STATE OF NORTH DAKOTA
ATTORNEY GENERAL'S OPINION 97-F-09

Date issued: October 17, 1997

Requested by: Representative Ole Aarsvold, District 20

- QUESTIONS PRESENTED -

I.

Whether cleaning out and repairing of an assessment drain established under N.D.C.C. ch. 61-21 includes widening and deepening the existing drain.

II.

Whether a vote of the landowners is required before a water resource board may undertake to widen and deepen an existing drain established under N.D.C.C. ch. 61-21.

III.

Whether a water resource board may assess landowners at rates different than the original assessment, such as a uniform amount, when widening and deepening an existing drain established under N.D.C.C. ch. 61-21.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that a water resource board has authority to widen or deepen an existing drain as part of cleaning out and repairing the drain.

II.

It is my opinion that a vote of the landowners is required before a water resource board may undertake a maintenance project exceeding the levy amounts contained in N.D.C.C. §§ 61-21-46 and 61-41-47.

III.

It is my opinion that a water resource board may assess landowners at a different rate than the original assessment made under N.D.C.C. ch. 61-21, including assessing a uniform amount.

- ANALYSES -

I.

The board of each water resource district has the duty to keep drains[1] open and in good repair. N.D.C.C. § 61-21-42. The board may issue a levy "for cleaning out and repairing a drain" or for "maintenance, cleaning out, and repairing any drain." N.D.C.C. §§ 61-21-46 & 61-21-47. Words in a statute are to be understood in their ordinary sense unless a contrary intention plainly appears, and any words explained in the North Dakota Century Code are to be understood as explained. N.D.C.C. § 1-02-02. N.D.C.C. § 61-21-01(3) defines "cleaning out and repairing of drain" to mean "deepening and widening of drains as well as removing obstructions or sediment, and any repair necessary to return the drain to a satisfactory and useful condition." Cleaning out and repairing a drain is broader in scope than maintenance because it not only encompasses returning a drain to a satisfactory and useful condition, but also includes "deepening and widening" a drain.

Therefore, it is my opinion that a water resource board has authority to widen or deepen an existing drain as part of cleaning out and repairing the drain under N.D.C.C. ch. 61-21.

II.

There is no statutory restriction on the meaning of "deepening and widening" a drain, but there are restrictions on the amounts that can be levied for cleaning out and repairing drains. A vote of landowners is required when the amount needed to clean out and repair a drain exceeds certain limits. N.D.C.C. §§ 61-21-46 and 61-21-47. These financial restrictions have the effect of limiting a board's discretion in determining how much "deepening and widening" may be made to a drain without a vote of the landowners.

N.D.C.C. § 61-21-46 provides:

> The levy in any year for cleaning out and repairing a drain may not exceed one dollar and fifty cents per acre [.40 hectare] on any agricultural lands in the drainage district.
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> 1. Agricultural lands that carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of one dollar and fifty cents per acre [.40 hectare]. The assessment of other agricultural lands in the district must be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full

[1] N.D.C.C. chs. 61-16.1 and 61-21 have separate procedures for establishing and maintaining projects, and N.D.C.C. § 61-21-02 requires drains established under N.D.C.C. ch. 61-21 to be maintained under that chapter. N.D.A.G. 84-22. Water resource boards must maintain drains pursuant to the appropriate statutory authority under which the drains were established. *Id.*

one dollar and fifty cents per acre [.40 hectare]. Nonagricultural property must be assessed the sum in any one year as the ratio of the benefits under the original assessments or any reassessments bears to the assessment of agricultural land bearing the highest assessment.

2. Agricultural lands must be assessed uniformly throughout the entire assessed area. Nonagricultural property must be assessed an amount not to exceed one dollar for each five hundred dollars of taxable valuation of the nonagricultural property.

In case the maximum levy or assessment on agricultural and nonagricultural property for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing the drain, the board may accumulate a fund in an amount not exceeding the sum produced by the maximum permissible levy for four years. If the cost of, or obligation for, the cleaning and repair of any drain exceeds the total amount that can be levied by the board in any four-year period, the board shall obtain an affirmative vote of the majority of the landowners as determined by section 61-21-16 before obligating the district for the costs.

Id. N.D.C.C. § 61-21-47 provides:

If the cost of maintenance, cleaning out, and repairing any drain shall exceed the amount produced by the maximum levy of fifty cents per acre [.40 hectare] in any year, together with the amount accumulated in the drainage fund, the board may proceed with such cleaning out and make an additional levy only upon petition of at least sixty-one percent of the affected landowners. The percentage of the affected landowners signing such petition shall be determined in accordance with the weighted voting provisions in section 61-21-16.

Id.

Under these sections, a water resource board has the authority to assess up to the maximum levies set in N.D.C.C. §§ 61-21-46 and 61-21-47 for cleaning out and repairing drains which were originally constructed as assessment drains without requiring a vote or approval of the landowners. Letter from Attorney General Heidi Heitkamp to Cameron Sillers, May 27, 1997 (the water resource board may increase the levy for cleaning out and repairing drains without a vote because the Legislative Assembly did not require a vote with regard to the maintenance levy unless the board wishes to levy in excess of the maximum levy authorized).

Approval of the landowners is required, however, in the following circumstances. If the cost of, or obligation for, cleaning and repairing a drain exceeds the total amount that can be levied by the board in any four year period, the board must obtain an affirmative vote of the majority of landowners before the board can obligate the district for those costs. N.D.C.C. § 61-21-46. A majority is determined in accordance with the weighted voting

provisions in N.D.C.C. § 61-21-16 which gives each landowner one vote for each dollar of assessment. If the cost of cleaning out and repairing a drain exceeds the amount that can be produced by a maximum levy of fifty cents[2] per acre in any year, together with the amount accumulated in the drainage fund, the board can proceed with the cleaning out and can make an additional levy only upon petition of at least sixty-one percent of the affected landowners.[3] Again, the percentage of affected landowners is determined in accordance with the weighted voting provisions in N.D.C.C. § 61-21-16.

N.D.C.C. ch. 61-21 does not specifically refer to improving or reconstructing drains. Because the definition of cleaning out and repairing a drain includes deepening and widening a drain, and as such would encompass reconstruction and improvement of a drain,[4] a drain may be reconstructed and improved using the assessment the board may levy under N.D.C.C. § 61-21-46, unless the drain has been abandoned. Therefore, it is my opinion that a vote is required if the cost of the work to be done exceeds the amounts previously discussed. A drain that is not maintained is considered to be abandoned. N.D.C.C. § 61-21-41. If the board establishes a new drain in substantially the same location as an abandoned drain, the board must proceed in the manner prescribed for the construction of new drains. *Id.*

III.

Before answering whether a water resource board may assess landowners within the assessment district an amount different than the original maintenance levy for agricultural property, it is necessary to determine whether N.D.C.C. § 61-21-46 authorizes the board

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[2] In Letter from Attorney General Heidi Heitkamp to Cameron Sillers, May 27, 1997, this office said:

> N.D.C.C. § 61-21-46 and N.D.C.C. § 61-21-47 were enacted as sections 45 and 46 of 1955 Senate Bill No. 33. When these laws were enacted in 1955, both sections referred to the maximum levy for cleaning and repairing a drain as fifty cents. Over time, the maximum levy was changed in N.D.C.C. § 61-21-46, while the reference to it in N.D.C.C. § 61-21-47 was not changed. 1975 House Bill No. 1393 increased the maximum levy in N.D.C.C. § 61-21-46 from fifty cents to one dollar. N.D.C.C. § 61-21-47 was not changed. 1983 Senate Bill No. 2257 increased the maximum levy in N.D.C.C. § 61-21-46 from one dollar to one dollar and fifty cents. Again, N.D.C.C. § 61-21-47 was not changed. Because both sections refer to different amounts for the maximum levy for maintenance, the two statutes appear to conflict. However, because you asked whether the board could increase the levy from ten to fifty cents without a vote, it is not necessary to address the possible conflict that would arise in situations where the board may want to levy more than fifty cents for maintenance. This is an issue the Legislative Assembly may wish to address next legislative session.

[3] The Legislative Assembly may also wish to address the conflict between the simple majority required by N.D.C.C. § 61-21-46 and the 61 percent supermajority required by N.D.C.C. § 61-21-47. Resolution of this conflict is not necessary in order to respond to the question presented.

[4] A drainage permit is required for any drain deepened or widened by the board. N.D.C.C. § 61-32-03 and N.D. Admin. Code § 89-02-01-03.

to choose one of the two methods set out in that section for levying assessments, and whether N.D.C.C. § 61-21-46 conflicts with N.D.C.C. §61-21-43.

N.D.C.C. § 61-21-46 contains two subsections, each of which specify a method for making assessments for cleaning out and repairing drains. Subsection 1 provides that assessments will be made in proportion to the assessments made when the drain was constructed. Subsection 2 requires assessments to be made uniformly throughout the entire assessed area. There is no language in this statute stating whether subsections 1 and 2 are to be applied separately or whether they must be applied together. If "uniformly throughout the entire assessed area" in subsection 2 means at the same rate or equally throughout the entire assessment district, then the methods prescribed in those two subsections are mutually exclusive because the board can do only one or the other. If subsection 2 means that within classes of agricultural property, the assessment is to be uniform, then subsection 2 would be meaningless because all classes of agricultural property would be subject to a uniform assessment under subsection 1. It is not possible for the board to comply with N.D.C.C. § 61-21-46 unless it also has the discretion to choose one method or the other or unless part of the statute is rendered meaningless.

In construing a statute, the overall objective is to ascertain the intent of the Legislature. *Production Credit Association of Minot v. Lund*, 389 N.W.2d 585, 586 (N.D. 1986). "[E]very word, clause, and sentence used in [a] statute is to be given meaning and effect. "*Garner Pub. Sch. v. Golden Valley County Committee*, 334 N.W.2d 665, 670 (N.D. 1983); *Lund*, *supra*, at 586-7. Statutes are to be construed in a way which does not render any provision worthless or meaningless and it cannot be presumed that the Legislature intended statutory provisions to be useless rhetoric because the law neither does nor requires idle acts. *Keyes v. Amundson*, 343 N.W.2d 78, 83 (N.D. 1983); N.D.C.C. § 31-11-05(23). If statutory language is ambiguous or of doubtful meaning, we may look to extrinsic aids to interpret the statute. *District One Republican Committee v. District One Democrat Committee*, 466 N.W.2d 820, 825 (N.D. 1991). Extrinsic aids for interpreting a statute include the object sought to be attained, the circumstances of its enactment, the legislative history, other laws including laws upon similar subjects, the consequences of a particular construction, any administrative construction of the statute, and its preamble, if any. N.D.C.C. § 1-02-39. Where statutory requirements are distinct and separate, a conflict between them may be avoided by interpreting the provisions to be independent and cumulative. *Haugland v. Spaeth*, 476 N.W.2d 692, 694-695 (N.D. 1991).

N.D.C.C. § 61-16.1-45 is a similar statute governing the maintenance assessment for drains constructed under N.D.C.C. ch. 61-16.1. It provides:

> If it is desired to provide for maintenance of an assessment drain in whole or in part by means of special assessments, the levy in any year for the maintenance may not exceed one dollar and fifty cents per acre [.40 hectare] on any agricultural lands benefited by the drain. *The district, at its own discretion, may utilize either of the following methods for levying special assessments for the maintenance:*
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> 1. Agricultural lands that carried the highest assessment when the drain was originally established, or received the most benefits under a

reassessment of benefits, may be assessed the maximum amount of one dollar and fifty cents per acre [.40 hectare]. The assessment of other agricultural lands in the district must be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full one dollar per acre[5] [.40 hectare]. Nonagricultural property must be assessed the sum in any one year as the ratio of the benefits under the original assessments or any reassessment bears to the assessment of agricultural lands bearing the highest assessment.

2. Agricultural lands must be assessed uniformly throughout the entire assessed area. Nonagricultural property must be assessed an amount not to exceed one dollar for each five hundred dollars of taxable valuation of the nonagricultural property.

In case the maximum levy or assessment on agricultural and nonagricultural property for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing the drain, a water resource board may accumulate a fund in an amount not exceeding the sum produced by the maximum permissible levy for four years.

If the cost of, or obligation for, the cleaning and repair of any drain exceeds the total amount that may be levied by the board in any four-year period, the board shall obtain the approval of the majority of the landowners as determined by chapter 61-16.1 before obligating the district for the costs.

Id. (emphasis added). The last sentence in the first paragraph of N.D.C.C. § 61-16.1-45 provides "[t]he district, at its own discretion, may utilize either of the following methods for levying special assessments for the maintenance." The statute then sets out the two methods, one of which the district may choose to levy assessments for cleaning out and repairing drains. The two methods are substantially similar to the methods set out in N.D.C.C. § 61-21-46. N.D.C.C. § 61-21-46 does not contain the same sentence found in N.D.C.C. § 61-16.1-45 giving the board the discretion in choosing which method to follow in levying assessments for cleaning out and repairing drains.

A review of the 1985 legislative history for N.D.C.C. § 61-16.1-45 reveals that it was amended for the purpose of giving the board the option to use either method to impose the levy for cleaning and repairing drains. 1985 Senate Bill No. 2316 proposed amendments to both N.D.C.C. §§ 61-16.1-45 and 61-21-46. 1985 N.D. Sess. Laws ch. 681. The amendments added the uniform method for levying assessments set out in subsection 2 of both of those sections and were explained as follows:

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[5] N.D.C.C. § 61-16.1-45 refers to the maximum levy as both "one dollar and fifty cents per acre" and "one dollar". Resolution of this inconsistency is not necessary to address the issue of whether the board has discretion to choose either one of the methods of levying special assessments for cleaning out and repairing drains under N.D.C.C. § 61-21-46.

> Current statutory authority is that Water Resource Districts when they want to maintain these legal drains, to impose an assessment not to exceed $1.50 per acre and those assessments will be spread against the lands in the same manner as the usual assessments were spread for the construction of the project. What this bill will do is allow the Water Resource District to have two options - 1) use the current procedure 2) created under this statute is to allow the Water Resource District to just impose a uniform assessment throughout the entire assessed area - say $1.00 per acre and everybody would pay equally for the maintenance. The reason for the bill is that in some areas the Water Resource Districts that need the drain projects are such they feel the maintenance of a legal drain everybody benefits equally and they would like to spread the costs of the maintenance of the project equally against the land.

Hearing on S. 2316 Before the House Comm. on Agriculture, 49th N.D. Leg. (March 8, 1985) (Statement of Mike Dwyer, North Dakota Water Resource District Association).

Based on the legislative history and construing statutes to avoid a meaningless result, it is my opinion that N.D.C.C. § 61-21-46 gives water resource boards the option of levying special assessments for cleaning out and repairing assessment drains constructed under N.D.C.C. ch. 61-21 through either the benefits received method set out in N.D.C.C. § 61-21-46(1) or the uniform assessment method set out in N.D.C.C. § 61-21-46(2).

Next, it is necessary to determine whether N.D.C.C. § 61-21-46 conflicts with N.D.C.C. § 61-21-43. N.D.C.C. § 61-21-43 provides:

> The cost of cleaning out and repairing a drain *or a drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available* must be assessed pro rata against the lands benefited in the same proportion as the original assessment of the costs in establishing such drain, or in accordance with any reassessment of benefits in instances where there has been a reassessment of benefits under the provisions of section 61-21-44. In cases where no assessment for construction costs or reassessment of benefits has been made, the board shall make assessments for the cost of cleaning and repairing such drain *or drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available* after a hearing thereon as prescribed in this chapter in the case of a hearing on the petition for the establishment of a new drain. The governing body of any incorporated city, by agreement with the board, is authorized to contribute to the cost of cleaning out, repairing, and maintaining a drain in excess of the amount assessed under this section, and such excess contribution may be expended for such purposes by the board.

Id. (emphasis added). This statute appears to conflict with N.D.C.C. § 61-21-46 because it specifies different methods for levying assessments for cleaning out and repairing drains.

The underlined words in N.D.C.C. § 61-21-43 were added by amendment to that section by 1987 House Bill 1554. 1987 N.D. Sess. Laws ch. 743. The legislative history of 1987 House Bill No. 1554 indicates that N.D.C.C. § 61-21-43 was amended to address a problem that related to drains built many years ago by the United States Soil Conservation Service. The drains had been constructed, not by funds raised through the establishment of assessment districts, but by the federal government and then were transferred to the jurisdiction of the water resource boards. The statutes were amended to give water resource boards the authority to levy assessments for cleaning out and repairing these drains. *Hearing on H. 1554 Before the Senate Comm. on Agriculture*, 50th N.D. Leg. (March 6, 1987) (Statement of bill sponsor Rep. Jack Dalrymple).

The 1987 amendments did not address the conflict. Based on the legislative history of N.D.C.C. § 61-21-43, the proper interpretation of this law is that the cost of cleaning out and repairing a drain must be assessed pro rata against the lands benefited in the same proportion as the original assessment of the costs in establishing such drain, or any reassessment of benefits and, the costs of cleaning out and repairing a drainage structure constructed by any governmental entity for which no continuing funds for maintenance are available must be assessed pro rata against the lands benefited in the same proportion as the original assessment of the costs in establishing the drain, or any reassessment of benefits. This interpretation conflicts with N.D.C.C. § 61-21-46 because that section gives the board discretion to determine which method of levying assessments for cleaning and repairing a drain should be used. N.D.C.C. § 1-02-07 provides:

> Whenever a general provision in a statute is in conflict with a special provision in the same or in another statute, the two must be construed, if possible, so that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable the special provision must prevail and must be construed as an exception to the general provision, unless the general provision is enacted later and it is the manifest legislative intent that such general provision shall prevail.

N.D.C.C. § 61-21-43 was last amended in 1987 and N.D.C.C. § 61-21-46 was last amended in 1995. N.D.C.C. § 61-21-46 is also a special provision regarding the methods available for assessing levies for cleaning out and repairing drains. Therefore, it prevails and the water resource board has the option of choosing either one of the two methods set out in that section for levying such assessments.

Remaining to be answered is whether a water resource board may change the method of assessing maintenance costs and whether this method may include a uniform assessment. Prior to the amendment of N.D.C.C. § 61-21-46 in 1985, the method set forth in N.D.C.C. § 61-21-46(1) was the exclusive method for levying the assessment. That method provided that the assessment on agricultural lands was to be based upon the proportion that the assessment of benefits at the time of construction bears to the assessment of the benefits of the agricultural land assessed the maximum levy. The 1985 amendment added the method set forth in N.D.C.C. § 61-21-46(2). That method authorizes the board to levy an assessment uniformly throughout the entire assessed area on agriculture lands. Before determining whether a uniform assessment under

N.D.C.C. § 61-21-46(2) may be made, it must be determined whether the method of assessment of landowners may be changed for an existing drain.

Article I, Section 18 of the North Dakota Constitution and Article I, Section 10 of the United States Constitution prohibit the impairment of contracts. However, changes in statutory provisions regarding special or local assessments are not generally regarded as constituting an unconstitutional impairment of contracts with the owners of property assessed, on the theory that there is no contractual relationship between the state and the property owner. 70A Am. Jur. 2d Special or Local Assessments § 12 (1987). *See also Houck v. Little River Drainage District*, 239 U.S. 254, 267 (1915) (drainage district charter was not a contract with district members so that the laws it administered may not be changed).

Further, the landowners do not have a vested right in the continuance of a particular method of assessment, but only an expectation that existing methods of assessment will continue. *Walstad v. Dawson*, 252 N.W. 64, 69 (N.D. 1934) (landowner assessed by a drainage board had no contract or vested rights with the state; "[t]he state, whose agent the drainage board was, might change the manner in which the assessments should be levied and collected so long as it did not increase the burden thereof upon his land."). Water resource boards have statutory authorization to reassess the original determination of benefit. *Anderson v. Richland County Water Resource Board*, 506 N.W.2d 362 (N.D. 1993). This also implies that the original assessment is not a vested right. *See generally Fairmount Tp. Bd. of Supervisors v. Beardmore*, 431 N.W.2d 292, 295 (N.D. 1988) (no vested right where one only hopes to use property in future; ordinance not retroactive where it did not impose new duty, obligation, or liability for past transactions); *Leonard v. Medlang*, 264 N.W.2d 481, 484 (N.D. 1978) (new laws restricting land use may be applied to landowners when the new law does not impair a vested property right). Based on the above, it is my opinion that the board may change, within statutory authorization, the manner in which assessments are made.

The method chosen to determine the benefit from, and assessment for, a specific project is the subject of considerable discretion of the governing body. Local governments have apportioned benefits on an area basis on a number of occasions in apportioning benefits and assessments for various local improvements. 2 Chester James Antieau, Municipal Corporation Law §14.40 (1995). The area rule is constitutional and valid when it reasonably approximates the benefits to the advantaged properties and when it is a fair and equitable means of distributing the cost of the improvement over the affected properties. *Id.* Where the area rule results in assessments greatly beyond benefits to particular properties or is, in practice, an unfair and unreasonable way of distributing the proportionate costs of an improvement, it will be judicially invalidated. *Id.* Special assessments which exceed the benefits provided generally are unconstitutional as a taking of property for public use without compensation. *Id.* at 14.32. McQuillin, citing the United States Supreme Court decision of *Norwood v Baker*, 172 U.S. 269 (1898) states as follows:

> In 1898 the Supreme Court of the United States in the case of *Norwood v. Baker*, first stated the following rule: "The principle underlying special assessments to meet the cost of public improvements is that the property

> upon which they are imposed is peculiarly benefited, and therefor the owners do not, in fact, pay anything in excess of what they receive by reason of such improvement. . . . The exaction from the owner of private property of the cost of a public improvement in substantial excess of the special benefits accruing to him is, to the extent of such excess, a taking under the guise of taxation, of private property for public use without compensation. We say 'substantially excess,' because exact equality of taxation is not always attainable, and for that reason the excess of cost over special benefits, unless it be of a material character, ought not to be regarded by a court of equity when its aid is invoked to restrain the enforcement of a special assessment." The principle of the Norwood-Baker case is that a special assessment is void when levied under a rule which makes it possible for the assessment to exceed the benefit to the land in question.

McQuillin on "Municipal Corporations", 3rd Ed., Volume 14, § 38.02.10, P. 29.

In the absence of flagrant abuse or purely arbitrary action, the state, consistently with the federal constitution, may establish local districts to include real property that it finds will be specially benefited by drainage, flood control, or other improvements and, to acquire, construct, maintain and operate them, the state may impose special tax burdens upon the lands benefited. *Chesebro v Los Angeles County Flood Control Dist.*, 306 U.S. 459, 464 (1939) citing *Houck v. Little River Drainage Dist.*, 239 U.S. 254, 265 (1915).

In *Houck* the United States Supreme Court found that a law authorizing a board to assess a maximum of 25 cents per acre, at a level rate, to pay for expenses of organizing a drainage district did not take property without due process of law in violation of the federal constitution. *Id.* at 262. The Legislature has determined that the water resource board may levy an equal assessment on an area basis on all agriculture property within the district. Generally, all presumptions are in favor of the validity of assessments for local improvements and the burden is on persons attacking the validity of assessments to show that they are invalid. *Cloverdale Foods Co. v. City of Mandan*, 364 N.W.2d 56, 60 (N.D. 1985). In *Cloverdale*, the court, citing 14 McQuillin Mun. Corp. (3rd Ed. Rev. 1970) said:

> 'The rule that a method of assessment cannot be arbitrary, and must have some relation to the benefits appears reasonable. It would seem that the legislature is competent to judge of benefits. This is assumed by the current of authority. A public improvement having been made, the question of determining the area benefited by such improvement is generally held to be a legislative function, and such legislative determination, unless palpably unjust, is usually conclusive, and not subject to judicial interference unless arbitrariness, abuse or unreasonableness be shown. The prohibition is that special taxes or local assessments shall not be levied in excess of the benefits conferred, whether by the valuation, front foot, area, or any other method.'
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> '. . . where the assessment exceeds the value of the benefits to the property assessed, it is, as to the excess, a taking of property without due process of law, as contemplated by the federal and state constitutions; . . .'

Cloverdale at 61.

The legislative history of the amendment to N.D.C.C. § 61-21-46 authorizing water resource boards to levy a uniform amount, as described above, states that the change would allow the water resource district to "impose a uniform assessment throughout [the] entire assessed area - say $1.00 per acre and everybody would pay equally for the maintenance." The Legislature determined that in some areas everybody benefits equally and as a result, the costs of the maintenance of the project should be spread equally against the land. The extent to which property will be benefited by an improvement is a question of fact. *Reed v. Langdon*, 54 N.W.2d 148, 152 (N.D. 1952). Unless the statutory scheme is arbitrary or a plain abuse of legislative action, it will be upheld. Whether the use of an assessment prescribed by N.D.C.C. § 61-21-46(2) operates in a manner whereby the assessment substantially exceeds the value of the benefit in any particular instance is a factual question that I cannot answer.

Therefore, it is my opinion that a water resource board may assess landowners at a different rate than the original assessment, including a uniform amount.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Heidi Heitkamp
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