

Each one of you officials is operating a big business, which is your local unit of government. I'm sure that you, as business men, will realize, as all business men will, that \$7,500,000 a year is not excessive to operate a plant investment of \$550,000,000, especially when this plant is subjected to the hard usage that our highways get throughout twelve months in the year.

Four or five years of neglect of these secondary roads will mean their complete deterioration, and they will have to be replaced at a cost far greater than \$550,000,000. But over this same period, \$30,000,000 to \$35,000,000 can be properly and scientifically used to preserve the highways to the satisfaction of the fellow who pays the bill, and he is Mr. Gas Taxpayer. And, gentlemen, it will take every red cent you get from this source to do your job well.

There is no other alternative—either a maintenance cost of \$30,000,000 for five years, or replacement at more than \$600,000,000. The responsibility lies in your hands.

A LEGAL INTERPRETATION OF THE NEW DRAINAGE DITCH LAWS

By Arthur C. Call, Attorney, Anderson, Indiana

I know of no other statute in Indiana during the last 30 years that has been discussed and cussed as much as the drainage law. Each legislature during that time has made some change in this law.

One might petition for a drain under the Acts of 1930 or 1931; it might be referred to the viewers pursuant to the Acts of 1927; and the report of commissioners might be made pursuant to the Acts of 1907; and in cleaning out and repairing the same ditch, you might pursue the Acts of 1917. So, until the legislature met in 1933, the real functioning of the drainage law was really more or less problematical.

The legislature of 1933 gave us a drainage law that I believe meets every part and phase of the drainage problem, and is, in my opinion, the best drainage law that we have had for the last quarter of a century.

The present drainage law makes quite a saving to the farmer in the way of overhead and other expenses of the drain. Under the old law, the viewers, on their regular per diem wage, worked in conjunction with the surveyor in going over the various tracts of land and in making up all of the assessments. If the drain was an unusually large one, the expenses of the viewers became a considerable item in the cost of the drain. Under the present law, the viewers, in conjunction with the surveyor, determine the practicability of the drain,

whether the costs will exceed the benefits, and whether it will benefit the highways and be of public utility. This they can determine in a very short time. The question of the watershed, the size of tile, and the assessments then are all fixed and determined by the surveyor alone. This eliminates three fourths of the work of the viewers and reduces the expense accordingly.

Under the old law, the newspaper advertisement was quite an expense. Now there is but very little advertisement in the newspapers; and when it is required, usually only one publication is necessary.

Formerly, the superintendent of construction collected the assessments over a period of ten months. This often dragged out over a greater period of time; therefore, the contractor usually accepted a drain contract on a "ditch pay" basis, not knowing when he would get his money. As a result the bid was usually high. Under the present law, the county becomes the paymaster, and the contractor who bids in the work knows that as rapidly as he completes the work, he can draw 80 per cent of the estimate, the balance to be forthcoming within 60 days after the completion of the job. This, in my opinion, will provide a tremendous saving over the operations of the old law in the construction of a drain.

One of the most important things under the new drainage law is the fact that all drains are placed in the charge of the county surveyor. Under the old law, each township trustee had charge of the repairing of open and tile drains in his respective township; therefore, there was a drainage record for repairs in each township in the county. Now this is all consolidated under one head, in charge of a man who is familiar with the work. It is much less expensive and will be more effective.

OUTLINE OF PROCEDURE

I know of no better way of giving you a picture of the drainage law than to give you a brief resume of the procedure of the construction and the repair of open and tile drains.

Under the drainage law of 1933, the construction of all new drains, the reconstruction of all court drains, and the repair of all open and tile drains are placed under the direct control of the county surveyor in the county in which the drain is located. The county surveyor shall obtain a sufficient number of deputies to take care of this work, with the approval of the county commissioners. The trustees of the various townships in the county become deputy surveyors under the repair and clean-out law.

Ten per cent of the acreage affected by any drainage system or watershed that lies outside the corporate limits of any city or town may file a petition in the commissioners' court or the circuit or superior court of their respective counties.

This petition must describe in area at least 80 per cent of the acreage in the drainage area and at least 80 per cent of the total length of the main drain to be constructed.

At the time of filing the petition, the petitioners shall give an undertaking that they will pay all costs in the event the drain is not established by the court. The petitioners shall serve notice on all of the affected parties, either in person or at their usual place of residence. Notices shall be posted along the line of the ditch, three in each township into or through which the ditch runs and one at the court house. In the event that the drain runs into two or more counties, the county having the greatest length of the drain shall have jurisdiction.

At the time the petitioners file their petition, they shall fix the day for the docketing of said petition. If the court shall find that notice is given as required by law at least 10 days prior to the day fixed for the docketing of the petition, the court shall order the same docketed as a cause pending. At the time that he makes that order, the judge shall appoint two viewers who shall be residents of the township into or through which the ditch runs, disinterested, competent men, not related to any person affected by the ditch.

Any person has a right, within 10 days after the appointing of the viewers and the docketing of the cause, to demur, object, or remonstrate as to the form of the petition or as to the further action of the viewers or the surveyor. If the court should find that the surveyor is disqualified, he may appoint a competent engineer in his stead. After 10 days, all objections to the form of the petition or action of the viewers or surveyor shall be waived. If, within 20 days, exclusive of Sundays, from the day set for the docketing, owners of two thirds of the acreage of the land named in the petition or who may be affected by any assessments shall have remonstrated in writing, the cause shall be dismissed at the costs of the petitioners.

If no remonstrance is filed and the court deems the petition sufficient, he shall make an order referring the same to the viewers and the surveyor for report. The court shall fix a time when they shall report. The viewers with the surveyor shall determine whether the drain is practicable, whether it will improve the health, benefit the highways, and be of public utility. They shall determine also whether the expenses will be less than the benefits to the various landowners affected thereby. If they find, on any of the above grounds, wholly in the negative, they shall report the same to court and the petition shall be dismissed at the costs of the petitioners. If they answer the above questions in the affirmative, then it becomes the surveyor's duty, without the co-operation of the viewers, to determine the watershed and the kind of drain to be established, and fix and determine the assessments. When completed, the viewers shall meet and sign the report with the

surveyor and report the same to court. The court notes the filing of the report of the viewers and at that time fixes a day for the hearing on the report not more than 40 days nor less than 30 days from that time. It then becomes the duty of the surveyor to notify all people mentioned in the petition, by mail, of the filing of the report, of the fact that the land is assessed, of the amount of the assessment, and of the date for the hearing.

If persons are mentioned in the report that were not mentioned in the petition, then he shall notify them by registered mail with a five days' return; and in the event the letter is returned, he shall give one publication in a local newspaper as to the date of the hearing, which shall be 15 days before the date fixed by the court for the hearing. On the day designated by the court for the hearing, it becomes the duty of the surveyor to appear at the clerk's office, or adjourn his meeting to any other place in the court house, and hear all objections as to his report and the proposed method of improving the drain. All objections shall be in writing, for unless they are in writing, they are not effective.

After hearing all objections, the surveyor can change his report or assessments therein in any way he may see fit. If he changes his report, he shall report the fact with the objections to the court. If he does not make any changes in his report, he shall report that fact to the court. Any person who files written objections before the surveyor stating that he is aggrieved by the decision of the surveyor, shall have 10 days to remonstrate to the court against the surveyor's report.

There are about ten grounds on which to remonstrate, including the following:

That the report of the surveyor is not according to law. The legislature says that this is ground for a remonstrance. The supreme court says that it is not sufficient, that it must set out specifically wherein it is not according to law.

That the damages assessed to any specified tract of land are exorbitant.

That one's lands are assessed too much as compared with other lands.

That the drain will not be of public utility, will not benefit the public health, will not benefit the highways, and that the costs of the drain will be more than the benefits resulting therefrom.

If, during the time in which they have a right to remonstrate to the court on the surveyor's report, owners of two thirds of the acreage mentioned on any tributary or lateral which was not described in the original petition shall remonstrate against the tributary or lateral, the same shall be stricken from the report.

If the court shall find that the drain will not be of public utility and will not benefit the health, and that the costs and

expenses occasioned thereby will be more than the benefits derived therefrom, then he shall dismiss the proceedings at the costs of the petitioners. If he should find otherwise, then on the other grounds he can adjust or equalize them as he may see fit.

If the court finds for the petitioners, he makes an order establishing the drain, and orders the assessments, as made and modified and declared, a lien on the real estate therein described. It shall become a lien from the time the court renders the judgment and shall have priority with other improvement liens from that date.

The court shall refer the drain to the surveyor for construction. It becomes the duty of the surveyor to advertise the drain for letting by one publication at least 10 days prior to the day fixed for the letting.

The surveyor can accept a low bid or, if he sees fit, may accept a higher bid or may reject any and all bids and re-advertise. As soon as the contract is let, it becomes the duty of the surveyor to proceed immediately and to certify to the auditor the total amount of the assessments on the drain, the total expense, including attorney fees allowed by the court, and the contract price. He shall also fix in his report to the auditor a date when the assessments shall be paid.

METHODS OF PAYMENT

Two acts were passed by the 1933 legislature and approved on the same day. One of them is a section of the drainage law which provides that assessments under \$25 shall be paid in one year. The other section of the statute provides that assessments of under \$25 shall be paid within 90 days. Taking the two sections together, I am inclined to think that the latter prevails and that 90 days from the publication by the auditor is allowed in which to pay an assessment in full when the amount is under \$25. When it is over \$25, the surveyor may divide the payments semi-annually over a two-year period, or a five-, ten-, or twenty-year period, and make the payments come due on the first Monday of May and the first Monday in November.

As soon as this is certified to the auditor, it becomes the duty of the auditor by one publication to notify all of the people affected that the surveyor's certificate has been filed, and has been certified to the treasurer, and that their assessments can be paid to the treasurer as therein specified.

The law provides that within 90 days after the taking effect of this act the county commissioners of the respective counties may create what is known as the ditch improvement fund. Or, if they decide not to do this, then all payments on ditches, repair, and construction shall be paid out of the general fund.

It is my opinion that, when a drainage improvement fund

is created, all drainage funds held for any prior purpose shall be turned into this fund, and all moneys collected on drains thereafter shall be turned into this fund. All money advanced from this fund for the payment of expenses on any particular drain shall be repaid by that drain plus 6 per cent interest from the time it was drawn out. In event an improvement fund is not created, then the general fund shall operate in exactly the same manner.

The law provides that the county commissioners may, at any time by proper resolutions, issue bonds on any ditch or any number of ditches in one bond issue to replenish the drainage improvement fund or the general fund. All money so raised shall go to this particular fund and not be used for any other purpose. These bonds are not county obligations but are issued by the county and paid out of the drainage fund only. In the event that the interest payment or principal payment of any bonds shall become delinquent, the county may pay the same out of the drainage funds by subrogates to the right of the holder of the bond.

The surveyor in letting the contract shall fix a time in which the drain is to be completed. The contractor can draw on his contract price from time to time on estimates furnished by the surveyor not exceeding, however, 80 per cent of the construction actually completed. The 20 per cent remains until the entire drain is completed. When the work is finally completed, it becomes the duty of the surveyor to so report to the court. When the contractor makes an affidavit that all bills are paid, then he is to be paid his final payment from the county within 60 days after the completion of the work.

All bills paid out of the drainage or general fund for drainage shall be made out and verified by the claimant, approved by the surveyor and court in charge, allowed by the county commissioners, and paid by the auditor.

In the event any person furnishes any material, board for employees, oil, greases, or labor on a ditch, he shall have 60 days from the furnishing of the same in which to file his claim with the surveyor, and in that event it becomes the duty of the surveyor to withhold that amount from the contract price. In the event there is a dispute between the claimant and the contractor, the surveyor shall certify the same to the court who shall determine the amount to be paid.

The contract and bond for the construction of drains under the present law is very important. The contractor becomes liable under the present law to any landowner who may be damaged by reason of any delay in the construction of the drain. In the event the contractor does not proceed with the work diligently, it becomes the duty of the surveyor to cancel the contract and re-let it for construction, and the original contractor becomes liable for any increased costs of labor and material prices. This shall all be covered in the contract and bond in the letting of the drain.

RECONSTRUCTION OF EXISTING COURT DRAINS

The statute provides that whenever 5 per cent of those affected in acreage shall petition the commissioners' court, the circuit, or the superior court of the county, alleging in substance that they were originally assessed for such and such a drain and that it is now out of repair, that it can be made more economical for the purpose for which it was designed and intended by increasing the size of tile or deepening or covering and widening the drain or various other methods, then you proceed exactly as you do under original drains by notice, reports, remonstrance, and finally the letting. Under the present statute, if owners of two thirds of the acreage mentioned in the petition or that may be affected, representing fifty per cent of the acreage abutting the ditch, shall remonstrate in writing, then the petition shall be dismissed, unless the petition alleges that the drain has not been repaired in more than 10 years, that it is out of repair, and that the petition is seeking to repair it and put it in proper condition, then in that event no two-thirds remonstrance will lie.

Under the present law, it becomes the duty of the surveyor to see that every open court ditch in his county is cleaned out and repaired to the original specifications biennially. If the surveyor does not have an allotment record of the various ditches, he shall proceed to allot the ditch beginning at the lower end, and setting stakes to designate the allotment to each land owner. In no event shall any allotment to any landowner be above his upper property line. These allotments and notices of allotments shall be made by the surveyor before the first of June and during the month of August of the same year. It becomes the duty of the landowner, who has an allotment, to clean out his part of the drain to the original specifications every two years. Each year he shall mow the weeds and clear the shrubbery from the ditch. In the event any person fails to clean out his allotment, it shall become the duty of the surveyor to have the same cleaned out, to notify the landowner of the expense and, if he fails to pay it, to certify the same to the auditor with his per diem and 10 per cent penalty which shall be certified to the treasurer by the auditor and collected as delinquent taxes against the farmer's land.

All court tile ditches shall be repaired by the surveyor at any time in the year upon receiving notice of the necessity for it. This notice does not necessarily have to be in writing. If the amount of the repair is less than \$50, the surveyor may have the work done without letting a contract and pay for it out of the ditch improvement fund heretofore mentioned.

In the event that the amount is more than \$50, then he shall proceed to advertise as in letting an ordinary ditch, thus having the work done by contract. Then he shall take the contract price plus all other expenses, make an assessment

on all of the land in the drainage area, and proportion the assessment on all of this land based on the original assessment. This, as I remember, is certified to the treasurer to be paid as delinquent taxes within one year.

Where a tile has broken near the center of a tile ditch line, some have questioned the right to assess land that lies below the break for the necessary repairs. Viewing the law as a whole, the drainage system is treated as a unit and the surveyor has no right to fix an assessment on part of the land and not on all of it when he makes a repair on a tile ditch. It must be treated as a unit and all lands must be assessed for repairs.

The problem often arises wherein a farmer owns a tract of land that has been assessed for the construction of a certain drain but which is cut off from the proposed drain by a neighbor's land. This law provides that when a man owns real estate that was assessed for the construction of a court ditch and not more than two landowners intervene between his land and the court ditch, they may enter into a compromise, have the surveyor set stakes, fix the amount that each is to be assessed, and go ahead and construct the drain. In the event that any one does not pay his assessment, it becomes the duty of the surveyor to so certify to the auditor and it comes up as delinquent taxes. I believe that under this act any person can complain to the surveyor, then it becomes the duty of the surveyor to run the line, determine the size of tile and the amount each owner is to put in and pay for. When this is done, he must keep a record of the ditch just the same as in the case of a court ditch, and the assessments can be collected as taxes if necessary.

The statute also provides that if a tile ditch tributary is out of repair at any point, the persons above can complain to the surveyor provided the tributary drains 10 acres or more of land. It then becomes the duty of the surveyor to have the same repaired and certify the costs where he thinks they should be placed. On failure to pay, the surveyor shall certify the assessments with his per diem and 10 per cent penalty to the auditor and the same will be collected as delinquent taxes.

METAL-PLATE PIPE AND ARCHES

By J. C. Eckert, Ripley County Surveyor

Only a comparatively few years ago, an engineer contemplating the building of a small bridge would have considered only two materials—stone or timber, or a combination of the two. As years passed, other materials, with their own peculiar merits and advantages, came into use. Among these