

OFFICIAL OPINION NO. 68-28, Power of County Commissioner to hold and save the United States free from damages due to the construction works relating to the local erosion control project along the Missouri River

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

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M. E. Miller
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OFFICIAL OPINION NO. 68-28

Power of County Commissioner to hold and save the United States free from damages due to the construction works relating to the local erosion control project along the Missouri River

Dear Mr. Miller:

Your request for an official opinion from this office presents the following factual situation and question:

"The Corps of Engineers are about to do some work on the bank of the Missouri River near Greenwood, South Dakota in an attempt to control flooding waters."

A resolution executed by the County Commissioners of Charles Mix County, South Dakota provides that the general welfare of the residents of Charles Mix County requires the construction of a proposed plan of improvement for the protection of the rural road and of the property within the area of the proposed erosion control project in conformity with the plans and specifications for the construction of said project as prepared by the Corps of Engineers of the U. S. Army, and Subdivision (b) of said resolution "Hold and save the United States free from damages due to the construction works."

The Chief Engineer, under the authorization of Section 14 of the 1946 Flood Control Act, has approved a project for bank protection on the Missouri River near Greenwood, South Dakota.

Section 14 of the 1946 Flood Control Act provides:

"That the Secretary of War is hereby authorized to allot from any appropriations heretofore or hereafter made for flood control, not to exceed \$1,000,000 per year, for the construction of emergency bank-protection works to prevent flood damage to highways, bridge approaches, and public works, when in the opinion of the Chief of Engineers such work is advisable: **Provided**, That not more than \$50,000 shall be allotted for this purpose at any single locality from the appropriations for anyone fiscal year."

SDC 12.0617 and acts amendatory thereof relates to the powers of the Board of County Commissioners.

Your question has been answered in the NEGATIVE by our Supreme Court: (See the case of **Jacobsen v. Hansen**, recorded in 75 SD 476, 68 NW 2d 480.) On page 478 of the opinion it is written:

"A county in this state is a creature of statute and has no inherent authority. It has only such powers as we expressly conferred upon it by statute and such as may be reasonably implied from those expressly granted. *Pearson v. Johnson*, 59 S.D. 163, 238 N.W. 644; *South Dakota Employers Protective Ass'n v. Board of County Commissioners of Beadle County*, 68 S.D. 2377, 300 N.W. 832. As the representative of the county having general control over its property and the management of its business and fiscal affairs, SDC 12.0617, the county board can exercise authority in these respects only in so far as statutes confer power upon the county."

It is my opinion that the County Board of Commissioners of Charles Mix County are unauthorized to hold and save the United States free from damages due to the construction works of said project.

Respectfully submitted,

Frank L. Farrar
Attorney General