

**OPINION**  
**48-40**

August 23, 1948            (OPINION)

DRAINS

RE: Jurisdiction

Re: Question of jurisdiction in the matter of improvement of drains and providing sufficient outlets for same.

This will acknowledge the receipt of your letter dated August 16, 1948, addressed to the Attorney General's Office "Attention P.O. Sathre."

I have examined the pleadings, findings of fact and conclusions of law made by Hon. G. Grimson, Judge of the District Court, Second Judicial District, in the case of Allen V. Reilly, plaintiff, vs. A. B. Purdy, et al, an the declaratory judgment entered thereon. In view of this judgment it appears that the question of jurisdiction has been judicially decided. The judgment specifically says:

It is hereby adjudged and declared that the provisions of Section 61-2142 of the Revised Code of 1943, as amended by Chapter 329 of the Session Laws of 1945, giving the Board of County Commissioners the authority to keep open and repair all drains constructed under the laws of North Dakota, and making it the mandatory duty of said Board to keep such drains open and in good repair, should be and is hereby declared to include the authority of cleaning out or providing the necessary outlets to enable each drain to carry off the water for which purpose it was established."

In my opinion there can be no doubt that this conclusion of Judge Grimson is right. For a drain cannot be so constructed, reconstructed or repaired that it will discharge water upon and flood lands to the damage and detriment of the owner thereof. And a ditch which has no sufficient outlet cannot function as a drain.

The judgment further declares:

IT IS FURTHER ADJUDGED AND DECLARED that under the evidence in this case it seems necessary for the purpose of effectuating the object of Drain No. 38 that the coulee over plaintiff's land be cleaned out at the same time as the ditch itself. That the Board has the authority to carry said outlet further along any route that will effectuate such purpose;"

It is clear that the evidence in the case convinced Judge Grimson that in order to provide a sufficient outlet for Drain No. 38, and to prevent the discharge of the water carried in said drain upon the land through which the coulee runs, that it was necessary to "clean out" this coulee.

As stated in your letter, Section 61-2142 of the Revised Code, as amended by Chapter 369 of the 1947 Session Laws, vests in the Board

of County Commissioners jurisdiction over the maintenance and repair of existing drains, that is to say, drains which have been completed under the authority of the County Drain Board. But that does not imply that the Board of County Commissioners has the authority to approve the construction of new drains or the extension of an existing drain unless an extension is found necessary to provide sufficient outlet. If