

**OPINION**  
**58-179**

August 19, 1958           (OPINION)

MUNICIPAL GOVERNMENT

RE: Assessment of Benefits - State Highway Department - Exempt from  
Special Assessments

This is in answer to your letter of July 15, 1958, in which you state that the City of Glen Ullin created Paving, Curb and Gutter District Number 2 for the purpose of construction of paving, curb and gutter improvements, together with incidental work thereto. Included in the district were certain lots which had been purchased for right-of-way purposes only by the State Highway Department. Your question is: "Is the North Dakota State Highway Department liable and required to pay for special assessments against the lots and tracts of land above described?"

Section 176 of the North Dakota Constitution exempts from taxation property of the state or property used exclusively for public purposes. This section has been construed by the North Dakota Supreme Court in the case of the Gallagher v. City of Fargo, 64 N.W.2d. 444, 449 (1954) to relate only to general taxes and not to special assessment taxes. This section of the constitution, therefore, has no application to the question.

Subsection 2 of section 57-0208 of the North Dakota Revised Code of 1943 also exempts land owned by the state from general taxation. Section 40-2307 of the 1957 Supplement to the North Dakota Revised Code of 1943 specifically provides that benefited property of counties, cities, villages, school districts, park districts, and townships, shall not be exempt from special assessment. There appears to be nothing in the statutes, however, which specifically subjects property of the state to assessment for special improvements made by a city. In this regard, 63 C.J.S. page 1067, section 1332c, states in part as follows:

In the absence of a constitutional provision to the contrary, the legislature has power to make property of a state situated within a municipality liable to special assessments for benefits accruing from local improvements, and the exercise of this power is not repugnant to a constitutional provision that public property used for public purposes shall be exempt from taxation. The power to subject the property of the state to assessments of this character does not exist in the absence of statutes conferring it, and the power must be conferred either expressly or by necessary implication."

Also see, to the same effect, 44 C.J. 523, section 2881; 48 Am Jr. page 641, section 87, 90 A.L.R. 1143. McQuillin Municipal Corporations, s. 3873 (Third ed.).

In view of these authorities, it appears that a city cannot subject

land owned by the state to assessments for special improvements unless the state chooses to accept liability for payment of the assessments and this would be true whether or not the property of the state actually benefited by the improvement made. The Legislature of North Dakota has appropriated money from the state treasury for the payment of assessments for special improvements in such cities as Bismarck (Chapter 72, S.L. 1957 and Chapter 4, S.L. 1953), Grafton (Chapter 77, S.L. 1957), Grand Forks (Chapter 46, S.L. 1957 for the University), and Dickinson (Chapter 46, S.L. 1957 for the state teachers college), thus indicating a recognition by the Legislature that it should pay for benefits to the property of the state resulting from special improvements made by a city. However, there does not appear to be any statute in North Dakota which confers the power (either expressly or through implication) to any officer of the highway department to subject land to liability for payment of special assessments.

Therefore, it is the opinion of this office that the North Dakota State Highway Department is not, in the absence of legislation to that effect, liable and required to pay for special assessments against the lots and tracts located in a municipal special improvement district.

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