

OPINION OF ATTORNEY GENERAL
MILES LORD
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DRAINAGE: Auditor's tabular statement of assessments under MSA 106.341. Method of spreading assessment for repair expense. MSA 106.471, Subd. 5.

March 24, 1955
602-B

Brown County Attorney

Your letter of March 19 to the Attorney General calls for an opinion concerning the procedure which the county auditor should observe in carrying out the direction of the statute, M.S.A., 106.341. This section requires the auditor to make what is commonly known as the auditor's tabular statement. It is prepared by the auditor and recorded in the office of the register of deeds after a contract for the construction of a drainage ditch is let. This statement shows (1) the names of the owners of lands and the names of corporations and "public entities" benefited or damaged by the construction. The benefits and damages are taken from the viewers' reports as established by the final order. (2) A description of lands and properties, (3) the number of acres benefited or damaged in each tract, (4) the amount of the damages and benefits to each tract and property as shown in the viewers' report as confirmed or established on appeal, and (5) the amount each tract will be liable for and must pay into the treasury of the county. This is the manner in which the amount is determined:

The auditor makes a statement showing the total cost of the drainage, system, including items required to complete it. This cost is distributed to each tract and property affected in direct proportion to the benefits thereon. The statement shows the amount that each tract will be liable for on account of such improvement. It is shown in the tabular statement opposite the name and description of each tract.

Upon reading this statute you will note that, when there are assessments against a tract of land in excess of the amount of damages, there is no authority whatever to the auditor for the payment of damages to the owner.

In the event of repairs subsequently made, when there are not sufficient funds to the credit of the drainage system to pay the expense of the repair, M.S.A. 106.471, Subd. 5 directs that the county board shall apportion the cost of the repairs pro rata upon all lands, corporations and municipalities which have participated in the total benefits as theretofore determined. You will note that it says nothing about damages. At the time that the repairs are made, the landowner has already received credit for his damages.

Yours very truly,
Charles E. Houston
Assistant Attorney General

Bob
We have
some filed
audits.
How about
cleaning them
up.
WLF