

OPINION
56-29

October 29, 1956 (OPINION)

CITIES

RE: Special Assessment for Sewerage Pump Station

We are in receipt of your letter of October 25, 1956, in which you request an opinion on the following matter: You state that the city of Lakota is formulating plans for the extension of its sewer system through the creation of two additional sewer districts, the cost of the same to be defrayed by special assessment. In so doing it will be necessary to install a "lift station", which we understand to be a pump used to raise the sewerage from a lower to a higher level, and your question is whether the city could pay for the cost of the pump by issuing revenue bonds as provided in chapter 40-35 of the N.D.C.C. of 1943 and amendments thereto. The source of the revenue would come from service charges made by the city against all the users of the completed system as provided in section 40-3405 of the N.D.R.C. of 1943.

There is authority for the proposition that the construction of a pumping station for sewage in connection with an improved sewage system may be paid for by special assessment. See *Fisher v. City of Chicago*, 213 Ill. 268. 72 N.E. 680 (1904); 134 A.L.R. 895. They do not hold, however, that the cost must be defrayed in this manner and of course a city could pay for the same in any manner authorized by law.

Section 40-3503, subsection 3, of the N.D.R.C. of 1943, gives municipalities the power to: "Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by such undertaking, and in anticipation of the collection of the revenues of such undertaking, issue revenue bonds to finance in whole or in part the cost of the acquisition, construction, reconstruction, improvement, betterment, or extension of any undertaking;"

Section 40-3502 as amended by chapter 274 of the 1955 Session Laws defines the term "undertaking" as follows:

"The term 'undertaking', as used in this chapter, unless a different meaning clearly appears from the context, shall mean systems, plants, works, instrumentalities, and properties used in revenue producing undertakings, or any combination of two or more of such undertakings, which are used or useful in connection with:

* * * *

2. The collection, treatment, and disposal of sewage, waste, and storm water;

* * * *

together with all parts of any such undertaking and all appurtenances thereto, including lands, easements, rights in land, water rights, contract rights, franchises, approaches, dams, reservoirs, generating stations, sewage disposal plants, intercepting sewers, trunk connections, other sewer and water mains, filtration works, pumping stations, and equipment."

Section 40-2216 of the N.D.R.C. of 1943 (1953 Supplement) reads as follows:

"A municipality constructing a sewer or water improvement or a parking lot under the special assessment method may resolve in the resolution required by section 40-2215 that a portion of the cost of the improvement shall be raised by service charges for the use of the improvement. If the municipality so resolves, it may determine, in its resolutions, ordinances, and other proceedings relating to the levying of special assessments and the issuing of warrants to pay the cost of such improvement, the portion of such cost to be assessed specially against any property specially benefited and cause to be assessed only the portion so determined. All of the applicable provisions of this title relating to special assessments shall be applicable to such improvements except as to the portion of the cost thereof resolved or ordained to be paid by service charges. The governing body of the municipality shall provide for the establishment, imposition, and collection of service charges for the services furnished by such improvement and in connection therewith, it shall have all the rights and powers respecting such service charges as it would have with respect to like matters if such improvement were made in accordance with chapter 35 of this title. The net revenues derived from the imposition and collection of such service charges shall be paid into the appropriate improvement district funds created pursuant to section 40-2418. Such revenues when collected shall be used and applied in the same manner as moneys paid into such funds from the collection of special assessments."

These sections seem to make it quite clear that the city could defray the cost of the pumping station by issuing revenue bonds and making service charges to the users thereof but of course the persons being charged must actually be benefited by the pump. It would not be proper to charge persons with "service charges" if they are not actually being serviced by the lift pump.

Thus, the answer to your question depends upon the facts as they exist in your city. If the only persons receiving benefits from the lift pump were those in the new districts it would seem that the cost of the pump would have to be defrayed by special assessment.

LESLIE R. BURGUM

Attorney General