

OPINION
48-18

July 2, 1948 (OPINION)

CITIES

RE: Annexation

I have before me correspondence and other documents in connection with your inquiry relative to the attempted annexation by the City of Williston of a portion of the Drylands Substation near Williston, North Dakota.

From the correspondence, it appears that in the month of October, 1945, the City of Williston initiated proceedings for the purpose of annexing certain territory adjoining the City of Williston and included in the annexation was a strip of land 265 feet wide which is a part of the land belonging to the Experiment Station at Williston.

It appears that the City of Williston proceeded by petition under Section 40-5101 of the North Dakota Revised Code of 1943 and I presume that notice was given as provided by Section 40-5103 N.D.C.C. and that other provisions of the statute were completed within the procedure.

Under the procedure by petition any property owner may appear and make his objections to the annexation. It does not appear that there were any objections presented by any of the property owners.

The question involved is whether or not the City of Williston had the power to include a part of the land belonging to the Williston Experimental Substation. The Williston Substation is, of course, not a legal entity but is an extension of the Agricultural College and is in fact the property of the State of North Dakota since neither the Substation nor the Agricultural College is a legal entity.

It appears from the correspondence that the City of Williston created a special assessment district for additional sewer lines and enlarging of existing ones and in this district it included the strip of land which is a part of the Williston Experimental Station Project. Assessments were accordingly levied and the amount sought to be collected from the Williston Experimental Station is in the sum of \$1341.60.

Sections 4-0504, 4-0505 and 4-0506 provide that an irrigation and dry farming experimental station shall be maintained at or near Williston in Williams County in connection with the North Dakota Agricultural College under the direction of the State Board of Higher Education and provides further that experiments shall be made under irrigation and dry farming methods with native and other forage plants, fruits, trees, grains and grasses and other agricultural products with a view to improving and enlarging the supply thereof in the district. Section 4-0506 describes the land included in said Williston Substation and includes the strip of land sought to be annexed by the City of Williston.

It should be observed that the assessment which is sought to be collected from the Substation is in payment of a main trunk line installed recently with capacity to handle future development. However, it is located approximately 800 feet from the closest Substation property and some 1700 feet or more from the present building site. It follows, therefore, that the project is of no immediate or present benefit to the Substation

It is very doubtful that the city has the authority to annex a part of land belonging to the State of North Dakota and to subject such land to the payment of special assessments. In any event no negotiations were had with the Board of Higher Education as to the necessity and advisability of annexing this strip of land to the City of Williston and thereafter to subject it to the payment of special assessments.

Furthermore I find nothing in the Constitutional Amendment creating the Board of Higher Education which would give it authority to consent to such annexation of real property and subject it to special assessments.

It is my opinion, therefore, that the Substation is not liable for the payment of this special assessment and before such payment is made, the matter must be submitted to the Legislative Assembly for appropriate action.

NELS G. JOHNSON

Attorney General