

DRAINAGE DISTRICTS: Merchantable timber growing in ditches of a county court drainage district may be sold by the county court and the proceeds credited to such drainage district.

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Honorable Marshall Craig
Prosecuting Attorney
Mississippi County
Charleston, Missouri

Dear Sir:

This is in reply to your letter of recent date requesting an official opinion of this department and reading as follows:

"We have several County Court Drainage Districts in this County. The maintenance on them has not been so good and there is now a good bit of merchantable timber growing up in the ditches themselves. The question has arisen as to whether or not the County Court, as the proper supervising officials of such districts, have the authority to sell the merchantable timber and put the proceeds in the general revenue. If they do not have this authority, because their rights are easements and perhaps the adjoining land owners could sell the timber, is there any way the County Court could force the land owners to remove the timber and clear the ditch?

"Any opinions which you might give me on this matter will be greatly appreciated."

Section 12409, R. S. Mo. 1939, which is found in the article dealing with county court drainage districts, provides, in part, as follows:

" * * * Whenever any land is acquired by any district under the provision of this article and the price of such property has been paid the owner by the district, the title, use, possession and enjoyment of such property

shall pass from the owner and be vested in the district, and subject to its use, profit, employment and final disposition. * * *

Under the above-quoted provision, the title to the ditches in a county court drainage district is vested in the district itself.

Section 12433, R. S. Mo. 1939, provides that the county court shall have the continuous management and control of such drainage districts. The members of the county court, in managing and controlling a drainage district, by virtue of their offices as county judges, however, act only for the drainage district itself, and their powers are limited to using the assets of the drainage district only in improving and maintaining the ditches, drains and levees of such district.

Therefore, the county court may sell the merchantable timber which is growing in the ditches of a drainage district and must credit the amount received therefor to the credit of the drainage district, and cannot place such funds in the county revenue.

Since the drainage district has full title to all of the land used for ditches in the drainage district, the county court cannot force the landowners to remove the timber growing in the ditches.

CONCLUSION

It is the opinion of this department that the county court may sell merchantable timber which is now growing in the ditches of a county court drainage district, and that the county court must place any money derived from such sale to the credit of the drainage district.

Respectfully submitted,

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APPROVED:

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CBB:HR