

**OPINION  
66-346**

August 19, 1966 (OPINION)

Mr. Milo W. Hoisveen

Engineer-Secretary

Water Commission

RE: Waters - Water Management Districts - Indebtedness

Re: SWC #1133

This is in reply to your letter with regard to the financing of several watershed improvement projects.

You inform us that the water management board is actively engaged in bringing several watershed improvement projects to the point of actual construction as soon as they can, with the aim of reducing flood damage to farm lands within the county.

You indicate that each of the watershed projects has been petitioned, publicly explained, formally voted on, and a majority vote recorded in favor of acceptance of the local share of costs by the landowners.

You further inform us that commencement of construction is currently dependent on working capital. Same could be accumulated from the special assessment to be levied on the watershed landowners or the money could be raised by bond issue. Either procedure would require considerable time. A low interest loan is available from a federal agency but the federal agency would require written confirmation of the management board's right to borrow for such improvements. Your question is specifically stated as follows:

"Is the ----- County Water Management Board empowered, under existing North Dakota law, to borrow against special assessments to be paid by benefited landowners, when these assessments have been established and accepted by the landowners paying them in accordance with the procedure stipulated in the drainage statutes?"

The procedure you outline authorizing the "special assessment" would appear to be that outlined in the "drainage statutes", chapter 61-21 of the North Dakota Century Code, as amended to date, rather than that specified for water management districts as outlined in section 61-16-01 of the North Dakota Century Code, as amended to date. Consolidation of drainage districts into water management districts is provided for by section 61-21-65 of the 1965 Supplement to the North Dakota Century Code. Section 61-21-66 of the North Dakota Century Code prohibits dissolution of drainage districts having outstanding warrants, bonds or other obligations, unless the dissolution order provides for a continuance of assessments upon properties within the dissolved districts.

Insofar as a specific assessment and financing procedure is provided

for water management districts, we do not believe a water management district can utilize as an alternative to its own procedures the assessment and financing procedures provided for drainage districts. Where at the time of establishment of the water management districts the drainage districts of which it is composed had outstanding warrants, bonds or other obligations same could, we presume, be continued as could the assessment supporting them, pursuant to said section 61-21-66, and same could presumably be transferred by the holders of same to any appropriate agency interested in purchasing same.

The last sentence of section 61-21-65 of the 1965 Supplement to the North Dakota Century Code provides:

"\* \* \* Upon the establishment or expansion of a water management district to include one or more drainage districts the board of county commissioners shall, by resolution, dissolve the drainage districts and transfer all property of the dissolved districts to the water management district."

Continuance of "warrants, bonds, or other obligations" and of "funds" is provided for by section 61-21-66 of the 1965 Supplement to the North Dakota Century Code. No mention is made of continuance of levies or special assessments, except in such instances.

It would appear that drainage district financing warrants would be subject to the provisions of section 61-21-50 of the North Dakota Century Code and that same "shall be funded by a bond issue within one hundred and eighty days from and after the filing of the assessment of all such costs with the county auditor." Water management district warrants could be of serial maturity running for a period of not more than thirty years pursuant to section 61-16-32 of the North Dakota Century Code, and we find no provision for subsequent bond issue to fund same.

There is no authorization for water management districts or drainage districts to incur indebtedness other than by bonds or warrants. Generally speaking, we know of no legal objection to issuance of such bonds or warrants to any interested purchaser, including the federal agency mentioned.

Your letter does not specifically inform us whether this is an instance where drainage board rather than water management board procedures were used in organizing the project by mistake, or whether there actually has been a transition from several drainage districts to a water management district. If the former is the case, we would definitely suggest new proceedings under water management district procedures. If the latter is the case, whether drainage board procedures or water management board procedures should be used would be dependent upon the precise point in such assessment proceedings at which the transition to water management board took place and, of course, the orders entered establishing the water management board.

HELGI JOHANNESON

Attorney General