

COUNTIES:
LEVEE DISTRICTS:
DRAINAGE DISTRICTS:
ROADS:

ms
County liable for benefits to public
roads in drainage or levee districts.

OPINION NO. 59

January 21, 1969



Honorable Max B. Benne
Prosecuting Attorney
Holt County
Court House
Oregon, Missouri 64473

Dear Mr. Benne:

This is in response to your opinion request as follows:

"I have been requested by the County Court of Holt County as to whether or not they would be liable to pay to a levee district and to a drainage district both of which were organized by the Circuit Court of Holt County, for benefits assessed against the County for the county roads. There seems to be little if any question as to the fact that the county does receive considerable benefits from the levees and the ditches which have been established by these districts.

"Under Article 10, Section 6, of the Missouri Constitution, and the annotations therein cited in Volume Two, V. A. M. S. 492--494 it would appear that the Legislature could require the county to pay benefits but I am unable to find any Statute by which these are directed or authorized to do so."

Holt County has county organization as distinguished from counties with township organization. The question presented deals with a levee district and a drainage district organized by the Circuit Court. Chapter 242, RSMo, governs the organization of drainage districts organized by the Circuit Court, and Chapter 245, RSMo, governs levee districts organized by the Circuit Court.

In regard to drainage districts, Section 242.260, RSMo, provides that after commissioners have been appointed by the Circuit

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Court to assess benefits and damages that will result in constructing drainage districts that said commission,

" 'shall assess the amount of benefits, and the amount of damages if any, that will accrue to * * * public highways, railroad and other rights of way, railroad roadways and other property from carrying out and putting into effect "the plan for reclamation" heretofore adopted. * * * The public highways, railroad and other rights of way, roadways, railroad and other property shall be assessed according to the increased physical efficiency and decreased maintenance cost of roadways by reason of the protection to be derived from the proposed words and improvements.' (Italics ours.)"

In Platte River Drainage Dist. No. 1 v. Andrew County, 278 S.W. 387, the Supreme Court of Missouri held that in drainage districts organized by the Circuit Court in the county having county organization, the benefits assessed to public roads in a drainage district is a liability of the county and payable out of its general revenue.

This statute was last considered by the court in Fort Osage Drainage District v. Jackson County, 275 S.W.2d 326, Fort Osage Drainage District sued Jackson County for benefits assessed by the drainage district for the maintenance tax levied for benefits to the public roads within the district. In discussing this question, the court stated, l.c. 329:

"[6] Plaintiff District had the statutory power to levy the tax in question through District's board of supervisors. Section 242.490 RSMo 1949, V.A.M.S. Actions may be brought, on delinquent district tax bills within six months after delinquency, by a district in its corporate name and a judgment rendered for the delinquent taxes and penalty, including costs, and a reasonable attorney's fee to be fixed by the court. Section 242.600 RSMo 1949, V.A.M.S. Section 242.590 RSMo 1949, V.A.M.S., and Section 242.600, supra, provide that upon certification filed in the office of the recorder of deeds, the drainage tax shall constitute a lien. Although such a lien is unenforceable as against public highways, yet a drainage district may resort to an appropriate common-law remedy to recover the tax, penalty, and costs including an attorney's fee, usually an action seeking a general judgment, against the political or governmental subdivision of

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the State chargeable with the maintenance of the public roads and highways--in the instant case, defendant County. Platte River Drainage Dist. No. 1 of Buchanan County v. Andrew County, Mo.Sup., 278 S.W. 387; Harrison and Mercer County Drainage Dist. v. Trail Creek Tp., 317 Mo. 933, 297 S.W. 1. See also Drainage Dist. No. 1 of Bates County v. Bates County, 269 Mo. 78, 189 S.W. 1176; Id., Mo., 216 S.W. 949, treating with the County Court Drainage Law, now Section 243.010 et seq. RSMo 1949, V.A.M.S."

It is the opinion of this department that Holt County is liable for benefits to public roads within a drainage district that are properly assessed resulting from the construction or maintenance of a drainage district organized under Chapter 242, RSMo.

In regard to levee districts organized by the Circuit Court in counties having county organization, Section 245.120, RSMo, provides in part that the commissioners appointed by the Circuit Court shall assess benefits and damages resulting from the construction of a levee and,

"1. * * * they shall assess the amount of benefits, and the amount of damages, if any, that will accrue to each governmental lot, forty acre tract or other subdivision of land according to ownership, railroad and other right of ways, railroad roadways and other property from carrying out and putting into effect the plan for reclamation heretofore adopted. The commissioners in assessing the benefits to lands, public highways, railroad and other right of ways, railroad roadways and other property not traversed by such works and improvements as provided for in the plan for reclamation, shall not consider what benefits will be derived by such property after other levees, ditches, improvements or other plans for reclamation shall have been constructed, but they shall assess only such benefits as will be derived from the construction of the works and improvements set out in the plan for reclamation, or as the same may afford protection from overflow of such property. * * *"

The provisions of this statute are substantially the same as Section 242.260, supra, regarding drainage districts and should receive the same interpretation.

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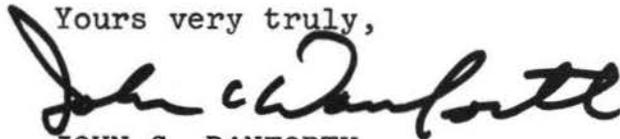
It is the opinion of this department that Holt County is liable for benefits assessed by a levee district organized by the Circuit Court against public roads situate within the district resulting from the construction of levees by a levee district.

CONCLUSION

It is the opinion of this department that a county not under township organization is liable for benefits assessed against county public roads in a levee district or drainage district organized by the Circuit Court.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Moody Mansur.

Yours very truly,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large initial "J".

JOHN C. DANFORTH
Attorney General