

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 99-F-17

Date issued: December 23, 1999

Requested by: Lonnie W. Olson, Ramsey County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether a water resource board levying a special assessment pursuant to N.D.C.C. § 61-16.1-40.1 may levy a special assessment in an amount exceeding the maximum levy provided in the statute.

II.

Whether there is any process, other than that established under N.D.C.C. § 61-16.1-40.1, by which a water resource board may levy a special assessment which is not subject to a statutory maximum and which does not provide for a vote by landowners to approve or disapprove the assessment.

- ATTORNEY GENERAL'S OPINIONS -

I.

It is my opinion that a water resource board may not levy a special assessment pursuant to N.D.C.C. § 61-16.1-40.1 in an amount exceeding the maximum levy provided in the statute.

II.

It is my opinion that there is no process by which a water resource board may levy a special assessment which is not subject to a statutory maximum and which does not provide for a vote by landowners to approve or disapprove the assessment.

- ANALYSES -

I.

Water resource districts assume responsibility for the upkeep of water projects within their boundaries by various means, including contractual agreements to provide maintenance and by operation of

law. N.D.C.C. § 61-16.1-40.1 authorizes the board of a water resource district to finance the maintenance of certain projects by a special assessment levied against the land and premises benefited by the project.

There are two salient aspects of N.D.C.C. § 61-16.1-40.1 for purposes of the questions presented. First, N.D.C.C. § 61-16.1-40.1 limits the levy to 50 cents per acre annually on agricultural lands and 50 cents annually for each \$500 of taxable valuation of nonagricultural property. Second, N.D.C.C. § 61-16.1-40.1 is unusual among statutes authorizing a special assessment in that it does not provide for a vote by landowners to approve or disapprove the assessment. All that is required to establish the assessment is that the water resource board must approve the maintenance and assessment by a two-thirds vote, and the county commission must approve and levy the assessments by a two-thirds vote. N.D.C.C. § 61-16.1-40.1.

A water resource board is a political subdivision created by statute. See N.D.C.C. ch. 61-16.1. It is limited to the powers conferred by statute. N.D. Const. art. VII, § 2. It has been the rule since territorial days that statutes granting a political subdivision the power to make special assessments are in derogation of the common law and must be strictly construed. See Dakota Land Co. v. City of Fargo, 224 N.W.2d 810, 813 (N.D. 1974) (citing McLauren v. City of Grand Forks, 6 Dak. 397, 43 N.W. 710, 711 (Dakota Terr. 1889)).

The statutory maximum for a special assessment may not be disregarded in an effort to raise enough revenue to meet the actual cost of maintaining a project. "[E]very word, clause, and sentence used in [a] statute is to be given meaning and effect." Garner Pub. Sch. v. Golden Valley County Comm., 334 N.W.2d 665, 670 (N.D. 1983). Statutes are to be construed in a way which does not render any provision meaningless. Keyes v. Amundson, 343 N.W.2d 78, 83 (N.D. 1983). One cannot presume that the Legislature intended statutory provisions to be useless rhetoric because the law neither does nor requires idle acts. Id. Accordingly, it is my opinion that any special assessment for maintenance of a project made by a water resource board pursuant to N.D.C.C. § 61-16.1-40.1 is subject to the specific levy limits set by that statute.

II.

Water resource districts are addressed in N.D.C.C. chs. 61-16 and 61-16.1. While several statutes discuss levying a special assessment, none of them eliminate potential landowner opposition to

the levy. See e.g., N.D.C.C. § 61-16.1-12.1 (landowners vote to approve or disapprove the overall project); N.D.C.C. § 61-16.1-15 (the process by which special assessments are levied under this statute includes landowner vote under N.D.C.C. §§ 61-16.1-18 and 61-16.1-19); N.D.C.C. § 61-16.1-39.2 (a special assessment under N.D.C.C. § 61-16.1-39.2 would include a vote by landowners to approve or disapprove the assessment).

Based on the foregoing, it is my opinion there is no process by which a water resource board may levy a special assessment which is not subject to a statutory maximum and which does not provide for a vote by landowners to approve or disapprove the assessment.

-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
Attorney General

Assisted by: Mary Hoberg
Assistant Attorney General

vkk