

**OPINION  
61-262**

October 16, 1961 (OPINION)

WATER CONSERVATION DISTRICTS

RE: Budgets - Authority of County Commissioners

In your letter of October 3, 1961, you requested our opinion in regard to several problems pertaining to the approval of the budget of the Oak Creek Water Conservation and Flood Control District by the Board of Commissioners of Bottineau County. You ask the following questions:

1. Does the Board of County Commissioners have the authority to check or revise the budget submitted by the Oak Creek Water Conservation and Flood Control District?
2. Does the budget, as submitted by the commissioners, have to be published with other budget items in the month of July of each year?
3. Is it required that the budget be submitted to the county board prior to the budget hearings in July of each year?

In reference to question one we refer you to our opinion issued October 4, 1961, to Mr. G. K. Swanson, Secretary of the Oak Creek Water Conservation and Flood Control District, where we said the county board may exercise a reasonable discretion over the proposed budget. As you know, the law says the proposed budget of water conservation and flood control districts must be submitted to the county board of commissioners and they shall authorize the levy. We believe this to be a control the Legislature wished to have exercised over the board of commissioners of water and flood control districts since they are appointed rather than elected to their posts. If the county board of commissioners could not exercise control over the proposed budget it would in effect be a tax levy by the commissioners of the water conservation and flood control district. The power of a political subdivision to levy taxes must be expressly and distinctly granted. We do not feel the commissioners of a water conservation and flood control district have such power.

For an excellent discussion of the power of an appointed board to levy taxes we refer you to the case of *Vallelly v. Park Commissioners*, 16 N.D. 25, 111 N.W. 615 (1907). This case held the power of the Legislature to delegate the authority to levy taxes is generally held to be limited to boards or councils elected by the people, and is not sanctioned when delegated to those appointed, when the appointment has not been assented to by a vote of the people. Consequently, we believe that if the county board did not have the power to exercise a legal discretion over the budget submitted by the district commissioners it would amount to a tax levy by the district commissioners which would be invalid. However, the Legislature does have power to confer upon local boards or officers, whether elected or appointed, the functions of assessing and apportioning the

benefits for local improvements. See *Soliah v. Cormack*, 17 N.D. 393, 117 N.W. 125.

In regard to question number two, it is our opinion that the proposed budget of the district does not have to be published with other budget items in the month of July or at any other time. This is for the reason that a water conservation and flood control district is a separate political subdivision and provisions applicable to county budget matters therefore do not apply to this budget. There is no section in chapter 61-16 of the North Dakota Century Code, the water conservation and flood control district law, that requires publication of the budget. The two sentences in the opinion given to Mr. G. K. Swanson relating to chapter 11-23 of the North Dakota Century Code should not be construed to mean that the county budget provisions are applicable to a water conservation and flood control district budget.

In answer to the third question you will note that chapter 61-16 says the budget shall be submitted to the county before July first in each year. The question then becomes whether this is mandatory or directory for the district commissioners. It is our opinion that provisions relating to the time when the budget should be submitted are directory. In *Vetter v. Benson County*, 81 N.W.2d. 758, (N.D. 1957), it was stated that provisions which are designed in force collection of a tax or divest the owner of his property for failure to pay the tax are mandatory, whereas the procedural steps which relate to the assessment, computation and levy of the tax are directory.

Thus, in our opinion, the district budget might be submitted and acted on up to the time when it would be too late for the county auditor to spread the levy. It is not necessary that a hearing be held on a budget unless there is a statute requiring that there be a hearing. There is no such statute in the water conservation and flood control district law. An interested taxpayer would still have recourse if there is no hearing. An aggrieved person may appeal a decision of the county board to the district court as provided for in section 11-11-39 or if the interests of the county are affected the state's attorney shall take the appeal upon the written demand of at least seven taxpayers as outlined in section 11-11-40.

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