

DRAINAGE DISTRICT : There is no provision by statute for
BY THE COUNTY COURT: the dissolution of a drainage district
organized by the county court under
Article 2, Chapter 64 R. S. Mo. 1929,
and it may not be dissolved except by
statute.

April 12, 1940



Honorable Charles S. Greenwood
Prosecuting Attorney
Livingston County
Chillicothe, Missouri

Dear Mr. Greenwood:

We desire to acknowledge your request for an opinion on March 26, 1940 wherein you state that the drainage district was incorporated by the county court and is now under Article 2, Chapter 64 R. S. Mo. 1929, said request being as follows:

"In 1909 a petition was filed in the County Court of this County for the incorporation of a drainage district under what is now Article 2, Chapter 64, R. S. 1929. Such proceedings were had as that in 1910 the district was incorporated, bonds issued to pay for the construction of the ditch, the ditch was constructed, assessments of benefits and damages made as required by law.

"The bonds have been entirely paid, and the district is not functioning, the drainage ditch having been completed, and nothing has appeared in the County Court to require any action with respect to the district for about ten years.

"After the district ceased to function the County Court, out of the public funds of the County, built at least one bridge across the drainage ditch, which bridge it subsequently maintained until the passage of an act several years after the bridge was built apparently prohibiting

the County Court from spending public funds on bridges located across drainage ditch.

"I think everybody connected with the matter feels that the district ought to be disincorporated. The land owners are insistent that an order be made by the County Court disincorporating the district, and I want to advise the County Court with respect to the matter, but I am not entirely clear as to their powers in the matter, and I would be gratified to have you advise me your views with respect to the situation."

Drainage districts organized by a county court under the provision of Article 2, Chapter 64, supra are organized "when it shall be conducive to the public health, convenience or public welfare, or when it will be a public utility or benefit".

This chapter was amended in part by house bill #590, Laws of Mo. 1939 at page 365, section 10843 thereof being as follows:

"It shall be the duty of the several County Courts of this state to maintain the efficiency of the drainage districts now or hereafter organized and existing under and by virtue of the provisions of this article and such courts are vested with the continuous management and control of said districts with the duty and power of maintaining, preserving, restoring, repairing, strengthening and replacing the drains, ditches and levees thereof. For the purpose of maintaining said ditches, drains and levees, all of the drainage districts in a county on a petition filed by a majority of the land owners owning the majority of the acres of land in each district of such county, may be treated and administered as a unit for such purpose in conformity with all the provisions of Section 10842 to 10847 inclusive."

The above bill further provided for a maintenance tax in order that the purposes of the organization of the district might be carried out. In 19 C. J. 624 we find the following language:

"The legislature may, with due regard to vested rights, abolish drainage districts. Morgan Engineering Co. v. Cache River Drain. Dist., 115 Ark. 437, 172 S. W. 1020; Peo. v. Sacramento Drain. Dist., 155 Cal. 373, 103 P 207; Peo. v. Reclamation Dist. No. 551, 117 Cal. 114, 48 P 1016; Bissell v. Edwards River Drain. Dist. 259 Ill. 594, 102 NE 990."

In the case of State ex rel vs. Mo. State Life Insurance Co., 228 Mo. App. p. 46 the court says:

" ** The law provides no method for the dissolution of drainage districts organized under the county court law. No such power is vested in the county court. The sole power to dissolve such a district once formed would seem to lie with the Legislature. (19 C. J. 624.) * * * * The Legislature, by failing to provide a method of dissolution, as it did so provide under the chapter relating to Circuit Court Levy Districts (see Sec. 10957, R. S. 1929), must have intended to leave the corporation in existence for the purpose of permitting it to continue as a corporate body and liquidate its outstanding obligations. Such a district has no governing head or supervisors, but all the authority in connection therewith is vested in the county court. In order to pay the outstanding obligations of the district proper action on the part of the county court was therefore necessary. This action the county court took by its order made in August, 1930. The matter of assessing the amount necessary to pay the expense of organizing the district had never before been adjudicated and we think the county court had authority to make such an order under the statutes, notwithstanding the fact that the order was made three years after the incorporation of the district and after its order of March, 1930, dismissing the proceedings."

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In the case of Hambleton v. Town of Dexter, 89 Mo. 188, 192, the court stated:

" * * * * These towns, when they are once incorporated, can only become disincorporated by resorting to the proceeding pointed out by the statute. 2 S. W., 1319 and 1320.
* * *"

CONCLUSION

Therefore, in view of the fact that the above drainage district, a municipal corporation, was organized for the health, convenience, public welfare and as a public utility or benefit and the legislature vested the county court with the continuous management and control of said district and with the duty and power of maintaining, preserving, restoring, preparing, strengthening and replacing drains, ditches and levees thereof and provided no plan for dissolution of said drainage district, it seems that the legislature clearly had no intention that such district should be dissolved even though the bonds had been paid in full which were issued for construction of said improvement.

Respectfully submitted,

S. V. MEDLING
Assistant Attorney-General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney-General