

LEVEES:
LEVEE DISTRICTS:
DRAINAGE DISTRICTS:

The St. John Levee and Drainage District, a circuit court drainage district of New Madrid and Mississippi Counties, Missouri,

has statutory authority to give assurances to the Department of Army as are required by the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

OPINION NO. 26

April 4, 1972

Honorable Frederick W. DeField
Representative, District 158
Room 401, Capitol Building
Jefferson City, Missouri 65101



Dear Representative DeField:

This is to acknowledge receipt of your request for a formal opinion from this office which reads as follows:

"Has the St. John Levee and Drainage District, a Circuit Court drainage district of New Madrid and Mississippi Counties, Missouri, a Public Corporation of the State of Missouri, the statutory authority to comply with the provisions of Public Law 91-646, 'Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1971, as required therein.

"From time to time the St. John Levee and Drainage District receives requests from the Department of the Army for right-of-way for levee enlargement or for new levee construction. This right-of-way is furnished at no cost to the Department. The Department constructs the levee enlargement or new levee at no cost to the district. The right-of-way is acquired by the District by easement, deed or by condemnation if required. At the present time, and at the request of the Department, the district is in the process of acquiring right-of-way for proposed levee enlargement. This right-of-way extends along the river front levee in both New Madrid and Mississippi Counties and is quite extensive, covering a distance of some 14 miles for a total of approximately 450 acres, all

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acreage to be used as borrow pits. It is anticipated that it may take a period of not less than 12 months to accomplish this purpose. This district has been requested by the Department of the Army to assure said Department that it will make every effort to come within the provisions of Public Law 91-646 by July 1, 1972, if, as it appears, it is now without statutory authority so to do." (Emphasis added)

Public Law 91-646 which may be cited as the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970," and hereinafter referred to as the Act, was legislation passed by Congress to provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by federal and federally assisted programs and to establish uniform and equitable land acquisition policies for federal and federally assisted programs. See U.S. Code Congressional and Administrative News, Volume 2, Page 2222.

Title II of the Act refers to uniform relocation assistance. In general, the following categories of assistance are provided for: (1) moving expenses from homes, businesses and farm operations (Section 202); (2) replacement housing for homeowners (Section 203), and (3) replacement housing for tenants (Section 204). This assistance is required to be provided by any state agency receiving federal funds for any project resulting in displacement of any person after July 1, 1972 (Section 210). Such relocation assistance provided by the state agency is to be included along with other costs of the project and eligible to some extent and manner for federal funding of the project (Section 211).

Title III of the Act refers to uniform real property acquisition policy. In this regard, Section 305 of the Act provides that state agencies administering programs receiving federal financial assistance must be guided to the greatest extent practicable under state law, by the land acquisition policies set forth in Sections 301 and 302 of the Act, as a condition of such federal assistance. In addition, Section 305 of the Act provides that state agencies administering programs receiving federal financial assistance must provide for reimbursement of the owner for expenses incidental to transfer of title and for reasonable expenses of litigation.

The statutory authority for the organization of the St. John Levee and Drainage District, a circuit court drainage district of New Madrid and Mississippi Counties, Missouri, is found in Chapter 245, RSMo 1969. In general, Section 245.015, RSMo 1969, provides that the owners of a majority of the acreage in any contiguous body

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of swamp, wet or overflowed land, or lands subject to overflow, wash or bank erosion, may form a levee district for the purpose of having such land and other property reclaimed and protected from the effects of overflow and other water, for sanitary or agricultural purposes, or from the effect of wash or bank erosion. Section 245.060, RSMo 1969, provides that the owners of real estate or other property situated in said district may elect a board of supervisors. The powers and duties of a board of supervisors are set forth in Section 245.095, RSMo 1969; and in general, the board has the power of condemnation in order to effect the leveeing, protection, and reclamation of the land and other property in the district subject to tax. Upon the adoption of the plan for reclamation, the board of supervisors may petition the circuit court to appoint commissioners to appraise the lands within and without said district to be acquired for rights-of-way, holding basins, and other works of the district, and to assess benefits and damages accruing to all lands in the district and other property by reason of the execution of the plan for reclamation. Section 245.150, RSMo 1969, further provides that the price awarded for all lands acquired by any district for rights-of-way or other works and the amount of damages assessed by the board of commissioners and confirmed by the court to any tract or parcel of land or other property in the district shall be paid in cash to the owner thereof or to the clerk of the court for the use of such owner. Finally, Section 245.150, RSMo, provides that the board of supervisors of said district shall have full power and authority to build, construct, excavate, and complete all or any work and improvements which may be needed to carry out, maintain, and protect the plan for reclamation. It is further provided under this section as follows:

" . . . that if and when the state of Missouri or the United States of America or any subdivision, department, division or agency thereof is willing to construct the works and improvements provided for in the plan for reclamation or any part thereof, the board of supervisors of said district is authorized to cooperate with such agency to the fullest extent and is hereby granted power and authority to accent any such work in aid of the project, irrespective of whether it be by way of grant of funds, labor, work, materials or otherwise and may, in the discretion of the board of supervisors, give such assurances as may be required to obtain the construction of the works and improvements provided for in the plan for reclamation."
(Emphasis added)

Under the above section, it was pointed out in In re Tarkio-Squaw Levee District of Holt County, 319 S.W.2d 660 (Mo. banc 1959)

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that the board of supervisors of a levee district has power to enter into a contract with federal government authorities in relation to construction of levees in a levee district. Also, it was held in Opinion No. 30, Foote, February 24, 1948, that the St. John Levee and Drainage District had authority under what is now Section 246.170, RSMo 1969, to give assurances to the United States that it would maintain and operate certain levee and drainage works after their completion by the federal government (copy attached).

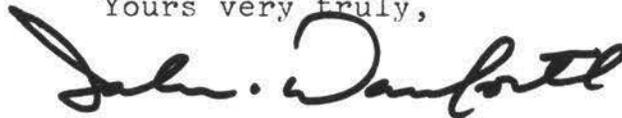
As a result of the above, it is our view that the St. John Levee and Drainage District, a circuit court drainage district of New Madrid and Mississippi Counties, Missouri, has statutory authority to give assurances to the Department of Army as are required by Sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

CONCLUSION

It is the opinion of this office that the St. John Levee and Drainage District, a circuit court drainage district of New Madrid and Mississippi Counties, Missouri, has statutory authority to give assurances to the Department of Army as are required by the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

The foregoing opinion, which I hereby approve, was prepared by my assistant, B. J. Jones.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 30
2-24-48, Foote