

OPINION
59-286

December 8, 1959 (OPINION)

TOWNSHIPS

RE: Unincorporated Village - Street Lights - Payment of
 Electrical Costs

This is in reply to your letter requesting a further interpretation of chapter 58-16 of the 1957 Supplement to the N.D.R.C. of 1943.

You inform us that an unincorporated village in your county has for many years had street lights. The cost of electricity used has been paid for from an unofficial assessment and collection from lot owners in said unincorporated village.

You call attention to a previous opinion of this office holding in effect that while the township may install such a street lighting system in an unincorporated village, paying the costs thereof from special assessments levied on the property benefited thereby pursuant to said chapter 58-16, funds of the township may not be used to pay the electrical costs of street lighting and that contributions of the residents for such purpose may be so used.

You point out the practical necessity of obtaining funds to pay for the necessary electricity to operate a system of street lighting to adequately effectuate the purposes of said chapter 58-16, and express your opinion to the effect that the power to levy special assessments for such purpose would be within the fair implications of the terms of said chapter 58-16.

We do note in the first part of section 58-1603 of the 1957 supplement to the N.D.R.C. of 1943 provision that the supervisors shall assess and levy upon each lot or parcel of land along which the sidewalk has been built a sum sufficient to cover the cost of the construction thereof. While in providing for street lighting said statute merely provides that the supervisors shall assess and levy against each lot or parcel of land benefited by the installation of street lights, without in terms limiting the amount of the assessment to the cost of the construction. We note further, however, in a subsequent provision of said section 58-1603, referring to the form of the assessment the statement that: "When street lights are installed, the cost of such installations shall be assessed and levied against all lots or parcels of land that benefit from the street lights."

While the matter involved in *Boynton v. Minot*, 54 N.D. 795, 211 N.W. 441, involved details of procedure rather than the extent to which the purposes of a special assessment statute must be followed, we believe the following language from that decision (at pages 797, 798 of the North Dakota Report) is of interest in this regard. The court there states:

The power to tax is a sovereign power to be exercised only by the Legislature. . . . The making of special improvements and the paying for the same through special assessments by means of special improvement districts are instances of the exercise of this power. The matter of providing for public improvements in peculiarly legislative| This power may be delegated to a municipal corporation as a proper agency and instrument of the state. . . . Where a city undertakes to make such improvements it can do so only in the manner and to the extent authorized. In the exercise of such delegated power, it must follow the letter of its authority. . . ."

We note also in Vol. 5, McQuillin Municipal Corporations Second Edition, Revised at page 740, Section 2171 the following:

Power to make public improvements does not of itself confer the power to levy and collect special taxes or assessments to defray the cost of such improvements. Moreover, as a municipal corporation has no inherent power to levy and collect such charges, and as the exercise of such power is in derogation of the right of private property, the law involved should be strictly construed, in determining whether the power exists, and in case of any fair and reasonable doubt, the doubt should be resolved against the existence of the power and the power denied. . . ."

In the present instance, it would be out opinion that the power to levy special assessments to pay for electricity for the contemplated street lighting would be beyond the excess provisions of said chapter 58-16 and that, therefore, same would be of doubtful validity. The special assessment procedure prescribed by said chapter would seem to be a fair method of determining the proportionate amount the individuals concerned should be asked to contribute, however, it seems doubtful that same could be enforced by the usual methods of enforcing the collection of special assessments.

We are enclosing another opinion of this office in this regard, which may also be of interest to you.

We would also like to call to your attention the provisions of chapter 405 of the 1959 Session Laws, adding to section 58-0601 of the N.D.R.C. of 1943 the provision that:

58-0601. GENERAL POWERS AND DUTIES OF THE BOARD OF TOWNSHIP SUPERVISORS. The board of township supervisors shall have the following powers and duties:

8. To pay all, or a part of the cost of electricity used in electrically lighting the streets of unincorporated villages located within the township."

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