

Date Issued: April 13, 1984 (AGO 84-21)

Requested by: Tom P. Slorby
Ward County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether a board of county commissioners can increase from three to five the number of managers on a water resource board.

II.

Whether boards of county commissioners must comply with the requirements of section 61-16-08 of the North Dakota Century Code when appointing managers to water resource boards.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that a board of county commissioners can increase the number of managers on a water resource board from three to five.

II.

It is my further opinion that boards of county commissioners must comply with the requirements of section 61-16-08, N.D.C.C., when appointing managers to waters resource boards.

- ANALYSES -

I.

Section 61-16-07, N.D.C.C., provides that if a water resource "district's boundaries are confined to one county, the board of county commissioners shall appoint a water resource board consisting of three or five managers." The statute mandates that a board of county commissioners appoint such water managers after a water resource district has been created, but leaves to their discretion whether to appoint three or five water managers. Because the number of managers on a water resource board is discretionary, a board of county commissioners may, at its discretion, increase the number of managers from three to five provided they follow the provisions of section 61-16-08, N.D.C.C.

II.

Section 61-16-08, N.D.C.C., establishes guidelines a board of county commissioners must follow in selecting managers for a water resource board. To be eligible for appointment, a prospective manager must be a resident landowner in the district but cannot be a county commissioner. The length of the initial appointment must comply with the statutory intent of section 61-16-08, N.D.C.C., to provide for one vacancy to occur every year on a five-member board.

Therefore, the terms of two new water manager appointees must fit into that scheme, taking into consideration the remaining terms of the three water manager board members who are presently serving office. In addition, section 61-16-08, N.D.C.C., requires that two of the managers appointed to a five-member board must be from flood prone areas, if any, within the district.

Therefore, it is my opinion that a board of county commissioners must comply with the provisions of section 61-16-08, N.D.C.C., when increasing the number of managers on a single county water resource board from three to five members.

- 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 questions presented is decided by the courts.

ROBERT O. WEFALD
Attorney General

Prepared by: Joseph J. Cichy
Assistant Attorney General