

INTRODUCTION

The relationship between Iowa's roads and drainage developed when rural roads were originally constructed. The land parallel to roadways was excavated to create road embankments. The resulting ditches provided an outlet for shallow tiles to drain nearby fields for farming.

Iowa's climate and terrain are nearly ideal for farming, and more than 90 percent of the land suits the purpose. Much of the land, however, needs to be artificially drained to achieve maximum productivity. Most of this drainage has been accomplished with an extensive network of levees, open ditches, and underground tiles. The U.S. Census Bureau estimated that as early as 1920 approximately nine million acres of Iowa farm land had been artificially drained or needed to be.

Couple this drainage system with Iowa's extensive surface transportation system—approximately 100,000 miles of roads and streets, 90,000 on local systems—and potential for conflicts will naturally arise. This is particularly true with urban expansion resulting in residential and commercial development of rural land.

Drainage laws

Iowa relies on a broad system of drainage-related laws established in several forms: common law, statutory law, and case law. For many aspects of drainage law, however, specific legal rules are not available.

Most of the pertinent legal precepts were established early in the twentieth century. Some, as with case law, may be more precisely defined even today. Federal statutes further define requirements regarding drainage of rural lands.

In general, perpetuating natural drainage is the recommended course of action. Essentially, water runs down hill, so it's natural that downstream or lower land receives drainage from upstream or higher land. Iowa

courts have ruled that lower lands are obligated to receive all natural drainage and cannot obstruct that natural flow to the detriment of upstream property.

Property owners can make *reasonable* drainage improvements to their land, even if they have some effects on neighboring property. But the courts may consider other improvements *unreasonable*, and may consequently assess damages and/or order the improvement removed.

Under Iowa common law precepts, cities and counties have the same rights and obligations as private citizens in the control and disposition of drainage. Cities and counties are also subject to the same liabilities. Public agencies, however, are generally held to higher standards than private interests.

Definitive solutions to all conflicts won't be found in established law. To avoid conflict and potential liability over drainage issues, agencies should always look for solutions and opportunities for cooperative action with other jurisdictions and property owners. Common sense, good judgement, and a cooperative problem-solving approach will serve agencies well.

About this manual

This manual contains summaries of and references to the laws most relevant to drainage in Iowa. It also includes frequently asked questions about transportation agencies' responsibilities related to drainage. Typical policies and agreement forms used by agencies to address drainage issues are illustrated and a glossary of common terms is included.

DISCLAIMER

This manual should not be considered a substitute for legal advice. Counsel from a qualified attorney should be sought whenever solutions to specific legal controversies cannot be readily determined. Opinions presented are those of the contributors and authors only and should not be used as the basis for legal decisions.

This manual references the 2003 Iowa Code and the 2004 Administrative Code. It does not contain all the laws and regulations that may affect a specific situation. Users should check for any recent revisions in the code.

OBSERVATIONS OF A DRAINAGE ATTORNEY

By James W. Hudson, Attorney at Law

Editor's note: James Hudson has more than 50 years of experience as an attorney dealing with drainage law. Since 1951 he has represented supervisors, trustees, and landowners in more than half the counties in northern Iowa. These observations result from that experience.

Old common law

A drainage district as we know it in Iowa did not exist under the old common law. The old common law water law was very general but also somewhat restrictive and did not permit landowners to properly utilize the potential of their land. Basically, the courts did not permit much alteration of a natural watercourse. A dominant landowner, being a landowner of higher elevation, was entitled to drain his water onto the lands of the servient landowner, being the lower in elevation. The dominant landowner could not increase the flow or divert the flow in or out of the natural watercourse. The servient landowner could not obstruct the flow of water, and a person could not divert water out of or into another watercourse.

Laws pertaining to drainage districts

The Iowa Legislature first adopted statutes describing and defining a drainage district in about 1890. The Iowa Constitution was amended in 1908 specifically providing drainage districts with the authority necessary to carry out the purposes of drainage districts as provided by statute. Drainage districts have the right of eminent domain to acquire lands for the public purpose of establishing and maintaining drainage district facilities.

Over the years the drainage statutes have been amended and expanded in many areas. I have participated in the recommendation of many of these amendments to the statutes.

For many years, the law for drainage districts existed in 13 chapters—Chapters 455–467 of the Code of Iowa. About twenty years ago the legislature decided to consolidate those thirteen chapters into one, namely, Chapter 468. The consolidation resulted in confusion for the many people who seek a specific statute in the chapter containing nearly 500 sections.

Drainage district basics

A drainage district is not required to follow the natural watercourse and can divert water in or out of a natural watercourse if it is more efficient in the management of the drainage of water. Ordinarily, however, a drainage district is established along watershed lines since the natural watersheds collect much of the surface water.

Wetlands and drainage districts

It has been said that over 90 percent of the wetlands in the state of Iowa have been drained. This is perhaps true, and the establishment and existence of drainage districts has probably contributed to the draining of the great majority of said wetlands. Drainage districts have drained some wetlands as have individual landowners who acquired outlets from a drainage district. By virtue of the drainage of these lands, the agricultural economy in the state of Iowa has been greatly enhanced.

Establishing a drainage district

Two or more landowners can petition to establish a drainage district by filing a petition with the county auditor's office and the board of supervisors in the county where the district is located. The basic purpose is to provide facilities for draining the excess water in a watershed area. All lands within the watershed area

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that are benefited by the drainage facilities are included in the drainage district and are assessed for drainage taxes accordingly.

When a drainage district is first established, the board of supervisors serves as trustee for the district. After the district has been legally established, the landowners in the district may petition the county auditor to call for a special election to elect three trustees from the membership of the landowners in the district. If the trustees election is completed, the three trustees take over the administration of the drainage district and the supervisors are relieved of further responsibility. The trustees must, of course, follow the exact same statutes that the supervisors follow under Chapter 468 of the Code of Iowa.

Tax assessments

In most drainage districts, the method of classification of the assessment is referred to as the relative benefit method of assessment. To arrive at this schedule of assessment, the board of supervisors appoints a classification commission consisting of a qualified engineer and two landowners, neither of whom can own land or be interested in lands in the drainage district. That commission reviews the lands in the district and arrives at a classification and assessment schedule.

The statute provides that the land having the greatest need for drainage would be taxed on the basis of 100 percent and other lands in relation thereto. The classification is done by 40 acre tracts or fraction thereof, and each tract of land has a separate classification. In addition to the need factor, the classification commission also considers two proximity factors:

1. The distance of the 40 acre tract from the drainage facility for which it is being classified.
2. How much of the district facility is necessary to provide an outlet for the tract of land.

The commission also considers other factors such as the type of soil—some soils require more drainage than others—and can consider any other special factors with a bearing on the benefit to the land by virtue of the existence and maintenance of the drainage district facility.

The classification and assessment of a tract of land does not depend on the landowner's use of the drainage facility. Rather, the basis for assessment is the availability of the outlet for drainage, not the utilization of an outlet. If there is modification in the facility which is the basis for the assessment, it is possible for the supervisors to reclassify a district reflecting any change of benefit which might result.

No federal or state funds are used for drainage districts, although there are occasional exceptions. In 1993, due to excessively heavy rainfall, some drainage district ditches incurred flood damage. Some drainage districts received Federal Emergency Management Administration funds for partial reimbursement for needed repairs. The state of Iowa also partially reimbursed some counties for the cost of drainage district projects which were designed solely to provide alternate outlets to allow existing agricultural drainage wells to be closed.

Drainage district projects

The two basic types of drainage projects are repairs and improvements. Generally, a repair is defined for drainage purposes as that work which is necessary to restore the facility to its original design or intended efficiency. If the project is a repair, the supervisors have a mandatory duty to perform it. According to statute, the supervisors shall maintain the district facilities in a reasonable state of repair. If the board of supervisors fails to maintain that appropriate repair status, any one landowner in the district can petition

the court in that county to compel the board to make the repair.

An improvement usually consists of work that would enhance or enlarge the district facility. Pursuing an improvement is at the discretion of the board.

Right of remonstrance

There is a right of remonstrance available to landowners when a new drainage district is proposed for establishment. A majority of the landowners in the district must comply with the remonstrance provision, and they must own at least 70 percent of the total land in the district. If the remonstrance provision is met by the landowners, then the supervisors must terminate that procedure and pay for preliminary expenses of the bond furnished by the petitioners.

Before January 1957, this right of remonstrance only applied to a new district. In January 1957 a committee appointed by the legislature and governor filed a report with the legislature about a new water law and revisions in the drainage law. The report recommended that the right of remonstrance also applies to an improvement in a drainage district if the costs of the improvement exceeded the original cost of the drainage district. Therefore, under current law, if an improvement is proposed by the board which exceeds the original cost of the district, the landowners can terminate that procedure by filing a remonstrance.

Drainage subdistrict

In the event a landowner has land that is separated from the main drainage district or watercourse by the land of others and they cannot agree to terms and conditions for crossing their lands to obtain the outlet into the drainage facility, that landowner can file a petition for a subdrainage district.

When the petition is filed with the board of supervisors, the board appoints an engineer and goes through the same process for the establishment of a subdrainage district as for a regular drainage district. The new subdistrict also includes the intervening lands so that they all pay according to their respective benefit. The fact that a subdrainage district is available to an outlying landowner usually prompts the intervening landowners to be more compatible and usually results in the landowners entering into a written agreement providing for the outlying landowners to have access to the district facility.

Annexation

Occasionally the board finds that lands outside a drainage district are benefiting from the district facilities. In such cases, the board can go through a procedure to annex those lands to the district. In that way all who benefit from the drainage district facilities also help pay for their maintenance.

Dissolution

In order to dissolve a drainage district, there are two conditions which must exist:

1. The drainage district must be solvent and all obligations of the district paid.
2. The board must find that there is no longer any need to maintain the facilities of the drainage district.

As a practical matter, this condition seldom exists as the land usually does not lose its need for drainage.

Appeals

By statute, anytime a landowner is aggrieved by the final action of the board of supervisors or board of trustees in regard to drainage district procedure, the

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landowner has the right to appeal the board's decision to the district court in the county where the district is located. The landowner must follow a specific procedure to have a successful appeal. The drainage statute also provides that this particular procedure shall be the exclusive remedy for a landowner who is aggrieved by a final action of the board of supervisors. This right of appeal and procedure for appeal is part of the due process of law which the Iowa Constitution and the United States Constitution provide for persons.

Drainage district immunity

For many years governmental entities had immunity which provided that they could not be found liable for damages for negligence. In 1968 the Iowa Legislature modified the governmental immunity statute and removed immunity from most governmental entities. Drainage districts, however, maintained their immunity against claims for negligence and damages. While this does not affect the landowner's right to appeal to the court for any final action of the board, it does protect drainage districts from much litigation for negligence.

Note to public officials

Public officials working with drainage districts in Iowa should be aware of the potential conflict that can occur between the purpose of drainage districts and the focus of federal wetland programs. Some drainage districts have been requested to enter into agreements with certain state and federal agencies to remove or discontinue certain drainage facilities to permit collection and/or diversion of water to enhance or establish a wetland. In one instance, the Department of Natural Resources (DNR) installed a long dike across an open ditch in an established district. The dike acted as a dam to stop the flow of water in that drainage area. The dam was installed without any contact

between the DNR and the county board of supervisors or the board that had jurisdiction over the drainage district. This action could be in violation of the district's legal rights and easement for the ditch. As of this writing, this matter has not been resolved and the dam still retards the flow of drainage.

If efforts are made by governmental agencies to seek agreements or legislative changes to permit modification of drainage district facilities to enhance or create wetlands, supervisors and/or trustees of drainage districts should be fully advised by competent independent drainage engineers and drainage attorneys before entering into any such agreement or proposed legislation to ascertain that the rights of the drainage district and member landowners are protected.

Disclaimer

This article does not intend to cover all of the possible problems or conflicts which can arise regarding drainage districts in Iowa, but it is intended to alert persons working with drainage districts to be aware of rights under the Code of Iowa and urge that competent advice be sought before relinquishing any of the rights of the legal drainage district.