

OPINION
47-87

April 18, 1947 (OPINION)

DRAIN DISTRICTS

RE: Dissolution of Irrigation Districts

This will acknowledge receipt of your letter of April 11, 1947, in which you say:

Application has been made to the Cass County Commissioners to dissolve a drainage district as provided in section 2 in chapter 14 of the Special Session Laws of 1944. Chapter 14 was an amendment of section 2486 of the 1945 Supplement to the Compiled Laws of 1913, as amended by chapter 118 of the 1943 Session Laws and which appeared in the North Dakota Revised Code of 1943 as section 61-2142.

The regular session in 1945, in chapter 329, amended section 61-2142 as amended by chapter 14 of the 1944 Special Session Laws and in this amendment omitted entirely such section 2 regarding the dissolution of a drainage district as set out in chapter 14 supra.

I am of the opinion that if no subsequent legislation was enacted at the recently adjourned session, we are without any procedure for the dissolution of a drainage district."

As far as I am aware the Thirtieth Legislative Assembly did not enact any legislation in regard to drainage districts except House Bill 148 relating to the repair of drains by County Commissioners. You undoubtedly have a copy of House Bill 148. It amends section 61-2142 of the Revised Code as amended by chapter 14 of the 1944 Special Session Laws as amended by chapter 329 of the Session Laws of 1945. No part of House Bill 148 relates to the dissolution of drainage districts.

Prior to the enactment of section 2 of chapter 14, 1944 Special Session Laws, section 61-2164 of the 1943 Revised Code prescribed the method of dissolving drain districts. Section 2 of chapter 14 does not specifically amend section 2 of chapter 118 of the 1943 Session Laws, embodied in the Revised Code under section 61-2164. The change made by section 2 of chapter 14 of the Special Session Laws of 1944 relates to the percentage of property, liable for assessments for maintenance of a drain, required to be owned by petitioners for the dissolution of the district. Section 2 of chapter 14 of the Special Session Laws changed the percentage requirements noted in chapter 118 of the 1943 Laws to fifty-one percent.

It appears to me, Mr. Croal, that chapter 329 of the 1945 Session Laws amends only section 1 of chapter 14 of the 1944 Special Session Laws which relates only to the "repairs of existing drains".

Section 1 of chapter 14 amends section 2486 of the 1925 Supplement as amended by chapter 118 of the 1943 Session Laws. Section 2 of this

chapter was undoubtedly intended as an amendment of section 2 of chapter 118, 1943 Laws, but it was not enacted as an amendment. Nor was it enacted as an amendment of section 61-2164 of the 1943 Revised Code. It was, however, clearly the intention of the Legislature that section 2 of chapter 14 of the Special Session Laws should be substituted for and take the place of section 2 of chapter 118 of the 1943 Session Laws and of section 61-2164 of the Revised Code. It covers the same subject matter and it is the latest enactment.

You will note that chapter 329 specifically restricts the scope and purpose of that act to amending and reenacting section 61-2142 of the 1943 Revised Code as amended by chapter 14 of the 1944 Special Session Laws. The amendment of section 61-2142 by chapter 14 was effected by section 1 of said chapter 14. Consequently chapter 329 of the 1945 Session Laws amends only section 1 of chapter 14 of the 1944 Special Session Laws. Section 2 of chapter 14 of the Special Session Laws was not amended or affected by chapter 329, Laws of 1945, and in my opinion section 2 of chapter 14 is in full force and effect.

But the title of chapter 14 of the Special Session Laws may be found insufficient. It reads as follows:

An Act to amend and reenact section 2486 of the 1925 Supplement to the 1913 Compiled Laws as amended by chapter 118 of the 1943 Session Laws, relating to repairs of existing drains and declaring an emergency."

The title of chapter 14 does not mention dissolution of drain districts. But this is, in my opinion, a matter of minor importance or consequence, because, if section 2 of chapter 14 of the 1944 Special Session Laws was not constitutionally enacted on account of the insufficiency of its title, then section 61-2164 of the Revised Code remains unchanged. And if the provisions of section 2 of chapter 14 are followed, the requirements of section 61-2164 will be fully met.

NELS G. JOHNSON

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