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DRAINING THE LAW: THE EROSION OF DRAINAGE DISTRICTS THROUGH A WINDING SLOUGH

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Illinois' History of Drainage Districts

For generations, Illinois residents have relied upon drainage districts—local bodies of government formed specifically to address local problems related to draining, ditches, and improvements of land, related to agriculture and sanitation.¹ Their basis was put forth in the Illinois Constitution of 1870, which made way for comprehensive state legislation in 1871.² This gave citizens a local voice, allowing them to petition their county courts to create drainage districts.³

Following a constitutional amendment, the drainage districts were empowered with authority to levy taxes, and changes were made to Illinois' drainage laws in the late 1870s.⁴ Since 1871, the entities have filed annual financial reports directly to the county or with circuit courts.⁵ Over time, the Legislature refined the law and recodified it in 1955 when the Legislature passed the Illinois Drainage Code.⁶ The Illinois Drainage Code has been the standard of governance for these localized bodies. Since the 1870s, this system of governance has operated pursuant to those strictures. It also addresses the exact procedures that must be followed when a drainage district is dissolved.

Dissolution under the Drainage Code

¹ The Office of the Illinois Secretary of State, Illinois State Archives, <https://www.ilsos.gov/departments/archives/IRAD/drainage.html> (citing L. 1871-72, p. 356; L. 1879, pp. 120, 142; L. 1955, p. 512).

² *Id.* (citing L. 1871-72, p. 356 and Constitution of 1870, Article IV, section 31).

³ *Id.*

⁴ *Id.* (1878 Amendment, Article IV, section 31).

⁵ *See Id.* ("From 1871 to the present, the commissioners have been required to file annual financial reports with the county or circuit courts."); 70 ILCS 605/5-20.1 (distinguishing districts where county collects drainage assessments).

⁶ *Id.* (citing L. 1871-72, p. 356; L. 1879, p. 120; L. 1879, p. 142; L. 1885, p. 109; L. 1871-72, p. 356; Rev. Stat. 1979, Ch. 42, secs. 4-14 to 4-17; 70 ILCS 605).

⁷ *See* 70 ILCS 605/10-1, 10-2, 10-3 (All or part of a district's work may be abandoned through a petition signed by two-thirds of

Dissolution of drainage districts is governed specifically under Article 10 of the Drainage Code. It provides three ways to dissolve drainage districts, subdistricts, and minor subdistricts.⁷ Because "[d]rainage districts are creatures of statute and have no existence without statutory authority . . . statutory procedure must be followed in the creation and dissolution of drainage districts."⁸ All petitions for dissolution eventually make their way before the court,⁹ via three methods specifically outlined within the Drainage Code. Those methods can be led by landowners, a majority of the drainage district commissioners, or by a sufficient representation of municipalities.

1. Dissolution by Verified Petition of Landowners:

When at least three-fourths of landowners within a district wish to dissolve the district, they can file a verified petition with the court.¹⁰ The petition must: (a) provide the landowners' "reasons for dissolving the district," (b) show that there are no outstanding debts or inability to satisfy any outstanding debts, (c) show that dissolution will not impair any contracts, (d) verify that the district is not obligated to maintain bridges, and (e) represent that these petitioners will cover any court costs.¹¹ Subdistricts and minor subdistricts may be similarly dissolved, after which they become absorbed into the main district.¹²

2. Dissolution by Petition of Commissioner Majority:

A majority of the district's commissioners can sign a petition for dissolution, which must be verified by at least one commissioner.¹³ The commissioners' petition must include similar representations to the landowner petition (e.g., dissolution's reasoning, no debts, no impairment of contracts, no obligations of

landowners in an affected area, before the commissioners have contracted to begin construction and before any lien has attached).

⁸ *Drainage Dist. #1 in Sand Prairie Twp., Tazewell Cnty. v. Vill. of Green Valley*, 69 Ill. App. 3d 330, 333 (3d Dist. 1979) (citing *Bissell v. Edwards River Drainage Dist.*, 259 Ill. 594 (1913)).

⁹ 70 ILCS 605/10-6.

¹⁰ 70 ILCS 605/10-5; *see Beatty v. Zimmerman*, 249 Ill. 180, 182 (1911) (affirming petition's dismissal where it "did not contain the requisite number of signers."); *see also Hollenbeck v. Detrick*, 162 Ill. 388, 394 (1896) ("the legislature did not see proper to provide the dissolution should be prevented by a single landowner because he might be damaged by such dissolution. The petition seems to have been carelessly and unskillfully drawn, but contains the essential element required by the statute, and must be held sufficient.").

¹¹ 70 ILCS 605/10-5.

¹² *See* 70 ILCS 605/10-9 (extending landowner-dissolution method of main district to subdistricts and minor subdistricts).

¹³ 70 ILCS 605/10-7.1.

bridge maintenance) and represent that the district will pay for the petition's court costs.¹⁴ Subdistricts and minor subdistricts may be similarly dissolved, after which they become absorbed into the main district.¹⁵

3. Dissolution 75% of Municipal Territory:¹⁶

Government entities (municipalities or unincorporated county territory) that individually or collectively account for at least 75% of certain district territory can dissolve a district by adopting a resolution or ordinance to do so (or respective resolutions or ordinances).¹⁷ When this consists of more than one government entity, each one that is part of the 75% threshold must have adopted such a resolution or ordinance. That resolution or ordinance must state that (1) the county clerk shows no outstanding debts, and (2) that dissolution will not impair any permits or grants.¹⁸ The bounds of municipal territory are carefully analyzed during dissolution.¹⁹

After the resolution or ordinance is adopted, the county must file a petition for dissolution with the circuit court.²⁰ Written notice of a court hearing must be provided both to all municipalities with territory in the district and to all commissioners of the dissolving drainage district.²¹ The court must then determine whether conditions for dissolution have been met. If the conditions are met, the court must enter an order requiring that: within 60 days of the order, the commissioners must issue a final financial report, as well as a report of all property owned by the district and any interests in title of easements or infrastructure. If the commissioners fail to do so, the county must supplant this omission by filing a verified statement reflecting district funds and the other required showings.²²

After the court-ordered report is complete, the court sets a hearing to review the sufficiency of those showings and to support an order that upon a certain date the district will be dissolved.²³ Upon dissolution,

the county assumes responsibilities of the district's drainage system and ownership of all property owned by the district, and if the district assessed levies, the county can continue to collect the assessment.²⁴

Within 60 days of dissolution, the county must notify the Illinois Environmental Protection Agency.²⁵ Within that time, all government entities that initiated dissolution must issue an ordinance or resolution that either: (1) reduces the assessment as necessary to continue the former drainage district's operations, or (2) eliminates the assessment—provided that there is sufficient revenue to maintain the drainage operations in those boundaries.²⁶

If the county where the former district is located has a stormwater management committee²⁷ and 75% majority of territorial municipalities agree that the stormwater management committee should assume responsibility—the county's dissolution resolution or ordinance must then reflect that all authority and responsibility is vested with that stormwater management committee.²⁸ Accordingly, the former district's assessment will directly fund the stormwater management committee to fulfill the former district's localized purpose.²⁹ But those funds *must* be budgeted and segregated from the greater stormwater management committee budget.³⁰

The Court's Role in Petitions for Dissolution

The filing of any aforementioned method of drainage dissolution is presented to the county court, which then must set the date and time of the required hearing.³¹ The clerk must ensure that the notice is "entitled 'Drainage Notice'" and that it contains: the petition's filing date; the court of filing; the district's name; a general description of the court relief sought or any other matters proposed; the amount of the assessment and annual maintenance, if any; and the petition hearing's date and location.³²

¹⁴ *Id.*

¹⁵ See 70 ILCS 605/10-10 (extending commissioner-dissolution method of main district to subdistricts and minor subdistricts).

¹⁶ See 70 ILCS 605/10-7.3(h) (only permitting such dissolution for "Michigan Watershed, Chicago/Calumet Watershed, Des Plaines River Watershed, or Fox River Watershed; and [districts] wholly contained within a county with a stormwater management planning committee operating under Section 5-1062 of the Counties Code.").

¹⁷ 70 ILCS 605/10-7.3(a).

¹⁸ *Id.*

¹⁹ See *Sayers v. Drainage Com'rs of Drainage Dist. No. 5, Manlius Twp., Bureau Cnty., Ill.*, 214 Ill. App. 576, 581 (2d Dist. 1919) (noting "drainage district[s] can be partly within and partly without a municipal corporation.").

²⁰ 70 ILCS 605/10-7.3(b).

²¹ *Id.*

²² *Id.*

²³ 70 ILCS 605/10-7.3(c).

²⁴ 70 ILCS 605/10-7.3(d).

²⁵ 70 ILCS 605/10-7.3(f).

²⁶ 70 ILCS 605/10-7.3(e).

²⁷ See 55 ILCS 5/5-1062 (Stormwater management).

²⁸ 70 ILCS 605/10-7.3(g).

²⁹ See *Id.* ("to continue to levy the former drainage district assessment in the territory of the former drainage district to be used by the county stormwater committee for the benefit of the former drainage district's drainage system.").

³⁰ *Id.*

³¹ 70 ILCS 605/10-6.

³² 70 ILCS 605/4-21.

Public notice of the hearing must be given by publication in a newspaper that is generally circulated in the county where the district is located once per week for two successive weeks.³³ For any cross-county district, a cross-county publication must be utilized—or respective newspapers.³⁴ The petition requires a credible person’s affidavit with names and addresses of all known landowners, or the last property taxpayer if the owner is not known.³⁵ But during the time until the petition is heard, any person who signed the petition has a right to withdraw.³⁶

When any dissolution petition is heard by a court, that court must determine: whether the signatures belong to property owners in the district, whether the number signatures meets the required threshold, whether dissolution is supported by “a good reason,” and whether anything else required of the petition is true.³⁷ If the court finds the petitioners have met the necessary burdens, the court must dissolve the district.³⁸ But if the court finds otherwise, the petition must be dismissed.³⁹ All costs are levied against the petitioners, and the resulting order is final.⁴⁰ It may be separately or jointly appealed by the parties or commissioners like a typical civil matter.⁴¹

Section 10-11 explains the effect of dissolution. Upon dissolution, the drains, levees, and other works remain for the mutual benefit of the lands that were previously part of the now-dissolved district.⁴² In the cases of subdistrict or minor subdistrict dissolution, the district’s property are absorbed in a succeeding district.⁴³

The courts ultimately have the vested power to dissolve a drainage district, pursuant to this part of the Drainage Code.⁴⁴ When a court enters the dissolution order, the district ceases to exist as a public body.⁴⁵ Any property interests become held in trust by the

former commissioners (now trustees).⁴⁶ Such property is to be sold, and any proceeds satisfy any district debt and costs associated with dissolution.⁴⁷ Any funds remaining after that must “be rebated equitably to [any] landowners,” who owned land when the petition for dissolution was filed.⁴⁸ The commissioners must report to the court all acts of sale and the names of those landowners those entitled to the rebate, which is reviewed in a subsequent court hearing.⁴⁹

Additional Approaches: The Drainage Code’s 2019 Revisions and the Illinois Counties Code

In 2019, Lake County had successfully lobbied the Illinois Legislature to add a specific provision to the Drainage Code – one offering an easier statutory means for the Lake County Board to dissolve Seavey Drainage District.⁵⁰ Seavey had been inactive and nontaxing for decades.⁵¹ But even long inactivity cannot override the Drainage Code’s dissolution requirements.⁵²

The new dissolution subsection provided that “[i]n addition to the other methods of dissolution provided” in the Code, “the Lake County Board may dissolve the Seavey Drainage District by adopting a resolution,” which needed to be adopted by the end of 2019 and state that: Seavey had not imposed a levy for at least a decade 10 years, there was no outstanding debt, no grants would be impaired by dissolution, that Seavey’s precise physical boundaries had become indeterminate over time, and provide the date of dissolution of the district.⁵³

Accordingly, Seavey’s dissolution went by way of the Section 10-11, under the Drainage Code’s mutual benefit provision, such that the powers over the land were to cede to “the respective municipalities where the various parts” of Seavey were “located and [ceded

³³ 70 ILCS 605/4-22.

³⁴ *Id.*

³⁵ *Id.*

³⁶ See *Konald v. Bd. of Educ. of Cmty. Unit Sch. Dist. 220*, 114 Ill. App. 3d 512, 516 (2d Dist. 1983) (noting there is a “reasonable time to examine the petition, during which the right to withdraw is viable.”) (citing *Sayers*, 214 Ill.App. at 580)).

³⁷ 70 ILCS 605/10-7.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*; see *Cosby v. Barnes*, 251 Ill. 460, 463 (1911) (rejecting the argument that the full class of petitioners must appeal together, holding that “each petitioner herein, alone or with others, has the right to pray an appeal.”).

⁴² 70 ILCS 605/10-11.

⁴³ *Id.*

⁴⁴ 70 ILCS 605/10-4.

⁴⁵ 70 ILCS 605/10-8.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ 70 ILCS 605/10-7.2

⁵¹ Mick Zawislak, *Lake County dissolves inactive government body: the Seavey Drainage District*, DAILY HERALD (Feb. 12, 2019),

<https://www.dailyherald.com/20190212/news/lake-county-dissolves-inactive-government-body-the-seavey-drainage-district/>.

⁵² See *People ex rel. Gauen v. Niebruegge*, 244 Ill. 82, 86 (1910) (“As [districts] can exist only by legislative sanction . . . they cannot be dissolved or cease to exist except by legislative consent or pursuant to legislative provision,” and failure to elect officers is not a *de facto* dissolution).

⁵³ 70 ILCS 605/10-7.2.

to] Lake County for any unincorporated areas contained in the former district.”⁵⁴

But in 2024, Lake County fashioned an easier path to dissolve drainage districts. Rather than rely on the Drainage Code, the County looked to the Illinois Counties Code, 55 ILCS 5/5-44025(a), which contains a provision for the general dissolution of a local government entity.⁵⁵ This approach, however, conflicted with the more specific Illinois Drainage Code. And in Illinois, the more specific law takes primacy.⁵⁶ The Counties Code approach also dispensed with the respective need for input from the commissioners or affected landowners and municipalities. Lake County’s well-meaning purpose of dissolving that district was to “eliminate these costs and residents of the District,” repudiating the tax levy and “devolv[ing]” its responsibilities “to the municipalities and township that overlap with its territory.”⁵⁷

The Illinois Counties Code permits a county to dissolve units of local government via county ordinance.⁵⁸ Under that provision, a county board may adopt an ordinance that proposes “dissolution of a unit of local government.”⁵⁹ That ordinance must “detail the purpose and cost savings to be achieved by such dissolution, and be published in a newspaper of general circulation served by the unit of local government,” as well as on the county’s website.⁶⁰

The effective date of the ordinance adopted by the county triggers the “audit of all claims against the unit, all receipts of the unit,” inventory of all property and personalty the unit controls or owns, and all debt that the unit owes.⁶¹ At the county chairperson’s discretion, the county can undertake additional audits and review of the dissolving entity—with an audit report to be issued within a month.⁶²

Once the Subsection (b) audit report is returned, the county board can adopt an ordinance to authorize dissolution, which must be within 60 days from the court’s appointment of the trustee-in-dissolution.⁶³

Unlike the public notice provisions that precede dissolution in the Drainage Code, the public has a “backdoor referendum” for post-dissolution proceedings under the Counties Code.⁶⁴ Once the county has adopted the authorizing ordinance, it must publish a notice that notifies the public of its opportunity for the referendum, as well as: (1) “the specific number of voters required to sign a petition” for the backdoor referendum; (2) the time by when the referendum petition must be filed; (3) “the date of the prospective referendum;” and (4) “the cost savings and the purpose or basis for the dissolution,” as the county previously set forth in its ordinance.⁶⁵

The county’s election authority must “provide a petition form to anyone requesting one,” explaining that if the public seeks the backdoor-referendum, the election authority shall review the petition to ensure that: (a) the petition was filed within the 30-day backdoor period; (b) it is signed by the lesser of either 7.5% of all registered voters in the affected governmental unit or by 200 registered voters; and (c) it formally asks that dissolution be submitted to the referendum.⁶⁶ If these elements are met, the election authority must “certify the question for submission at the next election held in accordance with general election law.”⁶⁷ Accordingly, the voters who “resid[e] in the area served by the unit of local government” are then called to answer a majority-vote “‘Yes’ or ‘No’” question: “Shall the county board be authorized to dissolve [name of unit of local government]?”⁶⁸ If the majority vote favors dissolution, the chairman of the county board can proceed pursuant to subsection (c) of this Section. Likewise, “[i]f no petition is filed with the county’s election authority within 30 days of publication of the authorizing ordinance and notice,” the chairperson may “proceed pursuant to subsection (c) of this Section.”⁶⁹

⁵⁴ *Id.* (citing 70 ILCS 605/10-11 and requiring Lake County to timely notify the Illinois EPA).

⁵⁵ 55 ILCS 5/5-44025; PROPOSING ORDINANCE FOR THE DISSOLUTION OF THE SLOCUM LAKE DRAINAGE DISTRICT <https://www.lakecountyil.gov/DocumentCenter/View/77435/2024-08-13-Proposing-Ordinance-for-Slocum-Lake-DD-Dissolution>; Angelica Saylo Pilo, Lake County Planning, Building, Zoning and Environment Committee met Oct. 30, LAKE COUNTY GAZETTE (Nov. 3, 2024), <https://lakecountygazette.com/stories/665628153-lake-county-planning-building-zoning-and-environment-committee-met-oct-30>.

⁵⁶ *Watseka First Nat. Bank v. Horney*, 292 Ill. App. 3d 933, 937 (3d Dist. 1997).

⁵⁷ PROPOSING ORDINANCE, *supra* note 55.

⁵⁸ 55 ILCS 5/5-44025(a).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ 55 ILCS 5/5-44025(b).

⁶² *Id.*

⁶³ 55 ILCS 5/5-44025(c).

⁶⁴ 55 ILCS 5/5-44025(e).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

Assessing General Dissolution Methods Outside the Drainage Code

Like the Drainage Code petition methods, the Counties Code alternative requires court ratification. Upon the county's adoption of its dissolution ordinance (before the ordinance's effective date), and after the end of the requisite full 30-day publication period, the county board chairperson must petition the county circuit court for a court order.⁷⁰ That order must: designate a trustee-in-dissolution for the unit, ensure that the trustee is compensated from the unit's funds, and immediately terminate the terms of any governing members of the dissolving unit.⁷¹

Regardless of any other provision of law, upon court appointment of the trustee-in-dissolution, the county officials become the exclusive respective representatives.⁷² The state's attorney assumes all duties of legal representation, the county clerk serves as secretary for the dissolved entity, and the county treasurer serves as treasurer.⁷³

There is a school of thought that, because the Drainage Code and Counties Code both require court-ratification to accomplish dissolution, the court

functions as a Pilatian handwashing – where the outcome is neutrally finalized regardless of whether it was done correctly or incorrectly.⁷⁴ Still, some courts have suggested that post-ratification remedies cannot run roughshod over statutory duties.⁷⁵ There may be good reason, too. For instance, the Illinois Supreme Court has historically recognized the unique aspects of drainage district responsibilities, which must be completed before dissolution.⁷⁶ Thus, there remains a question of whether an improperly dissolved drainage district somehow looms in perpetuity, which is not an ideal question for taxpayers, especially where dissolution is proposed as a cost-saving measure.⁷⁷

Conclusion

There are 102 counties in Illinois, with an estimated number of drainage districts exceeding 1,700.⁷⁸ Using the Illinois Counties Code—while easier—is an ugly method to undo a long-settled part of state history. Given the array of options available under the Drainage Code, it offers the proper path for those seeking dissolution.

⁷⁰ 55 ILCS 5/5-44025(c)

⁷¹ *Id.*

⁷² 55 ILCS 5/5-44025(d).

⁷³ *Id.*

⁷⁴ See *Cosby*, 251 Ill. at 465 (“While drainage districts are created and dissolved by statutory authority, statutes must be given a reasonable construction.”); See generally *Collinsville Comm. Unit School Dist. v. Witte*, 5 Ill. App. 3d 600, 603 (5th Dist. 1972) (Applying the doctrine of ratification, explaining, “[t]he board of education by its action in the public meeting in January, when it approved the expenditure and issuance of the warrant, ratified its earlier action.”); see also *Athanas v. City of Lake Forest*, 276 Ill. App. 3d 48, 57 (2nd Dist. 1995) (“Ratification may also be inferred from surrounding circumstances, including long-term acquiescence, after notice, in the benefits of an unauthorized transaction.”); and *Hollenbeck v. Detrick*, 162 Ill. 388, 392 (1896) (drainage districts are “not protected by an impervious armor superior to that of other municipal bodies, and the right of repeal or amendment to the charters of municipal corporations exists, and may be exercised.”).

⁷⁵ See generally, *Bessler v. Board of Education*, 11 Ill. App. 3d 210, 213 (3rd Dist. 1973) (“We do not think the doctrine of ratification is applicable to this case because a statutory duty was imposed on the Board which it failed to perform within the time allowed by the statute.”).

⁷⁶ See *Maulding v. Williams*, 330 Ill. 599, 605 (1928) (“the obligation to take immediate action to repair and rebuild these bridges constitutes an indebtedness for service due within the intent of the statute and which must be discharged before the district can be dissolved.”).

⁷⁷ See *Lingle v. Clear Creek Drainage & Levee District*, 281 Ill. 511, 517 (1917) (reversing judgment because it “was never dissolved in the manner provided by law and was still in existence.”).

⁷⁸ Illinois Association of County Board Members: Illinois Counties <https://ilcounty.org/resources/illinois-counties>; Tinley Park, *Union Drainage Districts: History*, https://www.tinleypark.org/government/departments/finance_department/union_drainage_districts.php.