

IN THE IOWA DISTRICT COURT FOR PALO ALTO COUNTY

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PALO ALTO DIST. COURT
CLERK DIST. CTY. IOWA

STATE OF IOWA,)	
)	
Plaintiff,)	No. EQCV023312
)	
vs.)	
)	FINDINGS OF FACT,
BOARD OF TRUSTEES OF PALO)	CONCLUSIONS OF LAW,
ALTO COUNTY DRAINAGE)	AND DECREE
DISTRICT 80 and PALO ALTO)	
COUNTY TREASURER KATHLEEN)	
THOMPSON,)	
)	
Defendants.)	

Plaintiff's Petition for Declaratory Judgment filed on October 10, 2006, came on for trial before this Court on November 20, 2007. The Plaintiff, State of Iowa, was represented by Assistant Attorney General Michael H. Smith. The Defendants, Board of Trustees of Palo Alto County Drainage District 80 and Palo Alto County Treasurer, Kathleen Thompson, were represented by their attorneys, James W. Hudson and James C. Hudson. The Court heard the evidence of the parties, received their exhibits, and at the conclusion, took the matter under advisement for later ruling. Now, the Court having considered the record properly before it, applicable law, and the written submissions of the parties, makes the following findings of fact, conclusions of law and decree.

INTRODUCTION

The State commenced this declaratory judgment action to challenge the annexation of Five Island Lake, classification of the lake, and levy of an assessment in the principal amount of \$96,633.83 against the lake for alleged drainage benefits.

The State challenges the notice the Iowa Department of Natural

Resources received and alleges that:

1. Assigning drainage benefits to a natural lake is contrary to the statutory purposes of drainage districts.
2. Failure to comply with notice statutes is jurisdictional and strict compliance should be required for annexation of property into a district.
3. Notice to the DNR was not authorized by the Iowa drainage code.
4. The purported notice to the DNR was not consistent with the statute waiving sovereign immunity.
5. The Legal Publication failed to notify the State of the consequences of failure to appear and object.
6. Iowa Code Section 468.43 does not authorize payment of interest.

The Defendants' position is that they have complied with all the applicable provisions of Iowa Code Chapter 468.

The Petition, in the post-trial amendment thereto, requests judgment declaring that the assessment levied by the Trustees of Palo Alto County Drainage District 80 against Five Island Lake and Islands is void for lack of jurisdiction to assess drainage benefits and that the State has no duty to pay the principal amount of drainage taxes on Five Island Lake and Islands or any interest thereon.

FINDINGS OF FACT

Five Island Lake is a natural lake owned by the State in its capacity as a sovereign state. The State holds the title to the lake in public trust to protect the lake from adverse consequences, including drainage of the lake. The district's action challenged is the annexation and classification of State-owned property consisting of 1,032.35 acres identified as "Five Island Lake & Islands," resulting in an assessment in the amount of \$96,633.83 against the lake. Water

flows out of Five Island Lake at the location of its natural outlet over a concrete structure that stabilizes the elevation of the spillway and prevents the lake from being drained.

Donald Etlar, a professional engineer, made an investigation into complaints that the upper main open ditch of Drain 80 was not draining appropriately. He filed his report and as a part of that report recommended that the Board of Supervisors pursue annexation of additional lands into Drainage District 80. The Board accepted this recommendation and engaged him to classify the benefits provided by the facilities of District 80 to each parcel. Contemporaneously he also tendered his annexation report. The report describes and allocates benefits to each parcel of land in the district and describes the lands to be annexed into the district.

The Board, acting under sections 468.119 and 468.120 of the Iowa Code, established a hearing on annexation. Notice was given by publication on April 12, 2005, in a special section of The Reporter, a newspaper of general circulation published in Emmetsburg, Iowa. Notice was also given to each landowner of a parcel which was proposed for inclusion in District 80 by mailing to each person a copy of the special supplement to the newspaper, which is in evidence as Exhibit 1.

The legal publication gives notice of a hearing date on May 3, 2005, at 10 a.m. in the Palo Alto County Election Center. The notice as published is entitled "Notice of Hearing on Annexation to Drainage District No. 80, Palo Alto County, Iowa." The State of Iowa (DNR) is shown as a landowner. The notice provides:

"You and each of you are hereby notified that the Board of Supervisors of Palo Alto County, Iowa, acting in behalf of Drainage District No. 80, Palo Alto County, Iowa, have adopted a resolution of Necessity for the annexation of additional lands to Drainage District No. 80, as provided by law.

You are further notified that the Board of Supervisors have appointed Donald D. Etler of Kuehl & Payer, Ltd., a qualified engineer, to examine such additional lands, to make a survey and plat thereof showing the relation, elevation and condition of drainage with reference to Drainage District No. 80, and to make and file with the County Auditor a report provided by law. Said report to specify the character of benefits received."

The notice shows: "Lands Recommended for Annexation." The State of Iowa (DNR) is shown as the owner of Five Island Lake and Islands and additional land described by section and township. The published notice further provides:

"You are further notified that said report has been filed with the County Auditor of Palo Alto County, Iowa, and the Board of Supervisors have set the time and place of hearing on said report for 10:00 a.m. on May 3, 2005, at the Election Center, 1302 Broadway, Emmetsburg, Iowa 50536. At said hearing the Board of Supervisors shall consider such report, plats and profiles and if satisfied that any of such lands are materially benefited by the district and that such annexation is feasible, expedient, and for the public good, it shall proceed to annex said lands to Drainage District No. 80, Palo Alto County, Iowa, as provided by law.

You are further notified that all objections to the proposed annexation of said lands and any claim for damages must be in writing and filed with the County Auditor of Palo Alto County at or before the time set for hearing.

At the time fixed for hearing, the board shall examine said report and may hear evidence thereof, both for and against the annexation of said lands to said district.."

The publication notice is signed by Gary Leonard, Palo Alto County Auditor.

The Palo Alto County Auditor, Gary Leonard, also mailed copies of the legal publication from the Emmetsburg Reporter to all landowners listed in the publication. He referred to the transfer books in his office and found that they were all blank and failed to reflect any ownership of Five Island Lake. The book of plats had written across part of it the name "medium lake" in pencil. The auditor checked with other auditors in the State and was advised that for state owned lakes that title is in the State of Iowa and that the state owned lakes are under the jurisdiction of the Department of Natural Resources of the State of Iowa. He then placed the name State of Iowa, Department of Natural Resources, as the owner of the tract of land known as Five Island Lake. He published the notices of annexation and classification as required and has filed his proof of publication and mailing, reflecting that he mailed said notices to the State of Iowa in care of the Department of Natural Resources at the Wallace State Office Building in Des Moines, Iowa. The notice to the State of Iowa consisted of placing the legal publication, exhibit 1, in an envelope addressed to Department of Natural Resources, Wallace State Office Bldg., Des Moines, IA 50319, and mailing it.

For whatever reason, the notice never reached a representative of the State of Iowa, who would have authority to investigate the action of the Board of Trustees of Palo Alto County Drainage District No. 80. The State of Iowa did not file any written objections to the proposed annexation or make any claim for damages. The Department of Natural Resources becomes aware of the proceedings when in January 2006, the Palo Alto County Treasurer sent notice to the Department of drainage taxes due including \$96,633.83 for the assessment against Five Island Lake and Islands. Subsequently, the Treasurer

has sent notice of interest due on delinquent drainage taxes.

On the issue of whether or not Five Island Lake benefits from the drainage repairs, the Court heard from two experts: Donald D. Etler, a professional engineer with experience in drainage matters, and Jack D. Riessen, also a professional engineer with experience in surface water runoff and open channel hydraulics. At trial, Mr. Etler agreed that the open ditch repairs, for which the Five Island Lake was annexed, classified and assessed, have no effect on the rate at which water flows into or out of Five Island Lake. He also agreed that the lake is not agricultural land that has been improved by tiling and conversion of prairie into crop land. He expressed his opinion that the lake is "highly benefitted" by the drainage district repairs because it is flat, wet, and relatively close to the upper main ditch. Mr. Etler testified that when the Board of Trustees approved the annexation, classification and assessment of Five Island Lake, he had believed that the natural outlet of the lake had been rerouted in the early 1900's, see exhibit 15, and was one of the major reasons Drainage District 80 was established. He testified that on the basis of subsequent research, he concluded that his belief had been mistaken.

Mr. Riessen, the State's expert, agreed with Mr. Etler's opinion that the drainage district repairs have no impact on the rate or volume of flow into or out of the lake. He opined that the lake receives no benefit from the drainage district facilities. With these findings of fact in mind, the Court now turns to its conclusions of law.

CONCLUSIONS OF LAW

I. Assigning drainage benefits to a natural lake is contrary to the statutory purposes of drainage districts.

Iowa Code Section 468.2 (2007) recites:

1. The drainage of surface waters from agricultural lands and all other lands or the protection of such lands from overflow shall be presumed to be a public benefit and conducive to the public health, convenience, and welfare.
2. The provisions of this subchapter and all other laws for the drainage and protection from overflow of agricultural or overflow lands shall be liberally construed to promote leveeing, ditching, draining, and reclamation of wet, swampy, and overflow lands.

In examining Iowa Code Section 468.2, it appears to apply to the drainage of surface waters from agricultural lands and all other lands. In the Iowa Supreme Court case of Higgins v. Board of Supervisors, 176 N.W. 268 (Iowa 1920), the Iowa Supreme Court reviewed a situation where Pratt Lake, a meandered body of water, situated in Dickinson County, Iowa, was drained and lots sold in the lake bed. The Court held that where it was found that to maintain a lake as such would be detrimental to the best interests of the public it became, in effect, surface water to be dealt with under the provisions of the drainage act.

It is undisputed in this case that Five Island Lake is a natural lake owned by the State in its capacity as a sovereign and that the State holds the title to the lake in public trust to protect the lake from adverse consequences, including drainage of the lake. It is not agricultural land. Therefore, in this Court's opinion, for the lake to meet the definition of all other lands, there would need to be a decision that Five Island Lake is detrimental to the public's health and safety and needs to be drained. There has been no finding that Five Island Lake is detrimental to the best interests of the public and should be drained. The lake is preserved and held in trust for the public's benefit. No surface water exists to be drained.

The Fifty-seventh General Assembly in 1957 amended Iowa Code Chapter 455 by adding a new section. This section allowed the commissioners to assess benefits to state-owned lands under the jurisdiction of the state conservation commission within a levee or drainage district. In 1985 the Seventy-first General Assembly, Chapter 267, section 3, amended section 455.50 of the Code of Iowa to include the language, "However, the commissioners shall not assess benefits to property below the ordinary high water mark in a sovereign state-owned lake, marsh or stream under the jurisdiction of the state conservation commission." Then, in 1997 the legislature amended Iowa Code Chapter 468.43, 97 Acts, Chapter 194, section 1, to exclude the language cited above.

It therefore appears to this Court that assigning drainage benefits to a natural lake was initially contrary to the statutory purposes of drainage districts, but the legislature apparently provides for the assessment of lakes when the lake benefits.

"It is clear from the applicable statutes and our case law, that in order to annex land, the Board must show a benefit, if not a 'material' benefit, to those landowners whose land is being annexed." See Iowa Code Sections 468.119, 468.120.

By the language of the statute, the land to be included in the district must in some way be affected by the improvement, and, to benefit it, necessarily this must increase its value, either by relieving it of some burden, or by making it adapted for a different purpose, or better adapted for the purpose for which it is used. It is manifest, then, that a prerequisite to the inclusion of any tract of land in the district proposed by the engineer is that it will in all reasonable probability derive some special benefit from the improvement." Ray W. Ohrtman Revocable Trust, et al., v. Palo Alto County Board of Supervisors, et

al., No. 8-479/07-1921 (Iowa) filed December 17, 2008. (Citing Zinser v. Bd. Of Sup'rs of Buena Vista County, 114 N.W. 51, 56 (1907)).

It is undisputed that water flows out of Five Island Lake at the location of its natural outlet over a concrete structure that stabilizes the elevation of the spillway and prevents the lake from being drained. At trial, the district's licensed professional engineer, Donald D. Etler, agreed that the open ditch repairs for which the Five Island Lake was annexed, classified and assessed have no effect on the rate at which water flows into or out of Five Island Lake. He also agreed that the lake is not agricultural land that has been "improved" by tiling and conversion of prairie into crop land. He is of the opinion that Five Island Lake is highly benefitted by the drainage district repairs because it is flat, wet, and relatively close to the upper main ditch, which begins about 1/4 or 3/8 of a mile downstream from the lake's natural outlet. Mr. Etler originally believed the lake was diverted to drain to the east in 1909 and that Drainage District 80 was established to control this extra water, all as reflected in exhibits 15, 16, and 17. At trial, he testified that after subsequent research he concluded that his belief had been mistaken. Although at trial he testified that the alleged rerouting of the lake had not been a basis for the annexation, classification, and assessment of the lake, exhibits 15, 16, and 17 support the court's conclusion that the alleged rerouting of the lake outlet was a significant factor in the decision to annex, classify, and assess the lake.

Mr. Etler also testified that water that drains off the lake is presumed to be a benefit to the lake under Iowa Code section 468.2. However, the lake bed is not protected from overflow. The land downstream is the land protected. Because of the removal of the excess water, the lake has an obligation to participate in the water's removal.

The State's expert witness, Jack D. Riessen, agreed with Mr. Etler's

testimony that the drainage district repairs have no impact on the rate or volume of flow into or out of the lake. He, however, is of the opinion that Five Island Lake receives no benefit from the drainage district facilities.

It is this Court's belief that Five Island Lake receives no benefit by this annexation. The Court believes the presumption of Iowa Code section 468.2 is not applicable to Five Island Lake because it is not agricultural land and it is not other lands. See Higgins, 176 N.W. 268 (Iowa 1920). If the legislature, with the language used in the amendments referred to earlier, intended lakes to be included in the definition of "all other lands," then the court finds the presumption has been overcome by evidence to the contrary. Strict compliance with statutory provisions is required to establish a drainage district. Id. (citing Hicks v. Franklin County Auditor, 514 N.W.2d 431 (Iowa 1994)). The Court believes the Defendants have failed to meet their burden of proof that Five Island Lake will materially benefit by this annexation, as required by Iowa Code section 468.120.

II. Failure to comply with notice statutes is jurisdictional and strict compliance should be required for annexation of property into a district.

Iowa Code Section 468.14 describes the form of notice of hearing as follows:

"When any plan and report of the engineer has been approved by the board, such approval shall be entered of record in its proceedings as a tentative plan only for the establishment of said improvement. Thereupon it shall enter an order fixing a date for the hearing upon the petition not less than forty days from the date of the order of approval, and directing the auditor immediately to cause notice to be given to the owner of each tract of land or lot within the proposed levee or drainage district as shown by the transfer books of the auditor's office, including railway companies having right of way in the proposed district and to all

lienholders or encumbrancers of any land within the proposed district without naming them, and also to all other persons whom it may concern, and without naming individuals all actual occupants of the land in the proposed district, of the pendency and prayer of the said petition, the favorable report thereon by the engineer, and that such report may be amended before final action, the approval thereof by the board as a tentative plan, and the day and the hour set for hearing on said petition and report, and that all claims for damages except claims for land required for right of way, and all objections to the establishment of said district for any reason must be made in writing and filed in the office of the auditor at or before the time set for such hearing."

Iowa Code Section 468.15 provides:

"The notice provided in section 468.14 shall be served by publication as provided in section 331.305 before the hearing except that the notice shall be published at least twenty days before the hearing date. Proof of the service shall be made by affidavit of the publisher. Copy of the notice shall also be sent by ordinary mail to each person and to the clerk or recorder of each city named in the notice at that person's last known mailing address unless there is on file an affidavit of the auditor, or of a person designated by the board to make the necessary investigation, stating that no mailing address is known and that diligent inquiry has been made to ascertain it. The copy of notice shall be mailed not less than twenty days before the day set for hearing and proof of the service shall be by affidavit of the auditor. Proofs of service required by this section shall be on file at the time the hearing begins."

The State argues that this Court should apply a standard of strict compliance with statutory notice requirements. The State argues that the Iowa Supreme Court has distinguished between the compliance required for notice on

organization of a drainage district and notice required as to subsequent repair or improvement. See Voogd v. Joint Drain Dist., Kossuth & Winnebago Cos. 188 N.W. 2d 387, 390 (Iowa 1971). The cases that hold substantial compliance with notice requirements sufficient pertain to repair or improvement and do not involve the annexation of additional property into an existing district. In addition, the district's authority to annex and classify lands is governed by Iowa Code Section 468.119 and the duty to give notice of same to affected landowners is governed by section 468.120. That section expressly provides that as to notice and hearing the procedures for annexation shall be "to the same extent and in the same manner as provided in the establishment of an original district."

"Unless notice is made by personal service, on a designated agent, or is waived, it must be made by ordinary mail and publication" Hicks v. Franklin County Auditor, 514 N.W.2d 431,436 (Iowa 1994) (citing Iowa Code Sections 468.15 - .18). Strict compliance with statutory provisions is required to establish a drainage district. Ray W. Ohrtman Revocable Trust, et al, v. Palo Alto County Board of Supervisors, et al., No. 8-479/07-1921 filed December 17, 2008, (Iowa 2008). Since the Ohrtman case is an annexation case, the Court agrees with the State's position and concludes that a standard of strict compliance is required.

III. Notice to the DNR was not authorized by the Iowa drainage code.

The State argues that the auditor's transfer books cannot have been the source of any decision to identify the DNR as the owner of Five Island Lake because the lake has never been the subject of a recorded real estate conveyance to the State or any of its agencies as it has been owned by the State since statehood by virtue of the State's sovereignty.

The auditor testified that in preparing these notices pursuant to Iowa Code Section 468.14 he referred to the transfer books in his office and found that with respect to Five Island Lake, that the transfer books and the index book and the book of plats were all blank as to any ownership. He also testified that in the book of plats relative to this property there was written in pencil across part of it the name "medium lake". In checking with other auditors in that part of Iowa he was advised that for state owned lakes title is in the State of Iowa and that the state owned lakes are under the jurisdiction of the Department of Natural Resources of the State of Iowa. In preparing the notices he placed the name, State of Iowa, (Department of Natural Resources) as the owner of said tracts of land. He published said notices in a newspaper of general circulation published in Palo Alto County, Iowa and that he had on file in his office a proof of publication from said publisher and also a proof of mailing executed by himself as county auditor reflecting the mailing of said notices to all of the landowners listed on said notice. He sent the notice by mail to the State of Iowa in care of the Department of Natural Resources at the Wallace State Office Building in Des Moines, Iowa. He was advised by other county auditors in neighboring counties that that is the appropriate title to be used for state owned lakes and the appropriate address to be mailed to the Department of Natural Resources.

It is undisputed that the county auditor's attempt to mail notice to the State of Iowa consisted of placing the legal publication, exhibit 1, in an envelope addressed to Department of Natural Resource, Wallace State Office Bldg., Des Moines, IA 50319, and mailing it.

Iowa Code Section 468.120 provides that as to notice and hearing the procedures for annexation shall be "to the same extent and in the same manner as provided in the establishment of an original district." Procedures for notice

and hearing in the establishment of an original district are governed by Iowa Code sections 468.14 and 468.15. Section 468.14 prescribes the method for identifying affected landowners, requiring the board of supervisors to direct the county auditor to "cause notice to be given to the owner of each tract of land or lot within the proposed levee or drainage district as shown by the transfer books of the auditor's office..." The county auditor's transfer books are governed by Iowa Code Section 558.60, which prescribes required content for indexing conveyances of real estate.

It is apparent that the auditor's transfer books were not the source of any decision to identify the DNR as the owner of Five Island Lake. Five Island Lake has never been the subject of a recorded real estate conveyance to the State or any of its agencies as it has been owned by the State since statehood by virtue of the State's sovereignty.

Therefore, the decision to mail notice to the DNR could not have been based on the method for identifying and notifying landowners expressly prescribed by Iowa Code Section 468.14. Strict compliance with statutory provisions is required to establish a drainage district. Ohrman, at page 9. Therefore, the Court concludes that the notice to the DNR was not authorized by the Iowa drainage code.

IV. The purported notice to the DNR was not consistent with the statute waiving sovereign immunity.

The Plaintiff, State of Iowa argues that the district's assumption that mailing the legal publication to the DNR was a valid notice to the State of Iowa is not supported by the statute waiving the State's immunity from drainage assessments.

The General Assembly has enacted a limited waiver of sovereign

immunity from levy of drainage district assessments against State-owned lands as codified in Iowa Code section 468.43. That section does not expressly specify how the State is to be given notice of annexation, classification or assessment of state-owned property.

The State argues that under the analysis in Ioerger v. Schumacher, 203 N.W.2d 572 (Iowa 1973), the provisions of Section 468.43 for assessments against State-owned lands put the drainage district on notice that it had a duty to notify the Executive council of Iowa of hearing on the proposed annexation and assessment against the lake.

The Court concludes that the legislature did not specifically provide how the State is to be given notice of annexation, classification or assessment of state-owned property in Iowa Code section 468.43. The Court cannot conclude that the drainage district had a duty to notify the Executive Council of Iowa of hearing on the proposed annexation, reclassification, and assessment against Five Island Lake.

V. The "Legal Publication" failed to notify the State of the consequences of failure to appear and object.

The issue of proper notice to the State presents two questions

- (1) Does the published notice comply with the statutory requirements and contain the essential elements for notice? (Form of the notice.)
- (2) Was the mailing of notice procedure proper? (Manner of service.)

Notice of a hearing is sufficient if it informs the affected parties of the following: (1) the nature of the project; (2) that their land is involved; (3) it must inform them of their right to object or file claims for damages and the

consequences of their failure to do so; and (4) it must inform them of the time and place of any required public hearing. Mammel v. M & P Missouri River Levy District, 326 N.W.2d 299, 302 (Iowa 1982).

This Court, in an earlier ruling on a Motion for Summary Judgment in the Ohrtman case, had found that notice was sufficient despite the fact the notice did not inform of the consequences of their failure to act. This Court had concluded that the notice substantially complied. Subsequently, the Honorable Patrick M. Carr held in his findings of fact and conclusions of law in Ray W. Ohrtman Revocable Trust, et al., vs. Palo Alto County Board of Supervisors and Drainage District No. 80, Palo Alto Equity number EQCV023187, that the notice was sufficient in all but one particular. "The notice given, Exhibit 3 in this record, fails completely to advise affected landowners of the consequences of their failure to timely object."

The Honorable John P. Duffy examined the same issue in his ruling on Motion for Summary Judgment in this case. He agreed with Judge Carr's earlier ruling in Ohrtman. The Ohrtman case was appealed and there is no reference in the opinion of the Iowa Code of Appeals to sufficiency of the notice. Because these are companion cases, this Court is of the opinion that Judge Carr's opinion about the notice being insufficient because it fails to inform affected landowners of the consequences of their failure to timely object and fails to advise them that their failure to object shall result in the waiver of all objections and claims for damages, as provided by Iowa Code Section 468.19, is the law of this case.

In addition, this Court after the review of two jurists has been persuaded that its earlier ruling was incorrect. This Court is now also of the opinion that the published notice fails to inform the State of Iowa of the consequences of its failure to object to the annexation proceedings of Drainage District No. 80.

Strict compliance with statutory provisions is required to establish a drainage district. Ray W. Ohrtman Revocable Trust, et al. vs. Palo Alto County Board of Supervisors, et al. No.8-479/07-1921, filed December 17, 2008 (Citing Hicks, 514 N.W.2d at 435 (strict compliance with statutory provisions is required to establish a drainage district, while substantial compliance is sufficient as to repairs or improvements) Mammel v. M & P Missouri River Levy District, 326 N.W.2d 299, 302 sets forth the essential elements regarding the content of notice. This notice is insufficient because the notice fails to advise affected landowners of the consequences of their failure to timely object. The consequence is that anyone properly notified who fails to object "shall be held to have waived all objections and claims for damages." Section 468.19, code of Iowa. The Court has the benefit of the Ohrtman case (Id.), which was an annexation. Thus, this Court believes strict compliance is required.

The Honorable Judge Duffy in his Ruling on Motion for Summary Judgment filed November 19, 2007, on page 7 states:

"The second issue involves the mailing of a notice to the State of Iowa, Department of Natural Resources at the Wallace State Office Building in Des Moines, Iowa. The mailing of the notice was intended to comply with Iowa Code Section 468.15, requiring the county auditor to mail copies of the published notice by ordinary mail to each person named in the notice.

Iowa Code Section 468.17 provides for an alternative service of notice by personal service. This method was not used in this case. If this method was used, service of notice could have been made, pursuant to Iowa Rule of Civil Procedure 1.305 (11).

The notice sent by ordinary mail was not addressed to any particular person with the Iowa Department of Natural Resources. There is a designated director of

the Iowa Department of Natural Resources. His name was not on the envelope as mailed."

Judge Duffy concluded that the mailing of the notice to the Iowa Department of Natural Resources, Wallace State Office Building in Des Moines, Iowa, does not constitute due notice. There is no way of knowing how many people in the Iowa Department of Natural Resources office who would have received this notice. Had it been addressed to the Director of the Department of Natural Resources, it could be presumed that it was delivered to the Director. He concluded that the notice as mailed does not comply with the statute and does not provide due notice to the State of Iowa. This Court concurs with this opinion.

DECREE

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. All of the above.
2. The assessment levied by the Trustees of Palo Alto County Drainage District 80 against Five Island Lake and Islands is void for lack of jurisdiction to assess drainage benefits and the State of Iowa has no duty to pay the principal amount of drainage taxes on Five Island Lake and Islands or any interest thereon.
3. Court costs in the amount of \$ 125.00 are assessed to the Defendants.

NOTE TO CLERK:

Hearing held: Yes-Contested.

Michael Smith
James Hobson

If you require the assistance of auxiliary aids or service to participate in court because of a disability, immediately call your district ADA coordinator at 712-279-6616. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.)

RECEIVED

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FEB 02 2009

IOWA JUSTICE DEPT.
ENVIRONMENTAL LAW DIV

disc

Don E. Courtney
DON E. COURTNEY
DISTRICT COURT JUDGE

1-14-09
email