

DRAINAGE DISTRICTS: Substantial changes in plan for reclamation must be effected by the procedures set out in Section 242.310, RSMo 1959.

OPINION NO. 251

August 29, 1963



Honorable David Rolwing  
State Representative  
Mississippi County  
Charleston, Missouri

Dear Mr. Rolwing:

This is in response to your request for an opinion of this office which request reads as follows:

"The board of supervisors of the Big Lake Drainage District in Mississippi County has considered revising part of the district's present drainage system in a manner which will be described below. I am requesting your opinion as to whether this may be done under existing laws and, if so, whether the board could do it without resort to the rather cumbersome procedure set out in Section 242.310, RSMo 1959.

"The district presently maintains a ditch through what is known as the Big Lake Basin, a marshy area of little or no agricultural value, which acts as a natural reservoir during extended periods of precipitation. The present ditch system in the basin is so located that it fills up with silt and debris.

"The proposed revision would provide for the abandonment of the ditches presently in the basin and the construction of a diversion ditch with a spoil bank on the south side to impound water in the basin.

The revised system would improve drainage throughout the district and be considerably more economical to maintain. Moreover, a portion of the basin would then become a lake which could be used for fishing while other areas of the basin would be drained so that they could be used for farming.

"It might be noted that the original plan of reclamation included the proposal that the basin would be drained. However, after five or six years it was found that this was impossible. The revised system would permit part of this original plan to be fulfilled. The only adverse effect of the existence of the lake would be that the capacity of the area which it would cover would henceforward not be able to hold as much water as it does now during rainy periods. The runoff would then be somewhat increased with regard to the landowners in the lower portions of the district.

"In summary, the questions I wish to put to you are these:

"1. Does the district have a free hand to abandon the two segments of ditch through the basin and replace them with the relocated diversion ditch? Will this action be a breach of the original plan of reclamation? Will this action leave the board open for liability?

"2. Is it within the jurisdiction of the district to allow or not to allow water to be impounded in the natural reservoir?"

Examination of Chapter 242, RSMo 1959, reveals two methods relevant to this inquiry by which the reclamation plan of a drainage district organized in circuit court may be amended. One is the method set out in Section 242.310, which requires the filing of a petition in circuit court, and notice to all landowners

in the district with a corresponding right to all affected by the change to appear and object to the proposed change. The other method is that provided by Section 242.340 which permits the board of supervisors of the district to revise the plan, under some circumstances, without recourse to the courts.

We believe that a reading of subsection 1 of Section 242.340 indicates that it was not intended by the Legislature to permit changes as broad as those described in your request. That subsection reads as follows:

"Whenever it shall appear to the board of supervisors, after the plan for reclamation has been filed with the clerk of the court organizing said district and work has progressed thereunder, that some of the ditches or other improvements called for in said plan are inadequate and are not affording or giving to the lands adjacent to such ditch or ditches or other improvements, substantially the same outlets for drainage or protection from overflow that are afforded other lands in the district equally taxed, the board of supervisors of said districts shall have the power, authority and right, upon the recommendation of its chief engineer, to enlarge or cause to be enlarged any ditches or other improvements set out in the plan for reclamation and to construct or cause to be constructed such additional ditches, levees, canals and other improvements that may be necessary to afford such lands substantially equal outlets for drainage and protection from overflow that are afforded the other lands in said district, equally taxed, as a whole."

We are cognizant of the fact that our Supreme Court has considered powers of the board of supervisors other than those enumerated in Section 242.340 in determining whether a board could effect various changes in the drainage system. In *City of Hardin v. Norborne Land Drainage District* (Mo. Sup., 1950), 232 SW2d 921, 924, a drainage district was permitted to increase

the height of its levees, without resorting to the procedure spelled out in Section 242.310, after the court noted that the board had the power and duty to "maintain and protect the plan for reclamation", Section 242.330, as well as other functions enumerated in Section 242.190.

However, we do not regard the City of Hardin case as authority for holding that the changes described in your request can be accomplished solely by act of the board. In that case, the drainage district was attempting to bring about exactly that which was contemplated by the original plan for reclamation. The sole departure from the plan was the raising of the levees above the height originally specified, and this change was made necessary only because efforts of other drainage districts had raised the flood water level to the point where the old levees were ineffective.

The factual situation posed by your request is, we believe, readily distinguishable from that in City of Hardin. In order to accomplish the proposed change, some existing ditches of the Big Lake Drainage District would have to be completely abandoned; a diversion ditch not contemplated by the plan for reclamation would have to be constructed; and a portion of the Big Lake Basin (which the plan for reclamation provides will be drained) will in fact be flooded to form a permanent lake. Such changes, regardless of how desirable they may be, amount to a substantial departure from the original plan for reclamation. In our opinion, it was for such changes that Section 242.310 was written into the drainage district law; and we believe that the procedures set out in that section should be implemented if these changes are to be effected.

#### CONCLUSION

It is, therefore, the opinion of this office that in order for a drainage district organized in circuit court to abandon established ditches and construct a new one with the effect of creating a lake, none of which was contemplated by the original plan for reclamation, the board of supervisors must amend the plan for reclamation by means of the procedures set out in Section 242.310, RSMo 1959.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Albert J. Stephan, Jr.

Very truly yours,

\_\_\_\_\_  
THOMAS F. EAGLETON  
Attorney General