

DRAINAGE DISTRICTS:

County court drainage districts liable for construction of or replacement of a collapsed bridge over one of it's ditches.

February 14, 1948



Mr. Joe C. Welborn
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Stoddard County
Bloomfield, Missouri

Dear Mr. Welborn:

This will acknowledge receipt of your letter of February 14, 1948, in which you request an opinion of this department. Omitting caption and signature, your letter is as follows:

"It has become necessary for a new bridge to be constructed over a drainage ditch of a district formed by the County Court. This necessity has arisen by reason of the fact that the present bridge has collapsed. The question arises as to whether it is the duty of the township, (Stoddard County being a county with township organization), the drainage district, or the County Court to rebuild the bridge.

"So far as I can tell, the law is somewhat confused on the subject.

"The Supreme Court has ruled that it is the duty of Circuit Court Drainage Districts to build bridges across their ditches and to maintain them until they are declared sufficient by the county court. State ex rel Medicine Creek D.D., 224 S.W. 343 and State ex rel vs Big Medicine Drainage District, 196 S.W. 2nd 254. They base these rulings on Section 12354, R.S. 1939.

"This section, 12354 is pretty much similar to 12427, in the article pertaining to county court Drainage Districts. The Supreme

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Court seems to base their conclusion that the drainage district is liable under 12354 on the language:

'Within ten days after a dredge boat or any other excavating machine shall have completed a ditch across any public highway, a bridge adjudged sufficient by the County Court of said County or Counties shall be constructed over such drainage ditch where the same crosses such highway . . . '

"There is no such provision in Section 12427. On the contrary, there is this provision:

'The County Court, may, when the same is necessary--.. cause to be constructed or enlarged, any bridge or culvert made necessary by the crossing of any ditch constructed by a district organized under the provisions of this article.'

"Apparently, this refers to the County Court, as the governing body of the Drainage District.

"I am aware of the holding in Camden Special Road District et al vs Willow Drainage District, 199 S. W. 716, which holds that a County Court Drainage District must replace a washed out bridge. However, the ruling in that case is based on Section 5564, of the Revised Statutes of 1909, which section was replaced in 1929 and I find no similar section in the present law.

"It will cost considerably more than \$100.00 to replace the bridge, so we are confronted with Section 8824, and 8825 in so far as liability of the township is concerned.

"The County Court has never adjudged this bridge sufficient, so far as I have been able to determine. The bridge collapsed from a heavy load, not from a washout.

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"I would appreciate an official opinion from you as to the agency liable for replacing the bridge."

In answering your inquiry it is necessary that we deal with two types of drainage districts; those organized as a result of a petition filed in circuit court and districts organized by the county courts. The drainage district about which you inquire, was, according to your letter organized by the county court of your county, and therefore, we must deal primarily with the statutes and decisions referring to that particular type of district.

The authority of the county courts of the various counties to organize, incorporate, and establish drainage districts is conferred by Section 12398, Mo. Revised Statutes Annotated, which provides as follows:

"When it shall be conducive to the public health, convenience or public welfare, or when it will be of public utility or benefit, the county court of any county in this state shall have the authority to organize, incorporate and establish, drainage districts and to cause to be constructed, straightened, widened, altered or deepened, any ditch, drain, natural stream--not navigable, bank protection, current control, or watercourse, when the same is necessary to drain or protect any land or other property. The word 'ditch' as used in this article shall be held to include a drain, watercourse, bank protection, current control or levee or any drain, watercourse, bank protection, current control or levee hereafter constructed. The petition for any such improvement shall be held to include any side, lateral, spur, or branch, ditch, drain, watercourse, or levee, the lowering of any lake, the protection of the banks of an adjacent stream from wash, cutting or erosion or any other work necessary to secure fully the object of the improvement petitioned for, whether the same is mentioned in such petition or not: PROVIDED, that in the event any work is to be done upon any navigable stream, the consent of the federal government shall be obtained to make such improvement or improvements

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before the actual work on the improvement shall be begun."

The question to be settled is what agency shall reconstruct a collapsed bridge across one of the ditches of the district. There are three possibilities according to your letter. They are, (1) the township (your county having township organization, (2) the drainage district itself, or (3) the county court.

Reserving comment on any liability of the part of the township until later in the opinion, we will first consider the other two possibilities. The county court occupies a peculiar position relative to drainage districts which they form. Such districts like those formed in circuit courts are public corporations. See *Graves vs Little Tarkio D.D.* 134 SW (2) 70, 345 Mo. 557; *Thompson vs City of Malden*, 118 SW 1059. As can be seen from reading the *Thompson* case, supra, the county courts have charge of the drainage districts which they form. In said case, the court said:

"The County Court Drainage Districts, as shown above, are public corporations, and are subject to the administration by the County Courts in which they are organized
*****."

Also see *Drainage District #23 vs Hetlage*, 102 SW (2) 702, 231 Mo app 355.

The county courts are given authority to construct bridges across ditches constructed by county court drainage ditches under Section 12427, Missouri Statutes Annotated. Said section of the statute provides, in part, as follows:

"The County Court may, when the same is necessary for the public health, convenience or welfare, cause to be constructed or enlarged any bridge or culvert made necessary by the crossing of any ditch constructed by a district organized under the provisions of this article: PROVIDED, HOWEVER, that if such bridge or culvert shall belong to any corporation other than the county, the county clerk shall give such corporation notice by delivering to its agent the order of the court declaring the necessity for constructing or enlarging such bridge or culvert. A failure to

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construct or enlarge such bridge or culvert within the time specified shall be taken as a refusal to do said work, and thereupon the county court shall proceed to let the work of constructing or enlarging the same, and assess the corporation with the cost thereof, the county clerk shall place such assessment on the tax book against said corporation, to be collected as taxes. But before the county court shall let such work, they shall give to the agent of such corporation at least twenty days' actual notice of the time and place of letting such work,*****."

It will be seen from the above that the county court of the various counties have control over construction of bridges over the ditches constructed by county court drainage districts. Therefore, all that is required to be done, is for the county court to determine if a bridge is necessary for the public health, convenience or welfare, and if so, then, order the corporation responsible for the construction or upkeep to construct or reconstruct such bridge. If such order is not complied with, then the county court may proceed to let the work of constructing such bridge and assess the cost against the corporation responsible for the work.

The courts of this state have on several occasions, passed on the responsibility for the construction of bridges across county court drainage districts. The first case to pass directly on this point was Camden Special Road District et al vs Willow Drainage District 199 SW 716, (Mo. app). The defendant in this case was a drainage district incorporated in the county court of Ray County. The Court of Appeals said:

"***** and, since we have seen that legislative authority is granted in the instance of the county court districts, to the district itself to build bridges where the drain crosses a public highway, and since the crossing by such drain is the destruction of the right of the public in the highway (citing case), it should follow that the district may be compelled to perform that act which it is authorized to perform which will restore the public use."

Again in the case of State ex rel vs Medicine Creek, D.D. 224 SW 343, l.c. 345, 284 Mo. 636, the Supreme Court, in speaking of a drainage district organized in a circuit court stated the following:

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"Since the counties are not required to build these bridges the drainage districts must do so. Furthermore, it seems essentially just that the burden of building bridges made necessary by the digging of drainage district, should be borne by drainage district. Drainage Districts are in a sense public enterprises, and they have, very properly, been greatly encouraged in this state; but in the last analysis the benefits which flow from them are chiefly enjoyed by those who own the lands which the ditches drain."

The decision in the case of Camden Special Road District vs Willow Drainage District, supra was apparently based on Section 5564, Revised Statutes of Missouri, 1909. This section of the statute which related to county court drainage districts, provided that the three commissioners appointed by the county court to oversee construction, had the power to do any and all acts necessary in constructing and repairing all the property of the drainage district which included bridges.

As stated in your request, this statute, after having been reenacted in 1919, was repealed by the laws of 1929 at #177. However, since that time, the principle that the drainage district should construct and maintain the bridges, has been set out in other cases. In 1931, the case of Cunningham Realty Company vs Drainage District #6 of Pemisnot County, 40 SW (2) 1086, 226 Mo. app. 1, was decided by the Springfield Court of Appeals. In speaking of the question of the upkeep of bridges in county court drainage districts that court said:

"It was the duty of the district to maintain them."

This point was again passed on in the case of Graves vs Little Tarkio D.D. #1, 134 SW (2) 1.c. 79, 345 Mo. 557, when the Supreme Court of Missouri stated as follows:

"The fact that drainage districts have been required to build and maintain bridges where their ditches cross public highways, whether such cost was provided for in their original plans or not, would also indicate that the district is not without authority to incur indebtedness in excess of maximum annual maintenance income. These duties and obligations are not based on assets or income."

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State ex rel Chamberlin v. Grand River
Drainage District, 311 Mo. 309, 326, 331,
278 S.W. 388, 393, 395; State ex rel. Ashby
v. Medicine Creek Drainage District, 284
Mo. 636, 654, 224 S.W. 343, 346. The same
is true of County Court Drainage District.
Camden Special Road District v. Willow Drain-
age District, Mo. App., 199 S.W. 2nd 716;
Cunningham Realty Co. vs. Drainage District
No. 6, 226 Mo. App. 1, 22 40 S.W. 2nd 1086,
1097."

In view of the above decisions, this department feels that it is the duty of county court drainage districts to construct and maintain bridges across its ditches whether they need repairs or reconstruction. It will be a very simple matter for the county court, as the administrative body controlling a drainage district to order a bridge reconstruction.

Our views as above stated will dispose of any possibility of there being liability on the part of the township.

CONCLUSION

Therefore, it is the opinion of this department, that where a bridge has collapsed over ditch dug by a county court drainage district, it is the duty of such drainage district to replace it.

Respectfully submitted,

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APPROVED:

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