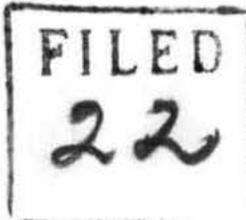


COUNTY COURTS:
DRAINAGE DISTRICTS:

County court cannot purchase machinery for maintaining ditches, drains and levees in only part of the districts of the county under Section 243.330, RSMo 1949.

September 22, 1952



9/23/52

Honorable Robert A. Dempster
Prosecuting Attorney of
Scott County
Benton, Missouri

Dear Sir:

Reference is made to your recent request for an official opinion of this office which request reads as follows:

"The County Court of Scott County, Missouri, which is the governing body of all the drainage districts in Scott County, has asked this office to write you for an opinion on the question hereinafter set out.

"In connection therewith the following information is given: There are seven drainage districts organized by the county court in Scott County. In four of these districts, more than 50% of the benefited acreage has asked the county court to purchase one drag line machine for these four districts. The other districts have not asked for, and indications are that they do not want to participate in the purchase of a drag line. The county court feels and would do find that the ditches in the four participating districts can be better maintained, more economically and in general that the four districts desiring participation in the drag line can best be served from the standpoint of economy and efficiency in the drag line is purchased for the four districts than contracting the work done.

Honorable Robert A. Dempster

"The question is: Can the county court, for and on behalf of fewer than all county court drainage districts in the county, at the request of a majority of the acreage in the petitioning districts, purchase a drag line machine for such petitioning districts alone?

"Reference is made to Section 243,330 VAMS providing method for purchase of equipment for all districts, and Section 243.280 authorizing lease of equipment, and Section 243,240, placing the duty on the county court to maintain the efficiency of the ditches and vesting power and duty of maintaining, preserving, restoring, repairing, strengthening and replacing the ditches, etc.

"Under the last cited section the duty of constantly maintaining, etc., of ditches is cast upon the court and the cost of continually contracting such work is prohibitive, whereas with machinery owned by the district, cost could be kept down and ditches maintained more efficiently."

We presume from your opinion request that the drainage districts to which you refer are districts organized in the county court and this opinion is, of course, so limited.

You inquire whether or not the county court is authorized to purchase machinery for maintaining ditches, drains and levees in some of the drainage districts in the county but not for others. Under the provisions of Section 243.240, RSMo 1949, drainage districts organized under the provisions of this chapter are under the continuous management and control of the county court. Said section provides in part as follows:

"1. It shall be the duty of the several county courts of this state to maintain the efficiency of the drainage districts now or hereafter organized and existing under and by virtue of the provisions of this chapter and such courts are vested with the continuous management and control of said districts with the duty and power of maintaining, preserving, restoring, repairing, strengthening and replacing the drains, ditches and levees thereof."

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Honorable Robert A. Dempster

Section 243.330, RSMo 1949, authorizes the county court to purchase machinery to be used in the maintenance and preservation of the ditches, drains and levees of the districts in the county. This section provides in part as follows:

"* * *provided, however, the court may, from time to time, as occasion may require, set aside a portion of said tax from each district in said county into a general fund to be used by the county court in the purchase of dredge boats, tools and other machinery to be used in the maintenance and preservation of the ditches, drains and levees of the districts organized and existing under the provisions of this chapter; provided, the portion appropriated from each district to be used in the purchase of dredge boats, tools and other machinery, shall be determined by dividing into two equal parts the estimated cost of the dredge boats, tools and other machinery purchased; and one such part shall be apportioned in the ratio that the total benefit assessments in each district assessed for original construction bears to the aggregate total assessed benefits for original construction in all said districts, and the other part thereof shall be apportioned to the ratio that the total yards of excavation, or yardage moved, as the case may be, in constructing the original improvement in each district bears to the total yards of excavation of yards moved in constructing original improvements of all said districts.

"3. The dredge boats, tools and other machinery so purchased, shall be and become, the general property of all the drainage districts in said county, and be used under the direction of the county court in the cleaning and restoration of any such ditch, drain or levee in said county to its original size and condition; * * *."

It is noted that this section provides that the county court may set aside a portion of the tax therein provided from each district in the county for the purchase of machinery for the maintenance and preservation of the ditches, drains and levees of the districts. This section further provides that the machinery so purchased shall be and become the general property of all the drainage districts in said county. We are of the opinion that the intention of the legislature is affirmatively stated in this section

Honorable Robert A. Dempster

and would preclude any other interpretation. This rule is stated in the case of Kroger Grocery & Baking Co. v. City of St. Louis, 435, l.c. 439, as follows:

"* * *when special powers are conferred, or special methods are prescribed for the exercise of a power, the exercise of such power is within the maxim expressio unius est exclusio alterius, and forbids and nugatory the doing of the thing specified, except in the particular way pointed out, * * *."

Following the above cited rule we believe that since the legislature has provided for the purchase of machinery which shall be and become the general property of all of the districts and since we are unable to find authorization for the purchase of machinery in the manner that you have indicated that it could not be done.

CONCLUSION

Therefore, it is the opinion of this office that Section 243.330, RSMo 1949, provides the only method for the purchase of machinery for drainage districts organized under the provisions of Chapter 243, and if such machinery is purchased as herein provided it becomes the general property of all such drainage districts in the county, and all of said districts may participate in the use thereof within the discretion of the county court subject to the rental and lease provisions contained in this chapter.

Respectfully submitted,

D. D. GUFFEY, Assistant
Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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