

OPINION
52-54

June 17, 1952 (OPINION)

DRAINS

RE: Obstruction to Natural Channel May be Removed

Your letter of June 10, addressed to the Attorney General, requesting the opinion of his office in regard to a drainage problem in Norden Township of LaMoure County, North Dakota, has been referred to me as Special Assistant Attorney General for the State Water Conservation Commission for consideration and reply. In your letter to the Attorney General you say that at the request of the township board of said township you request the opinion of his office as to whether or not obstructions placed in the natural water course, mentioned in your letter, "may be removed to allow flood waters to flow through the natural channel as it did prior to the construction of the temporary fill placed across the drain".

Attached to your letter is a report by E. S. Hagert, Engineer in Charge of Surveys and Investigations for the State Water Conservation Commission. Mr. Hagert's report reads as follows:

Inspection of the problem area was made by the writer of this report on June 9, 1952 in the company of Edwin Mueller, Waldo Pullman and Martin Kinzler, members of Norden township board and Wilber Holmgren who owns the SE 1/4 of section 3, township 133, range 66 with his brother.

Portions of the roads on the east lines of the NE 1/4 of section 10 and SW 1/4 of section 3 are flooded by slough water which was measured at 2.06 feet in depth on the top of the road an estimated one-tenth of a mile north of the SE corner of section 3. There is an additional slough which extends into the NW portion of the SE 1/4 of section 3. The two sloughs are connected by a draw some 600 feet long which serves as the overflow to the northwest, the water surface being 9.6 feet lower in the slough to the northwest. There are several gravel pits along the west side and in the north end of the draw connecting the two sloughs, in addition straw and manure have been placed in the same area with stripping from the gravel pits placed on top. Reconnaissance elevations taken indicate the bottom of the straw and manure to be about 2.4 feet below the present water surface of the upper slough. Wilbur Holmgren says the gravel pit stripping was placed in the draw in 1937 when the family sold gravel from the pits, he does not recall when the manure and straw were placed there."

It appears from the foregoing report of Mr. Hagert that the draw, mentioned therein, is a natural watercourse which in past years conveyed the overflow waters of one slough into another slough situated at a lower elevation. It appears from Mr. Hagert's report that due to obstructions, caused by the depositing of manure and stripplings from a gravel pit in the said draw, water does not flow as

it did prior to such obstructions. Section 10228 of the 1913 Compiled Laws, embodied in the 1943 Revised Code as section 61-0107, in effect, prohibits the obstruction of a natural watercourse without authority of law. And Section 210 of our State Constitution provides that "all natural watercourses shall forever remain the property of the state for mining, irrigating and manufacturing purposes."

It is therefore my opinion that no person or corporation has the legal right to obstruct or to impair a natural water course and thereby cause the flooding of a public highway. And it is also my opinion that when obstructions are placed in a natural watercourse without proper authorization that the same may be removed. In other words such water course may be restored to the condition which existed before obstructions were placed therein.

ELMO T. CHRISTIANSON

Attorney General