

OPINION
48-37

December 17, 1948 (OPINION)

DRAINS

RE: Culverts

This is in reply to your letter of December 9, 1948, in which you say:

In a drain construction namely the Garfield Drain #32 an inlet culvert was installed. This culvert lies across a section line. The drain, an open ditch, is along the west side of the road. A farmer on the east side to get rid of his water must have a culvert across the road or to the west side. This culvert and the installing would be over \$350.00.

The county commissioners refused to pay for the culvert and installation on the grounds that it is an inlet culvert. The Drain Commissioners contend that as it is across the section line and over \$100.00 the County Commissioners should pay."

I assume that the Board of County Commissioners has obtained the advice or opinion of Mr. Chauncey Kaldor, the State's Attorney.

Section 61-2137 of the Revised Code of North Dakota of 1943 provides:

The board shall construct such bridges or culverts over or in connection with a drain as in its judgment may be necessary to furnish passage from one part to another of any farm or tract of land intersected by such drain. The cost of the construction thereof shall be charged as part of the cost of constructing such drain, and such bridge or passageway shall be maintained under the authority of the board of county commissioners or the board of township supervisors, as the case may be, and the necessary expense thereof shall be deemed a part of the cost of keeping such drain open and in repair. Whenever any such bridge is to be erected on a section line, and the cost of construction shall exceed one hundred dollars, such bridge shall be constructed and maintained by the board of county commissioners as provided by sections 24--0801, 14-0802, and 24-0803. Whenever the expense of constructing any such bridge or culvert on a section line shall be less than one hundred dollars, such expense shall be borne by the township in which such bridge or culvert is located."

It is my opinion that Section 61-2136 requires a Board of County Commissioners to construct a culvert through, or a bridge over, a drainage ditch when the drain crosses the section line and the cost is \$100 or more. If the cost of such bridge or culvert is less than \$100, the expense must be borne by the township.

Section 61-2136 requires the Board of County Commissioners or the Township Board, depending on the costs of construction, to bear the expense when a drain constructed by the County Drain Board pursuant

to the provisions of Chapter 61-21 and acts amendatory thereof, crosses a section line road. But if a culvert is needed through a section line road in order to drain water from certain lands into the drainage ditch, then such culvert is merely an outlet into the drain for water flowing over and from such land.

If, before the drain was established and constructed, the county was not legally required to construct a culvert through the highway mentioned in your letter, in order to prevent the highway from acting as a dam and flooding adjacent lands, it is my opinion that the county is not now legally obligated to construct such culvert as an outlet into the drain or to pay the cost of such construction.

P. O. SATHRE

Attorney General