

**OPINION
49-38**

November 15, 1949 (OPINION)

DRAINS

RE: Drain Commissioners - Power of

In a letter addressed to you under the date of November 10, 1949, Mr. Elmer L. Worthington, District Conservationist of the U.S. Department of Agriculture, Bottineau, North Dakota, asked you to request the opinion of the Attorney General as to legal right of the Board of Drain Commissioners to construct a drain terminating in an established drain, for the drainage of lands which were not assessed for the costs of constructing the established drain.

Under the provisions of Section 61-2133 of the North Dakota Revised Code of 1943, "The powers conferred by this Chapter (61-21) for establishing and constructing drains also shall extend to and include: . . .

5. The establishing and constructing of lateral drains with outlets in drains already constructed."

Section 61-2133 further provides:

Whenever the widening, extending or deepening of a main drain is made necessary by the construction of a lateral drain, the petition for the lateral drain shall contain a request for such widening, deepening or extension, and the cost of such widening, deepening or extension shall be charged as a part of the cost of construction of the lateral drain and assessed against the property benefited thereby as a part of the costs of construction."

It therefore appears that when a drain is constructed so as to terminate in an existing drain that such new drain must be regarded as a "lateral drain" and the established drain as the "main drain." Any expense found necessary to extend, widen, deepen, or enlarge such established or "main drain" in order to carry the waters discharged into it by the new drain. And it is my opinion that the expense required to properly maintain the "main drain" in order to insure its capacity to adequately carry the waters discharged into it by such lateral drain, would have to be assessed against lands benefited by the lateral drain.

WALLACE E. WARNER

Attorney General