

transactions are gasoline and oil issued from stock, cement issued from stock, and notice of cash apportionment received. The scrapping or sale of equipment or other items will be recorded in this record.

I cannot recommend the installation of this system of accounting unless provision is made for a trained and competent bookkeeper. To attempt to maintain this or any other system otherwise will most surely prove unsatisfactory.

In some counties, at present, the road departments employ full-time bookkeepers, and the State Board of Accounts has not objected when the charge for such service is reasonable.

The savings, convenience, and added efficiency which will result from the use of an adequate accounting system in the county road departments will amply justify the necessary expense. It will provide for a proper audit of claims which we suspect is not possible at present in many counties. It will provide a record of materials and equipment owned, which is sadly needed in so many places. It will provide a cost record, which the supervisor needs to guide him in his maintenance and construction program. It will provide for keeping the office open during the entire working day without interrupting the supervision which the supervisor should give to outside work.

## FUNCTIONING OF INDIANA'S DRAINAGE LAWS

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I come here today to discuss in my humble way some provisions of the Drainage Law in Indiana, and shall attempt at the close of my discussion to answer questions concerning the various phases of the Drainage Law. As I said before this body three years ago, the Drainage Law in Indiana is probably discussed and cussed more than any other law we have on the statute books.

In petitioning for a drain before 1933, your petition might be under the act of 1917, the references made pursuant to the act of 1925, the report made according to the statute of 1929, and other steps taken pursuant to other statutes. During my period of the practice of law, practically every Legislature has changed the Drainage Law.

The Legislature in 1933 gave us a general drainage law covering proceedings in court for the construction and reconstruction of a drain, and also for the repair of drains. This law in some respects was a very good law.

The Legislature of 1935, two years afterwards, saw fit to make a large number of changes in the law. In fact, it amended about 10 or 15 sections of the Drainage Act of 1933.

Then our last Legislature amended some other sections of the act of 1933, and then amended some of the sections of the act of 1935. Hence, we have a conglomeration of 1933, 1935, and 1937; and I suppose, as soon as the Legislature meets in 1939, we will have some more drainage laws. No wonder the attorneys and surveyors of the State of Indiana are at a loss to know what the Drainage Law is in Indiana.

#### DRAINAGE ACT OF 1933

The Drainage Act of 1933, with some of the amendments in 1935, is to some extent an improvement over the old Drainage Law, because it saves the farmer a considerable expense in the construction of a drain.

Under the act of 1933, part of which is still in force, the viewers meet with the county surveyor and make inspection of the various tracts of land and determine about three or four things: one is the practicability of the drain, whether the costs will exceed the benefits, and if it will benefit health and certain highways described in the petition. If they find these facts in the affirmative, then the viewers' work is done. The surveyor proceeds to make the assessments and apportion them to the respective landowners. This is quite a saving over the old law, as the viewers' per diem and expenses under the old law were quite an item of expense.

Under the same act, a great deal of the newspaper advertising of notices has been eliminated. This makes quite a saving, but one of the greatest savings under the Drainage Law is in the lowered pay to the contractor for the construction of the drain. Under the old law, the contractor did the work and received his pay from time to time as the assessments were paid. This is what we called ditch pay. The contractor, knowing that he probably would not get all of his money for three or four years, usually made his bid higher in view of such a condition.

Part of the act of 1933 which is now in force provides that the contractor shall be paid as the work progresses, from time to time, 80% of the estimates on labor and material and work accomplished, the 20% remaining within 60 days after the completion of the work, on affidavit that all liens and bills have been paid. This method of payment has proved to be a great saving on the various drains, and these amounts are paid from the drainage funds.

I know of no better way of discussing this question than to give you a brief synopsis of the proceedings in court in the construction and reconstruction of drains, and then to discuss repairs of open and tile drains.

#### COURT PROCEEDINGS

Under the Drainage Law now, 10% in acreage of the owners affected by any proposed drain may petition the Circuit

or Superior Court, or the board of county commissioners, for the construction of a drain. They must allege that they have set out in their petition 80% of all of the acreage they believe will be affected, and have described at least 80% of the total length of the drain.

The petitioners shall designate on their petition the day fixed by them for the docketing of the petition; they shall then give notice to all people mentioned in the petition by a written or printed notice; this notice shall be served on the parties in person or on their agents, or by leaving it at their usual place of residence. They shall also post along the drain three notices in each township, giving notice to all of the people mentioned in the petition. These notices shall be along the line of the drain in public places. And one notice shall be posted at the court house.

If parties are non-residents and their residence can be ascertained at the auditor's or treasurer's office, notice shall be sent to them by mail. When this method is pursued and notice given as outlined, and proof made by affidavit, the court acquires jurisdiction.

When the proof is filed with the court, the judge shall make an order docketing the petition as a cause pending. At this time he shall appoint two viewers, who shall be disinterested, not related to anybody affected by the drain, and residents of the township or townships into or through which the drain runs. In event the court cannot find a disinterested person in the township, then he may appoint disinterested persons from anywhere in the county.

Any person affected by the drain shall have 10 days from the docketing of the petition in which to demur to the form of the petition or object to the appointment of any viewer. If 10 days elapse, all objections to the form of petition and the appointing of viewers are waived.

The statute also provides that if within twenty days, exclusive of Sundays, two thirds of those residents of the county where the drain is to be located shall remonstrate in writing, and they shall also represent at least 50% of the acreage abutting on said drain, then the petition shall be dismissed at the cost of the petitioners. If no remonstrance is filed, the Court shall make an order referring the drain to the surveyor of the county and the viewers.

The surveyor and the viewers shall first determine the practicability of the drain, whether the costs exceed the benefits, and whether it will benefit highways and health; and when these facts are determined, the viewers' work is done.

The surveyor shall then proceed to view the land, determine the watershed, and make the assessments of the various tracts of land. When his report is completed, it shall be signed by himself and at least one of the viewers. This is filed in court. At that time, the court makes an order that the surveyor shall

give notice to all people affected that on a certain date, not less than 30, nor more than 40, days from the date of the filing of the report, the surveyor will be at the clerk's office to hear any objections that anyone may have to the report.

Notice is given by the surveyor through the mail, with a five-day return, to all parties mentioned in the petition; and in the event that additional parties are brought in by the surveyor's report, they shall have notice by registered mail demanding a return receipt. Said notice shall specify that the report has been filed and is pending in court, and give the description of the land owned by the party, the amount of the assessments, and when the surveyor will hear objections.

On the day fixed by the court, the surveyor shall be in the clerk's office to hear any objections. He may adjourn the hearing to any other room in the court house, but not to any other building. All objections shall be in writing and verified.

The surveyor shall hear the objections, and if he sees fit he can change the report, modify the assessments, or eliminate them entirely. If he makes any changes, he shall report the fact to the court. If he overrules the objections, he shall report the fact to the court.

Any person who has filed his written verified objections with the surveyor, may, within ten days after the filing of the surveyor's report, remonstrate to the court on the following grounds of remonstrance:

1. That the report is not according to law.
2. That the lands assessed will not be benefited to the extent of the assessment.
3. That the land is assessed too high as compared with other lands, naming them.
4. That the lands will be damaged.
5. That the drain will not be of public utility.
6. That the costs will exceed the benefits occasioned by the drain.
7. That the drain will not benefit the health or the public highways.

Under the present law, I do not believe any person has a right to remonstrate in court, unless he files his written verified objections with the county surveyor. I think it is necessary to give the surveyor an opportunity to pass on the questions before a party has a right to take his remonstrance into court.

The court hears remonstrances, can equalize the assessments, allow damages, or make any changes in the assessments that he may deem just and advisable. He then makes an order establishing the drain.

The assessments are a lien on the real estate from the date of the decree. The drain is then referred to the surveyor for construction. He shall give notice for the letting of the contract. Notice of the time and place where the letting will be

held is given in some newspaper by one publication. The surveyor has a right to accept the best bid that, in his opinion, is offered, regardless of whether or not it is the low bid. He also has a right to reject any and all bids and re-advertise the letting.

#### LETTING OF CONTRACT

The letting of the contract is a very important matter. The law now makes the contractor personally liable for all damages that may accrue to the land-owners by reasons of the drain's not being constructed within the time prescribed in the contract. This should be set out specifically in the contract. The surveyor also has the right to terminate the contract on failure to carry it out, and to let the contract to some other person. The court should approve the contract and bond.

#### DITCH IMPROVEMENT FUND

Under the Act of 1933, and this part is still in force with slight amendments, the county commissioners in each county may designate and have what is known as a Ditch Improvement Fund. If they do not designate and have in the county a Ditch Improvement Fund, then the expenses and overhead of drains shall be paid out of the general fund.

All expenses incident to construction under this act are first paid by the county, either out of the improvement fund or the general fund, and charged to this particular drain. The county is to be reimbursed from the drain for all money it has advanced, including 6% interest per annum on money advanced.

When the surveyor has let the contract for the drain, within 10 days he shall make an estimate of the entire costs of the drain and determine how the payments shall be made and over what period of time, and shall certify his findings to the auditor. The auditor shall give notice that the surveyor has made his report, and that it has been filed with the auditor, and that all people whose assessments are \$25.00 or less shall have one year in which to pay their assessment. Any sums over this amount shall be paid as designated in the report of the surveyor.

The county commissioners may issue bonds for 2, 5, 10, or 20 years, and the proceeds shall go to the Ditch Improvement Funds to defray the expenses of the drain; or, if they so desire, they may pay all of the expenses out of the drain and carry the account and collect the assessments and turn them into the drainage fund, and charge 6% interest per annum.

#### RECONSTRUCTION

Another section of the statute provides for the reconstruction of tile or open court ditches. This in substance provides that when the landowners representing 5% of the acreage of

the drainage area shall petition the court, alleging in substance that the drain is out of repair and that it can be more economically kept in repair and made more efficient for the purpose for which it was designed and intended by deepening, widening, cutting, straightening, tiling or taking out tile, making an open ditch, the same notice and the same proceedings are applicable to this proceeding as apply to original drains. The two thirds remonstrance under this act is slightly different from that under the original, as this act provides that in the event the open ditch has not been cleaned out for a period of ten years, a two thirds remonstrance shall not be applicable.

We have also an act of 1933, later amended, which provides that if a person owns real estate and is assessed on a certain court drain and does not have an outlet to that drain, and there are not more than two persons intervening between his land and the drain, under the law now he can petition the surveyor, alleging those facts. The surveyor shall survey the ground, and if he finds the petition justified, he shall fix and determine the drain and the assessments, construct the drain, and certify the assessments to the auditor, which are a lien on the respective tracts of ground. He shall keep a record of these drains, and they in effect become court drains.

#### REPAIR OF COURT DRAINS BY SURVEYOR

The Acts of 1933 cover approximately every phase of drainage repair law. A number of these sections were amended in 1935, and a part of the 1933 Act was amended in 1937 and a part of the 1935 Act was also amended in 1937. So in taking the acts as a whole, I think the Repair Drainage Law is substantially as follows:

As soon as possible after the taking effect of these acts it becomes the duty of the county surveyor to divide all of the open drains in his county into two classes passed according to the necessity for repair;

Class 1. To be cleaned out the first year.

Class 2. To be cleaned out the second year, and biennially thereafter.

The landowners are to remove all weeds, growth, and debris on the drains annually. The surveyor shall use the old allotments until a petition is filed by the owner asking that he make a new allotment; and if on examination he finds it necessary he can re-allot the drain.

In making allotments, he shall begin at the mouth of the drain and designate the various allotments; the farmers shall be notified of their allotments, and shall keep them clean annually of all weeds, growth, and debris.

Tile drains shall be repaired at any time on notice to the surveyor of necessity. If the amount of repair is under \$50.00, the surveyor can have the work done without letting contract and pay for it out of the ditch improvement fund; this with

6% interest would be a charge against this respective drain. If the amount is over \$50.00, he shall let a contract and make assessments against the respective landowners.

On open drains, the statute has been amended. The Acts of 1937 provide that the surveyor shall clean out and repair open drains biennially, but that no drain shall be repaired until it has been constructed at least one year. This is done by letting contract and making assessments against the various tracts of land. The same act also provides that the surveyor shall make repairs on open drains at any time that the necessity therefor arises, and that if the assessment for the repairs is not more than \$100.00 in expenses, the work may be done by the surveyor without advertising and letting the contract, and that this amount shall be paid from the general funds of the county.

The act also provides that the surveyor shall not expend more than \$100.00 in this manner for the repairing of drains in any one year.

#### SUGGESTED AMENDMENTS TO THE REPAIR DRAINAGE LAWS

From my experience in drainage matters, I am inclined to think that our drainage law has not proved very satisfactory. The surveyor must allot the work and depend on various persons having allotments to do their work in a proper manner. This is a very poor way to get proper drainage.

I believe that if our drainage law was amended so that both open and tile drains could be repaired when necessity demanded, the necessity to be determined by the surveyor, then the surveyor could have the work done and pay for it out of the ditch improvement fund when the amount did not exceed \$300.00, and, when the amount exceeded \$300.00, could proceed and make his assessments. If he paid this out of the ditch improvement funds, this particular ditch should be charged with that amount, and as soon as the total charge for repairs from time to time reached \$500.00, then an assessment should be made to cover the entire expenses, including 6% interest, in order to reimburse the ditch improvement fund.

All such drains should be let by contract, either as a whole or in units as the surveyor may see fit, to the lowest responsible bidder. In this manner, we would have our drains properly repaired and constructed as a unit and they would be far more efficient and in the long run, in my opinion, less expensive to the landowner.