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Philip A. Trautman

University of Washington School of Law

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ASSESSMENTS IN WASHINGTON

PHILIP A. TRAUTMAN*

The history of the development of cities and towns in Washington, as elsewhere in the nation, is punctuated with problems relating to the construction and financing of local improvements. The accelerating increase of population in metropolitan areas of the state,¹ can be expected to multiply these problems. It thus seems appropriate to examine special assessment principles as an aid to counsel representing private parties or municipalities.²

CONSTITUTIONAL BACKGROUND

The principal provision of the Washington Constitution with which we are concerned is article 7, section 9: “The legislature may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of property benefited...”

This provision explicitly states that the power of local bodies is dependent upon delegation from the legislature. The nature of this delegation, as it has been developed, will be examined in the following section. The provision also allows delegation only to “the corporate authorities of cities, towns and villages.” It has no application to counties or other municipal bodies³ though the legislature is not precluded from granting to other bodies the power to construct local improvements and to pay for them by special assessments.⁴

Article 7, section 9, does not provide an exclusive method by which cities and towns may defray the cost of local improvements. In 1930 the city of Chelan constructed a sewer system, by local assessments, except for the trunk sewer and treatment plant, which were financed by the sale of general obligation bonds. Subsequently, additions and improvements to the system were required, including extensions into previously unserved areas. Acting pursuant to statute, the city combined

* Professor of Law University of Washington
1 See Citizens Advisory Comm. of the Wash. Legislative Comm. on Urban Area Government, City and Suburb—Community or Chaos (1962).
2 This article will consider problems arising from the initiation of assessment proceedings and the establishment of local improvement districts. A subsequent article will examine the problems relating to the payment and collection of assessments.
4 Hansan v. Hammer, 15 Wash. 315, 46 Pac. 332 (1896); Foster v. Commissioners of Cowlitz County, 100 Wash. 502, 171 Pac. 539 (1918).
its water works utility and sewer system, constructed and installed additions and improvements, and proceeded to collect service charges for water and sewer service to pay for the improvements. Owners who had been assessed for the original improvements in 1930 objected to paying any part of the cost connected with the construction and installation of the additions to the original sewer system, which would serve only new users and would be of no benefit to them. The Washington court recognized that the owners’ objection would be valid if the city had acted pursuant to the local improvement statutes. Here, however, the city had acted in the exercise of its police power; it was providing sewer service to protect the health of its inhabitants and defraying the expense by making service charges. The court specifically noted that article 7, section 9 of the constitution does not provide the exclusive method of defraying the cost of local improvements. Nevertheless, the vast majority of local improvements are made under the authority of article 7, section 9; it is to problems created by that provision that this article will primarily be directed.

The constitution empowers the legislature to vest cities and towns with power to make “local improvements.” Initially, the legislature has discretion to decide what a local improvement is. It has exercised this discretion in detail, as will be noted at length later. And when this discretion has been exercised, the court has shown little tendency to interfere.

As general guidelines, the Washington court has set forth two essential characteristics of an improvement which may be chargeable upon private property: (1) the improvement must be of a public nature, as distinguished from one purely private; and it must be of such a nature as to justify the municipalities constructing and maintaining it by general taxation; and (2) the improvement must confer a special benefit on the property sought to be specially charged with its creation and maintenance, over and above that benefit conferred generally upon property within the municipality.

Some jurisdictions have added a third characteristic, permanency, but the Washington court has held that this is not essential. Thus, a

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5 Morse v. Wise, 37 Wn.2d 806, 226 P.2d 214 (1951).
6 RCW 35.43.040.
9 Ankeny v. Spokane, 92 Wash. 549, 159 Pac. 806 (1916).
10 See FORDE, LOCAL GOVERNMENT LAW 458 (1949), and STASON & KAUPER, CASES 599 (3d ed. 1959).
statute authorizing cities to order and make assessments for constructing and maintaining a street lighting system for a local improvement district was held not to violate article 7, section 9, even though the operation was limited to a period of ten years. In dictum, the court suggested that a local improvement district could not be charged with the cost of repair of a street, as contrasted with its construction, not because of lack of permanency but because of lack of special benefit to the abutting property over and above general benefit to the public at large.

The difference between general and special benefits is critical in distinguishing taxation from local assessment. While the Washington court has at times spoken of the levy and collection of local improvement assessments as being a branch of the sovereign power of taxation, a distinction between the two has been more commonly recognized. This distinction is well stated in an early case:

The theory upon which general taxation proceeds is entirely distinct from that of local assessments. General taxation is sought to be enforced against all classes of property upon an ad valorem basis, while local assessments are limited to real property within a given district, and are based entirely upon the theory of special benefit by which the value of property is enhanced in excess of the general good. General taxation is enforced to serve the necessary purposes of government, while local assessments are enforced to serve mere local convenience, and for the additional benefit of private property holders. These differences make it necessary to recognize taxation and local assessments as distinct subjects.

Applying these broad concepts to a specific situation, general taxation might be used to pay for a sewage treatment plant which would benefit an entire municipality or metropolitan area; special assessments might be assessed to pay for sewer lines in each district; and sewer charges might be made for maintenance and operation of the system.

The necessity for distinguishing between general taxation and special assessments becomes apparent in analyzing the application of certain

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11 Ankeny v. Spokane, 92 Wash. 549, 159 Pac. 806 (1916).
12 In Young v. Tacoma, 31 Wash. 153, 71 Pac. 742 (1903), it was held that an assessment for construction of a street improvement under a city charter could not include an assessment for future repairs. However, RCW 35.43.040 seems to allow for creation of a local improvement district and levy of a special assessment for the repair of streets.
14 McMillan v. Tacoma, 26 Wash. 358, 361, 67 Pac. 68 (1901).
constitutional limitations and restraints upon municipal power. The
second sentence of article 7, section 9, provides, "For all corporate
purposes, all municipal corporations may be vested with authority to
assess and collect taxes and such taxes shall be uniform in respect to
persons and property within the jurisdiction of the body levying the
same." The requirement of uniformity of taxes as to property applies
only to general taxation for corporate purposes;¹⁶ it does not restrict
assessments for local improvements according to local benefits, which
of course may vary from one tract or lot to another.¹⁷ Likewise, the
fact that multiple assessments are made upon the same property does
not violate any principle against double taxation, so long as special
benefit results from each improvement.¹⁸

A comparable problem is posed by article 11, section 12 of the Wash-
ington Constitution which provides, "The legislature shall have no
power to impose taxes upon counties, cities, towns or other municipal
corporations, or upon the inhabitants or property thereof, for county,
city, town or other municipal purposes, but may, by general laws, vest
in the corporate authorities thereof, the power to assess and collect taxes
for such purposes." This provision prohibits the legislature from levy-
ing, or authorizing agencies other than municipal corporations to levy,
general taxes for municipal corporation purposes.¹⁹ However, it does
not prohibit the legislature from authorizing some agency of the govern-
ment other than the municipality to levy a special assessment upon land
in a municipality according to benefits resulting to that land.²⁰

The necessity for distinguishing between general taxes and special
assessments is further illustrated by the so-called forty-mill limitation
provision. The seventeenth amendment to the Washington Constitution
provides, "... the aggregate of all tax levies upon real and personal
property by the state and all taxing districts now existing or hereafter
created, shall not in any year exceed forty mills on the dollar of assessed
valuation, which assessed valuation shall be fifty per centum of the true
and fair value of such property in money. ..." This provision limits
only the amount of general ad valorem taxes to be levied, and has no
application to local assessments against property specifically benefited
by an improvement.²¹

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¹⁸ In re Aurora Ave., 180 Wash. 523, 41 P.2d 143 (1935).
²⁰ State ex rel. Conner v. Superior Court, 81 Wash. 480, 143 Pac. 112 (1914).
A comparable limitation is placed upon municipal indebtedness by the twenty-seventh amendment to the Washington Constitution. That amendment broadly limits municipal indebtedness to an amount not exceeding one and one-half per cent of the taxable property within municipal boundaries. It was early established that an indebtedness to be paid out of a special fund derived from special assessments does not fall within this constitutional debt limitation.\(^2\) The twenty-seventh amendment also provides that a city or town, with the assent of three-fifths of its voters, may become indebted to a larger amount, not exceeding an additional five per cent in order to supply the city or town with water, light, and sewers, when the works are owned and controlled by the municipality. In *Smith v. Seattle*,\(^3\) it was ingeniously argued that this provision prohibited municipal corporations from financing such improvements other than by payments out of the general fund, and limited legislative power to vest cities and towns with authority to finance such improvements by special assessments. The court held, however, that this provision was limited only to those instances in which a city might construct an improvement and pay for it out of the general fund, for example, laying a main water line. In those instances in which the city elects to provide water, light, and sewers by special assessment, this provision has no effect.

Just as constitutional limits upon municipal taxes and debts have no application to special assessments, constitutional limitations upon exercise of the power of eminent domain likewise have no direct bearing upon special assessments. The power of eminent domain and the power to levy special assessments are sometimes exercised together. For example, a city might condemn certain land to be used as a street and levy special assessments upon abutting property benefited by the street. Part of an owner's land might be condemned for the laying of water mains and another part assessed for the special benefits received. It is essential to distinguish the two powers. For example, the ninth amendment to the Washington Constitution provides for a jury trial to determine the amount of compensation owing for a taking by eminent domain; no such provision is made for determination of the amount of benefits received from local improvements.\(^4\) The more general jury

\(^2\) *Baker v. Seattle*, 2 Wash. 576, 27 Pac. 462 (1891). However, if a city assumes primary liability for such indebtedness out of its general funds, the constitutional debt limit must not be exceeded. *Austin v. Seattle*, 2 Wash. 667, 27 Pac. 557 (1891).

\(^3\) *Commissioners Commercial Waterway Dist. No. 2 v. Seattle Factory Sites Co.*, 76 Wash. 181, 135 Pac. 1042 (1913).
trial provision in article 1, section 21 of the Washington Constitution, "The right of trial by jury shall remain inviolate," relates only to issues which were triable by jury at common law or triable by jury by statute when the constitution was adopted. Since no right to a jury trial in special assessment proceedings was available at common law, nor required by statute when the constitution was adopted, no right to a jury trial in special assessment proceedings is guaranteed by article 1, section 21. Statutes provide for assessment by city councils and commissioners, subject to review by the courts without a jury. It is to these statutes that our attention will now be directed.

**GENERAL STATUTORY AUTHORITY**

It is commonplace that municipal corporations possess only those powers expressly enumerated by statute, those necessarily or fairly implied in or incident to the powers expressly granted, and those essential to the declared objects and purposes of the municipal corporation. It is generally agreed that municipal corporations have no inherent power to levy special assessments. Likewise, the power is not implied from a general power to levy taxes or to make improvements. The power to levy special assessments must be expressly conferred by statutes or charters. Such is the case in Washington.

As previously discussed, the source of the power of cities and towns to levy special assessments is article 7, section 9. The Washington Constitution does not grant this power directly to cities and towns, but authorizes the legislature to do so; thus the power of a municipality to levy special assessments depends upon statutory enactment; it does not exist unless a valid statute confers it. The only constitutional limitation upon the power of a city to levy a special assessment is that the assessment shall not exceed the benefit, but any additional limitations or qualifications placed upon the city's powers by the legislature...

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26 In re Jackson St., 62 Wash. 432, 113 Pac. 1112 (1911).

27 The court's function is one of review. Levying assessments is deemed a legislative function under the separation of powers doctrine. Further, directly empowering courts to levy assessments might violate article 7, section 9 of the Washington Constitution, which empowers the legislature to vest in cities the authority to levy assessments. *In re Westlake Ave.*, 40 Wash. 144, 82 Pac. 279 (1905); *State ex rel. Matson v. Superior Court*, 42 Wash. 491, 85 Pac. 264 (1906).

28 See discussion in Trautman, *supra* note 16 at 772-75.


31 Northern Pac. Ry. v. Seattle, 46 Wash. 674, 91 Pac. 244 (1907).
must be complied with. Thus if no provision is made for assessment to pay interest on bonds issued to finance an improvement, no such assessment can be made.\(^2\) If assessments are limited by statute to a certain percentage of the assessed valuation of municipal property as shown on the tax rolls, this limitation must be complied with.\(^3\) If statutes prescribe certain procedural steps to be followed in the levying of assessments, these steps must be followed.

Of course, as noted above, article 7, section 9, does not provide the exclusive method of defraying the cost of local improvements. Such local improvements as may be necessary to promote health and sanitation may be authorized by the legislature in the exercise of its police power, and the cost of these improvements need not be defrayed by local assessments.\(^4\) Also, a city might initiate an improvement under a special assessment plan in accordance with the statutes enacted pursuant to article 7, section 9, abandon the plan and pay for the improvement with other public funds. In *Clise v. Seattle,*\(^5\) after a contract had been let and work undertaken for a street improvement, it became apparent that a sum sufficient to pay the contractor might not be raised by a local improvement assessment. The contractor was released from his contract, the work was abandoned, an assessment roll was prepared to cover the completed work, and a special assessment was levied to liquidate the obligation owing to the contractor. The city then appropriated sums from the general fund to complete the improvement. This action was sanctioned by the court.\(^6\) In most cases, however, the statutes relating to special assessments are followed through to completion in constructing local improvements; it is to these statutes that we shall now turn.

Statutes granting powers to municipalities are usually strictly con-

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\(^3\) *East Hoquiam Co. v. Hoquiam,* 90 Wash. 210, 155 Pac. 754 (1916); *Van Der Creek v. Spokane,* 78 Wash. 94, 138 Pac. 560 (1914).

\(^4\) *Morse v. Wise,* 37 Wn.2d 806, 226 P.2d 214 (1951).

\(^5\) 153 Wash. 661, 280 Pac. 80 (1929).

\(^6\) But when a city undertook and completed physical improvements of a street and financed the project solely by funds to be raised by special assessment upon property benefited, the city was not generally liable for a deficiency arising when part of the assessment could not be collected because part of the property was not benefited and further assessments could not be levied upon the property. Because the city was not liable, it was held to have no power to assume the deficiency as a general indebtedness. Neither did the deficiency morally oblige the city to assume payment. *Pratt v. Seattle,* 111 Wash. 104, 189 Pac. 565 (1920). In *Pratt* no attempt was made by the city to change from a special assessment plan to general indebtedness prior to completion of the improvement. In *Clise* the work was abandoned and a special assessment levied to pay the contractor in full for work actually done by him prior to completion of the improvement out of the general fund.
strued, and any doubts are usually resolved against the municipality.\textsuperscript{37} In Washington, however, powers vested in first-class cities are broadly construed and statutes relating to the powers of first-class cities are liberally interpreted.\textsuperscript{38} As to special assessments, it is unnecessary to distinguish between classes of cities. RCW 35.43.020 specifically provides that the general rule of strict construction of statutes in derogation of the common law does not apply to statutes relating to municipal local improvements. These statutes are to be "liberally construed for the purpose of carrying out the objects for which intended." This provision may well lead the court to allow some deviations which might not be sustained in other circumstances.\textsuperscript{39}

In some states, the power of a municipality to levy special assessments derives not only from statutes but also from home rule constitutional provisions. A number of courts in home rule states have held this power to be a local rather than a general matter, with the result that municipal charter provisions are superior to state statutes in the event of conflict.\textsuperscript{40} In Washington, the home rule doctrine has been so weakened that the legislature is supreme as to all matters, regardless of whether they are matters of state-wide concern or local affairs.\textsuperscript{41} Legislative supremacy is made explicitly clear in the case of special assessments by RCW 35.43.030, which makes the local improvement statutes applicable to all cities and towns, and which specifically supersedes inconsistent provisions in the charter of any city of the first class.\textsuperscript{42} Each city and town is directed to enact ordinances necessary to carry out the statutory provisions, and all proceedings are to be conducted under such statutes and ordinances.\textsuperscript{43}

Municipal corporations cannot exercise powers beyond their limits, except as such authority may be derived from a statute which expressly or impliedly permits it.\textsuperscript{44} In general, exercise of extraterritorial powers by municipal corporations has been a constant source of problems.

\textsuperscript{37} Pacific First Fed. Sav. & Loan Ass'n v. Pierce County, 27 Wn.2d 347, 178 P.2d 351 (1947).
\textsuperscript{38} Winkenwerder v. Yakima, 52 Wn.2d 617, 338 P.2d 873 (1958).
\textsuperscript{39} Buck v. Monroe, 85 Wash. 1, 147 Pac. 432 (1915).
\textsuperscript{40} See 2 ANITTEAU, op. cit. supra note 29, at 290.
\textsuperscript{41} See Trautman, supra note 16, at 765-72.
\textsuperscript{42} Beach v. Bellingham, 80 Wash. 287, 141 Pac. 703 (1914). Statute which prescribes publication of notice of proposed improvements prevails over charters of first class cities. See RCW 35.22.280 (first class cities); RCW 35.23.440(50) (second class cities'; RCW 35.24.290(3) (third class cities).
\textsuperscript{43} Rosenthal v. Tacoma, 31 Wn.2d 32, 195 P.2d 102 (1948). However, an assessment may be valid though the general ordinance is not passed before the city proceeds with improvements. Great No. Ry. v. Leavenworth, 81 Wash. 511, 142 Pac. 1155 (1914).
\textsuperscript{44} Edmonds Land Co. v. Edmonds, 66 Wash. 201, 119 Pac. 192 (1911).
However, RCW 35.43.030 eliminates many potential problems of this kind by authorizing cities and towns to form local improvement districts composed entirely, or in part, of unincorporated territory adjacent to the corporate limits.

**CREATION OF LOCAL IMPROVEMENT DISTRICTS**

RCW 35.43.040 designates the purposes for which the legislative authority of any city or town may order a local improvement, and levy a special assessment on property specially benefited. By its terms, the statute is not restricted to the purposes listed, but applies "whenever the public interest or convenience may require." This is of considerable consequence, as it allows for the exercise of power to cope with problems unforeseen by the legislature at the time of enactment.\(^4\)

Nevertheless, the great majority of local improvement districts are created for one of the purposes stated in the statute. These purposes include construction of streets and other public ways; auxiliary water systems; recreational and playground facilities and structures; bridges, culverts, trestles and approaches thereto; bulkheads and retaining walls; dikes and embankments; sewers; escalators or moving sidewalks (and defraying the expense of their operation and maintenance); parks and playgrounds; sidewalks and curbing; street lighting systems (and defraying the expense of furnishing electrical energy, maintenance and operation);\(^4\) underground utilities transmission lines; water mains and hydrants;\(^4\) and fences or coverings along or over open canals or ditches.\(^4\)

Limitations placed upon the construction of trunk sewers and water mains should be particularly noted. The territory which can be serviced

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\(^4\) As an example, see 61 Ops. Att'y Gen. 79 (1961), sustaining the authority of cities and towns to create local improvement districts to finance construction of community fallout shelters.

\(^4\) In Ankeny v. Spokane, 92 Wash. 549, 159 Pac. 806 (1916), the court sustained special assessments for the cost of furnishing electrical energy. The fact that the cost of operation exceeded the cost of the plant was not objectionable where the plant had a local situs and did not extend over the city at large. Further, the fact that some posts and lamps of the system were ornamental did not invalidate the assessment. RCW 35.43.040 specifically allows for placement of shade or ornamental trees and shrubbery on an improvement.

\(^4\) In Smith v. Seattle, 25 Wash. 300, 65 Pac. 612 (1901), the court sustained a special assessment for water mains against an attack that article 8, section 6, of the Washington Constitution, which authorizes cities to become indebted in excess of the limitation upon general municipal indebtedness for the purpose of supplying such cities with water, artificial light and sewers, prohibited other payment than that made out of a general fund.

\(^4\) RCW 35.43.045 grants cities right of entry upon irrigation, drainage and flood control canals, and ditch rights of way, and the right to construct safeguards or to require those maintaining the canal or ditch to construct safeguards, subject to reimbursement by the city.
by the trunk lines is directed to be included, as nearly as possible, in the original improvement district. This provision is not mandatory; it allows the legislative authority of the city some discretion in determining whether the district shall conform strictly to topographical conditions.\(^{40}\) In distributing assessments in the case of trunk lines, property lying between the termini of the improvement and back to the middle of the blocks along the marginal lines of the area improved, is to be assessed the reasonable cost of a local line and its appurtenances suited to the requirements of the property. The remainder of the cost of the improvement is to be distributed over and assessed against all of the property within the boundaries of the district.\(^{50}\) The abutting property which is required to bear the extra expense has the immediate benefit of the sewer and is not subsequently liable to assessment for lateral or local sewers. As to the remaining property, the sewer is not of immediate use and cannot be made useful without the additional expense of construction of lateral or local sewers, which that property must subsequently bear. In the end, hopefully, the burden will be equalized.\(^{51}\)

The usual improvement district is corrected and continuous and includes all of the property within a certain boundary that lies contiguous to the other properties involved.\(^{52}\) But the district may include adjoining, vicinal or neighboring streets even though the improvement made is not connected or continuous.\(^{53}\) In the latter case, the cost of each continuous unit of the improvement is to be ascertained separately, as near as may be, and the assessment rates computed on the basis of the cost of each unit. The municipal legislative body may later, in its discretion, eliminate from such a district any unit which is not connected or continuous and proceed with the balance of the improvement.

Local improvement districts must be created by ordinance, pursuant to a petition or resolution.\(^{54}\) The owners of property, aggregating a majority of the lineal frontage upon the improvement and of the area within the proposed district, may petition for any local improvement, for which the assessment district does not extend beyond the termini of

\(^{49}\) See Brown v. Anacortes, 79 Wash. 33, 139 Pac. 652 (1914).

\(^{50}\) Towers v. Tacoma, 151 Wash. 577, 276 Pac. 888 (1929); In re Grandview, 118 Wash. 464, 203 Pac. 988 (1922).


\(^{52}\) See McCormick, Special Assessments and Assessment Districts (1960). This is a mimeographed paper comprising a part of the outlines for a continuing legal education series entitled "Municipal Law and Your Clients," available in the law library, University of Washington.

\(^{53}\) RCW 35.43.030.

\(^{54}\) RCW 35.43.070.
the improvement.\textsuperscript{55} This petition must set forth the nature and territorial extent of the proposed improvement, the mode of payment, and the proportion of the lineal frontage upon the improvement and of the area within the proposed district which is owned by the signatory petitioners. The petition is filed with the clerk or such other officer as the city charter or ordinance may require.\textsuperscript{56}

Although a petition for a local improvement is not a jurisdictional requirement and may be dispensed with by the legislature,\textsuperscript{57} and although it is usually only one of two possible methods of initiating an improvement, a petition is made mandatory by RCW 35.43.110 in three instances. Any local improvement which includes a charge for the cost of furnishing electrical energy to any system of street lighting, or for the cost of operation and maintenance of escalators or moving sidewalks, may be initiated only upon a petition signed by the owners of two-thirds of the lineal frontage upon the proposed improvement and two-thirds of the area within the limits of the proposed district. An improvement of parkways must also be initiated by petition if management of the parkways has been vested in a board of park commissioners, unless the improvement is requested by the board of park commissioners.\textsuperscript{58}

With the above three exceptions, an improvement may be initiated by resolution.\textsuperscript{59} The resolution must be made by the legislative authority of the city, declaring its intention to order the improvement, setting forth the nature and territorial extent of the improvement, and notifying all persons who may desire to object to the improvement to appear at a designated time and present their objections. The resolution must be published in two consecutive issues of a newspaper, and the first publication must appear at least fifteen days before the day fixed for hearing. Notice of the hearing must also be given by mail to the owners of all property to be specially benefited by the proposed improvement, at least fifteen days before the day fixed for hearing.

\textsuperscript{55} The requirement that a majority of the property owners sign the petition is not jurisdictional if a municipal legislative body orders the improvement properly. Spokane v. Ridpath, 74 Wash. 4, 132 Pac. 638 (1913).

\textsuperscript{56} RCW 35.43.120.

\textsuperscript{57} Redding v. Spokane, 81 Wash. 263, 142 Pac. 664 (1914). RCW 35.43.100 provides, in part, "the action and decision of the council as to all matters passed upon by it in relation to any petition or resolution shall be final and conclusive."

\textsuperscript{58} As previously stated, a city may form a local improvement district which includes territory outside the city limits. A 1963 statute RCW 35.43.075, provides that whenever formation of a district, which lies entirely or in part outside of a city's corporate limits, is initiated by petition, the municipal legislative authority may by a majority vote deny the petition and refuse to form the district.

\textsuperscript{59} RCW 35.43.140.
This notice must set forth the nature of the proposed improvement, its estimated cost, and its estimated benefits to the particular lot. The hearing may be held before the legislative authority of the city, or before a committee which is subject to the legislative authority.

Upon filing of a petition or adoption of a resolution initiating a proceeding for formation of a local improvement district, the proper board or officer designated by charter or ordinance to make preliminary estimates and an assessment roll must prepare an estimate of the proposed improvement's cost and certify this estimate to the legislative authority of the city. If the proceedings are initiated by petition, the designated board or officer must also determine the sufficiency of the petition and whether the facts set forth in the petition are true. The estimate must be accompanied by a diagram showing the property which will be specially benefited by the proposed improvement and the estimated cost to be borne by each lot. No diagram is required where the estimate is on file in the office of the city engineer, together with a detailed copy of the preliminary assessment roll and the plans and assessment maps of the proposed improvement.

The cost estimate is made to aid the legislative authority in determining whether to initiate the local improvement. The fact that actual cost may eventually exceed the estimate does not later invalidate the proceedings. In *Vincent v. South Bend*, the Washington court approved an assessment for $89,199.92 when the original estimate had been only $9,500. It was found that the increased assessment represented actual bona fide cost, and the increased cost was occasioned by a change of conditions.

There is nothing in the constitution requiring that notice of a proposed improvement be given by resolution or otherwise. As a result, the court has been somewhat liberal in allowing for deviations from the statutory requirements as to notice and contents of a resolution. Substantial compliance, rather than exact compliance, is the test. The

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60 RCW 35.43.150.
61 The proper board officer is also to forward all papers and information in his possession touching the proposed improvement, a description of the boundaries of the district, a statement of what portion of the cost of the improvement should be borne by the property within the proposed district, a statement in detail of the local improvement assessments outstanding and unpaid against the property in the proposed district, and a statement of the aggregate actual valuation of the real estate including twenty-five percent of the actual valuation of the improvements in the proposed district according to the valuation last placed upon it for the purposes of general taxation.
62 RCW 35.43.150.
63 83 Wash. 314, 145 Pac. 452 (1915). See also Inner-Circle Property Co. v. Seattle, 69 Wash. 508, 125 Pac. 970 (1912).
64 Wilce v. Cheney, 93 Wash. 422, 161 Pac. 72 (1916).
purpose of the notice at this stage is not to accord a hearing upon the
validity of the assessment, which has not yet been determined or the
benefit to the property within the district, which has yet to be deter-
mined, but to accord a hearing upon the limits of the proposed district
and upon the question whether the district should be formed at all. Objections by property owners at this stage should be directed to those
questions. A failure to raise issues pertinent thereto, as to sufficiency of
the notice, or sufficiency of the city engineer's report, at this stage
will constitute a waiver. On the other hand, questions relating to
whether an improvement constitutes a general or special benefit, and
questions relating to the amount of benefit and assessment to each lot,
are not properly in issue at this stage. Such questions are to be raised
at the subsequent hearing on the assessment roll.

RCW 35.43.070 provides that, pursuant to a petition or resolution,
a local improvement may be ordered only by an ordinance which re-
cieves the affirmative vote of at least a majority of the members of a
municipal legislative body. In cities other than the first-class the
ordinance must receive the affirmative vote of at least two-thirds of the
members if, prior to its passage, written objections are filed with the
city clerk by or on behalf of owners of a majority of the lineal frontage
upon the improvement and of the area within the limits of the proposed
improvement district. The charters of first-class cities may prescribe
further limitations.

The ordinance ordering an improvement must establish a local im-
provement district by number, which district is to embrace as nearly
as practicable all the property specially benefited by the improvement.
An ordinance may provide for more than one improvement, such as
widening of certain streets and changing of grades of certain streets,
where all relate to a unified subject. Each lot will bear its share of the
benefits resulting from the entire improvement.

Unless the ordinance provides otherwise, the improvement district is
to include all property between the termini of the improvement which
abuts or is adjacent, vicinal, or proximate to, the street or way to be

66 Chandler v. Puyallup, 70 Wash. 632, 127 Pac. 293 (1912).
67 Ibid.
68 Compare Great No. Ry. v. Leavenworth, 81 Wash. 511, 142 Pac. 1155 (1914),
with Buckley v. Tacoma, 9 Wash. 253, 37 Pac. 441 (1894).
69 Matthews v. Ellensburg, 73 Wash. 272, 181 Pac. 839 (1913).
70 It is not necessary that two-thirds take direct action upon the objections, but only
that the ordinance be passed by that percentage. Buck v. Monroe, 85 Wash. 1, 147 Pac.
432 (1915).
71 RCW 35.43.080.
72 In re Third, Fourth & Fifth Ave., Seattle, 49 Wash. 109, 94 Pac. 1075 (1908).
improved, to a distance of ninety feet back from the marginal lines of the street or way, or to the center line of the blocks facing or abutting on the street or way, whichever is greater. In the case of unplatted property, the distance back is to be the same as that of immediately adjacent platted property.\textsuperscript{73}

If special benefits resulting from the local improvement extend beyond the boundaries stated above, the municipal legislative authority may create, by ordinance, an enlarged district, to include, as nearly as practicable, all the property specially benefited by the improvement.\textsuperscript{74} The petition or resolution for an enlarged district and all related proceedings are to conform to the provisions governing local improvement districts generally. However, the petition or resolution for an enlarged district should describe the enlarged district as such,\textsuperscript{75} and state what proportion of the amount to be charged to property specially benefited is to be charged to the property which constitutes the enlargement.\textsuperscript{76}

If special benefits conferred upon property by the proposed improvement are not fairly reflected by the use of the termini and zone method, the ordinance may provide that assessment shall be made against all property in the district in accordance with the special benefits conferred upon it, without regard to the termini and zone method. When this

\textsuperscript{73} Considerable litigation has been occasioned in defining terms. Where the western terminus of a street improvement was fixed at the westerly line of an intersecting street, the property on the northwest corner of the intersection did not "abut" upon the improvement. Hensler v. Anacortes, 140 Wash. 184, 248 Pac. 406 (1926). "Block" refers to a square included by four streets as located by the prevailing scheme of streets in a locality. "Platted" property refers to that property included by regularly placed intersecting streets where lands are capable of being platted. "Unplatted" property refers to property not included by regularly placed intersecting streets. Sivyer & Sons Co. v. Spokane, 77 Wash. 282, 137 Pac. 808 (1914). Property may be "immediately adjacent" to unplatted property for purpose of assessment although it is separated from unplatted property by a cross street. In re Tenth Ave. No. E., 125 Wash. 503, 217 Pac. 28 (1923). In assessing unplatted property by reference to adjacent platted property, measurement back should begin from a common margin. Megary v. Woodland, 148 Wash. 560, 269 Pac. 829 (1928).

\textsuperscript{74} If a municipal legislative authority desires to include property outside a normal district, it is necessary for the legislative authority in the ordinance creating the district, to so declare and describe the property included outside a normal district. Reitzie v. Kirkland, 139 Wash. 466, 247 Pac. 735 (1926).

\textsuperscript{75} A statement of the proportion of the cost to be charged to the added property of an enlarged district need not be included in an ordinance providing for the improvement, but is a matter to be stated in the petition or resolution. State ex rel. Independent Asphalt Paving Co. v. Gill, 87 Wash. 201, 151 Pac. 498 (1915).

\textsuperscript{76} It is necessary to distinguish between an enlarged district and a district for trunk sewers and water mains, discussed in the text accompanying notes 51-53 supra. See Brown v. Anacortes, 79 Wash. 33, 139 Pac. 652 (1914). Further requirements for an ordinance ordering construction of trunk sewers, trunk water mains, dikes and auxiliary water systems are prescribed in RCW 35.43.090. Such an ordinance must describe the place of commencement and ending of the improvement and the route along which the improvement is to be constructed; specify the structures or works necessary for forming a part of the improvement; and adopt maps, plans, and specifications for the improvement.
second method is adopted, the ordinance authorizing the improvement must specifically provide that assessment shall be levied in accordance with special benefits which property within the district will derive from the improvement. 77

LIMITATIONS ON CREATION OF IMPROVEMENT DISTRICTS

Certain statutes limit and restrict the power of a city to create an improvement district. Under RCW 35.43.160, no city may proceed with a local improvement initiated by petition if it appears from preliminary estimates and the assessment roll that the amount of estimated cost, which is to be assessed against the property in the proposed district, when added to all outstanding local improvement assessments against the property in the proposed district (excluding certain specified assessments), exceeds the aggregate actual valuation of real estate within the district (including twenty-five per cent of the actual valuation of the improvement) according to the valuation last placed upon it for the purposes of general taxation. However, this limitation may be avoided if the property owners affected deposit with the city a sum equal to the amount by which the estimated cost of the improvement exceeds the prescribed limit. 78 This limitation refers to the value of property in the entire district, not to the value of each tract nor to the amount which each tract may be charged. 79 Further, the phrase “valuation last placed upon it for the purposes of general taxation” in the statute refers to the “actual valuation” of the real estate in the district, rather than assessed value. 80

Likewise, if a local improvement is initiated by resolution of the municipal legislative authority, the city may not proceed if it appears from preliminary estimates and the assessment roll that the city would have been prohibited from proceeding had the improvement been initiated by petition. 81 There is an exception when, for reasons of public health, the legislative authority by unanimous vote orders construction of sanitary sewers and necessary accessories for disposal of sewage;


78 The limitation does not apply to improvement of a disconnected unit included in a local improvement district as permitted by RCW 35.43.050, discussed in text accompanying note 55 supra, but applies only to the local improvement district as a whole.

79 State ex rel. Hindley v. Superior Court, 82 Wash. 37, 143 Pac. 455 (1914); Hapgood v. Seattle, 69 Wash. 497, 125 Pac. 965 (1912).

80 Cf., Schoen v. Seattle, 117 Wash. 303, 201 Pac. 293 (1921).

81 RCW 35.43.170.
construction of any sanitary fill; or the filling of any street to the established grade over tidelands or tidelands. The city may then assess the cost to the property benefited without the limitations discussed above.

RCW 35.43.180 provides that jurisdiction to proceed with an improvement initiated by resolution is divested by a protest filed with the municipal legislative authority within thirty days after the date of passage of an ordinance ordering the improvement. The protest must be signed by owners of property within the proposed district who are subject to sixty per cent or more of the total cost of the improvement, as shown by preliminary estimates and the assessment roll of the proposed district.82 This limitation does not apply to an improvement by sanitary sewers if the municipal health officer with the municipal legislative authority a report showing the necessity for such improvement; if the municipal legislative body recites in the ordinance authorizing the improvement that it is necessary for protection of the public health and safety; and if the ordinance is passed by unanimous vote of all members present. Divesture of jurisdiction by protest of property owners does not estop the city from instituting a second proceeding for the same improvement, and a change of conditions need not intervene to render inapplicable the grounds of the original protest.83

One other statutory limitation relates to the method by which work is to be done. Under RCW 35.43.190, all local improvements must be made either by the city itself or by contract on competitive bids. The board or officer charged with the duty of letting contracts for local governments determines which means to use. If the contract method is chosen, the city may reject any and all bids.

With respect to competitive bids, two additional points should be mentioned. First, in Washington, a patented article may be specified in the call for bids. Otherwise, a city would be deprived of the power to procure the best article or material available simply because it is procurable only from a limited source.84 Second, the fact that the city includes a requirement in its call for bids which increases the cost of

82 Prior to 1957, authority to proceed could be divested by protests filed at any time prior to the awarding of the contract for the improvement. See 24 WASH. L. REV. 199 (1949). If all or part of the district lies outside the city, jurisdiction is divested by a protest filed in the same manner and signed by owners of property which is within the proposed district, but outside the boundaries of the city, and which is subject to sixty per cent or more of that part of the total cost of the improvement allocable to property within the proposed district but outside the boundaries of the city.

83 Casco Co. v. Olympia, 124 Wash. 218, 213 Pac. 915 (1923).

84 Smith v. Seattle, 192 Wash. 64, 72 P.2d 588 (1937); Great No. Ry. v. Leavenworth, 81 Wash. 511, 142 Pac. 1155 (1914).
the work, as by prescribing a minimum wage which is higher than that
in private employment, does not invalidate the contract. However, a
property owner may be entitled to have the sum assessed against his
property reduced accordingly.85
In *Malette v. Spokane*,86 the Washington court sustained the levy
of an assessment for a street improvement for the full contract cost,
though the contract prescribed a higher rate of wages than the prevail-
ing rate. However, the court found that at the time of the contract no
statute or ordinance required competitive bidding. In view of the fact
that a statute now calls for competitive bidding when work is done for
a city by contract, it is unclear whether an assessment may now include
the cost resulting from a contract provision designed to effectuate some
separate public policy. For example, suppose an increase in cost re-
sults from a contract provision which restricts maximum hours to less
than the maximum prevailing in the community, requires union labor,
or requires the employment of local labor or use of locally produced
materials. May the increase in cost be assessed against property
owners? The decisions to date in Washington compel a negative an-
swer. However, since the city might do the work itself and impose
any resulting increase in costs upon property owners, it would seem
that the city should be able to do the same by contract. This rationale
is suggested by dictum in the *Malette* case.

Since the work might be done without letting a contract at all, it is plain
that the competitive principle would have no such drastic application as to
prevent the city from providing reasonable conditions under which the
work might be done, even though such conditions tended in some degree
to modify competition in some particular.87

In determining allowable assessments, the purposes and policies be-
hind contract provisions resulting in a restriction of competition, as
well as the policy behind the statutory provision for competition, should
be considered. Further, in *Malette* the court recognized that the city
does not act as agent of the owners whose property is assessed when it
provides for improvements; it acts as the "agent of the law" in letting
the contract and collecting the assessment. As something more than the
agent of the owners, the city should be able to effectuate other policies
in calling for bids. However, the court in *Malette* also noted that com-
petitive bidding statutes in other states have voided specifications tend-

85 Gerlach v. Spokane, 68 Wash. 589, 124 Pac. 121 (1912).
86 77 Wash. 205, 137 Pac. 496 (1913).
87 Id. at 233, 137 Pac. at 507.
ing to increase cost and making bids less favorable to property owners. The leading case in point is inconclusive, and further litigation may be expected.

Special Benefits

No concept has created more problems of construction and interpretation than the apparently simple concept of "special benefits." In numerous cases, the Washington court has stated that property which receives no benefit from a local improvement may not be assessed.88 An opposite conclusion would result in a taking of property without compensation, in violation of the ninth amendment to the Washington Constitution.

In some early cases, the Washington court ruled that property could be assessed for no more than the amount of the benefit received from an improvement.89 Stated another way, no greater charge could be levied upon property than a sum equal to the benefits received.90 In more recent years, the court has stated that special assessments cannot substantially exceed the amount of the special benefits.91 It is now recognized that exact equality of taxation is not always attainable, and that excess of cost over special benefits may be ignored, unless the excess is material.92

Further, property may not be assessed in an amount greater than the property's proportional or relative benefit from a local improvement. The court has stated:

If, for example, two or more persons severally own tracts of land abutting upon a public improvement, each of which is equally benefited thereby, the city can, by the process of forming an assessment district, confine an assessment to pay the costs of the improvement to one or more of such tracts to the exemption of the others, but it cannot lawfully cause the entire cost to be assessed upon any number of such tracts less than the whole, even though the tracts assessed be benefited in a sum equal to the cost of the improvement. To do so . . . would violate that general principle which underlies all assessments, the principle which requires assessments for the public benefit to be distributed with substantial equality over all

88 In re Jones, 52 Wn.2d 143, 324 P.2d 259 (1959); Towers v. Tacoma, 151 Wash. 577, 276 Pac. 888 (1929).
89 In re Shilshole Ave., 94 Wash. 583, 162 Pac. 1010 (1917); In re Eighth Ave. No. E., 77 Wash. 570, 138 Pac. 10 (1914).
91 In re Local Improvement No. 6997, 52 Wn.2d 330, 324 P.2d 1078 (1958); In re Schmitz, 44 Wn.2d 429, 268 P.2d 436 (1954).
property of like kind and similarly situated with reference to the subject matter of the assessment.\textsuperscript{93}

The exclusion from a local improvement district of property which received a benefit does not necessarily make an assessment invalid;\textsuperscript{94} the fact of such exclusion may be considered, with other evidence, to determine whether property in the district was assessed beyond its special benefit.\textsuperscript{95}

The issue of special benefits is a judicial question, subject to review by the courts.\textsuperscript{96} However, it is also recognized that the question of how far the special benefits may physically extend beyond a local improvement cannot be answered with any fixed rule.\textsuperscript{97} This question is ordinarily one of fact,\textsuperscript{98} dependent upon the physical condition, locality, and environment of the property involved, and the character of the improvement.\textsuperscript{99} It is presumed that an improvement is a benefit; that an assessment is no greater than the benefit; that an assessment is equal or ratable to an assessment upon other property similarly situated; and that the assessment is fair.\textsuperscript{100}

In terms of a formula, the amount of special benefit accruing to property by reason of a local improvement is the difference between the fair market value of the property immediately after the special benefits have accrued and the fair market value of the property before the benefits accrued. "Fair market value" is the amount of money which a purchaser willing, but not obligated, to buy would pay an owner willing, but not obligated, to sell, taking into consideration all uses to which the property is adapted or might reasonably be applied.\textsuperscript{101} Not only the actual present use of the property is considered, but also any use to which the property is presently adaptable and any future use to which the property is reasonably adaptable within a reasonable

\textsuperscript{94} Moore v. Spokane, 88 Wash. 203, 152 Pac. 999 (1915).
\textsuperscript{95} Horton Investment Co. v. Seattle, 94 Wash. 556, 162 Pac. 989 (1917).
\textsuperscript{96} In re West Marginal Way, 112 Wash. 418, 192 Pac. 961 (1920); In re Shilshole Ave., 94 Wash. 583, 162 Pac. 1010 (1917).
\textsuperscript{97} Commissioners Commercial Waterway Dist. No. 2 v. Seattle Factory Sites Co., 76 Wash. 181, 135 Pac. 1042 (1913).
\textsuperscript{98} Hargreaves v. Mulkiteo Water Dist., 43 Wn.2d 326, 261 P.2d 122 (1953); In re Western Ave., 93 Wash. 472, 161 Pac. 381 (1916). But see, In re Twentieth Ave., No. E., 95 Wash. 5, 12, 163 Pac. 12 (1917), "The question is so largely one of opinion and not of fact it is generally held, where no other element intervenes, that the judgment of the officers will not be disturbed." Is not a question of "opinion" a question of fact in the sense used here?
\textsuperscript{99} In re Jones, 52 Wn.2d 143, 324 P.2d 259 (1958); In re West Marginal Way, 112 Wash. 418, 192 Pac. 961 (1920).
\textsuperscript{100} Gerlach v. Spokane, 68 Wash. 589, 124 Pac. 121 (1912).
\textsuperscript{101} In re Local Improvement No. 6097, 52 Wn.2d 330, 324 P.2d 1078 (1958); In re Schmitz, 44 Wn.2d 429, 263 P.2d 436 (1954).
foreseeable time. Property cannot be relieved from the burden of an assessment simply because its owner has seen fit to devote it to a use which presently may not be specifically benefited by the improvement. However, an assessment may not be made for purely speculative benefits. In *In re Marginal Way*, an assessment for a proposed street was held invalid where the property assessed was located on an island separated from the proposed street by a navigable waterway subject to the control of the Federal Government and by privately owned property abutting on the waterway. The street could be reached from the island only by a bridge constructed over the waterway at great expense, and no plans for a bridge existed at the time the assessment was made. However, in *Seattle v. Seattle & Mont. R.R.*, the court sustained a street improvement assessment against the railroad right of way although the property was permanently adapted to railway uses as an approach to a tunnel and the property would not actually be benefited by the improvement so long as it was devoted to that use. In the former case, the property involved could not be benefited without construction of a bridge upon other property which was not controlled by the assessed owner. In the latter case, the fact that the property would not be benefited by the improvement, presently or in the future, resulted from the owner's choice of use for its property.

This notion that particular use of land does not affect its liability to assessment and that abutting property cannot be relieved from the burden of assessment because its owner devotes it to a use which may not be specially benefited is best illustrated by cases involving railroad rights of way. The Washington court has held that a railroad right of way is liable to special assessment for a local improvement such as streets. This view accords with the principles discussed above, since the immediate effect of the improvement results from the nature of the use determined by the owner, rather than from the nature of the property or the nature of the improvement.

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102 Newell v. Loeb, 77 Wash. 182, 137 Pac. 811 (1913). A city is allowed discretion in excluding property which may be benefited in the future. Brown v. Anacortes, 79 Wash. 33, 139 Pac. 652 (1914).

103 *In re Jones*, 52 Wn.2d 143, 324 P.2d 259 (1958).

104 *In re Westlake Ave.*, 40 Wash. 144, 82 Pac. 279 (1905).

105 112 Wash. 418, 192 Pac. 961 (1920).

106 50 Wash. 132, 96 Pac. 958 (1908).

107 Northern Pac. Ry v. Seattle, 46 Wash. 674, 91 Pac. 244 (1907); Great No. Ry. v. Seattle, 73 Wash. 576, 132 Pac. 234 (1913). It has been held that a street railway having a franchise to use a street for a limited time is not assessable for a street improvement. *Seattle v. Seattle Elec. Co.*, 48 Wash. 599, 94 Pac. 194 (1908); *In re Third, Fourth & Fifth Ave.*, Seattle, 49 Wash. 109, 94 Pac. 1075 (1908).
Another factor considered in determining "special benefit" is the existence of a like or similar improvement from which the property derives a benefit. If a like or similar benefit does exist, the property is usually not subject to assessment. Thus installation of a water main on an adjoining street and installation of a fire hydrant at an adjoining intersection did not result in a special benefit to property which was already adequately supplied with water from another water main.\(^{108}\) Of course, the city may anticipate future needs and replace an old and inadequate facility with a new, larger, and more effective one, assessing property which is already served by an existing facility.\(^{109}\)

Property can only be assessed once for a particular improvement. If a city has been paid once it cannot levy another assessment for the same improvement.\(^{110}\) This rule does not prevent reassessment in some situations, nor does it mean that the power of assessment exercised once cannot be exercised again. For example, the fact that a city has once laid a sewer line and levied an assessment upon certain property does not prevent the city from laying a newer sewer line and assessing the property again. The power of assessment is a continuing power.\(^{111}\)

The special benefits requirement clearly precludes a levy in proportion to the valuation of the property for general taxation.\(^{112}\) Thus the fact that the entire assessment for a local improvement exceeded the valuation of all property in a district for general taxation did not establish that the assessment exceeded special benefits conferred upon the entire district or upon property assessed, there being no relation between the benefits and general taxation valuation.\(^{113}\) Likewise, the benefit a particular piece of property may receive from an improvement is not measured by the physical character or cost of that portion of the improvement upon which the property abuts.\(^{114}\) The questions are: to what extent is the particular tract benefited by the entire improvement, and is the particular tract assessed proportionally with the other property included within the improvement district.

\(^{108}\) In re Jones, 52 Wn.2d 143, 324 P.2d 259 (1958).
\(^{109}\) In re Appeal of No. Yakima, 87 Wash. 279, 151 Pac. 795 (1915).
\(^{110}\) In re Shilshole Ave., 94 Wash. 583, 162 Pac. 1010 (1917).
\(^{111}\) Knickerbocker v. Seattle, 69 Wash. 365, 124 Pac. 922 (1912).
\(^{112}\) Monk v. Ballard, 42 Wash. 35, 84 Pac. 397 (1906).
\(^{113}\) East Hoquiam Co. v. Hoquiam, 90 Wash. 210, 155 Pac. 754 (1916). But see In re Western Ave., 47 Wash. 42, 91 Pac. 548 (1907), in which the court stated that value is an element which may be taken into consideration in determining benefits. The court found, however, that the property had neither been assessed more than it was benefited nor more than its proportionate share. Accord, In re Seattle, 50 Wash. 402, 97 Pac. 444 (1908).
\(^{114}\) La Franchi v. Seattle, 78 Wash. 158, 138 Pac. 659 (1914).
In re Aurora Ave.\textsuperscript{115} offers an excellent illustration of special benefit principles. This case involved construction of a street and bridge and assessment for part of the cost of the improvement of the residential and business areas which were made more readily accessible to each other. Physical factors considered were: distribution of population, traffic congestion, improved access, topographical conditions, and relative distances from the business center. The fact that the improvement was part of an arterial highway and the fact that the property had been successively assessed for the opening of three previous traffic avenues did not preclude a finding of special benefits.

**Assessment**

Only that portion of the cost of a local improvement which is of special benefit to property can be levied against it.\textsuperscript{116} This rule has been defined by statute\textsuperscript{117} to include the following: (1) the cost of the portion of the improvement within street intersections;\textsuperscript{118} (2) the estimated cost of all engineering and surveying necessary for the improvement done under the supervision of a city engineer;\textsuperscript{119} (3) the estimated cost of ascertaining ownership of the lots included in the assessment district; (4) the estimated cost of advertising, mailing, and publishing all necessary notices;\textsuperscript{120} (5) the estimated cost of accounting, clerical labor, and of books and blanks used by the city clerk and treasurer in connection with the improvement; and (6) all cost of the acquisition of rights of way, property, easements or other facilities or rights, whether by eminent domain, purchase, gift, or in any other manner.\textsuperscript{121}

Statutory provision is made for ascertaining the amount to be assessed against each tract upon the basis of a so-called zone and termini method.\textsuperscript{122} The local improvement district is divided into subdivisions or zones which parallel the margin of the improvement and encompass

\textsuperscript{115} 180 Wash. 523, 41 P.2d 143 (1935).
\textsuperscript{116} 6697, 52 Wn.2d 330, 324 P.2d 1078 (1958).
\textsuperscript{117} 35.44.020.
\textsuperscript{118} RCW 35.44.020.
\textsuperscript{119} The city may also pay for the whole or part of this item out of its general fund.
\textsuperscript{120} Buck v. Town of Monroe, 85 Wash. 1, 147 Pac. 432 (1915).
\textsuperscript{121} The costs of the city attorney may also be included. In re Jackson St., 62 Wash. 432, 113 Pac. 1112 (1911).
\textsuperscript{122} Where a district was dissolved because an improvement was impractical, the property in the district could be charged with expenses incurred in determining whether the improvement should be made. State \textit{ex \mbox{rél}}. O'Phelan v. Lundquist, 103 Wash. 339, 174 Pac. 440 (1918).
\textsuperscript{123} RCW 35.44.010 provides, in part, "The cost and expense shall be assessed upon all the property in accordance with the special benefits conferred thereon in proportion to area and distance back from the marginal line of the public way or area improved." See RCW 35.43.080.
a designated footage back from the improvement.\textsuperscript{123} For example, the first zone includes all the land lying between the street margin and thirty feet; the second zone includes the land between thirty feet and sixty feet, etc. A formula is prescribed for determining the rate of assessment per square foot in each zone.\textsuperscript{124} The total assessment ascertained in this way against each lot is then entered upon the assessment roll as the amount to be levied against each lot.\textsuperscript{125} As has been previously discussed, special provision is made for calculation of assessments in construction of trunk sewer and water mains,\textsuperscript{126} and in creation of an enlarged district.\textsuperscript{127} Finally, it is provided that the termini and zone method need not be used if it does not fairly reflect special benefits.\textsuperscript{128}

Presumably the latter provision allows a city to select any method which will result in assessment according to special benefits. The court has sustained assessments of specific sums against each lot abutting upon a street, rather than a spreading out under a zone system;\textsuperscript{129} assessments made partly upon a zone method and partly upon a frontage basis;\textsuperscript{130} and assessments made solely upon a frontage basis.\textsuperscript{131} The method of distributing cost, whether by zone system, by front foot, or by area, does not itself affect the validity of the assessment. The critical consideration always is whether the method of distributing cost properly represents special benefits to the property assessed. An assessment for watering a parking district made solely upon the basis of front footage and disregarding the amount of parking to be maintained and the situation of the lots, was invalid.\textsuperscript{132} Apportionment of the cost of removal of shade trees on the south side during improvement of a street made ninety-five per cent to the south side and five per cent to the north side was also invalid.\textsuperscript{133} In the latter case, the court concluded that all property should have been assessed equally.

Generally, the city has considerable freedom in its choice of method for ascertaining the assessment to be levied against each tract. How-

\textsuperscript{123} RCW 35.44.030.
\textsuperscript{124} RCW 35.44.030. An alternative method of calculation is provided by RCW 35.44.045, for a local improvement district established for safeguarding open canals or ditches.
\textsuperscript{125} RCW 35.44.050.
\textsuperscript{126} See text accompanying notes 49-51, supra.
\textsuperscript{127} See text accompanying notes 74-76 supra.
\textsuperscript{128} RCW 35.43.080.
\textsuperscript{129} Moore v. Spokane, 88 Wash. 203, 152 Pac. 999 (1915).
\textsuperscript{130} Gerlach v. Spokane, 68 Wash. 589, 124 Pac. 121 (1912).
\textsuperscript{131} Northern Pac. Ry. v. Seattle, 46 Wash. 674, 1 Pac. 244 (1907).
\textsuperscript{132} In re Rockwood Blvd., 170 Wash. 64, 15 P.2d 652 (1932).
\textsuperscript{133} In re California Ave., 30 Wn.2d 144, 190 P.2d 738 (1948).
ever, as previously discussed, this freedom is qualified by the require-
ment that the ordinance establishing the district must so provide if a
means other than the zone and termini method is to be used.134

By whatever method selected, the assessment for each lot must be
entered upon the assessment roll, which must be filed with the city
clerk. In preparation of the assessment roll, the municipal legislative
authority is not bound by the preliminary estimated amounts of assess-
ments.135 Following preparation and filing of the roll, a date must be
fixed for a hearing before the municipal legislative authority or a
committee, and notice must be given of such hearing.136

The notice must specify the time and place of hearing and must
direct all persons who may desire to file written objections to do so.137
Personal notice must be mailed to the owners whose names appear on
the assessment roll and, in addition, a general publication must be
made.138 Irregularities in the notice are waived if the property owner
is advised of the hearing and has an opportunity to appear and make
his protests known. An objection that the notice did not exactly con-
form to the statute is unavailing if the objector is not prejudiced.139

The hearing on the assessment roll is the proper time for raising the
questions whether special benefits have been conferred and whether
amounts of individual assessments are correct.140 If any objections
are not made within the time and manner prescribed, they are con-
clusively presumed to have been waived.141 At the time fixed for hearing
objections to confirmation of the assessment roll, the municipal legisla-
tive authority may correct, revise, raise, lower, change, or modify the
roll. At the conclusion of the hearing it may confirm the roll by ordi-

\begin{footnotes}
134 Hargreaves v. Mukilteo Water Dist., 37 Wn.2d 522, 224 P.2d 1061 (1950); Har-
greaves v. Mukilteo Water Dist., 43 Wn.2d 326, 261 P.2d 122 (1953). In In re Schmiz,
44 Wn.2d 429, 268 P.2d 436 (1954), evidence that an assessment was made on the basis
of "$5.00 a front foot" did not sustain a levy where the ordinance in question did not
provide for a method of assessment other than the zone and termini method. See note
142 infra.
135 RCW 35.44.060.
136 RCW 35.44.070. Notice is specifically required by statute. In general, constitu-
tional due process is violated by failure to accord notice before an assessment becomes
a charge upon property. 14 McQuillin, MUNICIPAL CORPORATIONS § 38.98 (3rd ed.
1950). It is sometimes suggested, however, that the federal constitution is not violated
by failure to afford notice and hearing when a municipal legislative body itself imposes
individual assessments. See ANTITEAU & SEASONGOOD, CASES ON MUNICIPAL CORPO-
137 RCW 35.44.080.
138 RCW 35.44.090.
139 In re Local Improvement Dist. Nos. 1-58 and 2-58, 57 Wn.2d 499, 358 P.2d 314
(1961); Redding v. Spokane, 81 Wash. 263, 142 Pac. 664 (1914).
140 Matthew v. Ellensburg, 73 Wash. 272, 131 Pac. 839 (1913).
141 RCW 35.44.110.
\end{footnotes}
novum. If an assessment roll is amended so as to raise any designated assessments or include omitted property, a new time and place for hearing must be fixed and a new notice of hearing on the roll given.

Before considering the effects of confirmation of the roll and the means of rectifying any errors, the matters of estoppel and exemption should be noted. An owner who has petitioned for an improvement is estopped from contesting necessity for the improvement and, apparently, from claiming there is no benefit at all. An owner may also lose his right to contest by an express agreement waiving procedural irregularities. However, petitioners for an improvement are not estopped from asserting that individual assessments are arbitrary or excessive. Estoppel in the latter case would deny the statutory right of owners to question the amount of assessment by proper objection at the hearing on confirmation of the assessment roll.

A general exemption from taxation does not extend to special assessments. As a rule, all property covered by general terms of a statute, and not specifically exempted, is subject to assessment for local improvements. For example, the property of a commercial waterway district was not exempt from assessment by a city where statutes and ordinances did not expressly so provide, even though the commercial waterway district might not have power to levy and collect taxes to pay the assessment and might not have power to divert its funds to purposes other than benefit of the district.

Government-owned property has created a particular exemption prob-

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142 RCW 35.44.100. By virtue of this provision, it may be possible for a city to apportion benefits by a method other than the zone and termini method, though no such statement is made in the original ordinance ordering an improvement. See Hargreaves v. Mukilteo Water Dist. 43 Wn.2d 326, 261 P.2d 122 (1953) (dictum).
143 RCW 35.44.120. Where notice of a special assessment for local improvements limited assessment to property within 120 feet of the improved streets, as described in the assessment roll, the city council could not, without notice, amend the roll to include all property within 180 feet of the streets. Such an assessment was valid as to the 120 feet first described, but void as to the 60 feet added by amendment. State ex rel. Barber Asphalt Paving Co. v. Seattle, 42 Wash. 370, 85 Pac. 11 (1906).
144 Seattle v. Hill, 23 Wash. 92, 62 Pac. 446 (1900); Spokane v. Fonnell, 75 Wash. 417, 135 Pac. 211 (1913). Owners petitioning for a street of a certain width cannot object to confirmation of the assessment on the ground that the width is unnecessary. In re Jackson St., 62 Wash. 432, 113 Pac. 1112 (1911). However, the fact that a property owner petitioned for an improvement and made affidavit that the property was a public street did not estop the property owner from maintaining an action to cancel the assessment when it was found that the property improved was not public property. Allen v. Spokane, 108 Wash. 407, 184 Pac. 312 (1919); Yakima v. Snively, 140 Wash. 328, 248 Pac. 788 (1926).
146 Spokane v. Fonnell, 75 Wash. 417, 135 Pac. 211 (1913).
147 In re Local Improvement No. 6097, 52 Wn.2d 330, 324 P.2d 1078 (1958).
148 Seanor v. Board of County Comm'rs, 13 Wash. 46, 42 Pac. 552 (1895).
lem. Property owned by the United States is exempt from assessments for local improvement.\textsuperscript{150} Nor, in the absence of express statutory authority, can a municipality subject lands of the state to a special assessment.\textsuperscript{151} Statutes now provide that all lands held or owned by the state and situated within the limits of any assessing district in the state (including school lands, granted lands, escheated lands, tidelands, shorelands, and harbor areas lying between tide or shore lands and the outer harbor line) may be assessed for the cost of improvements specially benefiting such lands.\textsuperscript{152} A state armory site,\textsuperscript{158} the school house and playground property of a school district,\textsuperscript{154} and lands held by the state department of highways\textsuperscript{155} have been subject to assessment. Specific statutory provisions also allow for assessment of city, county, and metropolitan park district property, as well as leasehold rights and interests of private individuals in harbor areas and tidelands.\textsuperscript{156}

The Washington court has sustained validity of a condition in a dedication of land to a city that remaining land owned by the donor should not be subject to assessment.\textsuperscript{157} Also, a city's agreement exempting property holders from assessment of their abutting property for the cost of improving a street, for which they had dedicated a portion of their lands, was sustained.\textsuperscript{158} Similarly, a contract for an easement for a street in which the city agreed to reimburse an owner by repaying an assessment against abutting property for opening, grading, or improving the street was sustained.\textsuperscript{159} Further, property owners who made certain improvements which later became part of a local improvement constructed by a city were entitled to credits for the amount expended by them for such improvements.\textsuperscript{160}

\textsuperscript{150}Mullen Benevolent Corp. v. United States, 290 U.S. 89 (1933).
\textsuperscript{151}State v. Olympia, 171 Wash. 594, 18 P.2d 848 (1933); Spokane v. Security Soc'y, 46 Wash. 150, 89 Pac. 466 (1907).
\textsuperscript{152}RCW 79.44.100. For the purpose of levying assessments, the value of property of the state, or of any county, city, school district, or other public corporation whose property is not assessed for general taxes, is to be computed according to the standards afforded by similarly situated property which is assessed for general taxes. RCW 35.43.130.
\textsuperscript{153}Re Western Ave., 93 Wash. 472, 161 Pac. 381 (1916).
\textsuperscript{154}Spokane v. Fonnell, 75 Wash. 417, 135 Pac. 211 (1913).
\textsuperscript{155}In re State's Appeal, 60 Wn.2d 380, 374 P.2d 171 (1962).
\textsuperscript{156}RCW 35.44.130-.170. See North Am. Lumber Co. v. Blaine, 89 Wash. 366, 154 Pac. 446 (1916) (harbor areas and tidelands).
\textsuperscript{157}But see, Vrana v. St. Louis, 164 Mo. 146, 64 S.W. 180 (1901).
\textsuperscript{158}Giles v. Olympia, 115 Wash. 428, 197 Pac. 631 (1921).
\textsuperscript{159}Washington Water Power Co. v. Spokane, 89 Wash. 149, 154 Pac. 329 (1916). For cases sustaining agreements not to assess in condemnation proceedings, see In re Patterson, 98 Wash. 334, 167 Pac. 924 (1917); Richardson v. Seattle, 97 Wash. 371, 166 Pac. 639 (1917).
CONFIRMATION

If any property owner has any objections to confirmation of the assessment roll, he must state them within the time and in the manner prescribed or he is conclusively presumed to have waived them.161 Once an assessment roll has been confirmed, a statute provides that the regularity, validity, and correctness of proceedings relating to the improvement and assessment, including action of the legislative authority upon the assessment roll and confirmation, are conclusive in all things upon all parties. The proceedings cannot be contested in any proceeding by any person unless that person filed proper written objections to the assessment roll and prosecutes an appeal. The only stated statutory exceptions are:

No proceeding of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any assessment or the sale of any property to pay an assessment or any certificate of delinquency issued therefor, except that injunction proceedings may be brought to prevent the sale of any real estate upon the ground (1) that the property about to be sold does not appear upon the assessment roll or (2) that the assessment has been paid.162

This statute does not preclude objections made in the proceedings themselves or by a direct attack in reassessment proceedings. Its purpose is to cut off such collateral proceedings as an action in equity to cancel an assessment.163 The Washington court has required strict compliance with the statute and refused to allow parties to raise defenses to the assessment after the hearing on the assessment roll.

To be successful, a collateral attack upon proceedings to confirm the assessment roll must be directed at jurisdictional defects. Jurisdictional defects have been found where the improvement was not for the public benefit;164 where the property improved was not public property,165 and where there was a failure to give the required statutory notice of proceedings to confirm the assessment role.166 In addition, a

161 RCW 35.44.110.
162 RCW 35.44.190.
163 Van Der Creek v. Spokane, 78 Wash. 94, 138 Pac. 560 (1914).
164 Wiley v. Aberdeen, 123 Wash. 539, 212 Pac. 1049 (1923), involved construction of a culvert on private property to keep open a non-navigable natural water course, which had become obstructed by a private culvert and failure of private owners to properly maintain the culvert.
166 Pratt v. Water Dist. No. 79, 58 Wn.2d 420, 363 P.2d 816 (1961). This case concerned a water district rather than a city, but the statute involved was basically the same as the statute regarding cities and towns.
few cases hold that proceedings to confirm an assessment role which includes property not subject to assessment are void to that extent and subject to collateral attack.\textsuperscript{167} The exact limits of the latter exception are not clear. The fact that property is not benefited by an improvement is not a jurisdictional defect,\textsuperscript{168} though certainly an assessment roll which includes unbefitted property can be said to include property which is not subject to assessment. It may be expected that this exception will be strictly construed in the future. Certainly the tenor of the great majority of the opinions has been one of strict construction of "jurisdiction," and preclusion of attacks other than those prescribed by statute.\textsuperscript{169}

The following objections have been held not jurisdictional; they must be raised at the hearing on the assessment roll: that sufficient notice was not given of an intention to make an improvement; that specifications for the improvement were insufficient;\textsuperscript{170} that a city should not have accepted work improperly performed by a contractor;\textsuperscript{171} that landowners had dedicated land to the city for street purposes under a contract providing that their abutting land should be free from assessment for improvement of the street;\textsuperscript{172} that a city should have credited certain money before assessing property owners instead of wrongfully diverting it to other purposes;\textsuperscript{173} that an assessment exceeded charter limitations;\textsuperscript{174} that an assessment was greater than the actual cost of the improvement; that the assessment included items not proper, such as the cost of repairs of streets for five years; that the amount imposed upon an individual tract exceeded the benefits conferred.\textsuperscript{175} Any one of these objections to confirmation of the assessment roll, timely raised and supported, would have been successful.

\textsuperscript{167} Seattle & Puget Sound Packing Co. v. Seattle, 51 Wash. 49, 97 Pac. 1093 (1908), \textsuperscript{(property which had, in prior condemnation proceedings, been adjudged to have been damaged in excess of benefits)}; North Am. Lumber Co. v. Blaine, 89 Wash. 366, 154 Pac. 446 (1916) (private leasehold interests in harbor areas which have since been made subject to assessment by RCW 35.44.150); Northern Pac. Ry. v. Walla Walla, 114 Wash. 153, 194 Pac. 962 (1921); Reitzie v. Kirkland, 139 Wash. 466, 247 Pac. 735 (1926) (property beyond the statutory limits of the district).\textsuperscript{168} State ex rel. Renton v. Commercial Waterway Dist. No. 2, 152 Wash. 523, 278 Pac. 423 (1929).

\textsuperscript{169} But see Wade v. Tacoma, 131 Wash. 245, 230 Pac. 99 (1924), where property owners successfully enjoined a city from paying a contractor any sum exceeding the amount due on the contract, even though the property owners could not directly have had their assessments cancelled or set aside.

Appeals

The decision of a municipal legislative authority is final and conclusive upon any objections made in the manner and within the time prescribed, subject to a limited review by the superior court. Just as it is critical that the parties abide by the designated procedures in making their objections known at the hearing or confirmation at the local level, the same also is true in taking appeals to the superior court.\(^{176}\)

Appeal is made by filing written notice of appeal with the city clerk and the clerk of the superior court of the county in which the city is situated within ten days after the ordinance confirming the assessment roll becomes effective.\(^{177}\) At the time of filing the notice of appeal, the appellant must also file a $200 bond, conditioned to prosecute the appeal without delay and to pay all costs to the city by reason of the appeal.\(^{178}\) Within ten days after filing notice, the appellant must file with the clerk of the superior court a transcript consisting of the assessment roll and his objections, together with the ordinance confirming the assessment roll and the record of the municipal legislative authority referring to the assessment, and give notice of such filing to the city.\(^{179}\) The superior court is directed by statute to hear the appeal without a jury and give preference to appeal over all other civil causes except proceedings relating to eminent domain in cities and actions of forcible entry and detainer.\(^{180}\)

Review is limited. It has been said that power to determine the necessity for an improvement, the character of the improvement, and the materials out of which the improvement shall be constructed are legislative questions wholly within the discretion of the city.\(^{181}\) Moreover, broad discretion, conclusive in the absence of fraud or arbitrary action, is recognized in the city regarding establishment of the boundaries of improvement districts and apportionment of the costs between the general funds of the city and special assessments upon property owners. Courts have been very reluctant to reverse on such issues.\(^{182}\)

\(^{176}\) State ex. rel. Frese v. Normandy Park, 64 Wn.2d 423, 392 P.2d 207 (1964); Colville v. Goetter, 82 Wash. 305, 144 Pac. 30 (1914); In re Local Improvement Sewer Dist. No. 1, 84 Wash. 565, 147 Pac. 199 (1915).

\(^{177}\) RCW 35.44.200-210.

\(^{178}\) RCW 35.44.220.

\(^{179}\) RCW 35.44.230-240.

\(^{180}\) RCW 35.44.250.

\(^{181}\) Knickerbocker v. Seattle, 69 Wash. 365, 124 Pac. 922 (1912); In re Shilshole Ave., 94 Wash. 583, 162 Pac. 1010 (1917).

\(^{182}\) In re Aurora Ave., 180 Wash. 523, 41 P.2d 143 (1935); In re Grandview, 118 Wash. 464, 203 Pac. 988 (1922); Brown v. Anacortes, 79 Wash. 33, 139 Pac. 652 (1914); In re Westlake Ave., 40 Wash. 144, 82 Pac. 279 (1905).
Review of the questions whether and to what extent certain property is benefited by a particular improvement has been most troublesome. At one time a determination by the city that certain property was benefited by an improvement was not subject to review in the absence of fraud or arbitrary action. It was presumed that the city's findings as to benefit and the consequent assessment were fair; the burden to establish fraud or arbitrary action was on the property owner. More recently, the Washington Supreme Court has been more willing to review the question of benefits and to allow for a greater review by the superior courts. While a presumption of correctness continues, a greater review of the evidence has been undertaken. In In re Schmitz, the Washington court, after a detailed review of the evidence, reversed both a city and the trial judge, concluding that the amount of assessment upon the appellants' property substantially exceeded the value of the special benefits accruing to appellants' property by reason of the improvement. Four years later, in In re Local Improvement No. 6097, the court again reviewed evidence in detail, this time affirming a superior court reversal of a city on the question of benefits.

A 1957 statutory amendment may affect the scope of review in the future. Prior to that time, RCW 35.44.250 provided that, "The judgment of the court shall confirm, correct, modify, or annul the assessment insofar as it affects the property of the appellant." In 1957 this statute was amended to read:

The judgment of the court shall confirm, unless the court shall find from the evidence that such assessment is founded upon a fundamentally wrong basis and/or the decision of the council or other legislative body thereon was arbitrary or capricious; in which event the judgment of the court shall correct, change, modify, or annul the assessment insofar as it affects the property of the appellant.

It has been said that this amendment was an attempt to take some of the "sting" out of the result in In re Schmitz. Whether the attempt will be successful remains to be seen. That it may not be suggested by the fact that in both In re Schmitz and In re Local Improvement No. 6097 the court observed that the assessment was, or might have been, levied on a fundamentally wrong basis. The statute as

183 In re Appeal of No. Yakima, 87 Wash. 279, 151 Pac. 795 (1915).
184 Gerlach v. Spokane, 68 Wash. 589, 124 Pac. 121 (1912). See Spokane v. Fonnell, 75 Wash. 417, 135 Pac. 211 (1913) (the presumption was overcome).
186 52 Wn.2d 330, 324 P.2d 1078 (1958).
amended, allows the court to correct, change, modify, or annul the assessment in such an instance. What may be overlooked is that at an earlier date the court was not as willing to review evidence in such detail in order to determine whether an assessment was levied on a fundamentally wrong basis. Did the legislature intend for the court to revert to its prior practice in that regard? If so, to what extent and in what manner will the court implement that intent? To date, these questions have not been answered.

The judgment of the superior court is of course an appealable order. It is critical to note that an appeal to the supreme court must be perfected within fifteen days after entry of a judgment in the superior court; the general rule of allowing thirty days for an appeal from a final judgment does not apply. The record and opening brief of an appellant are to be filed with the supreme court within sixty days after filing of notice of appeal, subject to extension by order of the superior court or by stipulation of the parties. Review by the supreme court accords with the principles discussed above, with the usual deference to the determination made by the trial court.

**REASSESSMENT**

If assessments are invalid for want of form, or for insufficiency, informality, irregularity, or nonconformance with provisions of law, charter, or ordinance, a statute authorizes the local legislative authority to reassess the assessments and enforce their collection, in accordance with the provisions of law and ordinance existing at the time the reassessment is made. The fact that a contract has been let or that an improvement has been completed in whole or part does not prevent reassessment. Any municipal officer's noncompliance with the law governing a city as to petition, notice, resolution to improve, estimate, survey, diagram, manner of letting the contract, or execution of the work or any other matter connected with the improvement and the first assessment does not invalidate a reassessment.

Any reassessment must be made in accordance with statutory provisions, since a reassessment for any purpose without legislative authority is invalid. As indicated above, failure to comply with statutory

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188 RCW 35.44.260.
189 WASH. RULES ON APP. 33(1)(a); In re West Barton St. Sewer, 163 Wash. 645, 1 P.2d 858 (1931).
190 RCW 35.44.280.
191 RCW 35.44.300.
192 See Franklin Sav. Bank v. Moran, 19 Wash. 200, 52 Pac. 858 (1898), in which a reassessment to pay for the construction of a dike was held invalid where a statute authorized reassessment only for drains and ditches.
requirements in making the original assessment does not preclude a reassessment. Likewise, the fact that a court has decided the original assessment roll invalid does not bar reassessment by res judicata.\textsuperscript{193} As a practical matter, the most common reason for reassessment is likely to be a judicial determination that the city has in some way failed to abide by a statutory requirement in the original assessment. The statutes do not authorize a reassessment simply because some property owners have defaulted in their payments. When property owners have defaulted, the city must proceed with collection of the delinquent assessments, rather than reassess against those property owners who have already paid.\textsuperscript{194}

A reassessment must be made upon property which has been or will be specially benefiting by the improvement. This allows for the inclusion of property not in the original improvement district.\textsuperscript{195} Of course, if the city enlarges the district upon reassessment, it must give the added property owners an opportunity to be heard.\textsuperscript{196} Upon reassessment, the question of benefits and apportionment is in no way controlled by the original assessment.\textsuperscript{197}

A reassessment must be for an amount which does not exceed actual cost of the improvement and accrued interest.\textsuperscript{198} In apportioning cost to specially benefited property, any sums paid on the original assessment must be credited to the property for which they were paid.\textsuperscript{199}

Any ordinance providing for a reassessment must be enacted within ten years after an original assessment has been determined invalid or insufficient.\textsuperscript{200} All the statutory provisions relating to filing of assessment rolls, time and place for hearing, notice of hearing, hearing upon the roll, confirmation of the roll, and proceedings on appeal apply to a

\textsuperscript{193} Allen v. Bellingham, 77 Wash. 469, 137 Pac. 1016 (1914). However, a judgment vacating an assessment as to certain tracts upon a finding that they were assessed in excess of benefits conferred is res judicata and bars reassessment of the same tracts for the same improvement in the same or greater amounts. East Hoquiam Co. v. Hoquiam, 90 Wash. 210, 155 Pac. 754 (1916). Where an assessment was adjudged invalid because certain property had been damaged and was therefore nonassessable, such property could not be subjected to a reassessment, although it may in fact have been benefited. Hapgood v. Seattle, 69 Wash. 497, 125 Pac. 965 (1912).


\textsuperscript{195} RCW 35.44.290.

\textsuperscript{196} Bremerton v. Triangle Traders, 89 Wash. 214, 154 Pac. 193 (1916); Reitzie v. Kirkland, 139 Wash. 466, 247 Pac. 735 (1926).

\textsuperscript{197} Inner-Circle Property Co. v. Seattle, 69 Wash. 508, 125 Pac. 970 (1912). As discussed in note 193 \textit{supta}, a judgment as to special benefits received by any particular tracts will be res judicata as to those tracts.

\textsuperscript{198} RCW 35.44.310.

\textsuperscript{199} RCW 35.44.320.

\textsuperscript{200} RCW 35.44.340.
reassessment just as to an original assessment.\textsuperscript{201} Since a reassessment is a de novo proceeding, the fact that persons failed to object to an original assessment does not preclude them from objecting to a reassessment.\textsuperscript{202} However, the property owner who fails to object to a reassessment upon proper notice may not later dispute its validity.\textsuperscript{203}

**Conclusions**

Procedure for establishment of local improvement districts and determination of special assessments is well defined. Although there are potential traps for the unwary, careful reading and compliance with the detailed statutory provisions provide adequate protection for property owners. Ample provision is made for participation and protests by those to be affected. On the other hand, the procedure enables the cities to proceed with necessary improvements in an expeditious manner.

Additional and separate problems arise from financing of improvements, payment by owners, and collection of assessments by the cities. It is anticipated that these problems will be examined in a later issue of the *Washington Law Review*.

\textsuperscript{201} RCW 35.44.350. Comparable provisions allow for assessments upon property improperly omitted from the original assessment roll, RCW 35.44.360-380, and for supplemental assessments when the amount originally assessed is not equal to the cost of the local improvement or that portion to be paid by assessment of the property benefited, RCW 35.44.390-400.

\textsuperscript{202} Van Der Creek v. Spokane, 78 Wash. 94, 138 Pac. 560 (1914).

\textsuperscript{203} McNamee v. Tacoma, 24 Wash. 591, 64 Pac. 791 (1901).