

**OPINION
61-261**

October 4, 1961 (OPINION)

WATER CONSERVATION DISTRICTS

RE: Budgets - Alteration by County - Accumulation of Funds

In your letter of September 29, 1961, you state the Board of Commissioners of the Oak Creek Water Conservation and Flood Control District of Bottineau County have instructed you to secure an Attorney General's opinion on the following questions:

- 1) Does the Board of County Commissioners and the County Auditor of the county in which a water conservation and flood control district is situated have an arbitrary power to reject the budget prepared by the board of the water conservation and flood control district and the arbitrary power to refuse to levy a tax within the district to provide the amounts budgeted for when such budget is within the mill levy and other limitations of the statutes governing the water conservation and flood control district?"
- 2) Does the Board of Commissioners of a water conservation and flood control district have the power to accumulate funds from year to year which funds are raised from the tax levy pursuant to their budget?"

Section 11-23-01 of the North Dakota Century Code says that every officer in charge of any undertaking supported wholly or in part by the county shall file an itemized statement of such expenditures with the board of county commissioners. Section 11-23-04 provides that after any interested taxpayers have been heard for or against the proposed budget, the county board shall adopt such estimate as they determine.

Section 61-16-12 provides in part as follows:

. . . . Upon completion and adoption of a budget covering necessary expenses, the board of commissioners (conservation and flood control board) shall send a copy of such budget or apportionment thereof to the county auditor of each county in the district. . . . Such county auditor shall transmit the same to the board of county commissioners of his county. The board of county commissioners of each county in which the district is situated shall by resolution levy, authorize and direct their county auditor to extend and spread upon the tax roll of his county a tax of not to exceed three mills. . . ."

We do not believe this section places a mandatory duty upon the county board to approve any budget submitted by conservation and flood control district board that is within the three mill limit.

Section 61-16-11(9) of the North Dakota Century Code appears to

contemplate a review of such budget by the county board. ". . . .The board of county commissioners shall consider such budget. . . ." However, it is our opinion that the county board cannot refuse or trim a proposed budget whereby in so doing it would unreasonably restrict the operation of the water conservation and flood control district. The amount necessary for reasonable operation of such a district is a question of fact to be decided by a consideration of many factors. If it is felt the county board has been unreasonable an appeal can be taken from their decision as provided for in section 11-11-40.

Your second question deals with the power of the district to accumulate funds from year to year. Section 61-16-12 gives authority to accumulate funds. ". . . . Funds produced each year by such tax levy shall be available until expended, and if such tax levy in any year will not produce sufficient revenue to cover district expenses, a fund sufficient to pay the same may be accumulated. . . ." Thus, it is our further opinion that if the annual mill levy limit would not be sufficient to cover expenses of projects contemplated by the district an amount may be budgeted each year to go toward such a project if such project is within the scope and powers of a said district.

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