

April 1, 1971

Opinion Letter No. 232

Answered by letter-Klaffenbach

Honorable Truman E. Wilson
Missouri Senator, District 24
Capitol Building - Room 321
Jefferson City, Missouri 65101



Dear Senator Wilson:

This letter is in response to an opinion request concerning numerous questions posed by one of your constituents with respect to levee districts organized by circuit court order under Sections 245.010 to 245.280, RSMo 1969.

The first question asks whether a member of the Board of Supervisors is required to own one acre of land. Section 245.060, RSMo 1969, requires that such supervisors be owners of real estate in said district but there is no requirement that such ownership be of one acre or more of land. The same section with respect to the election of supervisors provides that "each owner shall be entitled to one vote in person or by proxy for every acre of land or mile of right-of-way owned by him in such district". However, this latter provision pertains only to such voting rights and since there is no such express requirement with respect to the qualifications of supervisors we do not believe that such can be implied.

The second question posed concerns proxies and asks for a ruling on several varied situations involving the use of proxies. The statutes in question contain no express provisions answering such questions and therefore the answers would be found in the general case law with respect to proxies. In our view however, such answers should be supplied by counsel involved in the day to day operation of the district and not by an opinion or ruling of this office. The same is true with respect to the question that follows concerning expenditure and bookkeeping procedures allegedly followed in a particular situation presented by your informant. That is, and we reiterate, these questions are basically local in nature and present day to day local issues and should be resolved on a local level.

Honorable Truman E. Wilson

Another question appears to ask whether it is proper for minutes to be kept in a loose leaf notebook. Section 245.165, RSMo 1969, requires the Board to keep a record of proceedings in "a well-bound book". While it may have been the legislative intent that pages of such a book could not be removed, we view the intent of the legislature in enacting this requirement only as a command that the records be held encased within a cover sufficient to preserve and protect the contents. That is, in our view, the records must be covered and held together although not necessarily permanently attached to such binding.

We also note in this respect that the Supreme Court of Alabama in Holcombe v. State ex rel Chandler, 200 So. 739, 748, held that a "loose-leaf" book kept by a sheriff was in substantial compliance with a statute which required the sheriff to keep a "well-bound book". The Supreme Court of Mississippi in Richardson v. Woolard, 97 So. 808, 809, reached a similar conclusion.

The question with respect to the surety bond requirements of Section 245.240, RSMo 1969, involves a question of fact and not of law. We cannot determine questions of fact in a legal opinion.

The last question presented, among other things, attacks the action of a circuit court in a matter before the court. Clearly such questions are not the proper subject of an opinion of this office under Section 27.040, RSMo 1969.

Very truly yours,

JOHN C. DANFORTH
Attorney General