

OPINION
65-470

December 20, 1965 (OPINION)

Mr. Harold O. Bullis

State's Attorney

Richland County

RE: Waters - Water Management District - Bridges

This is in response to your request for an opinion of this office with regard to the proper interpretation of section 61-16-47 of the 1965 Supplement to the North Dakota Century Code.

That section provides:

CONSTRUCTION OF BRIDGES AND CULVERTS - COSTS. The board of commissioners shall construct such bridges or culverts over or in connection with a drain as in its judgment may be necessary to furnish passage from one part to another of any private farm or tract of land intersected by such drain. The cost of construction thereof shall be charged as part of the cost of constructing such drain, and such bridge or passageway shall be maintained under the authority of the board of commissioners, and the necessary expense thereof shall be deemed a part of the cost of maintenance. Whenever any bridge or culvert is to be constructed on a county or township highway system over and across or in connection with a drain, and the cost thereof shall exceed five hundred dollars, the cost of constructing such bridge or culvert shall be shared in the following manner: the state water commission may, if funds are available therefor, participate in the portion of the cost thereof that exceeds five hundred dollars in accordance with such rules and regulations as it may prescribe. The remaining cost thereof shall be borne on the basis of fifty percent by the county and fifty percent by the water management district which has created the need for such construction. If, however, moneys have not been made available to the commission for such participation, then and in that case, fifty percent of the cost of a bridge or culvert costing in excess of one hundred dollars shall be paid by the county and fifty percent shall be charged as cost of the drain to the water management district. Whenever any bridge or culvert costing one hundred dollars or less is needed on any such road the cost of such bridge or culvert shall be charged on the basis of fifty percent to the water management district and fifty percent to the township in which such bridge or culvert is located.

In the case of such bridge or culvert construction where there is federal financial participation, if there are costs exceeding the amount of such federal participation then the excess balance shall be borne by the water management district,

or township, according to the provisions of this section, as the case may be."

In this regard we have also considered sections 24-08-01, 24-08-02, and 24-08-02.1 of the North Dakota Century Code and section 24-08-03 of the 1965 Supplement to the North Dakota Century Code. Said sections provide:

24-08-01. CONSTRUCTION OF BRIDGES BY BOARD OF COUNTY COMMISSIONERS - PETITION - BIDS - REJECTION. Whenever a majority of the freeholders of a civil township or a majority of the freeholders living within a radius of three miles of the proposed location, shall petition the board of county commissioners for a bridge at a specified location within such township, or within any incorporated city or village, if the cost of such bridge shall exceed the sum of one hundred dollars, the board of county commissioners shall view and investigate the necessity of such proposed bridge. If the board approves the petition, it shall proceed to advertise in the official paper of the county, for a period of thirty days, the plans and specifications of the proposed bridge, asking for sealed bids for the building of such bridge, to be submitted to it at the next regular or special meeting, at which the board shall proceed to examine all proposals or bids for the building of such bridge. If such board sees fit, it shall award the contract to the lowest responsible bidder, requiring such bidder to give a bond in a sum not less than the amount stipulated in the bid or contract, conditioned for the faithful compliance with the terms of such bid or contract, such bond to be approved by the board and filed in the office of the county auditor. The board shall have the authority to refuse all bids received, and to proceed to construct such bridge under its own supervision, and in the manner deemed by it most expedient, and to enter into contracts for the labor or material to be used in the construction of the same."

24-08-02. EXPENSE OF BRIDGE - HOW PAID. The expense of constructing a bridge built as provided in section 24-08-01 shall be paid out of the county bridge fund, if such bridge is accepted and approved by the board of county commissioners."

24-08-02.1. COUNTY TO FURNISH AND PAY FOR CULVERTS ON TOWNSHIP ROADS. The county shall furnish and install, at county expense, such culverts as are necessary to be used along township roads at points of intersection with established drains, in accordance with sections 24-08-01 and 24-08-02."

24-08-03. SUPERVISION AND REPAIRS OF BRIDGE - LIMIT OF COUNTY LIABILITY FOR NEGLIGENCE. Any bridge built under the provisions of section 24-08-01 shall be under the supervision of the board of county commissioners, and the cost of rebuilding or repairing the same shall be paid by the county. Should any emergency arise requiring the immediate rebuilding or repairing of any such bridge, the board of county commissioners may rebuild or repair the same, as the circumstances require, and without advertising for bids, in case said work can be performed by a responsible party at a

price not to exceed the last bid accepted by said board of county commissioners for like work. The board of county commissioners at least every two years, and so far as time and conditions may permit, shall cause an inspection to be made of all bridges on the county road system in the county. In case any bridge on the county road system shall be deemed unsafe for public use by the said board of commissioners, it forthwith shall take steps to close the same and prevent the use thereof by the public. In case any bridge on the county road system shall be deemed unsafe for loads in excess of a certain weight, the board of commissioners forthwith shall post notices on both ends of such bridge stating that such bridge is unsafe for loads beyond that weight. The county shall not be immune from claims or suits for damages arising out of negligent failure to perform the inspection and repair duties set out above, but the maximum recovery from the county on such suit or suits shall not exceed the sum of ten thousand dollars for each accident or occurrence caused by any negligent failure to inspect and repair."

Considering all these statutory provisions and considering the context in which these statutes lie, particularly with regard to other provisions relating to state, county and township roads and highways, bridges, culverts and drains, it would appear that the type of bridge here concerned is a water management district project, rather than the type of county highway project provided for by the above-quoted section 24-08-01. However, we would hesitate to say that such a bridge as here considered is not a "bridge on the county road system" such as is provided for in the above-quoted section 24-08-03. As a basic rule of thumb, we believe the standard of sharing costs of maintenance, as suggested by your letter, to wit: the same basis as the cost of construction, set out in section 61-16-47, might be quite useful. However, we believe maintenance costs related strictly to water management district purposes, with relation to obstruction of drains, etc., would be a primary responsibility of the water management district, whereas maintenance costs relating to such things as load carrying capacity of the bridge would be primarily the responsibility of the board of county commissioners.

HELGI JOHANNESON

Attorney General