

**OPINION
57-122**

July 22, 1957 (OPINION)

IRRIGATION DISTRICT

RE: Petition - Withdrawal of Name

This is in reply to your letter of July, 1957, in which you request the opinion of this office as to whether or not a landowner who has signed a petition for creation of an irrigation district may withdraw his name from such petition at or after the hearing prescribed by section 61-0510 of the North Dakota Revised Code of 1943, and whether or not an owner of land who has not signed the petition may have his name included as a petitioner after or at such hearing.

Section 61-0510 of the 1943 Revised Code does not provide either that a landowner who has signed a petition for creation of an irrigation district may withdraw his name therefrom, or that a landowner may be included as a petitioner, before or at the hearing required under the provisions of that section. If, however, the notice of hearing of such petition states that a landowner may withdraw his name he may do so, although withdrawal is not is not authorized by statute and if an owner of land requests that he be included as a petitioner his request may be granted if the notice of hearing so states.

The purpose of the hearing prescribed by section 61-0510 of the 1943 Revised Code is not to permit the withdrawal of names from a petition or to permit names of landowners to be added thereto. The purpose of the hearing required under section 61-0510 is to give owners of land in a proposed district an opportunity to be heard with reference thereto, to submit to landowners the state engineer's report as to whether the plan of irrigation proposed is practical and economically sound and, in general, to furnish such information as will better enable them to vote intelligently for or against establishment of the proposed district.

It is our opinion that any landowner who has signed a petition for creation of an irrigation district may withdraw his name therefrom at any time before such petition is accepted and filed by the State Engineer. When a petition for establishment of an irrigation district is received by the State Engineer, it becomes his duty and function to determine the sufficiency thereof before he accepts and files the same to determine whether or not he has jurisdiction to proceed in the manner provided by statute. If he finds the petition sufficient in form and substance to require a hearing thereon he must file it and give notice of hearing thereon.

In other words, jurisdiction of the State Engineer to proceed with the establishment of the proposed irrigation district, subject to the approval of the electors thereof at an election called by him, cannot be divested by the attempted withdrawal of names from the petition after it has been found legally sufficient and filed in his office. In the case of *Sim v. Rosholt* 16 N.D. 77, 112 N.W. 50, 11 L.R.A. (N.S.) 372 the Supreme Court held that the jurisdiction of drain

commissioners can not be divested by withdrawal of names from a petition filed. It is our opinion that the same rule of law applies to an attempted withdrawal of names after a petition for creation of an irrigation district has been duly filed by the State Engineer. And it is also our opinion that land not included in the petition may, if the State Engineer approves, be included in the proposed irrigation district if inclusion is requested by the owner thereof.

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Attorney General