

**OPINION**  
**47-86**

April 16, 1947 (OPINION)

DRAINS

RE: Cleaning and Repairing - Use of Unobligated Moneys in Drain Fund

Re: Cleaning and Repairing Drains

The attorney general is in receipt of your letter dated April 14, 1947, in which you say:

The Board of County Commissioners of Sargent County have before them a petition to clean an existing and established county drain. I realize it is the mandatory duty of the Board of County Commissioners to keep all drains constructed under the law of this state open and in good repair.

The particular drain in question has now several thousand dollars and there are but a few outstanding unpaid warrants. The commissioners want to use a portion of the money credited to this particular drainage ditch for cleaning of said ditch. I am unable to find where the county commissioners have the authority to use the funds now credited to the drainage ditch from assessments to pay for cleaning and repairing of this ditch."

You request the opinion of this office as to whether or not the board of county commissioners may use the moneys in the drainage district fund to pay for cleaning the drain.

Even in the absence of any statute specifically conferring the right to use the unobligated moneys in the fund of a drainage district to clean the ditch or ditches therein, it is my opinion that such authority would be implied. The fund was undoubtedly created to pay for the construction of the drain, and it would not seem reasonable or logical to levy assessments for cleaning or repairing a drain when funds belonging to the drainage district are available for that purpose.

There are two "provisos" in section 1 of chapter 329 of the 1945 Session Laws which, in my opinion, confer the authority upon the board of county commissioners to use such funds. They read as follows:

Provided that the levy in any one year for cleaning out or repairing any drain shall not exceed a maximum of fifty cents per acre on any lands in such drain district. Provided further that the board of county commissioners may accumulate a fund for such purposes, but such fund shall not exceed the maximum levy allowable for one year.\* \* \*

Provided, however, that if such levy and the funds accumulated in said drain fund shall not be sufficient for properly cleaning out or repairing such drains, the board of county

commissioners may spend more than the above maximum  
limit.\* \* \*"

An amount sufficient to pay outstanding warrants and all unpaid obligations of the district should be set aside and used only for such purposes. The balance in the fund may, in my opinion, be used by the board of county commissioners to repair and clean the drain.

You do not say in your letter how the fund mentioned in your letter was accumulated. I presume that the assessments collected for the construction of the drain exceed the actual cost thereof and that therefore landowners were assessed for benefits which in the aggregate exceeded the cost of the drain. If such is the case and the district were dissolved, the moneys in the fund would undoubtedly have to be distributed to those who paid for the drain in proportion to the total assessments each landowner paid. But the drainage district is a going concern. The drain has not been abandoned and I cannot find any provision in the statutes which requires the payment of such refunds. To refund overpayments to the landowners who paid the assessments would present administrative difficulties. It is, therefore, as stated, my opinion that the unobligated moneys in the fund may be used to repair and clean the drain.

NELS G. JOHNSON

Attorney General