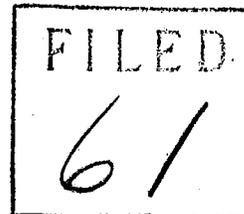


DRAINAGE DISTRICTS: In a county having township organization the County is liable for assessed benefits to roads in a drainage district which was organized under the County Court Drainage law.



February 4, 1946

Mr. L. E. Merrill  
Prosecuting Attorney  
Chariton County  
Keytesville, Missouri

Dear Mr. Merrill:

This will acknowledge receipt of your letter of January 25, 1946, in which you request an opinion of this department, as follows:

"The County Court of Chariton County, Missouri, desires your opinion on the following:

In a County having Township organization, is the County or Township liable for assessed benefits to roads in a drainage district organized by the County Court?"

In Bates County Drainage District No. 1 vs. Bates County (1916) 269 Mo. 78, the Supreme Court of Missouri held that the assessment of benefits accruing to public roads and highways situated in Bates County, which, at that time, was under township organization, were to be made against the County of Bates since the drainage district had been organized under the county court drainage law. The question was not raised in that case as to whether it was the county or the township which was liable for said assessed benefits.

In Harrison and Mercer County Drainage District vs. Trail Creek Township (1927), 297 S. W. (1) 317 Mo. 933, the Supreme Court of Missouri held that the assessment of benefits to public roads and highways in Harrison County, Missouri, should be made against the township within which the roads benefited were situated, where the drainage district was organized under the Circuit Court Drainage laws. In discussing the precise point presented by your letter of January 25, 1946, the Supreme Court of Missouri said: (l.c. 944 and 945)

"In Drainage District v. Bates County, 269 Mo. 78, the proceedings leading to the incorporation of the plaintiff drainage district, and the assessment of benefits accruing to the private lands and public roads and high-

ways situate therein, were had in the County Court of Bates County, under and by virtue of what is commonly called the County Court Drainage Law. (Art. 4, Chap. 41, R. S. 1909, and amendments thereto.) Section 5591, Revised Statutes 1909, which was then a part of the so-called County Court Drainage Law, provided: 'When any ditch established under the provisions of this article (i.e., Art. 4, chap. 41 R. S. 1909) drains, either in whole or in part, or benefits any public or corporate road or railroad, the viewers shall apportion to the county, if a county or state or free turnpike road, or if a corporate road or railroad, to the company owning, operating or controlling the same, the same proportion of the cost of location and construction of the improvement in proportion to the benefits received as to private individuals.' (Italics ours.) Construing therefore, the precise statute involved in the Bates County case, this division of this court therein ruled, in substance and effect, that the so-called County Court Drainage Law therein involved did not provide that public roads and highways shall be assessed for benefits accruing thereto by reason of the drainage improvements and reclamation plan, but, on the other hand, specifically provided that the benefits accruing to the public roads and highways shall be apportioned to the county in which such public roads are situate;\* \* \*"

\* \* \* \* \*

"\* \* \* But it is clearly apparent, from the above language used by Judge Graves, the author of the opinion in the Bates County case, that the remedy by action, and a general judgment therein, was properly against Bates County because the statute under construction in that case, by its precise terms, laid the liability and obligation for the payment of benefits accruing to the public roads and highways upon the county itself, and upon no other political or governmental subdivision of the State."

The court said further at l.c. 949:

"But it is said by defendant organized township herein that Bates County had adopted, and was under, township organization at the time of our ruling and decision in the Bates County case, supra, and that we ruled therein that Bates County, as the unit of government, was liable for the benefits accruing to the public roads and highways situate within that county. But, as we have pointed out herein, the drainage district proceedings in the Bates County case were had under and by virtue of the County Court Drainage Law, and not under the Circuit Court Law, and the County Court Law, by its terms, did not provide for the assessment of benefits directly against the public roads and highways, but specifically provided that the accruing benefits shall be apportioned to the county. Hence, even though Bates County had adopted township organization, the county itself was held liable for the payment of benefits accruing to the public roads and highways therein because the drainage act therein involved and under construction specifically directed and provided that the benefits are to be apportioned to (and paid by) the County, and to no other unit of government or political subdivision of the State. The distinction between the Bates County case and the instant case, we believe, is readily apparent."

Section 5591, R. S. 1909, which was the basis of the court's decision in the Bates County case, and which is also referred to in Harrison and Mercer County Drainage District v. Trail Creek Township, still remains, without change, a part of the County Court Drainage laws. It is now designated Section 12430, R. S. Mo. 1939, Mo. R.S.A., p. 699.

We are of the opinion that Bates County Drainage District Number 1, v. Bates County, supra, and Harrison and Mercer County Drainage District v. Trail Creek Township, supra, effectively ruled the instant question.

#### CONCLUSION.

It is, therefore, the opinion of this department that, in

Mr. L. E. Merrill

-4-

a county having a township organization, the county and not the township is liable for assessed benefits to roads and highways located in a drainage district which was organized by the County Court under the County Court Drainage Law.

Respectfully submitted,

SMITH N. CROWE, JR.  
Assistant Attorney General

SNC:DC

APPROVED:

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J. E. TAYLOR  
Attorney General