

OPINION
59-289

December 31, 1959 (OPINION)

WATERS

RE: Water Conservation and Flood Control Districts - Power of Board
 - Removal of Culverts

Attorney Norton M. Hatlie of Wahpeton, North Dakota, has forwarded to this office your letter addressed to him under date of December 9, 1959 in which you requested him to secure our opinion as to whether the Board of Commissioners of Water Conservation and Flood Control District No. 1 "has the authority to remove, or cause to be removed, culverts and bridges which conduct water from unassessed lands from entering drainage areas of legal drains".

The construction and maintenance of culverts and bridges on a township highway are under the jurisdiction of the township board of supervisors if such bridge or culvert costs less than one hundred dollars. Culverts or bridges on a township road costing one hundred dollars or more must be constructed and maintained under the direction of the Board of County Commissioners. Culverts and bridges on a county road are, of course, constructed and maintained by the county board and our state and federal highways are maintained by the State Highway Department. A board of commissioners of a water conservation and flood control district does not have the right to remove a bridge or culvert which is a part of a highway. And a bridge or culvert on a private road may not be removed without the consent of the owner unless removal is ordered as a result of court action.

Subdivision 11 of Section 61-1611 of the 1957 Supplement to the N.D.R.C. of 1943 provides that a board of commissioners of a water conservation and flood control district shall "have all powers conferred by statute upon a board of drain commissioners". It is our opinion that a board of commissioners of a water conservation and flood control district may, pursuant to the provisions of Chapter 407 of Session Laws of 1959, apportion and assess benefits to any tract or parcel of land benefited by a drain maintained by the board if such tract or parcel of land was not included in the drainage area assessed for the cost of the drain when established. Any attorney can explain the required procedure prescribed by Chapter 407.

LESLIE R. BURGUM

Attorney General