

OPINION
66-477

June 1, 1966 (OPINION)

Mr. Loren Johnson

Nelson County State's Attorney

RE: Waters - Water Management District - Authority

This is in response to your letter of May 4, 1966, in which you ask if a water management district, may, under the authority of section 61-16-11, subsection 10 of the North Dakota Century Code, "develop facilities at a dam project for recreational purposes and the maintenance thereof, including the establishment of parking areas, beaches, picnic tables, wells, fireplaces, toilets, etc."

Section 61-16-11, subsection 10 authorizes the board of commissioners of a water management district to "do all things reasonably necessary and proper to preserve the benefits to be derived from the conservation, control and regulation of the water resources of this state."

In addition to the benefits of water conservation and control the construction of a dam also provides recreational benefits such as swimming, fishing, picnicking, etc. These benefits are a natural result of the establishment of a body of water and are not created, nor do they exist, independently of such body of water.

36 Words and Phrases 654 defines the term "reasonably necessary" as meaning "that which is practical or reasonably convenient and is to be distinguished from the more exacting degrees of necessity, 'absolute' or 'strict'."

33 Words and Phrases 467 defines the word "preserve" as meaning "to keep; to secure; to uphold."

As indicated above, the recreational benefits to be derived from the construction of a dam are already in existence when the dam is completed and the reservoir filled. It follows, therefore, that the development of certain recreational facilities is merely a preservation of such benefits. In all likelihood it was the legislative intent that water management districts be allowed to develop, maintain and operate certain recreational facilities in conjunction with a water-related project. The law is not clear, however, as to exactly where "preservation" ends and "creation" begins. In any event the amount of funds expended for recreational purposes must be within a reasonable proportion of the amount expended for the project itself. If a park district exists the recreational development of a water-related project should, more properly, be its responsibility.

I suggest that the next session of the North Dakota Legislative Assembly be requested to clearly define a water management district's

authority in development, maintenance and operation of recreational facilities in conjunction with water-related projects.

In response to your other question regarding the authority of the board of county commissioners to delegate such authority to develop and maintain recreational facilities and, therefore, may not delegate such authority to anyone else.

HELGI JOHANNESON

Attorney General