OPINION
54-23

March 3, 1954 (OPINION)

DRAINAGE

RE: Assessment for Clean Out

Your letter, under date of February 27, 1954, addressed to Honorable Elmo Christianson, Attorney General, has been referred to me for attention.

In your letter to the Attorney General you say that the County Commissioners of your County are considering a levy of fifty cents an acre against the lands benefited by the Tri County Drain for the purpose of cleaning it. You say in your letter that several thousand dollars of bonds, issued for the construction of the drain, have not been paid and that there is a difference of opinion among the participating counties as to which one is responsible for the unpaid bonds.

You desire the opinion of the Attorney General as to whether funds raised by a levy for the purpose of cleaning the drain in Richland County "can be tied up in court proceeding and applied to the payment of the outstanding construction bonds."

I have endeavored to ascertain the facts with reference to the Tri County Drain from the decisions of our Supreme Court in the following cases; N.P.R.R. Co. v. Sargent County 43 N.D., 156, 194 N.W. 80; Hackney v. Elliott 23 N.D. 373, N.W. 433; and N.P.R.R. Co. v. Richland County 28 N.D. 192, 148 N.W. 545. But these decisions do not disclose what the facts were with reference to the issuance of special assessment warrants or bonds. They disclose, however, that the drain board of each county was duly petitioned to build a part of the drain; that the drain boards met jointly and apportioned construction costs to each county on approximately the following basis, Ransom fifty percent; Sargent twenty-two percent and Richland twenty eight percent.

The drain board of each county undoubtedly apportioned assessments on a percentage basis to the lands therein benefited by the drain. Now, if benefits were apportioned forty-five years ago to pay construction costs, then the amount assessed against the lands in each County must have long since been paid because the lands against which special taxes were delinquent would have been sold under tax sale. And if the holders of the warrants or bonds which have been outstanding and unpaid for forty-five years, have a legal claim they should, and undoubtedly would, have brought proceedings long ago to enforce payment.

Assessments for construction costs were apportioned to and assessed against the lands benefited, when the Tri County Drain was built, by the Drain Boards of each of the three counties. The boards of County Commissioners of the three counties had no jurisdiction then, and have no jurisdiction now, to apportion and assess benefits for

construction costs. When the drain was completed and assessments apportioned to lands benefited the board of County Commissioners of each county become responsible for maintenance of the part of the drain in their county that is to say, for cleaning and repairing.

The board of County Commissioners of Richland County can levy assessments for one purpose only, namely, cleaning and maintaining the Tri County Drain. The board can not levy assessments for construction or reconstruction of the drain.

Taxes when levied for a special purpose must be used for the purpose for which they are levied, and not otherwise; consequently, if and when the County Commissioners of Richland County levy special assessments against the lands benefited by the Tri County Drain for the purpose of cleaning the drain, the funds raised thereby can only be paid out for that purpose.

It is therefore my opinion that the holder or holders of the bonds or warrants issued forty five years ago for construction of the Tri County Drain can not on any legal basis tie up funds raised by special assessments for clean out purposes and thus prevent your board of county commissioners from doing a work which the statute requires as a "mandatory duty".

ELMO T. CHRISTIANSON

Attorney General