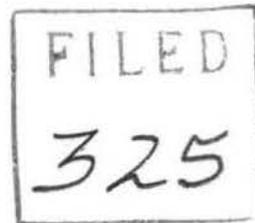


(Answered by letter)



October 16, 1964

Mr. Harold Owens, Executive Secretary  
State Soil and Water Districts Commission  
T-7 Building  
University of Missouri  
Columbia, Missouri

Dear Sir:

Your recent request for an opinion raises two questions concerning the disestablishment of a soil and water district. Your questions read as follows:

- "1. Is a hearing to be held in the steps to disestablish a district? The statutes do not specify this in section 278.150.
- "2. Is there a two year waiting period required before holding another referendum on the proposition of disestablishing a district? Under section 278.100, Para 2., the Statutes states, 'That the question of establishment to have been lost, although another referendum on this question may be called--for this area at any time after two years from the date of this declaration.'"

The establishment of a soil and water district is provided by Section 278.100, RSMo. Supp. 1963. A soil and water district may not be properly established unless the statutory procedure, so provided, is followed. The procedure requires the Missouri Soil and Water Districts Commission to call a public hearing after receiving a petition from the appropriate number of land representatives declaring that the saving of soil and water in the area is a public necessity. If the Commission finds at the public hearing that the general desire

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in the area is in favor of such a district, they shall conduct a survey of the conditions in the area to determine if a soil and water district is feasible and necessary. If the Commission reaches a favorable conclusion, they shall call and conduct a referendum on the question of establishing such a soil and water district. If the majority of all land representatives voting, vote in favor of the establishment of such district, the Commission at once declares such district established. However, if a majority of those voting do not vote in favor of the district, it shall be declared lost, and the Commission may not call for another referendum until after two years has passed.

The disestablishment of a district, like the establishment, must be provided for by statute. If no procedure is provided, a district once established properly, may not be disestablished. See State ex rel. Davidson v. Mo. State Life Insurance Co., 228 Mo. App. 38; and Opinion of Attorney General, No. 72, to Honorable William J. Esely, April 3, 1963, which is enclosed.

The legislature has provided for a method to disestablish soil and water districts in Section 278.150, RSMo, which provides as follows:

"1. The state soil and water districts commission upon receiving at any time a petition for the disestablishment of any soil and water district, said petition being signed by not less than twenty-five land representatives in each township within the area covered by the petition, shall presently call for and conduct within that district a referendum upon the disestablishment of that district; and if a majority of the land representatives voting in this referendum do vote in favor of the disestablishment, the soil and water commission shall declare that district to be disestablished, and the soil and water supervisors of that district may not thereafter enter into any contracts or agreements on behalf of that district."

It is clear from the statute that there is no requirement for a hearing to determine whether a general desire favoring disestablishment exists prior to calling and conducting a referendum upon disestablishment. The commission is not given such discretion. The calling of the referendum must presently follow the receipt of the petition.

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It is also clear that such a referendum for disestablishment must be called, whenever a proper petition for disestablishment is received. There is no waiting period after a referendum in which disestablishment did not receive a majority of the votes of the land representatives voting within which another referendum for disestablishment may not be conducted.

The two year waiting period between referendums for establishment of a district does not apply to referendums for disestablishment of a district. It is limited only to unfavorable voting upon the establishment of a district. A petition for disestablishment may be filed with the Commission "at any time" and the Commission is then required to call and conduct a referendum presently.

Therefore, it is the opinion of this office that under Section 278.150, RSMo. Cum. Supp. 1963: (1) A public hearing is not required after a petition for disestablishment of a soil and water district is received by the Missouri Soil and Water Districts Commission; (2) There is no required waiting period between referendums for disestablishment of soil and water districts. They are to be called presently any time a petition for disestablishment is received by the Commission.

I am also enclosing a petition heading for the disestablishment of a Soil and Water District as per your request.

Very truly yours,

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THOMAS F. EAGLETON  
Attorney General

JDF/dg

Enclosures