DRAINAGE DISTRICTS: Eight questions relating to the powers and duties of boards of supervisors of drainage districts organized in circuit court.

March 24, 1955

Honorable Richard J. DeCoster
State Representative
Lewis County
Room No. 415
Jefferson City, Missouri

Dear Mr. DeCoster:

Reference is made to your request for an official opinion of this department embodying eight separate questions relating to the powers and duties of the boards of supervisors of drainage districts organized in circuit courts. For convenience and clarity in the preparation of the opinion, we have grouped the related questions into several units.

Questions 1, 2 and 3 of your letter of inquiry read as follows:

> "1. May the Board of Supervisors invest money of the district accumulated from maintenance tax and rental of district owned land? (242.210 (5)).
>
> "2. If so, are there any requirements for or limitations on such investments and, specifically, may such investments be made in Building and Loan Associations?
>
> "3. If the Board of Supervisors may invest such funds, may they invest in out of state institutions?"

It is the duty of the treasurer of drainage districts of the nature referred to in your letter of inquiry to keep funds belonging to such districts in a depository selected by the Board of Supervisors. His action in this regard is governed by the provisions of Subsection 5 of Section 242.210, RSMo 1949, which reads as follows:

> "5. Said treasurer shall keep all funds received by him from any source whatever deposited at all times in some bank, banks or trust company to be designated by the board of supervisors. All interest accruing on such funds shall, when paid, be credited to the district."

Being officers created by statute, the powers and duties thereof must be strictly construed and be limited to those specifically enumerated or necessarily implied in connection with the discharge of official duties. Having specifically enumerated the types of financial institutions, viz., "bank, banks and trust companies" in which deposit of funds belonging to the district may be deposited, we can find no authorization for investment in different types of such institutions.

No limitation, however, appears that such designated institutions be located within the state of Missouri. Therefore, absent such limitation, it is our thought that the board of supervisors may designate as a depository for district funds one or more of the enumerated types of financial institutions located outside the State of Missouri.

Questions 4, 5 and 6 of your letter of inquiry read as follows:

> "4. Does the Board of Governors have the authority to sell land given or abandoned to it? (242.620 - of land acquired at delinquent tax sale).
>
> "5. May the Board of Governors sell district land to one of the members of the Board?
>
> "6. If the answer to question No. 5 is in the affirmative, may the Board members to whom the land is being sold cast the deciding vote in favor of selling?"

These questions which relate to the power of disposal of lands acquired by the drainage district we believe to be answered in part by the following portion of Section 242.620, RSMo 1949. This statute relates to the protection of the lien for drainage taxes assessed on behalf of such drainage district and authorizes the acquisition of lands upon which such taxes have become delinquent by the drainage district. After so providing, the

statute contains the following pertinent authorization with respect to the disposition of such real property:

> "1. To protect said lien of said drainage taxes upon the lands and other property against which said taxes shall be levied, in any case where delinquent lands are offered for sale for such delinquent taxes, and the amount of the tax due, together with interest, cost, and penalties is not bid for the same, the board of supervisors shall have authority to bid or cause to be bid, not to exceed the whole amount due thereon, as aforesaid, in the name of the drainage district, and in case such bid is the highest bid, the sheriff shall sell and convey such lands to such drainage district, and such lands shall thereupon become the property of the drainage district, and may be held, disposed of, and conveyed by the board of supervisors at such price and on such terms, as in the discretion of the board of supervisors may be to the best interest of the district."

Paragraph 2 of the same statute reads as follows:

> "If such lands, or other property, are sold by the board of supervisors the purchasers thereof shall take the same subject to all said drainage taxes thereafter becoming due, the same as all other lands and other property in the district."

Here appears a clear authorization to dispose of real property acquired in connection with the protection of the lien of the drainage district for drainage taxes and by implication, at least, a recognition of the authority of the board of supervisors thereof to sell and convey other property owned by the drainage district.

Of course, in making any disposition of such property, the board of supervisors will of necessity be governed by general laws applicable to public contracts. It is our thought that lands belonging to the drainage district may not be sold to a member of the board of supervisors thereof. It is our belief

that such a contract of sale would be void as against the public policy of the state. In this regard we direct your attention to the case of Githens v. Butler County, reported 165 S. W. (2d) at page 650, from which we quote, l. c. 652:

> "The directors of a private corporation may, if there is no fraud in fact or unfairness in the transaction, contract on behalf of the corporation with one of their number. A stricter rule is laid down in regard to public corporations, and it is held that a member of an official board of legislative body is precluded from entering into a contract with that body.' 6 Williston, Contracts, Sec. 1735, p. 4895. The basis of this common law rule is that it is against public policy (State ex rel. Smith v. Bowman, 184 Mo. App. 549, 170 S. W. 700) for a public official to contract with himself. 'At common law and generally under statutory enactment, it is now established beyond question that a contract made by an officer of a municipality with himself, or in which he is interested, is contrary to public policy and tainted with illegality; and this rule applies whether such officer acts alone on behalf of the municipality, or as a member of a board of (or) council. * * The fact that the interest of offending officer in the invalid contract is indirect and is very small is immaterial. * * * It is impossible to lay down any general rule defining the nature of the interest of a municipal officer which comes within the operation of these principles. Any direct or indirect interest in the subject matter is sufficient to taint the contract with illegality, if the interest be such as to affect the judgment and conduct of the officer either in the making of the contract or in its performance. In general the disqualifying interest must be of a pecuniary or proprietary nature.' 2 Dillon, Municipal Corporations, Sec. 773; 46 C. J. Sec. 308; 22 R.C.L., Sec. 121; State ex rel. Streif v. White, Mo. App., 282 S. W. 147; Witmer v. Nichols,

320 Mo. 665, 8 S. W. 2d 63; Nodaway County v. Kidder, 344 Mo. 795, 129 S. W. 2d 857."

Having reached this conclusion, it becomes unnecessary to further consider question No. 6.

Question No. 7 of your letter of inquiry reads as follows:

> "7. Do such drainage districts now have the authority to enter into an agreement with the Federal Government under the plan set out in Public Law 566 enacted by the 83rd Congress?"

We have examined Public Law 566 of the 83rd Congress. Substantially, it provides for financial assistance to be granted by the Federal Government through the agency of the Secretary of Agriculture of the United States in cooperative measures relating to flood prevention and conservation, development, utilization and disposal of water in connection with agricultural activities. The types of such activities for which such assistance may be given are defined in the law in the following language:

> "For the purposes of this Act, the following terms shall mean:
>
> "* * * * * * * * * * * * * * * * * * * *
>
> "'Works of improvement'--any undertaking for--
> (1) flood prevention (including structural and land-treatment measures) or
> (2) agricultural phases of the conservation, development, utilization, and disposal of water
> in watershed or subwatershed areas not exceeding two hundred and fifty thousand acres and not including any single structure which provides more than five thousand acre-feet of total capacity. No appropriation shall be made for any plan for works of improvement which includes any structure which provides more than twenty-five hundred acre-feet of total capacity unless such plan has been approved by resolutions adopted by the Committee on Agriculture and Forestry of the Senate and the Committee on Agriculture of the House of Representatives,

> respectively. A number of such subwatersheds when they are component parts of a larger watershed may be planned together when the local sponsoring organizations so desire."
>
> "'Local organization' -- any State, political subdivision thereof, soil or water conservation district, flood prevention, or control district, or combinations thereof, or any other agency having authority under State law to carry out, maintain and operate the works of improvement."

To determine whether a drainage district of the nature described in your letter of inquiry is a "local organization" within the meaning of that term as defined by Public Law 566, we have given further attention to statutes relating to the powers of such drainage districts. We direct your attention particularly to Section 242.190, RSMo 1949, which reads as follows:

> "In order to effect the drainage, protection and reclamation of the land and other property in the district subject to tax the board of supervisors is authorized and empowered to clean out, straighten, widen, change the course and flow, alter or deepen any ditch, drain, river, watercourse, pond, lake, creek, bayou or natural stream in or out of said district; to fill up any creek, drain, channel, river, watercourse or natural stream; and to concentrate, divert or divide the flow of water in or out of said district; to construct and maintain main and lateral ditches, canals, levees, dikes, dams, sluices, revestments, resorvoirs, holding basins, floodways, pumping stations and syphons and any other works and improvements deemed necessary to preserve and maintain the works in or out of said district; to construct or enlarge or cause to be constructed or enlarged any and all bridges that may be needed in or out of

said district across any drain, ditch, canal, floodway, holding basin, excavation, public highway, railroad right of way, tract, grade, fill or cut; to construct roadways over levees and embankments; to construct any and all of said works and improvements across, through or over any public highway, railroad right of way, track, grade, fill or cut in or out of said district; to remove any fence, building or other improvements in or out of said district, and shall have the right to hold, control and acquire by donation or purchase, and if need be, condemn any land, easement, railroad right of way, sluice, reservoir, holding basin or franchise in or out of said district for right of way, holding basin or for any of the purposes herein provided, or for material to be used in constructing and maintaining said works and improvements for draining, protecting and reclaiming the lands in said district.

"2. Said board of supervisors shall also have the power and authority to hold and control all water power created by the construction of works of said district, and shall have power to construct and maintain hydroelectric power plant or plants for the purpose of developing such power for the use of said district, and to use any funds in the treasury of said district not otherwise appropriated for the construction and maintenance of such power plant or plants, and the said board of supervisors shall have the right and authority to lease any surplus power in excess of that required for the uses of said district, and the proceeds of such lease or leases shall be converted into the treasury of said district.

"3. Said board shall also have the right to condemn for the use of the district, any land or property within or without said district not acquired or condemned by the court on the report of the commissioners assessing benefits and damages

> and shall follow the procedure that is now provided by law for the appropriation of land or other property taken for telegraph, telephone and railroad right of ways."

The foregoing, in our opinion, discloses that such a drainage district is such a "local organization" as is eligible to participate in a cooperative plan with the appropriate agent of the Federal Government, particularly in view of the complete authority which may be exercised by such drainage district acting through its board of supervisors with respect to the matters to which Public Law 566 relates.

Aside from the reasoning incorporated herein which has led to our conclusion, we find that even more definite authorization has been granted such drainage districts to engage in such cooperative enterprises. Your attention is directed to Section 16, Article VI of the Constitution of Missouri, 1945, which reads as follows:

> "Co-operation by local governments with other governmental units.--Any municipality or political subdivision of this state may contract and cooperate with other municipalities or political subdivisions thereof, or with other states or their municipalities or political subdivisions, or with the United States, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service, in the manner provided by law."

Implementing this constitutional provision, we find that the General Assembly has enacted certain statutes providing for the exercise of such cooperative powers. That such statutes are applicable to drainage districts appears from the definition of terms found in Section 70.210, RSMo 1949, reading as follows:

> "The term 'governing body' as that term is used in sections 70.210 to 70.320 shall mean the board, body or persons in which the powers of a municipality or political subdivision are vested. The term 'political subdivisions' as used in sections 70.210 to 70.320 shall be construed

> to include counties, townships, cities, towns, villages, school, road, drainage, sewer, levee and fire districts."

The following statute, Section 70.220, RSMo 1949, defines the scope of activities with respect to which cooperative contracts may be made. It reads as follows:

> "Any municipality or political subdivision of this state, herein defined, may contract and cooperate with any other municipality or political subdivision, or with an elective or appointive official thereof, or with a duly authorized agency of the United States, or of this state, or with other states or their municipalities or political subdivisions for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service; provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision. If such contract or cooperative action shall be entered into between a municipality or political subdivision and an elective or appointive official of another municipality or political subdivision, said contract or cooperative action must be approved by the governing body of the unit of government in which such elective or appointive official resides."

We observe the limitations incorporated in the quoted statute that the "subject and purposes" of the cooperative action must be within the scope of the authority of the political subdivision entering into such cooperative agreement. As we have pointed out supra, the "subject and purposes" of the cooperative agreement provided in Public Law 566 are clearly within the scope and powers of the drainage districts of the type referred to in your letter of inquiry. It is, of course, necessary that the procedural statutes relating to the actual execution of such contracts or agreements as outlined in Sections 70.230, RSMo 1949, to 70.320, inclusive, RSMo 1949, must be followed, together with other statutes relating to drainage

districts.

Question No. 8 of your letter of inquiry reads as follows:

> "Who must pay for the bond required of the County Collector by Section 242.540, (4) R. S. Mo. 1949? (See also 242.640)."

Section 242.540, RSMo 1949, provides for the collection of drainage district taxes by the collector of revenue of the county wherein such district is located. Among other provisions found in this statute is paragraph 4 thereof, which reads as follows:

> "4. Before receiving the aforesaid drainage tax book the collector of each county in which lands or other property of the drainage district are located shall execute to the board of supervisors of the district a bond with at least two good and sufficient sureties in a sum that is equal to the probable amount of any annual installment of said tax to be collected by him during any one year, conditioned that said collector shall pay over and account for all taxes so collected by him according to law. Said bond after approval by said board of supervisors shall be deposited with the secretary of the board of supervisors, who shall be custodian thereof and who shall produce same for inspection and use as evidence whenever and wherever lawfully requested to do."

It is quite clear that this statute contemplates the execution of a bond with personal sureties thereon. If this is correct and such procedure is followed, then, of course, no problem arises with respect to any "pay" being required for the bond.

However, no doubt your question arises by reason of the collector of revenue having elected to supply a corporate surety bond under the provisions of Section 107.070, RSMo 1949. As pertinent to your inquiry, your attention is directed to the following portion of such statute:

> "* * * he may elect, <u>with the consent</u>

> and approval of the governing body of such state, department, board, bureau, commission, official, county, city, town, village, or other political subdivision, to enter into a surety bond or bonds, with a surety company or surety companies, authorized to do business in the state of Missouri and the cost of every such surety bond shall be paid by the public body protected thereby."

It will be noted in order that liability for the payment of the premium on such corporate surety bond be imposed upon the public body protected thereby, there must be a concurrence of the election of the officer to supply the bond and the consent and approval of the governing body of the political subdivision. Absent the concurrence of both the officer and such governing body, no liability can be imposed upon the political subdivision for the payment of the premium thereon.

The statute here under consideration has been construed in two cases decided by the Supreme Court. Your attention is directed to Motley v. Callaway County, 149 S. W. (2d) 875, and Boatwright v. Saline County, 169 S. W. (2d) 371. In the former case the consent and approval of the giving of a corporate surety bond had been given and the county was thereupon held liable for the payment of the premium. In the latter case a contrary conclusion was reached bottomed in part upon the fact that the consent and approval of the governing body of the political subdivision, which in that particular case was the county court, had not been obtained. The gist of the decision appears in the following language:

> "* * * * The statute also provides that the officer, in this case the county collector, may elect, with the consent and approval of a governing body of such county, to enter into a surety bond and the costs shall be paid by the county. It is apparent that the legislature intended the county to be liable only in case the county court consented thereto and approved the giving of such a bond. * * * * * * * * * * * * "

CONCLUSION

In the premises, we are of the opinion:

Honorable Richard J. DeCoster

1. The board of supervisors of a drainage district organized in circuit court may designate as a depositoryin which the treasurer of such district shall deposit all funds belonging to such district only some bank, banks or trust company;

2. That the board of supervisors of such drainage districts may sell and convey real and other property belonging to such district, but may not sell and convey such real or other property to a member of such board of supervisors;

3. That such drainage districts are authorized to enter into cooperative contracts or agreements with the Secretary of Agriculture as agent for the United States of the nature provided for in Public Law 566 of the 83rd Congress; and,

4. That such drainage districts are liable for the payment of the premium of a corporate surety bond supplied by a collector of revenue under the provisions of Subsection (4) of Section 242.540, RSMo 1949, only if such collector of revenue has elected to supply such corporate surety bond and that such election has the approval and consent of the board of supervisors of such drainage district.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Very truly yours,

JOHN M. DALTON
Attorney General

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