

WATER DISTRICTS:
ADDING TERRITORY TO THE
DISTRICT:

June 1, 1939

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Mr. John W. Hoffman, Jr.
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Dear Mr. Hoffman:

This is in reply to yours of recent date wherein you request an opinion from this department based on the following statement:

"Under section 4 of the Article pertaining to Public Water Supply Districts, as enacted and set forth in the Session Acts of Missouri, 1935, at page 327, there is a provision, being the last paragraph of said section 4 which reads as follows:

" * * Provided, further, should any owner of real estate that abuts upon a district once formed desire to have such real estate incorporated in the district, he shall first petition the Board of Directors thereof for its approval."

"Under this proviso, any individual owner of real estate who actually abuts the property may petition the board of directors for incorporation of his property into the district. The problem which has arisen is whether or not a group of persons

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who are the owners of various parcels of land, all of which adjoin the district when described together, but some of which does not actually abut the district, can consolidate their property by unanimously petitioning the board of directors to have their property incorporated into the district."

The act authorizing the formation of water districts is new in this state having been enacted in 1935 and there seems at this time to be only one case in which the court passed on the provisions of this act. However, that opinion does not cover the question which you have submitted. This act or any other act insofar as it imposes a tax or an obligation upon property should have a strict construction.

From a reading of Section 4 of the act it seems that property can be brought into the district in three ways, first, by the original proceedings; second, by petition and third, by an election. In the second case you will note on page 330 of Laws of Missouri a case in which the boundaries of the district may be extended or enlarged by petitioning the board which petition shall be filed by five or more owners of real estate in the territory proposed to be annexed and then the same proceedings for annexation are carried out which are provided for in the organization of this district. In this class of additions to the district both those who are willing and those who are unwilling may be added to the district providing a necessary vote is cast. Then the last provision which covers your question is where the owner of real estate which abuts on the district desires to be incorporated in the district. This is a case in which the owner voluntarily asks that his land or property be placed in the district. Since the owner is the person who is primarily interested, then we do not see that this part of the act should be so strictly construed.

The provisions of the act provide for a board of directors to represent the district. Under the provision to which you have referred in your request

the owner of the real estate petitions this board of directors for their approval for the incorporation of his lands in the water district. This board represents all of the land owners in the district and it seems that the purpose of providing that the board approve the addition of lands to the district, then there would be nobody who could complain provided the owner also agreed.

It appears from your suggestions that there are a number of parties who own lands near the district, but all of their lands do not abut the boundaries of the district, however, they are all willing to join together and make one application to be admitted to the district. There is no doubt that the parties whose real estate abuts the district could be incorporated in the district providing the board approves their petition. It would seem to be a useless thing to require these parties to make different applications for the admission of their property to the district when one application and proceeding would be sufficient.

We find a rule in 59 C. J., page 961 at paragraph 571, which is somewhat applicable to the question here. It is as follows:

"In construing a statute to give effect to the intent or purpose of the legislature, the object of the statute must be kept in mind, and such construction placed upon it as will, if apossible, effect its purpose, and render it valid, even though it be somewhat indefinite. To this end it should be given a reasonable or liberal construction; and if susceptible of more than one construction, it must be given that which will best effect its purpose rather than one which would defeat it, even though such construction is not within the strict literal

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interpretation of the statute, and even though both are equally reasonable. * * * * *

Following this line of construction and applying it to the statute under consideration, we think the purpose of the lawmakers was in providing that an owner of real estate that abuts upon the district may have such real estate incorporated was to provide for those who voluntarily wish to be admitted into the district and that the main purpose of this part of the act was to take care of all who were willing to come into the district without being voted in.

As you suggest in your letter these real estate owners propose to consolidate their land together and make the application through one party as a trustee or some agent for them.

We do not think that the lawmakers ever intended for an unnecessary thing to be done and it would be unnecessary in this case for different applications for admission to the district to be made where one application would suffice.

CONCLUSION.

From the foregoing it is the opinion of this department that where a group of owners of land consolidate their land and describe the same as one individual tract and that the tract when so described abuts upon a water district that the same may be incorporated into the district in accordance with the provisions of the act.

Respectfully submitted

APPROVED:

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