

SOIL AND WATER:
CONSERVATION:
DISTRICTS:
WATERSHED PROTECTION
AND FLOOD PREVENTION
SUBDISTRICTS:
DISESTABLISHMENT:

Section 278.290, RSMo Supp. 1967, which requires a waiting period of more than five years for disestablishment of Watershed Protection and Flood Prevention Subdistricts has no application to the disestablishment of Soil and Water Conservation Districts; disestablishment of such districts is governed solely by Section 278.150, RSMo Supp. 1967, which permits disestablishment at any time.

OPINION NO. 281

July 3, 1969

Honorable Winston V. Buford
Prosecuting Attorney
Shannon County
Eminence, Missouri 65466



Dear Mr. Buford:

This opinion is in response to your letter of recent date in which you request an official opinion from this office which request reads in part as follows:

"Section 278.150 clearly says that at any time twenty-five land representatives from each township may seek to disestablish a district. Section 278.290 seemingly is in contradiction in that there is a five year period imposed before disestablishment is allowed.

* * * * *

"I would like to have your opinion as to whether or not under Section 278.150 permits an attempt at disestablishment for a district formed under section 278 in the year 1966."

Section 278.060, RSMo Supp. 1967, provides:

Sections 278.060 to 278.155 may be known and cited as "The Soil and Water Conservation Districts Law."

The legislative purpose for encouraging the voluntary establishment of Soil and Water Conservation Districts in counties and townships of the State is "the saving of Missouri soil and water." Section 278.080, RSMo Supp. 1967. The Legislature in Subsection 1 of Section 278.150, RSMo Supp. 1967, provided a means for the disestablishment of the voluntarily established soil and water conservation districts.

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Such subsection provides as follows:

"1. The state soil and water districts commission upon receiving at anytime a petition for the disestablishment of any soil and water district, said petition being signed by not less than twenty-five land representatives in each township within the area covered by the petition, shall presently call for and conduct within that district a referendum upon the disestablishment of that district; and if a majority of the land representatives voting in this referendum do vote in favor of the disestablishment, the soil and water commission shall declare that district may not thereafter enter into any contracts or agreements on behalf of that district." (emphasis supplied).

Pursuant to Sections 278.160 through 278.300, RSMo Supp. 1967, the legislature provided for the establishment of Soil and Water conservation subdistricts.

The legislative purposes for permitting the establishment of subdistricts are set forth in Section 278.160

Such section provides as follows:

"Subdistricts of a soil and water conservation district may be formed as hereinafter provided for the purpose of carrying out watershed protection and flood prevention programs "for the prevention of floodwater and sediment damage and for furthering the conservation, development, utilization and disposal of water, and for increasing recreation, the supply of water, industrial development and agricultural water management, including fish and wildlife and recreational development."

Until 1967 the Legislature provided no procedure for the disestablishment of a subdistrict. In 1963 this office was asked to give an opinion whether the disestablishment provisions of Section 278.150, RSMo 1959, applied to subdistricts. This office held that it did not because of the differences in purpose and operation of the districts and subdistricts. Missouri Attorney General Opinion No. 72, April 3, 1963, Esely. With this ruling it became clear that while soil and water conservation districts might be disestablished, there was no statutory means available for disestablishing Watershed Protection and Flood Prevention Subdistricts.

At its 1967 session the Legislature enacted Section 278.290, RSMo Supp. 1967, which provides in part as follows:

"1. After a subdistrict has been organized for more than five years and said subdistrict does not have any outstanding bonds, has not

constructed or contracted to construct any works of improvement, nor incurred any continuing obligations for maintenance and operation of any works of improvement or if any works of improvement have been constructed, if there are no bonds outstanding and an agency of United States government or the State of Missouri or a county or municipal corporation of this state has made arrangements satisfactory to the Secretary of Agriculture and the state soil and water districts commission to assume responsibility for operating and maintaining such improvement not less than fifty per cent of the land representatives of the subdistrict may petition the governing body of the subdistrict to call for and conduct a referendum upon the disestablishment of the subdistrict. If sixty-five per cent of the land representatives voting in referendum do vote in favor of the disestablishment of the subdistrict, the governing body shall declare the subdistrict to be disestablished; however, prior to any such declaration the governing body shall pay or make arrangements to pay outstanding indebtedness. The provisions of sections 278.190, 278.200 and 278.210 as to notice qualification of voters and manner of holding the referendum in organizing a subdistrict to the extent practicable shall apply to the referendum held under this section.

2. Following the entry in the official minutes of the board or boards of soil and water conservation district supervisors of the disestablishment of the subdistrict, the soil and water conservation district supervisors shall certify this fact on a separate form, authentic copies of which shall be recorded with the recorder of deeds of each county in which any portion of the subdistrict lies, and with the state soil and water districts commission.* * *"

It can be readily seen from their respective language that Section 278.150 is limited in its operation, as this office has previously ruled, to the disestablishment of Soil and Water Conservation Districts and that Section 278.290 is limited in its operation to the disestablishment of Watershed Protection and Flood Prevention subdistricts. This conclusion is bolstered by the fact that the Legislature added Section 278.290 subsequent to the ruling of this office that there was no procedure available for the disestablishment of subdistricts.

The question answered by this office in 1963, supra p. 2, is essentially the converse of that posed by the present request for opinion, i.e., whether a statute designed to provide a procedure for the disestablishment of subdistricts has application to the disestablishment of districts. Because, as our 1963 opinion noted, districts and subdistricts differ from each other in purpose and

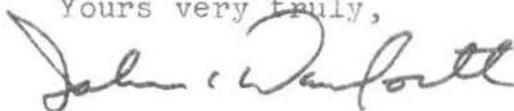
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operation and are not, therefore, interchangeable when disestablishment is considered and because of the clear limiting language of Section 278.290, this office holds that Section 278.290 does not in any way apply to the disestablishment of Soil and Water Conservation Districts and that pursuant to Section 278.150, proper land representatives may immediately attempt to have a Soil and Water Conservation District formed in 1966 disestablished.

CONCLUSION

Section 278.290, RSMo Supp. 1967, which requires a waiting period of more than five years for the disestablishment of a Watershed Protection and Flood Prevention Subdistrict has no application to the disestablishment of a Soil and Water Conservation District. Such district is governed solely by Section 278.150, RSMo Supp. 1967, which permits an immediate attempt to disestablish a district formed in 1966.

Yours very truly,



JOHN C. DANFORTH
Attorney General