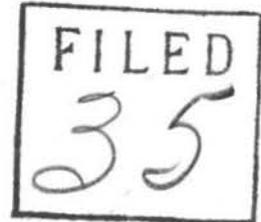


DRAINAGE DISTRICTS: ) Not responsible for upkeep of their bridges  
ROADS AND BRIDGES: ) after expiration of charter; authorities  
whose duty it is to maintain road on which  
bridge is constructed by drainage district  
may repair and maintain such bridge.

December 20, 1943

12/21



Honorable Charles S. Greenwood  
Prosecuting Attorney  
Livingston County  
Chillicothe, Missouri

Dear Mr. Greenwood:

The Attorney-General wishes to acknowledge receipt of your letter of December 17th in which you request an opinion of this Department. Your opinion request, omitting caption and signature, is as follows:

"Our County Court here has requested me to get an opinion from you on the following proposition.

"On the 14th day of April, 1917, in the Circuit Court of Livingston County, Missouri, the following order was made incorporating the Cream Ridge Drainage District. 'Wherefore, it is ordered, adjudged and decreed that the foregoing described lands and other property in said proposed drainage district be, and the same is hereby organized, formed and incorporated into and is hereby declared a Drainage District under the provisions of the Statutes of the State of Missouri, enacted by the 47th General Assembly, approved March 24, 1913, and found on pages 232 to 267, both pages included, of the laws of Missouri, 1913; and the name of the said corporation shall be the Cream Ridge Drainage District, and the said corporation shall continue for a period of twenty-five years.'

"This district has not functioned for sometime and at the expiration of the twenty-five years from the date of incorporation its indebtedness

shows all paid and its bridges in good shape. Since the date of expiration a bridge has washed out and the question in the mind of the Court is whether or not the County is now responsible for replacing or repairing this bridge. The district takes the position that the corporation has expired by limitation of time though no action was ever taken to terminate or wind up the affairs of the district.

"May I have your answer at your earliest convenience as to who is responsible in this matter."

Section 12324, R. S. Mo. 1939, provides the manner in which drainage districts organized under the circuit courts in this State are to be formed. This section of the statute, and sections following, are the laws under which the drainage district in question was formed twenty-five years ago. Section 12324, aforesaid, is a lengthy section and there is only part of it which is relevant to the question; consequently, we will only cite that part, as follows:

"The owners of a majority of the acreage in any contiguous body of swamp, wet or overflowed lands, or lands subject to overflow, situate in one or more counties in this state, may form a drainage district for the purpose of having such lands and other property reclaimed and protected from the effects of water, for sanitary or agricultural purposes, or when the same may be conducive to the public health, convenience or welfare, or of public utility or benefit, by drainage or otherwise, and for that purpose they may make and sign articles of association, in which shall be stated: The name of the district, and the number of years the same is to continue; \* \* \* \* \*"  
(Underscoring ours.)

It will be noted that in the formation of the Cream Ridge Drainage District that the order set out in your request and made

by the Circuit Court, provides as to the name of such corporation and that it should exist for a certain specified period of time, to-wit, twenty-five years.

We next wish to cite you to Section 12326, R. S. Mo. 1939, which is another lengthy provision, and we again will only cite that part which is pertinent to this issue. This part provides as follows:

"\* \* \*, the circuit court shall by its order, duly entered of record, duly declare and decree said drainage district a public corporation of this state, for a term not exceeding the time mentioned in said articles of association signed and filed. \* \* \* \* \*

In view of the order of the Circuit Court and the statutes which we have cited, we must reach the conclusion that the Cream Ridge Drainage District was organized for a period of twenty-five years, as stated in the order of the court. For the Circuit Court to incorporate this drainage district for a period in excess of the length of time requested by the parties asking its incorporation, would be to violate Section 12326, supra, since under that section of the statute the court shall not incorporate for a period longer than requested. Therefore, we reach the conclusion that, since this drainage district was organized and incorporated on the 14th day of April, 1917, and since the period of time for which it was incorporated was set by the court at twenty-five years, the original charter and permit of this drainage district under the Circuit Court expired on the 14th day of April, 1942. We will assume, for the purpose of this opinion, that there has been no effort made to extend the period of incorporation of this drainage district and that no order granting such extension has been made.

We next wish to cite you to 14A C. J., page 1099, Section 3689, entitled "Limitation of Term." This reads as follows:

"After the period of existence of a corporation has expired by force of express provision in its charter, or in a general law, and in the absence of any statutory provision authorizing its extension or continuance, it becomes ipso facto dissolved, and no longer has any existence at all, either de jure or de facto, for

there is no law under which it can longer exist."

Along this line we would also like to cite you to the case of Meramec Spring Park Co. v. Gibson, 188 S. W. 179, 1. c. 181 (Mo. Sup.), wherein the court made the following statement:

"Did it so far expire by statutory limitation as that it could not be sued as a corporation 22 years after its attempted organization? We think that this question must be likewise answered in the affirmative. It has been held in this state under our statute (section 19, G. S. 1865) that after the expiration by statutory limitation of a corporation's life, its property goes to its directors as trustees for the stockholders, and does not, as at common law, revert to the grantor (Bradley v. Reppell, 133 Mo. loc. cit. 552, 32 S. W. 645, 34 S. W. 841, 54 Am. St. Rep. 685; Richards v. Coal Co., 221 Mo. loc. cit. 158, 119 S. W. 953). From this alone it follows on principle that the defunct corporation could not be sued after its dissolution and death by the expiration of its charter; in such wise, at least as to foreclose a lien against lands it no longer owned, but which by operation of law had passed to its late directors as trustees for its shareholders. For the corporate entity is dead ipso facto (10 Cyc. 1271) when its statutory years are accomplished and its holdings of whatever sort, by force of the statute, pass to others (section 19, p. 329, G. S. 1865; Bradley v. Reppell, 133 Mo. loc. cit. 552, 32 S. W. 645, 34 S. W. 841, 54 Am. St. Rep. 685; McCoy v. Farmer, 65 Mo. 244)."

We, therefore, must conclude that the Cream Ridge Drainage District existed for the period of time specified by the Circuit Court in which it was organized, and under the decisions cited above we further necessarily must conclude that this drainage district is no longer in existence. It is true that there are certain ways in which a corporation of this type may be dissolved.

We find under Section 12361, R. S. Mo. 1939, that at any time during the corporate life of such drainage district, when all outstanding bonds shall have been paid and when all other indebtedness of said district shall have been paid or when there is sufficient money on hands to pay any and all outstanding indebtedness, and when there is sufficient money on hands to pay the costs of dissolution of said corporation as therein-after provided, the board of supervisors may, and on a petition of one-tenth of the land owners, shall, call a meeting of the land owners in such district for the purpose of determining whether or not said district shall be dissolved and its corporate life terminated. However, it will readily be seen that this section is for the purpose of dissolving a corporation of this kind during the time that its corporate charter is in effect, and not, as in the instant case, when the charter has expired due to the fact that the time for its existence has elapsed.

We also note from your request that at the time of the expiration of the twenty-five years, the Cream Ridge Drainage District had paid all of its indebtedness and the bridges constructed by it were at that time in good condition. The question now arises as to who is to repair the bridges constructed by the Cream Ridge Drainage District. For answer to this problem we wish to cite you to Section 12354, R. S. Mo. 1939, and, as in the former provisions we cited you, this section is long, so we will cite only the part which we feel will have any bearing upon the question in hand. In speaking of new bridges and enlargements, we find the following provision:

"\* \* \*, and after such bridge has been constructed it shall become a part of the road over which it is constructed and shall be maintained by the authority authorized by law to maintain the road of which it becomes a part. If said bridge has been constructed by the drainage district and has become a part of said road and is then destroyed the authorities having control of the road are authorized, if they desire, to reconstruct such bridge: \* \*"

In other words, if the Cream Ridge Drainage District constructed bridges on certain roads and across certain ditches, under this section these bridges become part of the road, and if the authorities, or the County Court in this case, wanted to repair these bridges they are authorized under this section of the statute to do so. This Department feels that the only way that the bridge

in question can be repaired, is by the action of the County Court, as this is a county road. The Cream Ridge Drainage District is out of existence and certainly they cannot be any longer charged with the duty of repairing bridges which by statute have become a part of the county road system.

Conclusion

Therefore, it is the opinion of this Department that in view of the fact that the Cream Ridge Drainage District is out of existence due to the expiration of its charter, and that at the time of its termination its indebtedness was paid and its bridges were in good repair, and further in view of the fact that by statute bridges constructed by such drainage district become a part of the road on which they were constructed, that the Cream Ridge Drainage District is no longer responsible for the upkeep and maintenance of bridges constructed by it. It is further the conclusion of this Department, that if the bridge in question has been constructed on a county road, it has become a part of such road and the authorities charged with the duty of maintaining such road may repair such bridge.

Respectfully submitted,

JOHN S. PHILLIPS  
Assistant Attorney-General

APPROVED:

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ROY MCKITTRICK  
Attorney-General

JSP:EG