



STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

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(701) 328-2210

Drew H. Wrigley
ATTORNEY GENERAL

LETTER OPINION
2024-L-03

Pembina County Water Resource District
C/O Robert C. Fleming, Attorney at Law
PO Box 633
Cavalier, ND 58220-0633

Dear Pembina County Water Resource District:

Thank you for your letter requesting my opinion regarding the interpretation of North Dakota Century Code (N.D.C.C.) § 61-32-07 and the authority of a Water Resource District to close a noncomplying drain. Specifically, you asked (1) whether N.D.C.C. § 61-32-07 is applicable where an individual has removed culverts from abandoned railroad property, resulting in an open ditch and potentially increasing the flow of water onto a neighboring landowner's property; and (2) whether a Water Resource District has the jurisdiction to order the owner of the abandoned property to remedy the problem.

For the reasons outlined below, it is my opinion that N.D.C.C. § 61-32-07 would apply to the situation described in your request, but the Water Resource District retains the discretion on applying N.D.C.C. § 61-32-07, rather than this office.

BACKGROUND FACTS

A local landowner complained to the Pembina County Water Resource District, alleging a neighbor had trespassed onto railroad property and removed culverts that had historically passed under the railroad tracks at a location since abandoned by the railroad. The complaint alleges the removal of these culverts resulted in an open ditch on the railroad property, and the complainant believes that this has increased the flow of water onto his property.

ANALYSIS

North Dakota Century Code § 61-32-07 provides a water resource district specific authority when addressing a complaint of unauthorized drainage.

Upon receipt of a complaint of unauthorized drainage, the water resource board shall promptly investigate and make a determination of the facts with respect to the complaint. If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to this title or any rules adopted by the board, the board shall notify the landowner by certified mail at the

landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if known. The notice must specify the nature and extent of the noncompliance and must state that if the drain, lateral drain, or ditch is not closed or filled within a reasonable time as the board determines, but not less than fifteen days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost of the closing or filling, or the portion the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing on the matter.¹

Your first inquiry was whether N.D.C.C. § 61-32-07 applies in the situation described above. General rules of statutory construction assist with the answer to your inquiry.

Our primary goal in statutory construction is to ascertain the intent of the Legislature. In ascertaining the Legislature's intent, we first look to the plain language of the statute and give each word of the statute its ordinary meaning. We construe the statute as a whole and give effect to each of its provisions, if possible. If the language of the statute is clear and unambiguous when read as a whole, we cannot ignore that language under the pretext of pursuing its spirit because the legislative intent is presumed clear from the face of the statute.²

The language of N.D.C.C. § 61-32-07 is clear and unambiguous: “[u]pon receipt of a complaint of unauthorized drainage, the water resource board shall promptly investigate and make a determination of the facts with respect to the complaint.”³ Section 61-32-07 is triggered when a complaint is filed. There is no language limiting or qualifying the type of complaint other than it must be for “unauthorized drainage”. In the factual scenario set forth in your letter, a complaint of unauthorized drainage was received by the Pembina County Water Resource District. The ownership of the property in question has no bearing on the applicability of Section 61-32-07. The Board shall promptly investigate and make a determination per the language of Section 61-32-07.

Your second inquiry centers on that determination. You ask whether a water resource district has jurisdiction to order the landowner to replace the culverts or partially fill the ditch, when it was not the landowner who removed the culverts. That determination is not for this office to make. It is for the water resource district to determine whether the facts of the complaint meet the standards set forth in N.D.C.C. § 61-32-07. The Pembina County Water Resource District, and not this office, must identify the relevant facts and determine whether they indicate “that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to this title or any rules

¹ N.D.C.C. § 61-32-07(1).

² *Workforce Safety & Ins. v. Avila*, 20202 ND 90, ¶ 7, 942 N.W.2d 811, quoting *Shiek v. N.D. Workers Comp. Bureau*, 2002 ND 85, ¶ 12, 643 N.W.2d 721.

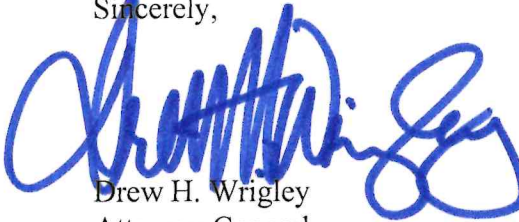
³ N.D.C.C. § 61-32-07(1) (emphasis added).

adopted by the [Pembina County Water Resource District].”⁴ Whether the facts you describe meet this standard is a question solely for the water resource district.

CONCLUSION

When a complaint of unauthorized drainage is received by a water resource district, N.D.C.C. § 61-32-07 requires the water resource district to promptly investigate and make a determination of the facts and conclusions with respect to the complaint. That determination is to be made only by the Water Resource District.

Sincerely,



Drew H. Wrigley
Attorney General

ATL

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.⁵

⁴ *Id.*

⁵ See *State ex rel. Johnson v. Baker*, 21 N.W.2d 355 (N.D. 1946).