

June 9, 1965



Honorable James R. Hall
Prosecuting Attorney Ripley County
106 Court House Square
Doniphan, Missouri 63935

Dear Mr. Hall:

This letter is in answer to your request for an opinion of this office on the question you have stated as follows:

"In 1935 or 1938 three Drainage Districts in Ripley County, which had been organized in County Court, ceased operation. These districts had been formed so that ditches could be constructed, and when the bonds for the ditches were paid, the districts no longer collected any taxes or performed any other operations.

"The question, in view of this background, is (1) What steps must be taken in order that the districts may again operate as districts; and (2) May the three districts combine to form one new district."

The three drainage districts involved in your question were organized pursuant to Chapter 243 RSMo. Districts organized under this chapter, that is, districts organized in County Courts, differ in several respects from drainage districts organized in Circuit Courts. Districts established by the County Court remain under the administrative control of that Court (not a board of supervisors), and

the County Treasurer acts as Treasurer of the district, Section 243.410 RSMo, and Section 243.240 RSMo; State ex rel. Drainage District No. 8 of Pemiscot County vs. Duncan, 334 Mo. 773, 68 S.W. 2d 679. The County Court has permanent management and control of such districts and makes and administers all improvements therein. The County Court manages County Court drainage districts under the statutes in the same manner as it manages the county's affairs. Drainage District No. 23 of New Madrid County v. Hetlage, 231 Mo. App. 355, 102 S.W. 2d 702.

The fact that the three districts involved in your inquiry have ceased all operations does not effect a dissolution. It was held in the case of State ex rel. Davidson v. Missouri State Life Insurance Company, 228 Mo. App. 38, 65 S.W. 2d 182, that the power to dissolve a drainage district originated by a county court lies solely with the Legislature. The Legislature has not enacted any legislation authorizing the dissolution of a district. Thus, these districts are still in existence.

These districts may be reactivated in one of two ways. The County Court may of its own volition under Section 243.330 levy a maintenance tax to take care of the drainage district.

If the County Court should fail to act on its own motion, and it develops that ditches or other improvements constructed in such district need to be enlarged, cleaned out, obstructions removed therefrom, or new work done, five or more of the owners of land originally assessed in a district may file a statement in writing with the County Clerk setting forth such necessity pursuant to Section 243.220 RSMo. The County Court will then proceed to follow the provisions of said Section 243.220 by directing the district engineer or an engineer of their selection to view the premises and report back to the Court in writing concerning necessary repairs and improvements and the probable cost of making such improvements as will restore such ditches, drains and levies to an efficient condition. The Court will then consider the report and if it approves the recommendations therein it will direct the engineer to make such repairs and improvements. Section 243.230 further provides for levying of additional taxes for such improvements.

Further, under Section 243.240, it is the duty of the County Court to maintain the efficiency of the drainage districts and the Court is vested with the continuous management and control thereof. Under that section, on a petition filed by a majority of the land owners owning the majority of acres of land in each district of such county, all of the drainage districts in a county may be treated and administered as a unit for the purpose of maintaining the ditches, drains and levies in all the districts.

In summary, the three drainage districts in Ripley County originally originated in the County Court, that have been inactive for many years, may resume operations by the voluntary action of the County Court pursuant to Section 243.330 or by the action of five or more of the owners of land originally assessed in each district desiring to resume operations and other procedure pursuant to Section 243.220; the three districts may combine as a unit for the purpose of maintaining ditches, drains and levies on a petition filed by a majority of land owners owning a majority of land in each district pursuant to Section 243.240, if these three constitute all of the Districts in the county.

Sections 243.450 to 243.470 provide for consolidation and reorganization of two or more adjoining drainage districts organized in County Court so as to become a district organized in Circuit Court. Under this procedure, the consolidated district would be administered by a board and would automatically dissolve after the expiration of the predetermined period of time, unless the time of corporate existence should be extended pursuant to the provisions of Section 242.130, RSMo.

Yours very truly,

NORMAN H. ANDERSON
Attorney General

DLR/sj