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PHONE:
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September 3, 1946

County Auditor
Anoka County
Anoka, Minnesota

Dear Sir:

In the matter of the Petition to
Clean and Repair County Ditch #57.

Enclosed find request to the Board of County Commissioners to proceed to let a contract in the matter of Ditch #57.

I have before me a report of the Attorney General of Minnesota under date of July 5th, 1945, to H. C. Lindgren, County Attorney of Faribault County, Blue Earth, Minnesota, in which the Attorney General holds that if a ditch is out of repair and needs cleaning, as the Board has found according to the minutes on file in the matter of Ditch #57, the contract must be let. The Attorney General in his letter says, I quote, "The board has no alternative." In this opinion it is further said, "The County Board could clean the ditch without a petition. But if it fails to do so, the petition requires it to proceed."

Also I have before me under date of July 16th, 1945 an opinion rendered to Theodor S. Slen, Acting County Attorney of Lac Qui Parle County, Madison, Minnesota, in which it is said "When the Board finds from the evidence that repairs are necessary, it does not have the discretion to refuse to make them even though it is of the opinion that the ditch will not accomplish the results anticipated even after repair." Further it is said, "When a petition is filed, obligation rests upon the county board to follow the procedure required by Chapter 82."

In the above case the County Attorney of Lac Qui Parle County stated to the Attorney General's office that under the new law, "A sole petitioner can practically force the repair of a ditch notwithstanding the objections and the heavy cost the repairs will involve." In connection with this the Attorney General reports that, when a ditch is in need of cleaning and repair, "the legislative intent appears to be that the order shall direct the county auditor and the chairman of the county board to let a contract for the repair of the system."

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The Attorney General was also asked in that case, "Has the board any discretion in granting or denying a petition for repair of an existing county ditch if it appears that the ditch is actually out of repair."

The attorney general reported, "when the evidence upon the hearing of the engineer's report and other evidence submitted, or if no other evidence is submitted, upon the hearing of the engineer's report alone, it appears that the repairs recommended are necessary and the board or court so finds, then the order as a result of such hearing must direct the county auditor and chairman of the county board to let a contract for the repairs."

In this opinion the Attorney General also stated that when lands had originally been assessed for the construction of the ditch such lands, "are entitled to all of the rights and benefits which attach to them because of the construction of the ditch." From this and in view of the new law, it follows that the right of repair and cleaning of the ditch goes with the land and such repairs must be made.

In an opinion under date of July 24th, 1945 to Mr. Vance B. Grannis, Acting County Attorney of Dakota County, the Attorney General's office held that even if there were a deficit in the ditch repair fund that the contract for the repairs should be let.

I mention the opinions in question to the end that you may take up with the County Attorney, if it be so advised, the question at issue.

In view of the present low state of water in the creek, this Fall would be a very good time to have the work done.

Very truly yours,

Ernest A. Michel

eam-dsm
Enc.