

Office of the Attorney General
State of North Dakota

Opinion No. 82-71

Date Issued: October 15, 1982

Requested by: Bruce E. Bohlman
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--QUESTION PRESENTED--

Whether Section 40-24-10 of the North Dakota Century Code prohibits a city park district from levying one hundred percent of the cost of a special assessment against land within the park district is to be benefited by the improvement.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that Section 40-24-10, N.D.C.C., does not prohibit a city park district from levying one hundred percent of the cost of a special assessment against land within the park district that is to be benefited by the improvement.

--ANALYSIS--

Section 40-49-18, N.D.C.C., provides, in part:

Except as otherwise provided in this chapter, the board of park commissioners . . . shall be governed . . . in the levying of any tax or special assessment . . . by the provisions of the laws of this state applicable to municipalities of the kind in which the park district is established.

Section 40-49-12, N.D.C.C., relative to powers of the board of park commissioners, provides in pertinent part as follows:

1. . . . The board shall have the sole and exclusive authority to maintain, govern, and improve the land, and to provide for the erection of structures thereon . . .

2. Lay out, open, grade, curb, pave, and otherwise improve any path, way, or street, in, through, or around the parks, and construct, erect, build, maintain, manage, and govern any and all buildings, pavilions, play and pleasure grounds or fields, and such other improvements of a like character as may be deemed necessary.

4. Levy special assessments on all property especially benefited by the purchase, opening, establishment, and improvement of such parks or boulevards and of ways or streets about the same.

10. Connect any park or parks owned or controlled by it with any other park or parks, and for that purpose, it may select and take charge of any connecting street or streets or parts thereof; and the board of park commissioners shall have the sole and exclusive charge and control of any street or streets taken for such purpose.

In construing that section, the North Dakota Supreme Court, in the case of City of Fargo v. Gearey, et al., Park Commissioners, 156 N.W. 552 (N.D. 1916), held:

And in the first subdivision it is stated that said commission 'shall have sole and exclusive authority to maintain, govern, erect and improve the same'.

The power to do this paving is conferred in express terms upon the park commission, and by necessary inference the power of the city council to pave said street is thereby excluded and withdrawn . . . The park commission alone possessed the power to pave and to levy special assessments to pay therefore against the property benefited throughout the park district, i.e., the City of Fargo. (156 N.W. 552, 554).

In addition, it is a rule of statutory construction that 'Whenever a general provision in the statute shall be in conflict with a special provision in the same or another statute, . . . the special provision shall prevail . . .' Section 1-02-07, N.D.C.C. It is clear, then, that those statutes providing for special assessments by boards of park commissioners are particular and govern the actions of those commissioners.

The Supreme Court, in Gearey, supra, also, in effect, explained the application of Section 40-23-07, N.D.C.C., when it held:

In other words, the park district, by its park commission, shall levy any such assessment through the use and assistance of such city officers as the city council would employ to make a special assessment against property benefited. The park commission therefore would utilize the services of the city special assessment commission, the city auditor and surveyor, and any other officers ordinarily connected with such an assessment. The park commission would sit in confirmation of the report of the special assessment commission, hear all appeals from that commission's report to it that would otherwise be taken to the city council, confirm and levy and special assessment made for this improvement and take any other steps necessary and usual and generally performed by the city council in ordinary special assessments. (156 N.W. 552, 554).

Furthermore, Section 57-15-41, N.D.C.C., provides in part:

No tax levy limitations provided by any statute of this state shall apply to tax levies heretofore or hereafter made by any . . . park district . . . for the purpose of paying any special assessments made in accordance with the provisions of title 40, against property owned by such county, city, school district, park district, or township.

These statutes and the interpretation of the Supreme Court indicate that the levying of special assessments against a park district is within the sole and exclusive domain of the board of park commissioners.

In Gearey, supra, the Supreme Court also held:

The power to levy special assessments being with the park commission, it is within their power to spread the entire amount to be repaid by special assessments upon private property, instead of levying the same or any portion of the same against park property. Without passing upon the power of the commission to levy an assessment upon this park property, it may be said that there is nothing in the statutes requiring it under these circumstances. (156 N.W. 552, 554).

While the Court did not specifically face the question, it follows from its comments that the commission may levy special assessments entirely upon park property. Also, Section 31-11-05(27), N.D.C.C., provides: 'The greater contains the less.' The 'greater' authority relative to the park district is that of spreading the entire amount of the special assessment upon private property. If the commission may levy the entire special assessment upon private property, it necessarily follows that it may also levy the entire special assessment upon park district property and that the special assessment cost, therefore, need not be made against each and every property owner within the City of Grand Forks.

In summary, it is my opinion that the statutory provisions relative to the special assessments by park districts are unique and exclusive to the park districts. Sections 40-22-01, 40-22-09, 40-23-07, and 40-24-10, N.D.C.C., do not, then, operate as limitations upon the special assessment authority of the board of park commissioners. Therefore, a park district may levy one hundred percent of the special assessment against the lands belonging to the park district, which assessments could thereafter, be paid through a general tax levy and, pursuant to Section 57-15-41, N.D.C.C., no tax levy limitations apply to such a levy.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C., It governs the actions of public officials until such time as the question presented is decided by the courts.

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