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DEPARTMENT OF JUSTICE
CIVIL DIVISION
P.O. BOX 94005
BATON ROUGE
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September 6, 2023
OPINION 23-0049

Honorable Warren Montgomery
District Attorney
Twenty-Second Judicial District
Washington and St. Tammany Parishes
701 N. Columbia Street
Covington, LA 70433

22-1 Drainage & Drainage Districts

La. R.S. 38:1751	La. R.S. 38:1767
La. R.S. 38:1763	La. R.S. 38:1798.1

Addresses questions about the dissolution of a sub-drainage district.

Dear Mr. Montgomery:

You have requested an opinion from this office concerning the effects of the dissolution of Sub-Drainage District No. 2 of Gravity Drainage District No. 5 (Sub-Drainage District 2) in St. Tammany Parish. Specifically, you would like to know how the dissolution will affect property rights previously donated to Sub-Drainage District 2 and what entity is responsible for the drainage of the area previously served by the sub-drainage district.

In 2011, the Meadowbrook Homeowners Association donated to Sub-District No. 2, real property which was “only useable for the natural drainage of the subdivision.” Sub-Drainage District No. 2 accepted the donation in order to improve and maintain the drainage of the subdivision. Your opinion request concerns the ultimate ownership of the rights conveyed to Sub-Drainage District No. 2 in the event of its dissolution.

The creation of gravity sub-drainage districts is permitted by La. R.S. 38:1763. St. Tammany Parish created Sub-Drainage District 2 by ordinance to “comprise and embrace a portion of the area within said gravity drainage district commonly known as Meadowbrook Subdivision.”¹ Louisiana Revised Statute 38:1763, which provides for the creation of sub-drainage districts, specifically outlines that sub-districts are carved out of drainage districts, stating that, “[g]ravity sub-drainage districts shall be composed of territory which is wholly within the limits and is less than the entire territory of a gravity drainage district.” Further, “[t]he governing body of any gravity sub-drainage district shall be the board of drainage commissioners of the gravity drainage district in which the sub-drainage district is situated.” *Id.*

The dissolution of sub-drainage districts is governed by La. R.S. 38:1798 and La. R.S. 38:1798.1. Where the bonded indebtedness and all other debts of the sub-district have been paid and satisfied the sub-drainage district may be liquidated and dissolved, “by resolution of the police jury . . . in the absence of a functioning board of commissioners, or by resolution of the board of commissioners if there be an existing one.” La. R.S.

¹ St. Tammany Land Development Code, Article IX, Section 115-318.

38:1798.1 (1). The resolution dissolving the sub-drainage district must provide that any remaining cash funds shall be turned over to the police jury of the parish and be paid over to “the governing authority of any newly created district or sub-district within the area of the dissolved district or sub-district to be used in the promotion of or for gravity drainage purposes.” La. R.S. 38:1798.1(4). However, where the parish is engaged in a parish-wide construction or drainage maintenance program with parish funds or state funds, the resolution of dissolution may provide that the cash funds and property of the sub-drainage district,

be expended and used by such police jury, or police juries, for drainage maintenance or construction purposes within the territory which theretofore formed the dissolved drainage district, as part of the parish-wide drainage program; and if this is done, then all canals, ditches, rights-of-way, works, natural or artificial drains, and other property theretofore acquired by such funds, to the parish or parishes wherein such property is located or situated.

La. R.S. 38:1798.1(5).

Further, the statute goes on to state that “in the event that such district or sub-district shall have property instead of cash funds, the same shall be disposed of in the manner hereinabove provided for in the case of cash funds, or as provided in paragraph (5) hereof.” *Id.* Therefore, it is the opinion of this office that the property rights conveyed to Sub-District No. 2 by the Meadowbrook Subdivision in the subject donation should be disposed of as provided for in La. R.S. 38:1798.1.

Next, you ask what entity is responsible for drainage of the area previously served by the Sub-Drainage District No. 2. A sub-drainage district is composed of territory that is wholly within the limits and is less than the entire territory of a gravity drainage district. La. R.S. 38:1763. Sub-Drainage District No. 2 is comprised of property that is already within the boundaries of Gravity Drainage District No. 5.² Thus, the boundaries of Gravity Drainage District No. 5 already embrace the area previously served by Sub-Drainage District No. 2.

Louisiana Revised Statute 38:1767 states,

The board of drainage commissioners *may* open all natural drains which they deem necessary in their respective districts and perform all work connected therewith, which they *may* deem necessary to make the opening of the natural drains effective. They *may* cut and open new drains, ditches, and canals wherever deemed necessary. In order to carry out the drainage works, the drainage commissioners *may* enter into contracts for the performance of these works, or purchase machinery and have the work performed under their supervision, and perform all other acts necessary to

² St. Tammany Land Development Code, Article VII, Section 115-259.

fully drain all the land in their districts and maintain the drainage when established.

(Emphasis added.)

In *Town of Sorrento v. East Ascension Consolidated Gravity Drainage District No. 1*, 21-1220 (La. App. 1 Cir. 4/12/22), 342 So.3d 89 the Louisiana First Circuit Court of Appeal opined on the above language stating:

It is evident from the provisions cited above that the District has the authority to perform the drainage works, which *it* deems necessary, but it has no duty to carry out specific drainage projects. The District has the discretion to determine how, when, and where to exercise its authority to properly carry out the function for which it was created, subject only to judicial intervention if this discretion is unreasonably, arbitrarily, or fraudulently exercised.

Id. at 96. (Emphasis in original.)

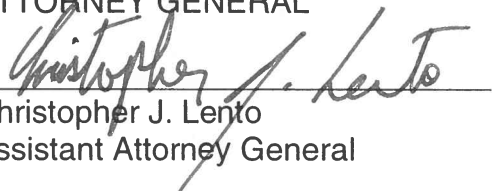
Accordingly, upon the dissolution of Sub-Drainage District No. 2, Gravity Drainage District No. 5 may exercise authority over the area previously served by Sub-Drainage District No. 2.

We hope this sufficiently answers your inquiry; however, if we may be of further assistance please do not hesitate to contact our office.

Sincerely,

JEFF LANDRY
ATTORNEY GENERAL

By:


Christopher J. Lento
Assistant Attorney General

w/permission
RMS

JL/CJL/my