

Date Issued: April 25, 1984 (AGO 84-22)

Requested by: Neil W. Fleming
Pembina County Water Resource Board Attorney

- QUESTION PRESENTED -

Whether a water resource board must maintain assessment drains and advertise for bids for maintenance for the drains pursuant to the authority under which the drains were established.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a water resource board must maintain assessment drains or advertise for bids for maintenance of the drains pursuant to the authority under which the drains were established.

- ANALYSIS -

Pursuant to section 61-16.1-61 of the North Dakota Century Code, on July 1, 1983, water resource districts assumed all assets, liabilities, and obligations of any county drain board whose territory was included within the boundaries of the district. Thus, the water resource districts assumed the responsibility indigenous to all assessment drains that were established in their county by boards of drain commissioners. The boards of drain commissioners established all their assessment drains pursuant to chapter 61-21, N.D.C.C. The water resource districts also have the authority to establish assessment drains under chapter 61-21, N.D.C.C. (See section 61-16.1-09(11), N.D.C.C.), as well as chapter 61-16.1, N.D.C.C., which pertains specifically to the operation of water resource districts.

Drainage projects established and built under chapters 61-16.1 and 61-21, N.D.C.C., have specific procedures particular to each. The method of establishing a project, investigations required, bonding requirements, establishing lateral drains and maintaining drains have significant differences when comparing the two sections. These differences militate against establishing a project under one authority and maintaining it under another.

Section 61-21-02, N.D.C.C., provides:

61-21-02. WATERCOURSES, DITCHES, AND DRAINS MAY BE CONSTRUCTED, MAINTAINED, REPAIRED, IMPROVED, OR EXTENDED. Watercourses, ditches, drains, and improvements thereto for the drainage of sloughs and other low lands may be surveyed and investigated and established, constructed, maintained, repaired, improved, and cleaned out in the several counties of this state under the provisions of this chapter. . .

(Emphasis supplied).

The sections relating to assessment drains in chapter 61-16.1, N.D.C.C., interrelate with other sections in that chapter so as to preclude establishing a project under one chapter and legally maintaining it under the other.

Chapters 61-16.1 and 61-21, N.D.C.C., have separate procedures for establishing and maintaining projects and section 61-21-02, N.D.C.C., requires drains established under chapter 61-21, N.D.C.C., be maintained under this chapter.

Therefore, it is my opinion that when water resource boards must maintain drains and advertise for bids, they must do so pursuant to the appropriate statutory authority under which the drains were established.

- EFFECT -

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

ROBERT O. WEFALD
Attorney General

Prepared by: Joseph J. Cichy
Assistant Attorney General