

**OPINION**  
**53-24**

December 30, 1953           (OPINION)

**DRAINAGE**

**RE: Funds of Water Conservation Commission May Be Used**

Your letter under date of December 22, 1953, addressed to Honorable Elmo Christianson, Attorney General, has been referred to me for consideration and reply. You say in your letter that Pembina County has requested financial assistance to meet the cost of "snagging and cleaning the channel of the Pembina River as well as some channel straightening" You request the opinion of the Attorney General as to whether or not funds appropriated to the State Water Conservation Commission for "Construction and reconstruction of drains and irrigation" may be used to pay part of the cost of cleaning, snagging and straightening the channel of a stream in order to facilitate the drainage of flood waters from adjacent lands.

Funds were first appropriated to the State Water Conservation Commission in 1943 "to promote the maintenance of existing drainage channels in good agricultural lands and to construct any needed channels" (See chapter 77 Session Laws 1943). In 1945, two hundred forty thousand dollars was appropriated for "assistance on reconstruction of drains or irrigation". In 1947, 1949 and 1951 funds were appropriated to the commission for "construction and reconstruction, drains or irrigation". In 1953 the Legislature appropriated one hundred forty thousand dollars "for the purpose of enabling the State Water Conservation Commission to render assistance on a matching or cooperative basis, in conformity with its rules and regulations, in the construction, reconstruction or cleaning of drains established for the drainage of lands -----."

It will be noted that the phraseology in the various acts, above referred to, relative to appropriations to the commission for drainage, has varied somewhat. The legislative intent has, however, in my opinion remained constant, that is to say, the same.

Since the inception of appropriations to the commission for the construction or reconstruction of drains, the funds appropriated have been made available on a matching basis to counties, county drain boards and townships for reconstruction, including cleaning and repairing, and construction of drains established and maintained under and by virtue of the provisions of chapters 61-21 and 61-22 of the 1943 N.D.R.C. and acts amendatory thereof. In other words, the State Water Conservation Commission has used such funds for the construction or reconstruction of county and township drains, and not otherwise.

A stream or river is, of course, a natural drain. Section 61-2133 of the 1943 N.D.R.C. provides that the powers conferred by chapter 61-21 thereof shall include "the straightening, clearing out and deepening of the channels or creeks and streams and the construction, maintaining, remodeling, and repair of levies, dykes and barriers for

the purpose of drainage." If, therefore, the work of snagging, cleaning and straightening of the channel of the Pembina River was undertaken and carried out as a drainage project, pursuant to the provisions of chapter 61-21 of the N.D.R.C. and acts amendatory thereof, in my opinion that the commission may extend financial assistance, in conformity with its rules and regulations, to pay the cost of the project.

It is my opinion that it has been the intention of the Legislature in appropriating funds to the State Water Commission in order to provide state aid for the construction, reconstruction and repair of drains, that such funds should be expended only to help meet the cost of construction and reconstruction of drains, established under the jurisdiction of county boards of drain commissioners and drains established by townships.

ELMO T. CHRISTIANSON

Attorney General