

OPINION
64-469

December 4, 1964 (OPINION)

Mr. Wm. J. Sturlaugson

Secretary - Treasurer

Pembina County Water Management District

RE: Waters - Water Management District - Acquisition of Property

Your letter dated November 21, 1964, has been received by this office. You wish our opinion on the following questions:

- 1) May a water management district use the same procedure as the State Highway Department in taking property for the construction of drainage ditches, i.e., may the district take possession upon making an offer to purchase and by depositing the amount of such offer with the clerk of district court of the county wherein the right of way is located?
- 2) When an easement is secured can such land be removed from the tax rolls?

In answer to your first question, we note that section 14 of the North Dakota Century Code provides as follows:

SECTION 14. Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner. No right of way shall be appropriated to the use of any corporation until full compensation therefor be first made in money or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, provided however, that when the state or any of its departments, agencies or political subdivisions seeks to acquire right of way, it may take possession upon making an offer to purchase and by depositing the amount of such offer with the clerk of the district court of the county wherein the right of way is located. The clerk shall immediately notify the owner of such deposit. The owner may thereupon appeal to the court in the manner provided by law, and may have a jury trial, unless a jury be waived, to determine the damages."

You will note the answer to your question depends upon the definition of the term "right of way" as used in the above quoted section of the Constitution. There have been no judicial determinations on this question in this state, however, it is our opinion that the taking of land by a water management district for a drainage ditch would constitute the acquisition of "right of way."

In answer to your second question, you will note that section 57-02-10 of the North Dakota Century Code directs the county commissioners to remove from the tax rolls all lands upon which the owner has granted a permanent easement to the United States, its instrumentalities or agencies, for the purpose of constructing, maintaining and operating water or wildlife conservation projects. Also this section directs the county commissioners to remove from the tax rolls all lands upon which the owner has granted an easement for highway or road right of way to the United States or to the State, or to the agencies and political subdivisions of either. It does not appear that there is any statute directing land upon which an easement has been taken for drainage ditch purposes to be removed from the tax rolls. However, if the total value of the tract of land is diminished by the drainage ditch the taxes would naturally be lower and if the drainage ditch raises the value of the tract of land the taxes would be increased. The assessor would make the initial determination as to whether the drainage ditch raised or lowered the value of the tract of land. It is conceivable where a tract is subject to flooding that the value would be increased if this danger were removed. If the ditch passes through land which was not subject to flooding, the value of that person's property would be diminished.

HELGI JOHANNESON

Attorney General