

**OPINION
69-536**

March 21, 1969 (OPINION)

Mr. Robert L. Eckert

Richland County State's Attorney

RE: Waters - Water Management Districts - Levy of Assessments

in Municipality

This is in reply to your letter of March 5, 1969, in which you request a determination as to whether a water management district's board of commissioners may, pursuant to chapter 61-21 of the North Dakota Century Code:

- 1) Levy a lump-sum assessment against an entire municipality for benefits received by only certain lots or parcels of land within such municipality as a result of the construction and maintenance of a drainage project; or
- 2) Levy such assessment against each individual lot or parcel of land within the municipality actually benefited by the project.

To begin with, subsection 11 of section 61-16-11 grants a water management district's board of commissioners "all of the powers conferred by statutes upon a board of county drain commissioners." A water management district's board of commissioners may, therefore, properly plan, construct and maintain a drainage project.

Section 61-21-52 provides, in part, that "Drain costs determined by the board shall be extended upon the proper assessment list of benefited tracts in specific amounts computed according to the proportionate benefits found for each tract affected by the drain or by work done on the drain. A true copy of every such list affecting lands in a city or village shall be served on the auditor or clerk thereof promptly following completion. The assessment list shall then be filed in the office of the county auditor of the proper county or counties and said auditor shall extend upon the tax lists against the land affected, the specific amounts of the drain assessments according to the drain assessment list prepared by the board." (Emphasis supplied.) It further provides that such assessment "shall constitute a specific tax thereon and shall be a lien upon such tract until fully paid." It becomes apparent that each individual tract of land benefited by the drainage project shall be individually assessed and shall be individually liable for such assessment. If all property within a municipality, including those lots not benefited by the project, were assessed for the benefits realized only by specific lots within the municipality, the tax lien referred to in section 61-21-52 would be without meaning insofar as property within any municipality is concerned.

Section 61-21-52 also provides for the assessment of property actually owned by a municipality. It states that "The governing body

of each city or village against which a drain assessment is made shall include in the earliest possible tax levy the amount assessed against it by the board, which amount shall be extended against all of the taxable property in such city or village as general taxes are extended, and such levy shall be over and above mill levy limitations prescribed by law." (emphasis supplied) In other words, if any property owned by the municipality such streets, parcels of land, improvements thereon, etc., is benefited by a drainage project the amount of tax necessary to cover such benefits shall be assessed against all property within the municipality against which a tax may be properly levied.

In summary, any property within a municipality may be assessed for benefits received as a result of the construction and maintenance of a drainage project. In the case of privately owned property within a municipality, the board of commissioners of a water management district shall include such privately owned property in the assessment list it files with the county auditor. The county auditor then extends the amount of the tax contained on such list against each parcel of land benefited by the project, including any parcel of land within any municipality. A copy of this assessment list is served on the auditor or clerk of the municipality and, in the case of municipally owned property, the governing body of such municipality shall then extend the amount of the assessment against all taxable property within the municipality.

HELGI JOHANNESON

Attorney General