

OPINION
67-327

February 27, 1967 (OPINION)

Mr. Lyle G. Stuart

State's Attorney

Adams County

RE: Townships - Special Assessments - Authority

This is in reply to your letter of February 21, 1967, in which you set forth the following facts and question:

"I have had put to me a question upon which I would like your opinion. The question is this: Is a township authorized to create a special assessment district? The purpose of this would be to surface a particular stretch of road within the township but which lies adjacent in part to the city limits?"

The powers of townships are specified in title 58 of the North Dakota Century Code, as amended. The powers are limited to those enumerated, those specially given by law, and those necessary to the exercise of the powers enumerated or granted. See section 58-03-02.

We know of no statutes which authorize a township to create a special assessment district for the purpose of surfacing a particular stretch of road within the township but which lies adjacent in part to the city limits. This conclusion is substantiated by the fact the township is given such authority with respect to lights and sidewalks in unincorporated streets or villages within the township. See chapter 58-16. This necessarily leads to the conclusion that had such authority been intended for other improvements it would have been so specified.

The special assessment statutes found in title 40 of the North Dakota Century Code do not apply to townships since section 40-01-01 (1) of the North Dakota Century Code provides:

"In this title, unless the context or subject matter otherwise requires:

1. 'Municipal corporation' or 'municipality' shall include all cities, towns, and villages organized under the laws of this state, but shall not include any other political subdivision;

* * *."

By express terms, therefore, the special assessment laws in title 40 (particularly chapter 40-22) authorizing municipalities to defray the expenses of certain types of improvements by special assessments do not apply to townships.

It is therefore our opinion that a township is not authorized to create a special assessment district for the purpose of surfacing a particular stretch of road within the township but which lies adjacent to the city limits.

HELGI JOHANNESON

Attorney General