

**WRITTEN TESTIMONY TO LEVEE AND DRAINAGE DISTRICT
LAW STUDY COMMITTEE, DES MOINES, IOWA
DECEMBER 15, 2010**

Issues Involving the Management of Levee and Drainage Districts by Trustees

Co-Chairpersons, Senators, and Representatives:

A Perspective from Southeast Iowa

Drainage and levee districts in Southeast Iowa, stretching from Muscatine County through Louisa, Des Moines, and Lee Counties, are similar to drainage districts elsewhere in Iowa in that they are flat river bottom land reclaimed from unusable swamp lands around the beginning of the 20th Century. There are similar districts adjacent to the Missouri River in western Iowa. The difference between these districts and more familiar drainage districts in the remainder of Iowa is two-fold. First, major levee systems are required to protect the drainage districts from recurrent flooding. The districts that I represent are subject to inundation from not only the Mississippi River, but also the Cedar, Iowa, and Skunk Rivers. The second difference is that these districts adjacent to major rivers generally are bounded on the west by substantial river bluffs and upland areas which frequently discharge large quantities of water into the districts from substantial watersheds. The districts must accept this water, channel it through the district in addition to normal precipitation, and pump it over the large levee structures by means of substantial and expensive pumping stations. These pumping stations are large and expensive to maintain. They consist of three or four large drainage pumps ranging from 48 inches to 60 inches in diameter on the discharge side and powered by very large diesel or electric motors. At maximum capacity, these stations are capable of discharging 250,000 gallons of water per minute. These pumping stations require constant maintenance and personnel to operate them in addition to the more normal ditch maintenance. This substantial commitment to infrastructure has resulted in these districts being managed by an elected Board of Trustees. In Southeast Iowa there are very few, if any, districts managed by Boards of Supervisors. These large districts in Southeast Iowa which I am privileged to represent comprise almost 80,000 acres of prime agricultural land. Dealing with the cost and complexity of operating these districts, four separate issues have begun to be discussed recently to which I would like to direct my comments. They are as follows:

1. Method of Electing Trustees.

Two bills were introduced in last year's legislative session which proposed to change the manner by which trustees are elected and who could serve as a trustee of a levee or drainage district. Ever since the drainage laws were enacted by the legislature in 1915, there have been two methods of determining the person's right to vote in a drainage or levee election. The first and most common method is that a person or entity owning land in a district which is assessed for benefits, that is pays a drainage or levee tax, is entitled to vote. The list of eligible voters is prepared by the County Auditor's office and updated for each election. The second is where the

right to vote is determined in proportion to the size of the drainage tax paid by the landowner. In these districts the landowner is entitled to one vote for each \$10.00 or fraction thereof of the assessment amount. This method of voting can only be adopted when a majority of the landowners in such a district approve it.

Senate File 20, introduced by Senator Courtney, and House File 246, introduced by Representative Reichert, proposed legislation which essentially would have done away with the method of voting determined by the amount of a landowner's assessment, disbanding the current Board of Trustees, and mandating a new election. These bills appear to have been aimed at the Muscatine-Louisa Drainage District No. 13 in south Muscatine and northern Louisa Counties, which District is represented here today by Terry Martin, Chairperson of the District. This District has been under trustee management since its inception in 1916. The present voting method has been in place for many years after its adoption by a majority of the voters in the District. As is true for all drainage districts, the area is predominantly agricultural in nature although, as is becoming common in Iowa, urban residents are moving into the area. Subdivisions now exist where crop land used to predominate. Unfortunately, the people in the subdivisions do not always share the viewpoint of their agricultural neighbors. As expressed to me by Mr. Martin "the people who pay the freight are the ones that should be able to determine the nature of these districts". That is because their livelihood and past investments are most at stake. For example, typical subdivision property owners pay \$22.00 in drainage tax; Mr. Martin pays \$8,852.00. These people have far more interest in the drainage districts than people who want to live in the country but commute to their jobs in the city. Any change in the status quo in the Muscatine-Louisa District would be unwise.

Senator Courtney's proposed legislation, however, goes even further. Once again, since the drainage laws originally were enacted in Iowa, only a person or entity owning agricultural land has been eligible to serve as a trustee. Senate File 20, as proposed, would allow any owner of land in the drainage or levee district managed by a Board of Trustees to be eligible to serve as a trustee. Seemingly this would allow the owner of a subdivision property to run and be elected as a drainage or levee trustee. Simply stated, such a person would be neither qualified or suitable to serve as a trustee and such a person's election would not be in the best interest of those persons or entities in the district which rely on the Board of Trustees for their continued existence. Allowing nonagricultural landowners to stand for election in these districts would be unwise.

2. Eminent Domain.

It seems as though every legislative session brings with it an attempt to revise legislation dealing with eminent domain. Recently, major revisions were made to these laws as reflected in the 1999, 2000, and 2006 Acts. After I complained about some of these changes to Senator Courtney, he uttered the proverbial words "you don't want to go there because you don't know what you will end up with". It is axiomatic that the right to institute eminent domain proceedings is conferred on local governments by the State through its legislative acts. The same is true for the Board of Trustees of a drainage or levee district. Interestingly, in the case of drainage and levee districts, the right to utilize eminent domain is conferred by Article I, Section 18 of the Iowa Constitution. Specifically, the right was conferred on levee and drainage districts by the

legislature as now embodied in Section 468.126(6). The power of eminent domain is used by trustees of levee or drainage districts very sparingly and only when absolutely necessary to carry out the purposes of the districts. In virtually all cases, mutually acceptable agreements are reached between the landowner and the trustees. In my 35 years representing levee and drainage districts, I am only aware of one instance where formal eminent domain proceedings have been instituted. The eminent domain procedures now in place in the State of Iowa are definitely calculated to protect the interests of the person whose property is being acquired, whether by the Board of Trustees of a levee and drainage district or otherwise. No changes are necessary or warranted in this regard.

3. Compensation of Trustees.

Compensation for trustees and the clerk of the Board is fixed by statute at \$40.00 per day plus necessary expenses by Section 468.531. The last time compensation was increased appears to have been back in 1989. Once again, I have been warned by Senator Courtney that this is a sensitive issue with the legislature. While I would not dispute that \$40.00 might be adequate for an average levee or drainage board meeting where the only item of business is approval of claims, I have also worked with these trustees through the floods of 1993, 2001, and 2008, plus other emergencies that arise frequently. I can assure you that \$40.00 per day plus expenses does not begin to compensate these trustees for their efforts in behalf of their constituents. I have observed these dedicated individuals working 24 hours a day for days on end trying to rescue their districts from disaster after disaster. It is a huge understatement to say that these trustees do their job out of dedication to their constituents. They deserve to be better compensated for their efforts, perhaps on a hourly basis. If their constituents feel that the trustees are overcompensated, they can either vote to elect some other person as a trustee or serve in that capacity themselves. I seriously doubt that these trustees would end up being overcompensated given the checks and balances of the election process. Then there is the aftermath of the disasters or near disasters. As you all know, governing has become a much more complex and time consuming process, especially when the agencies you deal with the most are the U.S. Army Corps of Engineers and FEMA. These recovery processes take a huge amount of time and effort. \$40.00 per day is simply not adequate compensation for these efforts. In working with these trustees I frequently ask them during the recovery process if they do the job for the money or the respect. All I get in response is a grin. In short, current compensation is grossly inadequate due to the nature of the job and its attendant responsibilities.

4. Possible District Consolidation.

The major and drainage and levee districts in Muscatine and Louisa Counties are separate entities. The levee district and three drainage districts in Louisa and Des Moines Counties are separate districts. The levee and drainage district in Lee County is a combined district. There is no mechanism under existing state law which would allow districts under trustee management to merge or consolidate. In the interest of cost saving and administrative efficiency this is an area that needs to be looked into. In Louisa and Des Moines Counties we have formed an association which amounts to a management company to oversee the operation of the one levee and three drainage districts. This has worked remarkably well because all operations are consolidated

under a single administrator. Levee and drainage laws presently allow for a large district to be divided into subdistricts, but the reverse is not possible. Perhaps this is because most districts in Iowa are under the management of Boards of Supervisors, which in effect allows a single entity to oversee the operation of several districts within a county without having to merge them into a larger entity. Because merger or consolidation would appear to be in the best interests of both the landowners and the trustees of these districts, this Committee should consider recommending changes in the levee and drainage laws to the legislature which would allow consolidation and the resulting more efficient operation of these districts.

Respectfully Submitted

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