

OPINION
56-32

August 30, 1956

CITIES -- Special Improvement Districts - Petitions - Filing

We are in receipt of your letter of August 24, 1956, in which you ask the following questions:

1. Can a city create a special improvement district and later "drop out" part of the district if there is objection from property owners to paving portions of the district?
2. If two districts are created, must there be separate petitions from the property owners in each district?
3. Must the petition of the property owners be filed and checked by the City Commission before the special improvement district is created?

Section 40-2206 of the North Dakota Revised Code of 1943 reads as follows:

"CITY MAY ENTER INTO AGREEMENT WITH HIGHWAY DEPARTMENT OR COUNTY FOR CERTAIN IMPROVEMENTS. Any city in this state, through its governing body, may enter into an agreement with the highway department of the state of North Dakota, or with the board of county commissioners of the county in which such city is located, or both, for the improvement of streets, sewers, and water mains, and for this purpose, may create a special improvement district or special improvement districts. No such agreement shall be entered into, however, unless the owners of a majority of the property liable to be specially assessed for a portion of the cost of such improvement shall have filed with the governing body of such city a petition in writing requesting such improvement, nor until any petition so filed shall have been checked thoroughly, the authenticity of the signatures and the ownership of the property affected established, and the petition approved by such governing body."

It would appear that the statute only requires that an agreement with the highway department or county commissioners should not be entered into before the petition has been verified. We see no objection to creating the special improvement district before that time. On the contrary, it would seem that it would have to be done in this manner since the property owners who sign the petition are those "liable to be specially assessed for a portion of the cost of such improvement" and it would be impossible to know which persons they would be until the district has been created.

If two districts are created, it would seem that two petitions would be required, for if one

were all that was necessary, it would mean that property owners of one district could authorize the city to make such improvements against the wishes of the property owners situated in the other district.

On the question of whether the city can later “drop out” part of the special improvement district, may we direct your attention to the case of Minor v. The Board of Control of the City of Hamilton, 20 Ohio Cir. Ct. Rep. 4 (1899) in which the Court held that “*** when there is a petition presented for the improvement of a particular part of the street, ** the board of control has not the power, acting on such petition, to lengthen or decrease the part of the street which the petition seeks to have improved.” It would thus seem that the city would not have the power to “drop out” part of the district at some later date.