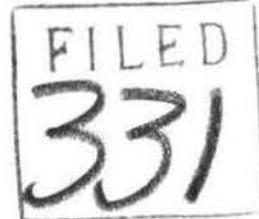


- LEVEE DISTRICTS: (1) County Board of Equalization cannot
COUNTY COURTS: change benefit assessment for levee.
BOARD OF EQUALIZATION: (2) Benefit assessment for maintenance
tax may be changed under Section
243.063.

December 30, 1965

Opinion No. 331

Honorable W. D. Hibler, Jr.
State Representative
Chariton County
Brunswick, Missouri



Dear Representative Hibler:

In your letter of August 11, 1965, you requested an opinion of this office concerning the right of land owners in a county court levee district to have benefit assessments reduced because of changes in the water courses and other work done in the district which you state nullified the benefits previously assessed.

Statutes providing for the organization and maintenance of levee districts formed by the county court are found in Sections 245.285 to 245.545, RSMo 1959.

In your first question, you inquire whether the land owners concerned can apply to the County Board of Equalization under Section 245.465 for readjustment of the assessment benefits. In order to answer this question, it will be necessary to review a few of the statutes providing for the assessment.

Section 245.450 provides in part that after the formation of any levee district as provided herein, the county court shall cause the county assessor at the first annual assessment to be made under the general revenue laws to assess the value of all lands in said levee district subject to overflow or inundation or erosion and to be benefited by said levee work having reference to the value of the land without the work and the value thereof as improved by said work.

Section 245.455 sets out the procedure to be followed by the assessor making the assessment and entering it on the books.

Section 245.460 provides in part for the assessment book as prepared by the county assessor to be filed with the clerk of the county court at the same time the assessor's book for state and county taxes is filed with the county clerk. It also provides for the county assessor to furnish a copy of said assessment book to the board of directors of the levee district. It further provides for the board of directors of

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the levee district to call a meeting of all land owners in said district to show cause, if any, why said land should not be assessed with their proportional part of the cost of the work.

Section 245.465 provides in part that the County Board of Equalization shall have the same jurisdiction over the lands taxed for levee purposes as is conferred by the general laws of the state in assessments of property for state and county purposes.

We believe that under the statutes governing the construction and maintenance of levee districts organized by a county court, that the assessment of benefits to the land in the district is to be made only once. The authority of the County Board of Equalization is limited to changing the benefit assessment as provided in Section 245.465, and once the benefit assessment has become final it cannot be changed by said Board. The County Board of Equalization has no jurisdiction over the rate determination provided for in Sections 245.470 and 245.445. If the original benefit assessment has been made and has become final, it is to be used as the basis for determining the payment or payments to be made for construction of levees or other works and the yearly tax levy necessary for maintenance of said levee district under Section 245.445, is based on such valuation. After the original benefit assessment has become final, any land owner may pay the total benefit assessment as provided in Section 245.475.

It does appear however, that a property owner in a levee district may be able to obtain a reduction or cancellation of benefits under certain conditions under Section 246.063, RSMo 1959. This section provides in part that when any lands within a levee district are so situated that subsequent improvements constructed in the district either by the district or by some other agency partially or wholly nullifies the benefits accruing from improvements previously constructed by the district for which benefits were assessed, a property owner in the district may petition the court where the district was organized and request the benefits against the land improvements previously constructed be reduced for the purpose of making a more equitable basis for the levy of the maintenance tax or that the benefits be cancelled. This section further provides that no assessed

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benefits shall be reduced or cancelled while the district has outstanding bond obligations. Therefore, it would appear that the answer to your second question depends upon whether the district has any outstanding bond obligations.

CONCLUSION

It is the opinion of this Department:

1. That the County Board of Equalization has no authority to change a benefit assessment after it has become final in a levee district organized by a county court.
2. That a land owner in such district may have the benefit assessment for the maintenance tax reduced or cancelled under the conditions specified under Section 246.063, RSMo 1959.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Moody Mansur.

Very truly yours,



NORMAN H. ANDERSON
Attorney General