

DRAINAGE DISTRICTS:

Drainage Districts organized by the county court may construct new ditches.

OPINION NO. 116

February 16, 1970

Honorable W. D. Hibler, Jr.  
State Representative  
93rd District  
Rural Route  
Brunswick, Missouri 65236



Dear Representative Hibler:

This is in response to your letter of January 15, 1970, requesting an opinion from this office as follows:

"I would like to request an official opinion on Section 243.220, Missouri Revised Statutes 1959, relating to Drainage Districts Organized by County Courts, titled, Repairs and Improvements, how made--hearing when cost exceeds maintenance fund--form of notice.

"A particular drainage district in my area wishes to dig a new ditch about three-quarters of a mile long to improve the drainage and removal of excess water from their land. The cost would not be excessive but would be more than the maintenance fund could handle. practically all of the people within the drainage district or in favor of the improvement.

"To clarify my question, what I would like to know is whether new improve-

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ments may be constructed in a drainage district under the provisions of Section 243.220 or is the improvements restricted to work on ditches are other improvements already constructed."

The law governing drainage districts, organized by county courts, is found in Chapter 243 RSMo 1959. Drainage districts organized by the county court are under the control and supervision of the county court.

Section 243.220, RSMo 1959, to which you refer provides:

"1. When any ditches or other improvements constructed under this chapter need to be enlarged, cleaned out, obstructions removed therefrom or new work done, five or more of the owners of land originally assessed for the construction of any such ditches, or other improvements, may file a statement in writing with the county clerk setting forth such necessity."

This section further provides that when such petition is filed, the county court shall direct an engineer to view the premises and make a report as to the repairs and improvements necessary and the probable cost of the same. It further provides that if the court finds the improvements shall be made, it shall direct an engineer to make such repairs and improvements and make an itemized report to the court of the expenses incurred all of which shall be paid out of the maintenance fund. It further provides that if the repairs and improvements cannot be made out of the maintenance fund, the court shall set a hearing for levying an additional tax for such improvements as cannot be made out of the maintenance fund and notify the property owners in the district of the meeting by publication in a newspaper.

Section 243.230 provides the procedure to be followed by the county court if the court finds at the hearing that the owners of a majority of the acreage in the district are in favor of making the improvements. It provides that if the court determines that the estimated cost of the improvement exceeds the amount of the maintenance funds, that the court shall make an assessment against the property in the district for the additional cost and direct that it be paid and collected as other drainage taxes.

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In State ex rel Ross v. General American Life Insurance Co. 85 S.W.2d 68, the constitutionality of these statutes was sustained. In this case, the court held the statutes authorizing additional assessments for the cleaning of drainage districts and construction of new outlets was constitutional. These statutes have not been materially amended in this respect since this decision was rendered.

It is clear that under these statutes a drainage district may construct new ditches and use maintenance funds for such purpose, and, if such funds are not sufficient, to levy an additional assessment against the property in the district to defray the additional expenses.

#### CONCLUSION

It is the opinion of this office that in drainage districts organized by the county court, under Chapter 243 RSMo 1959, new ditches may be constructed and maintenance funds used for such purpose, and if the maintenance funds are not sufficient, an additional assessment may be made to defray the additional expenses.

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

Yours very truly,



JOHN C. DANFORTH  
Attorney General