

Part 7

Levy of Special Taxes by Cities and Towns

10-7-26 Streets and alleys used by railway companies.

- (1) As used in this section and in Sections 10-7-27, 10-7-29, 10-7-30, 10-7-31, 10-7-32, and 10-7-33, the terms "railway company" or "street railway company" means any company which owns or operates railway tracks on, along or across a street or alley in any city or town.
- (2) Nothing contained in this section or in the sections referred to in Subsection (1) shall be construed to exempt any railway company from keeping every portion of every street and alley used by it and upon or across which tracks shall be constructed at or near the grade of such streets in good and safe condition for public travel, but it shall keep the same planked, paved, macadamized or otherwise in such condition for public travel as the governing body of the city or town may from time to time direct, keeping the plank, pavement or other surface of the street or alley level with the top of the rails of the track. The portions of the streets or alleys to be so kept and maintained by all such railway companies shall include all the space between their different rails and tracks and also a space outside of the outer rail of each outside track of at least two feet in width, and the tracks herein referred to shall include not only the main tracks but also all sidetracks, crossings and turnouts constructed for the use of such railways.

Amended by Chapter 27, 1969 General Session

10-7-27 Street railway companies to restore streets.

Every street railway company shall at its own expense restore the pavement, including the foundation thereof, of every street disturbed by it in the construction, reconstruction, removal or repair of its tracks, to the same condition as before the disturbance thereof, to the satisfaction of the governing body having charge of such street. The obligation imposed hereby shall, in cities other than cities of the first class, be in lieu and substitution of any and all other obligations of any such company to pave, repave or repair any street, or to pay any part of the cost thereof, and may be enforced in the same manner as similar obligations are or may be enforced under the laws of this state. Nothing herein contained shall be considered to relieve any such company from the repayment of any money which has heretofore been advanced or expended by any city for any paving heretofore done under or by virtue of a specific contract or agreement made and entered into between the board of commissioners or the city council of any city and such company providing for the repayment thereof, but the obligation for such repayment shall be and remain enforceable as if this section had not been passed.

No Change Since 1953

10-7-29 Railway companies to repave streets.

All railway companies shall be required to pave or repave at their own cost all the space between their different rails and tracks and also a space two feet wide outside of the outer rails of the outside tracks in any city or town, including all sidetracks, crossings and turnouts used by such companies. Where two or more companies occupy the same street or alley with separate tracks each company shall be responsible for its proportion of the surface of the street or alley occupied by all the parallel tracks as herein required. Such paving or repaving by such railway companies shall be done at the same time and shall be of the same material and character as the paving or repaving of the streets or alleys upon which the track or tracks are located, unless other material

is specially ordered by the municipality. Such railway companies shall be required to keep that portion of the street which they are herein required to pave or repave in good and proper repair, using for that purpose the same material as the street upon which the track or tracks are laid at the point of repair or such other material as the governing body of the city may require and order; and as streets are hereafter paved or repaved street railway companies shall be required to lay in the best approved manner a rail to be approved by the governing body of the city. The tracks of all railway companies when located upon the streets or avenues of a city or town shall be kept in repair and safe in all respects for the use of the traveling public, and such companies shall be liable for all damages resulting by reason of neglect to keep such tracks in repair, or for obstructing the streets. For injuries to persons or property arising from the failure of any such company to keep its tracks in proper repair and free from obstructions such company shall be liable and the city or town shall be exempt from liability. The word "railway companies" as used in this section shall be taken to mean and include any persons, companies, corporations or associations owning or operating any street or other railway in any city or town.

No Change Since 1953

10-7-30 Failure to pay for repairs -- Lien on company's property.

In the event of the refusal of any such company to pave, repave or repair as required herein when so directed, upon the paving or repaving of any street upon which its track is laid, the municipality shall have power to pave, repave or repair the same, and the cost and expense of such paving, repaving or repairing may be collected by levy and sale of any property of such company in the same manner as special taxes are now or may be collected. Special taxes for the purpose of paying the cost of any such paving or repaving, macadamizing or repairing of any such railway may be levied upon the track, including the ties, iron, roadbed, right of way, sidetracks and appurtenances, and buildings and real estate belonging to any such company and used for the purpose of such railway business all as one property, or upon such parts of such track, appurtenances and property as may be within the district paved, repaved, macadamized or repaired, and shall be a lien upon the property levied upon from the time of the levy until satisfied. No mortgage, conveyance, pledge, transfer or encumbrance of any such property or of any rolling stock or personal property of any such company, created or suffered by it after the time when any street or part thereof upon which any railway shall have been laid shall have been ordered paved, repaved, macadamized or repaired shall be made or suffered except subject to the lien of such special taxes, if such levy is in contemplation.

No Change Since 1953

10-7-31 Sale of property to satisfy claims for special taxes.

The city treasurer shall have the power and authority to seize any personal property belonging to any such company for the satisfaction of any such special taxes when delinquent, and to sell the same upon advertisement and in the same manner as constables are now or may be authorized to sell personal property upon execution; but failure so to do shall in no wise affect or impair the lien of the tax or any proceeding allowed by law for the enforcement thereof. The railroad track or any other property upon which such special taxes shall be levied, or so much thereof as may be necessary, may be sold for the payment of such special taxes in the same manner and with the same effect as real estate upon which special taxes are levied may be sold.

No Change Since 1953

10-7-32 Actions to recover taxes.

It shall also be competent for any municipality to bring a civil action against any party owning or operating any such railway liable to pay such taxes to recover the amount thereof, or any part thereof, delinquent and unpaid, in any court having jurisdiction of the amount, and obtain judgment and have execution therefor, and no property, real or personal, shall be exempt from any such execution; provided, that real estate may not be levied upon by execution except by execution out of the district court on judgment therein, or transcript of judgment filed therein, as is now or hereafter may be provided by law. No defense shall be allowed in any such civil action except such as goes to the groundwork, equity and justice of the tax, and the burden of proof shall rest upon the party assailing the tax. In case part of such special tax shall be shown to be invalid, unjust or inequitable, judgment shall be rendered for such amount as is just and equitable.

Amended by Chapter 378, 2010 General Session

10-7-33 Delinquent taxes -- Installment payments -- Election and waiver.

It shall be competent for the governing body, upon the written application of any company owning any such railway, to provide that such special taxes shall become delinquent and be payable in installments as in case of taxes levied upon abutting real estate as herein provided, but such application shall be taken and deemed a waiver of any and all objections to such taxes and the validity thereof. Such application shall be made at or before the final levy of such taxes.

No Change Since 1953