

CASE CITATIONS: State Constr. Corp. v. Scoggins, (1971) 259 Or 371, 485 P2d 391.

223.575

NOTES OF DECISIONS

"Fraud" is used in this section in its customary legal sense. State Constr. Corp. v. Scoggins, (1971) 259 Or 371, 485 P2d 391.

Failure to disclose facts is not fraud unless there is a duty to disclose. Id.

223.585

NOTES OF DECISIONS

The period of limitation in this section provides an affirmative defense which must be pleaded in the answer if the lapse of time does not appear on the face of the complaint. State Constr. Corp. v. Scoggins, (1971) 259 Or 371, 485 P2d 391.

223.610

NOTES OF DECISIONS

The lien may be enforced either by the remedy accorded by this section or by summary sale of the land and delivery of a deed. Wilson v. City of Medford, (1923) 107 Or 624, 215 P 184.

223.650

NOTES OF DECISIONS

The provision that no deficiency judgment shall be entered against the owner of the property controls and, by implication, repeals a charter provision to the contrary. City of Gearhart v. Gearhart Park Co., (1930) 132 Or 496, 286 P 147.

223.770

ATTY. GEN. OPINIONS: Authority of legislature to permit

local assessment against state property, 1950-52, p 122; payment of special assessments on streets adjacent to state fairgrounds, 1962-64, p 354; authority of school district to sign petition for highway lighting district, 1964-66, p 391; authority of state to pay assessments for public improvement on state land acquired by escheat, 1966-68, p 172.

223.805 to 223.845

NOTES OF DECISIONS

Property owners in motor vehicle parking district acquire no rights which they can assert to prevent the dissolution and liquidation of the district. State ex rel. Allen v. Martin, (1970) 255 Or 401, 465 P2d 228.

FURTHER CITATIONS: Wing v. Eugene, (1968) 249 Or 367, 437 P2d 836.

223.810

NOTES OF DECISIONS

Initiative municipal charter amendment making existence of parking districts contingent on approval of majority of district property owners was municipal legislation. State ex rel. Allen v. Martin, (1970) 255 Or 401, 465 P2d 228.

223.825

NOTES OF DECISIONS

An assessment does not offend due process unless it is palpably arbitrary. Wing v. Eugene, (1968) 249 Or 367, 437 P2d 836.

Unless there is a manifest or unreasonable discrimination in fixing benefits between parcels the determination does not contravene equal protection. Id.

The exemption of other public parking lots from assessment was proper because of lack of benefit. Id.

223.860

ATTY. GEN. OPINIONS: City parking meters on county road, 1950-52, p 311; joint construction of sidewalks upon county road within city limits, 1954-56, p 156.

223.862

ATTY. GEN. OPINIONS: Validity of this Act, 1934-36, p 544.

223.930

LAW REVIEW CITATIONS: 46 OLR 143.