

COUNTY COURT:
DRAINAGE DISTRICTS:
LEVEE DISTRICTS:

County court does not have authority to remove or exclude land that is within a drainage or levee district.



May 27, 1957

Honorable Leon McAnally
Prosecuting Attorney
Dunklin County
Kennett, Missouri

Dear Mr. McAnally:

This is in answer to your request for an official opinion from this office, which reads as follows:

"The County Court has asked me to secure an opinion from your office as to whether the Court has authority to remove certain land from a Drainage District or a Levee District which was organized by the County Court.

"It seems that they have a couple of reasons for wishing to do this if they have the authority. Due to relocation of the levee in one district, part of the land is now in the river, but is still being assessed against the owner. Also, the special benefits assessed against some other land now being in the form of town lots, is so small that the cost of collection of the taxes exceeds the amount of the taxes collected on these lots.

"The County Court wishes to remove from the drainage and levee districts these lands if they have the authority to do so."

Chapter 243, RSMo 1949, and Cum. Supp. 1955, is entitled "Drainage Districts Organized in County Court." It provides, among other things, that "when it shall be conducive to the public health, convenience or public welfare, or when it will be of public utility or benefit, the county court of any county in this state shall have the authority to organize, incorporate and establish drainage districts - - -." These drainage districts are municipal or public corporations, and the county court administers their affairs. The property owners within the districts are taxed to support and maintain them.

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In your letter, you stated the county court wanted to remove or exclude certain land that is now within a drainage district because this land has been divided into town lots and the cost of collecting the assessed taxes exceeds the amount of taxes collected on these lots. We shall assume these town lots within the drainage district are being benefited.

The legislature authorized the creation of drainage districts and they get their authority from it. In *Thompson v. City of Malden, C.A.*, 118 S.W. 2d 1059, 1063 (4), the court said:

"(4) Drainage ditches are artificially created and constructed through funds raised by taxation against the lands that comprise the district. Chapter 64, Article 2, R.S.Mo. 1929, creates a code unto itself and the provisions of this chapter and article limit and define the authority and duties of the governing board of drainage districts. *State ex rel. Walker v. Locust Creek Drainage District*, 228 Mo. App. 434, 67 S.W. 2d 840; *State ex rel. Harrison v. Hill*, 212 Mo. App. 173, 253 S.W. 448. Drainage districts organized under the provisions of this chapter and article are public or municipal corporations and the County Court of the county in which they are organized administers their affairs. Their rights, powers and liabilities are specifically limited by the statutes that create them. *State ex rel. Applegate v. Taylor*, 224 Mo. 393, 123 S.W. 892; *Squaw Creek Drainage Dist. v. Turney*, 235 Mo. 80, 138 S.W. 12; *Houck v. Little River Drainage Dist.*, 248 Mo. 373, 154 S.W. 739; *Wilson v. King's Lake Drainage & Levee Dist.*, 176 Mo. Sup. 470, 158 S.W. 931; *Id.*, 257 Mo. 266, 165 S.W. 734; *State ex rel. McWilliams v. Little River Drainage District*, 269 Mo. 444, 190 S.W. 897; *Birmingham Drainage Dist. v. Chicago, B & Q. R. Co.*, 274 Mo. 140, 202 S.W. 404; *Sigler v. Inter-River Drainage Dist.*, 311 Mo. 175, 279 S.W. 50; *Arthaud v. Grand River Drainage Dist.*, 208 Mo. App. 233, 232 S.W. 264."

In 17 Am. Jur. 794, it says:

"Most of the statutes authorizing the organization of districts of the kind under consideration make provision for subsequent alteration of their boundaries, either to take

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in outside lands that are being benefited, or to exclude lands that are receiving no benefit. * * *."

Keeping the foregoing in mind, Section 243.130, RSMo 1949, authorizes the county court to condemn additional land not originally acquired by the district; Section 243.140 authorizes the county court to annex land outside the drainage district under certain circumstances; and Section 243.450 authorizes different drainage districts to reorganize and consolidate under certain circumstances. You will note the statute does not authorize the county court to remove or exclude certain land from an existing drainage district. Thus, we hold they cannot.

The second part of your letter concerns levee districts. Section 245.285 through 245.545, RSMo 1949, is entitled "Levee Districts Organized by County Court." After organization by the county court, they become public corporations. A board of directors appointed by the county court administers the affairs of a levee district. The property owners within the district are taxed to support and maintain it.

In your letter, you stated the county court wanted to remove or exclude certain land that is now within a levee district because the levee has been relocated within the district and as a result part of the land within the district is now in the river and still being assessed against the owner.

The legislature also authorized the creation of levee districts and they get their authority from it.

In 52 C.J.S. 1082, it says:

"The legislature may delegate to, or confer on, a levee board power to administer the affairs of the district. Levee and flood control boards and other officers, as well as the districts themselves, have such powers and only such powers, as are conferred by statute either expressly or by necessary implication, including such incidental powers as are necessary to execute the powers specifically conferred or the duties imposed. ***."

The same authority at page 1079 continues:

"Alterations in the territorial extent of levee districts, including the annexation of lands outside the district, are usually provided for by statute. * * *."

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Again keeping the above in mind, Section 245.305 provides for incorporating lands into the district which are subject to overflow; Section 245.310 provides for extending the levee or enlarging the district if necessary; and Section 245.400 provides for relocation of the levee under certain circumstances. You will note the statute does not authorize the county court or the board of directors to remove or exclude certain land from an existing levee district. Thus, we hold they cannot.

However, in helping you solve your problem about the levee district, we think it pertinent to call your attention to Sections 245.445 and 245.450. They read as follows:

"245.445. As soon as any levee district shall have been organized, as aforesaid, and in order to defray the expenses of surveys and estimates of levees or other works and costs thereof, maintain and repair the same, and pay such officers, agents, servants and employees as may be entitled to compensation, the said board of directors may order the assessment of a tax on all the lands within the levee district to be benefitted, not to exceed ten mills on the dollar, on the valuation of the benefits thereon by reason of the work proposed or completed as returned by the assessor, and such tax may be assessed and levied for each and every year, and from year to year, whenever the board of directors may, from time to time, determine the same to be necessary; and all such taxes shall be a lien upon the lands in such districts until paid. And whenever said board of directors shall have, by resolution, ordered the assessment of a tax, the secretary of the board, under his official seal, shall cause a certified copy of said order to be transmitted to the clerk of the county court in which said levee district shall be situated, and in case such levee district shall be situated in two or more counties, then to the clerk of the county court of each county in which any portion of said district may be situated; and the said tax shall be extended on the tax books of the county on the real estate to be benefitted, situated in said levee district, in the same manner that other taxes are now extended in a column under the head of 'Levee fund tax,' and shall be collected by the collector of the county in which the real estate is sit-

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uated on which the tax is levied, at the same time the state and county taxes are collected, and when said tax shall be collected, the collector shall pay the same over to the treasurer of the county in which the greater portion of said levee district lies. All taxes assessed and levied under the provisions of sections 245.285 to 245.545, shall be collected in the same manner as provided by the general revenue law of the state for the collection of state and county revenue. All taxes not collected shall be returned delinquent at the same time and in the same manner as provided by the general revenue laws for the return of delinquent tax lists, and all writs for delinquent taxes assessed and levied, as aforesaid, shall be prosecuted in the name of the state of Missouri, at the same time, in the same manner and with like effect as writs are prosecuted under the general revenue laws of the state relating to the collection of delinquent and back taxes."

"245.450. After the formation of any levee district under the provisions of sections 245.285 to 245.545, the county court of the county in which such district lies, or when it lies in two or more counties, the county court of each county in said district, shall cause the county assessor of their respective counties composing said levee district, at the first annual assessment to be made under the general revenue laws of the state, to assess the value of all lands in said levee district subject to overflow or inundation or endangered or liable to be endangered by bank erosion or wash from rivers, and to be benefited by said work, having reference to the value of said lands without the work contemplated by sections 245.285 to 245.545, and shall assess the value thereof as improved by said work, in an assessment book to be provided for that purpose."

You will note these sections provide for an assessment of a tax on all the lands within the levee district to be benefited. The Supreme Court in State v. Three States Lumber Co., 198 Mo. 430, 95 S.W. 333, 335, has the following to say about this assessment:

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"A further contention is that it was the duty of the assessors to assess the value of all, not part, of the lands in the levee district subject to overflow, etc., which they failed to do, and assessed only such lands as they thought would be benefited. It would have served no useful purpose to assess the value of lands in the district which would not be benefited and could not be taxed for levee purposes, nor does the statute contemplate any such thing; so that it makes no difference that several thousand acres of land, not benefited by the levee although in the levee district, were not assessed.

"Section 8437, Revised Statutes 1899, says that the taxes shall be extended on the tax book of the county on the real estate to be benefited, situated in said levee district, clearly implying that there may be lands in the district not assessed because not benefited. * * *."

From the foregoing, it follows that if lands within the levee district are under water and are not benefited by the levee, they should not be assessed for purposes of paying a tax to the levee district.

CONCLUSION

It is, therefore, the opinion of this office that the county court does not have the authority to remove or exclude land that is within a drainage district; and that the county court and the board of directors of a levee district do not have the authority to remove or exclude land that is within a levee district.

It is further our opinion that if land within a levee district is receiving no benefit from the levee, it should not be assessed for purposes of paying a tax to the levee district.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, George E. Schaaf.

Yours very truly,

John M. Dalton
Attorney General