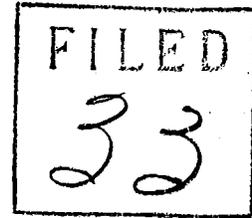


DRAINAGE DISTRICTS: Section 12435, R. S. 1939, authorizes the county court to use the maintenance fund of the drainage district to pay engineering costs incidental to estimate of cost of cleaning ditches of drainage district.

March 6, 1946



H-4

Honorable D. W. Gilmore
Assistant Prosecuting Attorney
Scott County
Warren, Missouri

Dear Sir:

Receipt of your request for an opinion from this department is hereby acknowledged, which reads as follows:

"The County Court of Scott County, Missouri, requests your opinion in the following matter:

"Does the County Court have authority to expend funds from the Maintenance fund of a Drainage District organized under the provisions of Article 3, Chapter 79, of the Revised Statutes of Missouri for 1939, in payment of engineering costs incidental to an estimate of the cost of cleaning out the ditches and laterals of the Drainage District in accordance with the provisions of Sec. 12435, R. S. Mo., 1939?"

"Section 12435, R. S. Mo., 1939, seems to be clear on this point, but one of the Judges of our Court requests your opinion.

"The petition provided for in Section 12435, in the matter now before the Court, has been presented. The County Surveyor is not considered competent to view the premises and make the report

required by the Statute. The Court is considering employing an engineer to make the report required by Sec. 12435. And the question is, as above stated, does the court have authority to pay the engineer out of funds now on hand in the Maintenance fund of the Drainage District in question.

"The matter is to be considered again on Monday, March 11th, 1946. If you could give us your opinion prior to that date it would be appreciated."

Section 12435, R. S. No. 1939, referred to in your letter, provides:

"When any ditches or other improvements constructed under this article need to be enlarged, cleaned out, obstructions removed therefrom or new work done, five or more of the owners of land originally assessed for the construction of any such ditches, or other improvements, may file a statement in writing with the county clerk setting forth such necessity. Upon the filing of such statement, it shall be the duty of the county court, at its next meeting thereafter, to direct the district engineer, or an engineer of their selection, as the case may be, to proceed at once to view the premises and to make a report to the court in writing of the repairs and improvements necessary to be made and the probable cost of making such improvements as will restore the said ditch, drain or levy to an efficient condition. It shall be the duty of the county court to forthwith consider said report and if the court finds that the improvements, or any of them, recommended in said report should be made, it shall direct the district engineer, or an engineer of their selection, as the case may be, to proceed with all due diligence in the making of such repairs and improvements, directing such engineer to purchase such supplies and

employ such labor as may be necessary to accomplish such repairs and improvements and make an itemized report to the court in that behalf, all of which shall be paid out of the maintenance fund of that district. If it shall be found by the court that repairs and improvements are necessary to be made at a cost in excess of the money available from the maintenance fund, then it should be the duty of the court to direct such repairs or improvements to be made as may be necessary and can be paid out of the maintenance fund and to cause the clerk thereof to set the hearing of the matter of the levying of an additional tax for such improvements as cannot be made out of the maintenance fund, for hearing on the first day of the next regular term of the county court, and to give notice of such hearing by publication in three issues of some weekly newspaper published in the county, the last insertion to be prior to the day set for the hearing, which said notice may be in the following form:

"Notice is hereby given to the land owners of drainage district No. _____ of _____ county, Missouri, that a statement has been filed with the undersigned clerk by five or more land owners of said district, alleging that the ditches or other improvements of said district, should be enlarged, cleaned out, have obstructions removed, or new work done and that the district engineer has viewed the premises and reported to the court the necessity for repairs and improvements in excess of the money available from the maintenance fund and that said statement and report of the engineer has been set down for hearing on the first day of the next _____ term of the county court and unless good cause to the contrary be shown, the county court will make an order requiring the district engineer, or an engineer of their selection, as the case

may be, to cause said ditches to be enlarged, cleaned out, obstructions removed therefrom and new work done as may be determined by the court and the cost of said work will be divided pro rata according to the original assessment of benefits against the lands included in such Drainage District."
(Emphasis ours.)

In answer to your request the pertinent parts of this section would be read as follows:

"When any ditches or other improvements constructed under this article need to be *, cleaned out * * * five or more of the owners of land originally assessed for the construction of any such ditches * * * may file a statement in writing with the county clerk setting forth such necessity. * * * it shall be the duty of the county court, at its next meeting thereafter, to direct * * * an engineer of their selection, * * * to proceed at once to view the premises and to make a report to the court in writing of the repairs and improvements necessary to be made and the probable cost of making such improvements * * * * * all of which shall be paid out of the maintenance fund of that district. * * * *"

This section seems reasonably clear and applicable to the present situation. We are of the thought that the rule as found in the case of *Norberg v. Montgomery*, 173 S. W. (2d) 387, 1. c. 390, should be applied to the present situation. In that case it is held:

"* * * 'Rules for the interpretation of statutes are only intended to aid in ascertaining the legislative intent, "and not for the purpose of controlling the intention or of confining the operation of the statute within narrower

limits than was intended by the law-
maker." Sutherland on Statutory Const.,
Sec. 279. If the intention is clearly
expressed, and the language used is
without ambiguity, all technical rules
of interpretation should be rejected.
State ex rel. Wabash Ry. Co. et al. v.
Shain, 341 Mo. 19. 106 S. W. 2d 898,
loc. cit. 899, 900." (Emphasis ours.)

Conclusion

It is, therefore, the opinion of this department
that said section does authorize the county court to use the
maintenance fund of the drainage district to pay the engi-
neering costs incidental to an estimate of the cost of clean-
ing out the ditches and laterals of the drainage district as
suggested in your request.

Respectfully submitted,

J. MARTIN ANDERSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

JMA:EG