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## Our Supreme Court Holds

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## OUR SUPREME COURT HOLDS

In Bradley C. Marks, F. L. Conklin and E. L. Williams, Pltfs, and Applt., v. City of Mandan, North Dakota, a municipal corporation, et. al., Defts. and Respts. Ada S. Stutsman and Charles Kidd, Inters. and Respts.  
(Case No. 1)

That Section 3716, Compiled Laws N. D. 1913, is examined and is held not to provide for the levy of a general tax to make good deficiencies in special assessment funds resulting from the failure of property owners to pay their special assessments.

That Chapter 174, Session Laws 1923, which amended and re-enacted section 3716, Compiled Laws N. D. 1913, is held to be wholly prospective in its operation and not to apply to special assessment funds created prior to its enactment and against which warrants had been issued.

That where there are two possible interpretations of a statute, by one of which the statute would be clearly constitutional, and by the other it would be of doubtful constitutionality, the court will avoid that construction which would leave the constitutionality of the statute in doubt.

Appeal from the District Court of Morton County, Hon. H. L. Berry, Judge.

**AFFIRMED.**

Opinion of the Court by Morris, J.

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In Bradley C. Marks, F. L. Conklin and E. L. Williams, Pltfs. and Applt., v. City of Mandan, North Dakota, a municipal corporation, et al., Defts. and Respts. Ada S. Stutsman, Inter. and Respt.  
(Case No. 2)

That Chapter 174, Session Laws of North Dakota, 1923, as amended by Chapter 171, Session Laws of North Dakota, 1929, obligates a municipality to levy a general tax to make good a deficiency in a special assessment fund upon the maturity of the last special improvement warrants drawn against the fund.

That the requirement of Chapter 174, Session Laws 1923, as amended by Session Laws 1929, relative to the levy of a general tax to pay deficiencies in special assessment funds, does not impinge upon constitutional inhibitions against double taxation or the requirements of due process of law and equality and uniformity; nor does it violate section 185 of the North Dakota constitution which prohibits a city from loaning or giving its credit to, or making donations to or in aid of any individual, association, or corporation, except for the reasonable support of the poor.

That the extent to which a municipality may go in bearing the expense of a sewer system through general taxation lies within the field of legislative discretion; and its reasonable exercise, even to the extent of permitting or requiring the city to assume deficiencies that may arise in the collection of assessments levied against private property, does not invade the constitutional rights of a general taxpayer of the city.

That the convenient and sanitary disposition of sewage is conducive to the health and comfort of the population of a city; and such a system is of general utility to the entire population, even though the more direct and proximate benefits accrue to the owners of property abutting on the sewer mains.

That Chapter 174, Session Laws North Dakota 1923, is not invalid as violative of section 61 of the North Dakota constitution.

Appeal from the District Court of Morton County, Hon. H. L. Berry, Judge.

**REVERSED.**

Opinion of the Court by Morris, J.