

DRAINAGE DISTRICTS: With the permission of the land owners within
JOHNSON GRASS: the Birmingham Drainage District, and with the
permission of land owners immediately outside
of the Birmingham Drainage District, which are
adjacent to the river side of the levee, the Board of Supervisors of
the Birmingham Drainage District may expend funds in their hands for
the eradication of Johnson grass.

October 6, 1960



Honorable Richard E. McFadin
Prosecuting Attorney
Clay County
Liberty, Missouri

Dear Mr. McFadin:

This is in response to your letter of August 25, 1960, in which, with reference to the Birmingham Drainage District, organized by the decree of the Circuit Court of Clay County, Missouri, you ask the following question:

"The specific opinion which they desire from you is whether or not in the opinion of your office with the permission of the land owners within the District or immediately outside of the District adjacent to the river side of the levee they may expend funds in their hands for the eradication of Johnson grass."

You state that the supervisors of the Drainage District have contracted with the United States Corps of Engineers to maintain the levee by mowing it and maintaining it free from trees and shrubs in addition to many other requirements of maintenance.

In your letter of the 25th, you bring to our attention two sections of Chapter 242 which we think should be set forth in part as follows:

Section 242.190:

"1. 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 construct and maintain main and lateral ditches . . . and any other works and improvements deemed necessary to preserve and maintain the works in or out of said district; * * * "

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Section 242.330:

"1. The board of supervisors of said district shall have full power and authority to build, construct, excavate and complete all or any works and improvements which may be needed to carry out, maintain and protect the plan for reclamation. * * * "

From the case law of Missouri, we are able to determine that the drainage district laws are to be construed and interpreted liberally so that they may effect the purpose for which they were written. In the case of Graves et al. v. Little Tarkio Drainage Dist. No. 1, et al., 134 SW2d 70, Division Number 1 of the Supreme Court of Missouri stated, at page 76, the following:

"[4,5] All the terms and provisions of the drainage act should be 'construed broadly and liberally to effectuate the wholesome and beneficial motives which prompted its enactment.' In re Big Lake Drainage District v. Rolwing, 269 Mo. 161, 171, 190 SW 261, 264; Wilson v. King's Head Drainage District. 257 Mo. 266, 289 165 SW 734, 740. Sec. 10808, RS 1929, Mo. St. Ann. §10808, pp. 3529, 3530, expressly provide that: 'This article is hereby declared to be remedial in character and purpose, and shall be liberally construed by the courts in carrying out this legislative intent and purpose.' * * * "

We believe it may be considered that the extensive growth of Johnson grass could be a detriment to the proper maintenance of the levees and ditches, and that the Birmingham Drainage District would properly be concerned with its control and eradication. The General Assembly of the State of Missouri has gone so far as to pass special legislation, Sections 263.255 through 263.267, RSMo Cum. Supp. 1957, authorizing a tax to be levied in counties declared a Johnson grass extermination area, for purposes of eradication and control of Johnson grass. The question which you present does not bring into question the Johnson grass law, and we believe that there is no inconsistency between the requirements of that law and the opinion which this office is herein writing.

In considering the law as set forth above in the Little Tarkio

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case, it is not difficult for us to conclude that the provisions of Chapter 242 which we have set forth are broad enough to justify the expenditure by the Birmingham Drainage District of some of its existing funds for the eradication of Johnson grass. We feel that this expenditure could be made within the district, and it could also be made outside of the District adjacent to the river side of the levee so long as this expenditure outside of the District is necessary to the proper maintenance of the District itself and so long as such expenditure is not in violation of the rights of any parties not associated with the Drainage District. You will note that Section 242.190, supra, authorizes the Board of Supervisors to construct and maintain the works and improvements in or out of said District. We think that this is broad enough to cover the situation which is apparently existing in and immediately around the Birmingham Drainage District.

CONCLUSION

It is the opinion of this office that, with the permission of the land owners within the Birmingham Drainage District, and with the permission of the land owners immediately outside of the Birmingham Drainage District, which are adjacent to the river side of the levee, the Board of Supervisors of the Birmingham Drainage District may expend funds in their hands for the eradication of Johnson grass.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James B. Slusher.

Very truly yours,

JOHN M. DALTON
Attorney General

JBS/mlw