

Date Issued: January 20, 1986 (AGO 86-2)

Requested by: Robert Priebe, Chairman
Divide County Water Resource District

- QUESTIONS PRESENTED -

I.

Whether a water resource board may accumulate funds for future projects.

II.

Whether there are any limitations placed upon funds accumulated by a water resource board.

III.

Whether the board of county commissioners may transfer funds from the water resource district's account to the county general fund.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that a water resource board may accumulate funds for future projects.

II.

It is my further opinion that there may be limitations placed upon funds accumulated by a water resource board.

III.

It is my further opinion that a board of county commissioners may not transfer funds from a water resource district's account to the county general fund.

- ANALYSES -

I.

N.D.C.C. section 61-16.1-08 provides, in pertinent part, as follows:

61-16.1-08. COUNTY TREASURER TO COLLECT AND REMIT TAXES TO DISTRICT TREASURER - INVESTMENT OF DISTRICT FUNDS - EXPENDITURE OF DISTRICT FUNDS.* * *

Each district may invest any money in the district treasury, including money in any sinking fund established for the purpose of providing for the payment of the principal or interest of any contract, bond, or other indebtedness or for any other purpose, not required for the immediate needs of the district

. . .

N.D.C.C. section 61-16.1-45 provides in pertinent part:

61-16.1-45. MAINTENANCE OF DRAINAGE PROJECTS.

* * *

. . .>A! water resource board may accumulate a fund in an amount not exceeding the sum produced by such maximum permissible levy for two years.

N.D.C.C. section 61-21-46 provides in pertinent part:

61-21-46. MAXIMUM LEVY - ACCUMULATION OF FUND.

* * *

. . .>T!he board may accumulate a fund in an amount not exceeding the sum produced by such maximum permissible levy for two years.

These sections clearly authorize a water resource board to accumulate funds. It is therefore my opinion that a water resource board may accumulate funds for future projects.

II.

Funds accumulated by a water resource board are subject to various limitations. Applicable limitations will vary as the facts vary in each situation. In your letter, you state that the board has accumulated approximately ninety thousand dollars. The circumstances under which these funds were accumulated are not set forth.

If the funds were accumulated for the maintenance of a drain, the limitations set forth in either N.D.C.C. section 61-16.1-45 or section 61-21-46 must be met. Currently, those statutes limit the use of funds accumulated to maintain drains. Additionally, the amount accumulated may not exceed the amount which would be raised if the maximum amount of one dollar and fifty cents per acre per year were levied for a period of two years (i.e. 100 acres x \$1.50 x 2 years = \$300.00).

N.D.C.C. section 61-16.1-08 places no limitations upon the amount of funds accumulated, the length of time they may be accumulated, or the use to which they may be put.

Recently this office addressed the applicability of N.D. Constitution Article X, Section 18 to a municipality. N.D. Attorney General's Opinion 85-14. The issue was "whether a city may contribute money to a private nonprofit corporation in order to assist the corporation in constructing a civic facility that the city will not own or control."

The conclusion drawn was that N.D. Constitution Article X, Section 18 prohibited such a transaction. Similarly, despite the broad grant of authority over district funds, a water resource board must comply with the prohibition of N.D. Constitution Article X, Section 18; that is, donations may not be made "to or in aid of any individual, association or corporation except for reasonable support of the poor." N.D. Constitution Article X, Section 18.

In another recent opinion this office stated that ">a!ll funds expended by a water resource board must be approved by its board of county commissioners." N.D. Attorney General's Opinion 85-16. Thus, the board of county commissioners may limit a water resource board's expenditure through the budgetary process.

Finally, a water resource board's actions are limited by the various powers, authorities and duties set forth in N.D.C.C. chapters 61-61.1 and 61-21.

Based upon the above discussion it is my opinion that various limitations will apply to funds accumulated depending upon the particular fact situation.

III.

A water resource board's funds "shall be paid out or expended only upon the authorization or approval of the water resource board." N.D.C.C. section 61-16.1-08 (Emphasis supplied). The water resource board's authority to expend the money, however, will be subject to the limitations discussed above. Thus, while a board of county commissioners may limit a water resource board's expenditures through the budgetary process, it is my opinion that the board of county commissioners may not transfer funds from a water resource district's account to the county general fund.

- EFFECT -

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

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