

## CHAPTER 106

## DRAINAGE

Sections 106.01 to 106.79, repealed by L. 1947 c. 143 s. 67.

Sections 106.80 and 106.81, repealed by L. 1947 c. 122 s. 1.

Section 106.93, repealed by L. 1947 c. 143 s. 67.

NOTE: L. 1858, c. 73, (Aug. 8, 1858) related to the drainage of lands; L. 1874, c. 57, to highway ditches; and L. 1877, c. 91, authorized private parties to drain wet lands, and where necessary to petition the town supervisors to direct the manner of construction and assess damages.

The first general drainage act, L. 1883, c. 108, empowered the county commissioners upon petition to lay out a drainage ditch or system and assess damages. L. 1883, c. 139, authorized the county board to drain shallow lakes.

L. 1887, c. 97, entirely revised all laws relating to county ditches; L. 1887, c. 98, provided for the formation and organization of county drainage districts; and L. 1887, c. 99, revised the laws relating to town ditches.

L. 1893, c. 221, appropriated \$100,000, contributed by the Great Northern Railway Company, to be expended under the direction of an appointed board for the purpose of expediting better drainage by the Red River and its tributaries.

L. 1897, c. 318, created a board of state drainage commissioners consisting of three members appointed by the governor.

The drainage laws were completely revised by L. 1901, c. 258; L. 1905, c. 230; L. 1907, c. 448; L. 1909, c. 469; and L. 1925, c. 415.

L. 1905, c. 230, inaugurated a plan for construction of judicial ditches operating in two or more counties; and created a state drainage commission composed of the governor, state auditor, and secretary of state, empowered to drain state lands. Additional powers and duties were imposed upon the commission by L. 1907, c. 470. The commission was abolished, and a department of drainage and waters created under the supervision of a single commissioner appointed by the governor. This department was continued under the reorganization act, L. 1925, c. 426, art. 5.

The department of drainage and waters became a division of the department of conservation pursuant to L. 1931, c. 186, further amended by L. 1937, c. 310, and L. 1943, c. 60, s. 3.

Laws 1945, c. 491, created a legislative interim commission to study, revise, and codify the laws relating to drainage and water resources. Based upon the report of the commission, L. 1947 cc. 103, 122, 123, 142, 143, and 571, were enacted.

The commission found the county and judicial ditch laws were principally set forth in Chapter 106, but found other laws affecting county and judicial ditches in Chapters 105, 106, 107, 108, and 113. Based upon the report of the commission, the 1947 legislature repealed all of the county and judicial ditch laws found in Chapters 105, 106, 107, 108, and 113, and a new code was adopted completely covering the subject. This new code is found in L. 1947, c. 143, and is coded as sections 106.011 to 106.661.

**106.011 DEFINITIONS.**

HISTORY. 1947 c. 143 s. 1.

**106.021 POWERS OF COUNTY BOARDS AND OF DISTRICT COURTS.**

HISTORY. 1947 c. 143 s. 2.

Legislative authority to enact drainage laws is derived from the police power, the right of eminent domain, or the taxing power, and is undoubted. It is founded upon the right of the state to protect the public health and to provide for the public convenience and welfare. *Nostdal v Co. of Watonwan*, 221 M 378, 22 NW (2d) 461.

Where plaintiff's cause was limited to the facts pleaded in the complaint and there alleged as the sole basis of relief that the officers and agents of defendant were negligent in constructing and maintaining a passageway for water carried in a public ditch as finally laid out and constructed through a highway of defendant, the latter in its corporate capacity was not liable for resulting damage because of such neglect or inefficiency. *Nostdal v Co. of Watonwan*, 221 M 378, 22 NW (2d) 461.

Under authority of L. 1937, c. 468, and relating to control of the flow of waters, the commissioner of conservation has veto power over other established statutory agencies and other agencies and other agencies may not proceed to make changes without consent of the commissioner. 1942 OAG 60, July 28, 1941 (983-D).

Established statutory agencies can make no changes as to water level of lake nor control the flow of water without the consent of the commissioner of conservation, he having a veto in relation to such changes. OAG July 28, 1944 (273-A-23).

- (1) No duty on part of county to unite with owners in making private ditch;
  - (2) Statement of rule relating to diversion of surface water;
  - (3) Remedy for damage to roadway and bridge caused by private parties.
- OAG Oct. 28, 1946 (602).

Interferences with surface waters. 24 MLR 891.

**106.031 PETITION.**

HISTORY. 1947 c. 143 s. 3.

A school district may pay for sewerage service, but is not chargeable by assessment. The signature of the board on a ditch petition is a nullity. OAG Sept. 12, 1944 (622a-19).

It is the positive duty of the county board to proceed upon the petition of the owners of 51 per cent of the area, and in such case the signature of the majority of the resident owners is not required. OAG Nov. 6, 1944 (602e).

Landowner assessed in drainage proceedings for benefits has right to clean ditch on his own land to meet specifications. He may cut channels through ditch banks to drain surface waters from his land. He may not enter upon his neighbor's land to remove debris from the ditch, but may petition the county board to do so and it is their duty so to do. 1944 OAG 36, April 27, 1944 (148-A-14).

If the owners of not less than 50 percent of the area sign the petition, it is just as good as though it were signed by a majority of the resident owners and the county board has the positive duty under the statute to proceed as required. 1944 OAG 37, Nov. 6, 1944 (602-E).

**106.041 PETITIONERS' BOND.**

HISTORY. 1947 c. 143 s. 4.

**106.051 INSUFFICIENT BOND; EXPENSES NOT TO EXCEED PENALTY OF BOND.**

HISTORY. 1947 c. 143 s. 5.

In proceedings under section 106.051, a corporation operating under section 326.14 should not be appointed engineer. OAG March 8, 1945 (148a-10).

**106.061. DISMISSAL OF PROCEEDINGS.**

HISTORY. 1947 c. 143 s. 6.

**106.071 ENGINEER.**

HISTORY. 1947 c. 143 s. 7.

If the specifications of the ditch are changed by repairs, a final hearing must be had on the engineer's and viewers' reports. If specifications are not changed, no hearing is required. 1942 OAG 108, Oct. 2, 1942 (602-J).

The offices of county surveyor and county ditch engineer are separable. OAG Feb. 26, 1946 (148-A-10).

The statute of limitations applies to civil actions. A drainage proceeding is not a civil action. OAG Sept. 26, 1946 (150-C).

Where, as in the instant case, the proportion that each of two counties must pay of the original ditch cost was fixed by the court, in case repairs are needed the cost to each county is fixed by the court in the same manner. OAG Sept. 26, 1946 (150-C).

**106.081 PRELIMINARY SURVEY AND REPORT.**

HISTORY. 1947 c. 143 s. 8.

**106.091 FILING ENGINEER'S REPORT; AUTHORITY OF DIRECTOR.**

HISTORY. 1947 c. 143 s. 9.

**106.101 PRELIMINARY HEARING.**

HISTORY. 1947 c. 143 s. 10.

**106.111 ORDER FOR DETAILED SURVEY.**

HISTORY. 1947 c. 143 s. 11.

**106.121 ENGINEER'S FINAL SURVEY AND REPORT.**

HISTORY. 1947 c. 143 s. 12.

When the plans and specifications required to be prepared and filed by the engineer are confirmed by a valid order establishing the ditch, they become final and conclusive and may be modified or changed only as provided by the drainage law. *Slosser v Gt. Northern*, 218 M 327, 16 NW(2d) 47.

Under applicable drainage laws, it is the duty of the engineer to prepare and file plans and specifications for all bridges and culverts to be constructed and installed as part of the drainage project, and such plans and specifications, after being confirmed by the order establishing the ditch, become final and conclusive unless modified or changed as provided by statute. *Nostdal v Co. of Watonwan* 221 M 377, 22 NW(2d) 461.

Report of, and specifications by the director of the division of drainage and waters in county ditch proceedings, and effect thereof. 1944 OAG 38, Nov. 18, 1944 (148-A-9).

**106.131 AUTHORITY OF DIRECTOR; DIRECTOR'S REPORT.**

HISTORY. 1947 c. 143 s. 13.

**106.141 VIEWERS; APPOINTMENT; QUALIFICATION.**

HISTORY. 1947 c. 143 s. 14.

**106.151 DUTIES OF VIEWERS; PROPERTIES.**

HISTORY. 1947 c. 143 s. 15.

An order establishing a drainage system and confirming the report of viewers does not change the rules of evidence bearing upon the issue raised by a demand for a jury to assess benefits. *Judicial Ditch v Owens*, 142 M 178, 171 NW 564; *Lake Elysian High Water Level*, 208 M 159, 293 NW 140; *Nostdal v Co. of Watonwan*, 221 M 377, 22 NW(2d) 461.

The limitation in this section applies only to the original proceeding in which the benefits were assessed. OAG Dec. 11, 1945 (602-B).

A village lacks authority to enter into a contract with property owners outside the village to install a drainage ditch, but by proceeding under the vehicle of the drainage law the village may be assessed in accordance with section 106.151. OAG Oct. 25, 1946 (387-G-6).

**106.161 FILING OF VIEWERS' REPORT.**

HISTORY. 1947 c. 143 s. 16.

**106.171 FINAL HEARING.**

HISTORY. 1947 c. 143 s. 17.

Drainage laws are based upon the powers of the state relating to eminent domain and public health, as well as its police and taxing powers, and the order establishing a public ditch is in effect a judgment in rem. *Nostdal v Co. of Watonwan*, 221 M 386, 22 NW(2d) 466.

**106.181 JURISDICTION.**

HISTORY. 1947 c. 143 s. 18.

An order making a county primarily liable on an obligation, when the county has no notice of hearing is not due process of law. 2 MLR 158.

**106.191 PROCEEDINGS AT HEARING.**

HISTORY. 1947 c. 143 s. 19.

Neither the engineer nor the county board are permitted to make any change in the final order establishing a ditch. OAG Oct. 1, 1945 (148-A-3).

**106.201 ORDER ESTABLISHING.**

HISTORY. 1947 c. 143 s. 20.

An order establishing a public ditch is a judgment in rem. It cannot be attacked collaterally. Rights as fixed cannot be modified or changed except by competent authority acting under the statute. *Clarke v Wenzel*, 208 M 158, 293 NW 140; *Slosser v Gt. Northern*, 218 M 327, 16 NW(2d) 47; *Nostdal v Co. of Watonwan*, 221 M 377, 22 NW (2d) 461.

**106.211 JUDICIAL DITCHES; APPORTIONMENT OF COST.**

HISTORY. 1947 c. 143 s. 21.

The auditor is without authority to file a ditch lien against property except as authorized by the final order. A county cannot escape liability when sued by a township on the ground that the payment by the township was voluntary, the payment being made with public funds. *Township v Co. of Yellow Medicine*, 205 M 453, 286 NW 881.

Under the applicable law in force when the ditch was established lands both private and corporate were ratably chargeable for benefits, and if the benefits exceeded the damages the owner paid the difference. *Nostdal v Co. of Watonwan*, 221 M 377, 22 NW(2d) 461.

**106.221 CONTRACT AND BOND.**

HISTORY. 1947 c. 143 s. 22.

Where the board's final order was based upon and confirmed the engineer's and the viewers' report, the engineer cannot thereafter during the course of the work, recommended for the first time, add an additional bridge although board after viewing the premises was of the opinion such bridge should be constructed. OAG Oct. 1, 1945 (148-A-3).

**106.231 LETTING CONTRACT.**

HISTORY. 1947 c. 143 s. 23.

The contract cannot be let during the 30-day waiting period after establishing a drainage system, but the proper officers may advertise and take other preliminary steps. OAG Aug. 31, 1945 (148-B-4).

In procedure to repair and extend county ditch, after advertisement, bids were received and accepted for open work, but no bids were received for the tile laterals. The contractor on the open work completed his contract and the auditor submitted his tabular statement. The tile work cannot now be done within the 30 per cent limitation. No contract was made for the entire job. It is too late, after the work has been so far completed, to declare the now completed contract invalid. All landowners and others are guilty of laches. Contractor cannot be forced to return the payment he received, but no lien can be laid on the lands of the benefited persons, until a legal contract has been let for the tile laterals and the entire work as outlined in the original plan has been completed. OAG Jan. 7, 1947 (602-c) (921-P).

**106.241 PROCEDURE WHEN CONTRACT NOT LET.**

HISTORY. 1947 c. 143 s. 24.

**106.251 PAYMENT OF DAMAGES.**

HISTORY. 1947 c. 143 s. 25.

The doctrine of voluntary payment is inapplicable to public funds. So where the township voluntarily paid certain assessments, it did not lose its right to recover from the county. *Township of Normand v Yellow Medicine Co.*, 205 M 451, 286 NW 881.

As the evidence clearly shows that the defendant county in 1940 collected and gathered surface water by the reconstruction of a county road with its adjoining ditch and cast it upon the premises of plaintiffs in increased and injurious quantities, the trial court was right in awarding damages and enjoining the county. *Ostlund v Co. of Stearns*, 221 M 329, 22 NW(2d) 173.

All land, whether corporate or individually owned, is chargeable pro rata for benefits. If benefits exceed the damages, the owner must shoulder his portion of the burden to the extent of such excess; if damage exceeds the benefits, he is paid the difference out of the total benefits found. *Nostdal v Co. of Watonwan*, 221 M 377, 22 NW(2d) 461.

Cost of maintenance of a bridge across a public ditch from private property to public road falls on the landowner. OAG Feb. 23, 1945 (148a-3).

**106.261 SUPERVISION OF CONSTRUCTION.**

HISTORY. 1947 c. 143 s. 26.

**106.271 CONSTRUCTION AND MAINTENANCE OF BRIDGES; AUTHORITY OF DIRECTOR.**

HISTORY. 1947 c. 143 s. 27.

**106.281 INSPECTION; PARTIAL PAYMENTS.**

HISTORY. 1947 c. 143 s. 28.

**106.291 ADDITIONAL PARTIAL PAYMENTS.**

HISTORY. 1947 c. 143 s. 29.

**106.301 EXTENSION OF TIME ON CONTRACTS.**

HISTORY. 1947 c. 143 s. 30.

**106.311 REDUCTION OF CONTRACTOR'S BOND.**

HISTORY. 1947 c. 143 s. 31.

**106.321 CONTRACTOR'S DEFAULTS.**

HISTORY. 1947 c. 143 s. 32.

**106.331 ACCEPTANCE OF CONTRACT.**

HISTORY. 1947 c. 143 s. 33.

By following strictly the procedure outlined in this section, certain changes may be made by reopening the matter even after the ditch has been established. OAG Dec. 15, 1945 (602-G).

**106.341 AUDITOR'S LIEN STATEMENT.**

HISTORY. 1947 c. 143 s. 34.

Assessments may be paid and discharged by payment of the amount required by law. County board has no power to add to the amount required by law to be paid in discharge of the assessment. 1944 OAG 35, April 6, 1944 (901-m).

Where there is no change in depth or width, or other specifications of the ditch, but the work consists merely of cleaning out the ditch so as to make it conform to the original specification, no hearing is necessary. When the cost of repairs has been ascertained, they are spread against the land affected using the same ratio as in the original assessment. If there is money in the ditch fund, it may be used in reducing the amount of cost. 1942 OAG 108, Oct. 2, 1942 (602-J).

**106.351 FILING LIEN STATEMENT; EFFECT THEREOF.**

HISTORY. 1947 c. 143 s. 35.

**106.361 SUPPLEMENTAL LIEN STATEMENT.**

HISTORY. 1947 c. 143 s. 36.

Additional assessment may be made against lands benefited by reason of construction of ditch to cover additional cost not included in original tabular lien statement filed, but not to exceed benefits accruing to the particular tracts. 1944 OAG 34, Dec. 1, 1943 (602-B).

**106.371 PAYMENT OF LIENS; INTEREST.**

HISTORY. 1947 c. 143 s. 37.

Landowners petitioning for cancelation of certain ditch assessments, who did not file their petition prior to June 1 of the year in which the assessments became payable, failed to comply with a material condition of the act. Petition of Slaughter, 213 M 70, 5 NW(2d)64.

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Interest on bonds issued by the county to finance construction of ditch system is not a charge against lands assessed for benefits. 1944 OAG 34, Dec. 1, 1943 (602-B).

Extension of the time of maturity of installments of a ditch lien on property acquired through foreclosure of a lien on old age benefit in no manner affects the validity of the lien. The burden of payment of the lien was a burden imposed upon ownership, and while the county was the owner of the land, it was relieved of the idle ceremony of paying money to itself, but the lien remains. There was no merger of title, however, and the property being sold by the county the lien survives. The law relating to title acquired by tax forfeiture has no application. 1944 OAG 39, Aug. 28, 1943 (921-J).

All that a person offering to pay is required to pay is the assessment plus interest to the date of the payment. Neither the county board nor the county officers may add to the tax burden created by statute. 1944 OAG 35, April 6, 1944 (901-m).

## **106.381 ENFORCEMENT OF ASSESSMENTS; PUBLIC AND CORPORATE.**

HISTORY. 1947 c. 143 s. 38.

## **106.391 SATISFACTION OF LIENS.**

HISTORY. 1947 c. 143 s. 39.

## **106.401 APPORTIONMENT OF LIENS.**

HISTORY. 1947 c. 143 s. 40.

## **106.411 BOND ISSUES.**

HISTORY. 1947 c. 143 s. 41.

Absence of funds in the ditch fund with which to pay matured bonds does not permit a levy against benefited property. The bonds are a general obligation of the county. OAG July 9, 1945 (38-h).

## **106.421 FUNDING BONDS.**

HISTORY. 1947 c. 143 s. 42.

## **106.431 FEES AND EXPENSES; PAYMENT.**

HISTORY. 1947 c. 143 s. 43.

The county board may levy a tax so that the general revenue fund may be reimbursed for money previously advanced from the general fund to the ditch fund. 1944 OAG 44, Oct. 18, 1943 (602-J).

The county attorney, in drainage proceedings, can act for no one except the county. OAG June 27, 1945 (101-A-7).

Where there is a provision that a certain officer's compensation shall be fixed by the board or court, "fixed" means the rate of compensation should be determined in advance of the service. OAG Sept. 21, 1945 (602-B).

Compensation of county highway engineer as controlled by civil service. OAG Sept. 21, 1945 (148-A-10); OAG June 13, 1946 (148-A-10).

In ditch proceedings under L. 1947, c. 143 ss. 43, 44, the county auditor is to be paid reasonable compensation for his services to be fixed by the board, and the county attorney receives no compensation except his regular salary. OAG March 25, 1947 (23-a).

## **106.441 COUNTY ATTORNEY.**

HISTORY. 1947 c. 143 s. 44.

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In ditch proceedings under L. 1947 c. 143 ss. 43, 44, the county auditor is to be paid reasonable compensation for his services to be fixed by the board, and the county attorney receives no compensation except his regular salary. OAG March 25, 1947 (23-a).

### 106.451 PAYMENT OF COSTS AND EXPENSES; WARRANTS; DITCH FUNDS.

HISTORY. 1947 c. 143 s. 45.

L. 1945 c. 82, empower the county board to repair judicial ditches lying wholly or in part within the county and the provisions of the act for creation of a repair fund apply thereto. OAG July 12, 1946 (150-c).

### 106.461 DUTIES OF PUBLIC EXAMINER.

HISTORY. 1947 c. 143 s. 46.

### 106.471 REPAIRS.

HISTORY. 1947 c. 143 s. 47.

Owners may have the validity of their claim, defense, or objection determined by the district court of the county in which the tax is levied by serving a petition for such determination upon the county auditor, treasurer, and attorney on or before the first day of June of the year in which the tax becomes payable. \*Petition of Slaughter, 213 M 70, 5 NW(2d) 64.

An assessment for ditch repairs by a county board, authorizing a county board to levy an annual assessment for ditch repairs at a rate not exceeding 30 mills of the assessed benefits as confirmed in the original proceedings for establishment of the ditch, is void where the county board fails to determine a definite rate of assessment. Being a legislative duty delegated by statute to the board, the board cannot redelegate to the county auditor. Saxhaug v Co. of Jackson, 215 M 490, 10 NW(2d) 722.

If the cost of repairs does not exceed 30 per cent of the original cost of the system, and if the engineer finds the repairs necessary, petitioners are entitled to an order directing the repairs. If funds are not available they are entitled to have the costs assessed in same proportion as original costs. Finseth v Sperry, 219 M 255, 17 NW(2d) 499.

County board has duty to maintain ditches within the county. If the board fails or refuses, section 106.501 affords a remedy. 1944 OAG 41, Oct. 8, 1943 (150-c).

County board may create a fund to the credit of each separate ditch to be used in future for repairs only. The board may order the county auditor to file statement similar to the original tabular statement. Certain limitations must be closely observed. 1944 OAG 43, Aug. 4, 1943 (602-J); 1944 OAG 45, Aug. 13, 1943 (602-J).

The county board cannot add to the burden created by the statute; and when a person tenders the amount of the ditch assessment offered in advance of due date the county treasurer must accept it, although the county board has requested that interest be paid. OAG April 6, 1944 (901-D).

An action to restrain others from interfering with a ditch may be brought by one or more landowners, but care should be taken that a burden is not imposed upon anyone not a party to the action. OAG Feb. 5, 1945 (602-B).

County board may on its own motion order a ditch cleaned out. OAG May 29, 1945 (602-B).

Where the cost is less than ten per cent of the original costs, the board may order repairs on ditch inspector's report and without a hearing. Where repairs are asked for by petition, a hearing is required. OAG June 22, 1945 (602-B).

In a petition to clean out a drainage ditch, no petitioner's bond is required. OAG July 5, 1945 (602-J).



County board may act upon a report made by an inspector, or by a subcommittee, or by the entire board, and the report may be oral or written. OAG July 16, 1945 (602-J).

County board may repair such portion of a judicial ditch as lies within the county. OAG Aug. 24, 1945 (602-J).

If the petition for repairs provided in Clause (2) of Subd. 4 is signed by less than 26 per cent of the area of the property affected by it and assessed for original construction of the ditch, Clause (b) applies. If the petition is signed by not less than 26 per cent, apply Clause (e). OAG April 29, 1947 (602-j).

Tax-forfeited lands in conservation area may be assessed for repair of ditches. This includes lands in a reforestation project. This may be done by the county board on its own motion, or by petition to the court in case of a judicial ditch, or to the county state lands. Any claim against the state can be collected only out of funds appropriated and available for payment of such assessments. OAG May 29, 1947 (602-B).

Cost of repairs must not exceed the original cost of the ditch; but a new petition may be filed based upon L. 1947, c. 143, s. 50, (s. 106.501) and there will be no limit to expenditure except it must not exceed the benefits determined in the improvement proceeding. OAG June 20, 1947 (602-B).

An individual desiring at his own expense to reopen a ditch and restore it to its former condition must apply to the county board and proceed under L. 1947 c. 47 s. 2. OAG June 26, 1947 (602-J).

#### **106.481 DITCH INSPECTORS.**

**HISTORY.** 1947 c. 143 s. 48.

The county board has the duty to maintain ditches within the county. 1944 OAG 41, Sept. 6, 1944 (602-J); 1944 OAG 42, Aug. 12, 1943 (602-J).

Assessments may be made against land to raise money for future ditch repairs. 1944 OAG 43, Aug. 4, 1943 (602-J).

After the engineer's report, the board may proceed under section 106.481. If the repairs are clearly needed, the board may proceed without calling a hearing. OAG Oct. 4, 1946 (602-J).

#### **106.491 OBSTRUCTION OF DITCH.**

**HISTORY.** 1947 c. 143 s. 49.

Where soil and vegetation obstruct the operation of a ditch a petition for removal of the obstruction is in order. If the cost of such repairs does not exceed 30 per cent of the original cost and if the engineer's report and evidence at the hearing entitles petitioners to relief, the order must issue. If funds are not available an assessment must be levied in the same ratio as original cost. *Finseth v Sperry*, 219 M 255, 17 NW(2d) 499.

The word "otherwise" as used in this section would include the removal of obstructions whether caused by the dumping of refuse in the ditch or caused by faulty construction. OAG April 29, 1947 (602-j).

#### **106.501. IMPROVEMENTS.**

**HISTORY.** 1947 c. 143 s. 50.

Owners of land on a branch of a ditch system may petition for removal of the obstruction. If the cost of repairs, according to the engineer's report is not in excess of 30 per cent of the original cost, the owners are entitled to an order directing that repairs be made. If money be not in the fund, an assessment may be laid. *Finseth v Sperry*, 219 M 255, 17 NW(2d) 499.

This section applies to cases where the ditch is obstructed; and not to a mere clean-out. OAG May 25, 1945 (602-J).

The distinction between a repair job and one of construction or major improvement must be kept in mind. In a repair job there is no redetermination of damage or benefits. OAG June 19, 1945 (9-A-17).

Cost of repairs must not exceed the original cost of the ditch; but a new petition may be filed based upon L. 1947, c. 143, s. 50, (s. 106.501) and there will be no limit to expenditure except not to exceed the benefits determined in the improvement proceeding. OAG June 20, 1947 (602-B).

#### **106.511 IMPROVEMENT OF OUTLETS; PETITION; PROCEEDINGS.**

HISTORY. 1947 c. 143 s. 51.

See notes under section 106.471.

Where the petition asks to extend and lengthen the ditch upstream from its original source, the county board has jurisdiction, and may exercise its discretion as to whether or not the extension improves the system. OAG Nov. 26, 1946 (602-G).

To convert an open ditch branch into a tile drain, it is necessary to follow the regular repair routine, including the service of an engineer. OAG Dec. 26, 1946 (150-C).

When bids for the construction of ditch improvement exceeds the total benefits as determined by the viewers, the officers charged with letting the contract have no remedy except to readvertise in hope of obtaining a lower bid. OAG July 18, 1947 (707-a-10).

#### **106.521 LATERALS.**

HISTORY. 1947 c. 143 s. 52.

A private lateral may be constructed for drainage of land not assessed when the main system was constructed so as to permit use of the main system, upon such terms and conditions as the board should determine. When the board determines to avail itself of the powers granted in section 106.55, it proceeds as specified in section 106.521. 1944 OAG 40, Sept.-6, 1944 (602-J); OAG Feb. 28, 1946 (602-H).

Owners of land not assessed for benefits resulting from the construction of a drainage ditch under Minnesota law have no right without the consent of the owners of the land assessed for such benefits to drain land not assessed into such ditch system. OAG June 3, 1946 (602-B).

#### **106.531 USE OF DRAINAGE SYSTEM FOR OUTLETS.**

History. 1947 c. 143 s. 53.

Where the owner of a private ditch desires to connect with a county ditch system, the board may if it deems it to the interest of the system permit such connection, and in so doing the order shall describe the property to be benefited by the new lateral and shall fix the amount of benefits to such property because of connection with the outlet. OAG April 21, 1947 (602-H).

#### **106.541 OUTLETS IN ADJOINING STATES.**

HISTORY. 1947 c. 143 s. 54.

#### **106.551 CONNECTION WITH DRAINS IN ADJOINING STATES.**

HISTORY. 1947 c. 143 s. 55.

The petitioning landowner was not assessed when the ditch was completed. He now applies to the county board to connect and provide ditch as a lateral. The board has jurisdiction and may permit the connection on such terms as they deem fair, bearing in mind among other things, the benefit to the landowner as compared with the benefit assessed to the original petitioners. OAG Feb. 13, 1947 (602-H).

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## **106.561 MUNICIPAL SEWER CONNECTIONS.**

HISTORY. 1947 c. 143 s. 56.

Providing a septic tank or other means having been installed to protect against contamination, a village may use a judicial ditch for sewerage disposal. OAG Feb. 14, 1945 (387g-9).

## **106.571 DEFECTIVE NOTICE; SERVICE.**

HISTORY. 1947 c. 143 s. 57.

## **106.581 RIGHT OF ENTRY.**

HISTORY. 1947 c. 143 s. 58.

## **106.591 RECORDS, PRIMA FACIE EVIDENCE.**

HISTORY. 1947 c. 143 s. 59.

## **106.601 FAILURE OF BOARD OR COURT TO ATTEND HEARINGS.**

HISTORY. 1947 c. 143 s. 60.

## **106.611 EFFECT OF DEFECTIVE PROCEEDINGS.**

HISTORY. 1947 c. 143 s. 61.

## **106.621 USE OF FORMER SURVEYS.**

HISTORY. 1947 c. 143 s. 62.

## **106.631 APPEALS.**

HISTORY. 1947 c. 143 s. 63.

## **106.641 OFFENSES; PENALTIES.**

HISTORY. 1947 c. 143 s. 64.

## **106.651 DIVERSION OF DRAINAGE.**

HISTORY. 1947 c. 143 s. 65.

## **106.661 ABANDONMENT.**

HISTORY. 1947 c. 143 s. 66.