

LETTER OPINION
97-L-61

May 27, 1997

Cameron D. Sillers, P.C.
Attorney at Law
908 Third Street
Langdon, ND 58249

Re: Cavalier County Water Resource Board

Thank you for your letter asking whether a water resource district may increase the levy for cleaning and repairing a drain established as an assessment drain under N.D.C.C. ch. 61-21 from ten cents to fifty cents without a vote of the affected landowners.

N.D.C.C. §§ 61-21-46 and 61-21-47 are the statutes governing the authority of the board to levy an assessment for cleaning and repairing a drain established under N.D.C.C. ch. 61-21.

N.D.C.C. § 61-21-46 provides:

The levy in any year for cleaning out and repairing a drain may not exceed one dollar and fifty cents per acre [.40 hectare] on any agricultural lands in the drainage district.

1. Agricultural lands that carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of one dollar and fifty cents per acre [.40 hectare]. The assessment of other agricultural lands in the district must be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full one dollar and fifty cents per acre [.40 hectare]. Nonagricultural property must be assessed the sum in any one year as the ratio of the benefits under the original assessments or any reassessments bears to the assessment of agricultural land bearing the highest assessment.

2. Agricultural lands must be assessed uniformly throughout the entire assessed area. Nonagricultural property must be assessed an

amount not to exceed one dollar for each five hundred dollars of taxable valuation of the nonagricultural property.

In case the maximum levy or assessment on agricultural and nonagricultural property for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing the drain, the board may accumulate a fund in an amount not exceeding the sum produced by the maximum permissible levy for four years. If the cost of, or obligation for, the cleaning and repair of any drain exceeds the total amount that can be levied by the board in any four-year period, the board shall obtain an affirmative vote of the majority of the landowners as determined by section 61-21-16 before obligating the district for the costs.

(Emphasis added.) N.D.C.C. § 61-21-47 provides:

If the cost of maintenance, cleaning out, and repairing any drain shall exceed the amount produced by the maximum levy of fifty cents per acre [.40 hectare] in any year, together with the amount accumulated in the drainage fund, the board may proceed with such cleaning out and make an additional levy only upon petition of at least sixty-one percent of the affected landowners. The percentage of the affected landowners signing such petition shall be determined in accordance with the weighted voting provisions in section 61-21-16.

(Emphasis added.) N.D.C.C. § 61-21-46 and N.D.C.C. § 61-21-47 were enacted as sections 45 and 46 of 1955 Senate Bill No. 33. When these laws were enacted in 1955, both sections referred to the maximum levy for cleaning and repairing a drain as fifty cents. Over time, the maximum levy was changed in N.D.C.C. § 61-21-46, while the reference to it in N.D.C.C. § 61-21-47 was not changed. 1975 House Bill No. 1393 increased the maximum levy in N.D.C.C. § 61-21-46 from fifty cents to one dollar. N.D.C.C. § 61-21-47 was not changed. 1983 Senate Bill No. 2257 increased the maximum levy in N.D.C.C. § 61-21-46 from one dollar to one dollar and fifty cents. Again, N.D.C.C. § 61-21-47 was not changed. Because both sections refer to different amounts for the maximum levy for maintenance, the two statutes appear to conflict. However, because you asked whether the board could increase the levy from ten to fifty cents without a vote, it is not necessary to address the possible conflict that would arise in situations where the board may want to levy more than fifty cents for maintenance. This is an issue the Legislative Assembly may wish to address next legislative session.

Cameron D. Sillers, P.C.
May 27, 1997
Page 3

N.D.C.C. §§ 61-21-46 and 61-21-47 require a vote or the filing of a petition with a certain number of signatures for certain actions by the board,¹ but do not require a vote or petition before the board may establish or increase the maintenance levy within limits set out in the statutes. Generally, the law is what the Legislature says, not what is unsaid. Little v. Tracy, 497 N.W.2d 700, 705 (N.D. 1993). One canon of statutory construction is that it is presumed that the Legislature intended all that it said and that it said all it intended to say. Id. Because the Legislative Assembly did not require a vote with regard to the maintenance levy unless the board wishes to levy in excess of the maximum which is at least fifty cents per acre, it is my opinion the water resource board may increase the levy for cleaning out and repairing drains from ten to fifty cents without a vote.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

JAK/dc

¹ If the cost of maintenance, cleaning out, and repairing any drain exceeds the amount produced by the maximum levy in any one year, together with the amount allowed to be accumulated in the fund established for cleaning out and repairing a drain under N.D.C.C. § 61-21-46, the board can proceed with the maintenance project and make an additional levy only if it receives a petition signed by at least 61 percent of the affected landowners. N.D.C.C. § 61-21-47. The percentage is calculated in accordance with the weighted voting provisions in N.D.C.C. § 61-21-16. In addition, if the cost or obligation for cleaning and repairing any drain exceeds the total amount that can be levied by the board in any four year period, the board is required to obtain an affirmative vote of the majority of landowners, as determined by the weighted voting procedure in N.D.C.C. § 61-21-16, before obligating the district for the costs. N.D.C.C. § 61-21-46.