

DRAINAGE DISTRICTS,) A drainage district does not lose its
) authority to levy and collect a mainte-
) nance tax by reason of its failure to
MAINTENANCE TAX:) function for a period of years.

October 25, 1951

10-26-51



Honorable James Q. Donaldson
House of Representatives
Jefferson City, Missouri

Dear Mr. Donaldson:

We have given careful consideration to your request for an opinion, which request is as follows:

"It is requested that you furnish an opinion as to the power, right and authority of the Mingo Drainage District to levy and collect taxes from landowners within the district, for the purpose of maintaining levees within the district.

"The following facts are submitted for your use in preparing this opinion:

"(1) The Mingo Drainage District was incorporated by the Circuit Court of Stoddard County on April 22, 1915, for a term of fifty years, and the decree of incorporation is recorded in Book 2 at page 132 and following et seq. of the records in the Circuit Court of Stoddard County.

"(2) A Board of Supervisors was duly elected on the 19th day of May, 1915, in the city of Puxico and the Mingo Drainage District began functioning and continued to function until some-time in the year 1945, the last meeting

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of the Board of Supervisors being held on the 2nd day of August, 1944. The last year in which a maintenance tax was levied was 1944.

"(3) On the 23rd day of May, 1951, a meeting of the landowners within the Drainage District was held in the city of Puxico pursuant to the notices published in the counties of Stoddard and Wayne, in accordance with the statutes made and provided in such cases. At said meeting of the landowners a new Board of Supervisors was elected.

"(4) This new Board of Supervisors is now desiring to repair 27 breaks in the levees of said district. The money for the restoration of the levees is available through the U. S. Army Engineers. Before the Board of Supervisor can attend to the restoration of the levees, it is necessary to know whether or not they may levy and collect taxes for the maintenance of such levees."

The board of supervisors of a drainage district organized in circuit court may levy a tax each year for the purpose of maintaining and preserving the ditches, drains, levees and other improvements of the district. The authority vested herein is contained in Section 242.-490, RSMo 1949. The wording of this statute is plain and, therefore, needs no construction.

Your problem, however, seems to be grounded in the fact that the Mingo Drainage District failed to function for a period of approximately six years. This situation raises the assumption that the corporate existence of the district might have elapsed. The statute governing this question is embodied in Section 242.140, RSMo 1949, which provides a definite procedure in circuit court for dissolving a drainage district. There is no other way in which such a district can be dissolved and its corporate existence

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terminated before the end of the fifty-year period for which the district was chartered. The courts have held that a municipal corporation can be disincorporated only in the manner authorized by statute.

In the case of *Hambleton v. Town of Dexter*, 89 Mo. 188, the Supreme Court of Missouri, on page 191, said:

"* * * As this case must be reversed and remanded for the reasons before noted, it may not be amiss to say that the order of the county court of January 4, 1877, did not disincorporate what is called the old town of Dexter. These towns, when they are once incorporated, can only become disincorporated by resorting to the proceeding pointed out by the statute. 2 W. S., 1319 and 1320. There is no pretense in the evidence that any notice was even given as required by law; nor does the order of the county court attempt or undertake to dissolve the corporation previously made. Nor does the law authorize the incorporation of a new town out of a part of the inhabitants and territory already incorporated. This last order of the county court cannot in the least prejudice the rights of the relator to have his judgment paid by taxation or otherwise."

In the case of *State ex rel. v. Crismon*, 354 Mo. 174, the Supreme Court of Missouri, on page 178, sustained this principle, as follows:

"In 1 Dillon's *Municipal Corporations*, 5th Ed., sec. 338, p. 591 it is said: 'The doctrine of a forfeiture of the right to be a corporation has also, it is believed by the author, no just or proper application to our municipal corporations. . . . In short, unless otherwise specially provided by the legislature, the nature and constitution of our municipal corporations, as well

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as the purposes they are created to subserve, are such that they can, in the author's judgment, only be dissolved by the legislature, or pursuant to legislative enactment. They may become inert or dormant, or their functions may be suspended, for want of officers or of inhabitants; but dissolved, when created by an act of the legislature, and once in existence, they cannot be, by reason of any default or abuse of the powers conferred, either on the part of the officers or inhabitants of the incorporated place. As they can exist only by legislative sanction, so they cannot be dissolved or cease to exist except by legislative consent or pursuant to legislative provision.'

"To the same effect is 1 McQuillin's Municipal Corporations, 2d Ed., sec. 317, pp. 380-381: 'A municipal corporation can only be dissolved in the manner prescribed by law . . . Thus a municipal corporation is not ipso facto dissolved or destroyed by a non-user of its powers, in whole or in part, or failure of a term of years to exercise the functions of a municipality, since a judicial sentence or legislative act is necessary to effect a dissolution. In such case the municipal corporation would be suspended for the time, but not civilly dead, since its dormant functions could be revived without action on the part of the sovereignty, the sources from which, in theory of law, corporate life originally came. The result would be the same should all of the inhabitants remove without the corporate limits. The remedy for failure to exercise municipal powers or for illegal acts or misconduct of the officers or agents of the corporation is not dissolution or forfeiture of the charter.'

"The same author says in Sec. 318: 'A municipal corporation is not dissolved

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by the mere failure to elect or appoint officers and agents to conduct its government, for its continuance as a legal entity does not depend on the existence of officers.'"

CONCLUSION

It is the opinion of this office that the Mingo Drainage District, under the facts stated in your letter, has not lost its corporate existence and is vested with power and authority to levy and collect taxes from landowners within the district for the purpose of maintaining levees and other improvements made by said district.

Respectfully submitted,

B. A. TAYLOR
Assistant Attorney General

APPROVED:



J. E. TAYLOR
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BAT/fh