

Drainage Financing

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For the State Board of Accounts to be invited to participate in your program is certainly gratifying. It further evidences the friendly attitude of the public officials of the state toward us. For me to be selected to help represent the State Board of Accounts at this meeting more than flatters my limited knowledge of the subject to be discussed.

Knowing my shortcomings, and after finding out that questions would be asked, I asked for help here today and we have the good fortune of having with us Mr. Herschel Umbaugh, who has made more than a little study of ditch matters. Mr. Umbaugh is a fellow field examiner.

I once had the good fortune of working close to another man who has made an exhaustive study of ditch laws. Not so long ago he stated before a public gathering that "the law concerning public ditches has become so complicated that its only competitor in the field of uncertainty is what is commonly known as the Barrett Law."

Some smart fellows have figured out a way to make it rain, but we can't depend on them to keep it from raining while all of the complications of the ditch laws are straightened out. Our remedy lies in the constant improvement of our drainage laws and in meanwhile employing our best efforts in making the most of what we have at the moment.

At best, a discussion of this kind is wholly unromantic; so I intend to confine what I have to say to some of the things which have appeared to be most controversial and at the same time try to point out some things which do not lend themselves to sound financing.

The discussion of drainage financing leads to a discussion of some of the laws pertaining to ditch construction and repair and the methods of paying the costs.

SOURCES OF FUNDS

Generally speaking, the money to finance the cost of construction and maintenance of ditches comes from two sources, assessments collected from property benefited and money collected by taxation.

Except in cases of certain small repairs, the cost of construction and repair is ultimately borne by the property benefited, through levy and collection of assessments. The ditch law of 1933 recognized that proceedings could not always wait until assessments were collected. That law permitted two methods for advancement of costs: creation of a general ditch improvement fund by the county commissioners and use of an appropriation made by the county council from the general fund of the county.

Whenever I talk to a surveyor or county auditor about the ditches of his county, I invariably find myself asking him, "Do you have a general improvement fund or do you finance ditch work by appropriation from the county general fund?" The question is asked not because the methods employed are so different, but because of the limitations placed on the general ditch improvement funds. The law (27-131) permitting establishment of a general ditch improvement fund states that the fund shall not exceed \$10,000 and shall be used to pay for the construction and maintenance of ditches. The same section of the law provides that if the board of commissioners deems it inadvisable to establish the ditch fund, all payments and reversions to such fund shall be paid from and shall revert to the county general fund. It has been decided many times that before disbursement of county general fund money, there must be an appropriation. In this connection, one point should be made clear—the establishment of a general ditch improvement fund terminates the authority to appropriate county general fund money for use for the same purposes assigned to the general ditch improvement fund. In other words, the county cannot have a general ditch improvement fund of \$10,000 or less and also appropriate additional money to supplement that fund for repair and construction of ditches except in those cases specifically authorized by special laws.

I want to emphasize that if the county has not established a general ditch improvement fund, all receipts and all disbursements for ditch construction and repair must be handled within the county general fund. There is no authority for the creation of a so-called construction fund into which assessments are receipted. Very undesirable results arise when this practice is followed: first, too often the county general fund is not repaid for preliminary costs advanced and an unidentified balance may remain in the fund; second, unwarranted demands will be made against such balance for later repairs or maintenance of the ditch. It is sometimes argued that the reason for setting up a construction fund is that the county council will not appropriate enough money to finance proposed work or permit an adequate program. When

this matter is placed before the county council with proper assurance that the money expended will be recovered for the county by levy and collection of assessments, the objection to appropriating money for this purpose will for the most part disappear. Thus, when additional revenues are assured, there is no limit on the amount the council may appropriate for this purpose from the county general fund.

If there is insufficient money to appropriate, or if there is insufficient funds in the general ditch improvement fund to carry out contemplated ditch work, ample authority is found in the laws (27-136-137) to borrow money by issuance and sale of bonds. The bonds are secured by a lien on the property benefited to the extent of unpaid assessments. Proceedings to issue and sell bonds is a field in itself and usually requires specialized counsel. I shall not attempt to outline those proceedings.

There is a point that should be mentioned about the computation of costs to be included in an assessment roll. Page 1044, Acts of 1945, gives the complete list of costs to be included. They are the contract price of the work, the cost of location profiles, plans and specifications, court costs, notices, advertising and attorney fees. To these costs is added interest not exceeding 6 percent from the time of payment by the county auditor. All the costs can be determined from the paid claims except the costs for the work done by the surveyor and his assistants. Page 1023, Acts of 1945, requires that the surveyor and deputies shall make, verify by oath, and file with the county auditor each month an itemized statement of the days and dates worked on each improvement, and the number of miles necessarily traveled by him or them in the preceding month. Thus there is an outline for the assembling and computing of rightful costs against each improvement to the end that the county general fund will be reimbursed for *all* the expense incurred in those cases where assessment is required.

INTERPRETATION OF CONFUSING LAWS

Perhaps more error has been committed from misunderstanding or wrong interpretation of the laws permitting certain small repairs to be made without letting a contract and without assessing the benefits.

There was a section of the parent ditch law of 1933 (Sec. 48) (27-210) which provided that under certain conditions the surveyor was authorized to make repairs to tile drains without advertising, letting a contract, or imposing assessments in cases where the repairs did not exceed \$50. This section was amended from time to time, and the limit was raised to \$100. After the 1935 amendment there

was a conjecture as to whether or not the cost of these small repairs was to be assessed to the property benefited. Perhaps the latest amendment of this section in 1947 (Ch. 190) relieves this question, but may present a more serious question. The 1947 amendment authorizes the surveyor to proceed with certain repairs without letting a contract or advertising, if the total cost does not exceed $1/20$ of the original cost of the ditch or \$400. It is further stated in the 1947 amendment that the costs shall be paid out of the ditch improvement fund and that if the costs be more than $1/20$ of the original cost of the ditch or \$400, the surveyor shall assess the cost upon the land in proportion to the original assessment for construction. When repairs coming under the meaning of not exceeding $1/20$ of the original cost or \$400 are made and the costs not assessed, the general ditch improvement fund is placed in a position where it will be decreased, and sooner or later, will become entirely depleted. The serious question is, "How can the general ditch improvement fund carry the load made possible under this part of the ditch law where no provision is made for replenishing the fund?"

Going back momentarily to the limits of $1/20$ th of the original cost of the ditch or \$400, to give weight to both limitations, the only logical interpretation of this term must be " $1/20$ th of the cost or \$400, whichever is smaller."

Possibly the law which has aroused more attention than any other and has been most controversial is Chapter 314, Acts of 1943. This law was amended by Ch. 191, Acts of 1947. You will remember that the 1943 law permitted annual county appropriations not exceeding \$5,000 for repair of open drains and \$5,000 for repair of tile drains. This 1943 law itself said that it was supplemental to existing laws. So if it was supplemental it cannot be assumed that there was intent to modify or change the processes of repair already stipulated in the ditch laws at the time it was passed.

Under this 1943 law, for the cost of repair of either an open drain or tile drain to be paid for from county funds, there had to be an appropriation available for the purpose.

For the cost of repair of an *open* drain to be paid for from the county appropriation the drain had to have certain other qualifications:

1. It had to be other than an open dredge ditch of court record.
2. Two years must have elapsed from the time the ditch was constructed or one year must have elapsed from the time it was last cleaned out or repaired.

3. The cost of the repair could not exceed \$200.
4. It must drain two or more tracts of farm land owned by different owners.
5. The work was limited to cleanout, repair, and removing obstructions. The total cost in any one calendar year could not exceed \$5,000.00.

For the cost of repair of a tile drain to be paid from the county appropriation, the drain likewise had to have given qualifications:

1. The repair work was limited to ditches of 8-inch tile or larger.
2. The cost of repair could not exceed \$100.
3. The repair could not include private or individual sewer tile drainage systems.
4. The drain had to drain two or more tracts of farm land owned by different owners.

The part of the 1943 law pertaining to tile ditches was not changed by the 1947 amendment. The part pertaining to open ditches was changed considerably. The qualifications of the open ditches which may come within the terms of this law as amended in 1947 are that:

1. The open drain may include open dredge ditches of court record, although the sentence making this inclusion says the surveyor is authorized to repair any open drain, including open dredge ditches of court record.
2. The cost of the repair cannot exceed 1/20 of the original cost of the drain or \$400. (Again we must say 1/20 or \$400, whichever is smaller).
3. Two years must have elapsed from the time the ditch was constructed, or one year must have elapsed from the time it was last cleaned or repaired.
4. It must drain two or more tracts of farm land owned by different owners.
5. The work is limited to cleanout, repair, and removing obstructions. The total cost in any one calendar year cannot exceed \$5,000.

The 1947 amendment pertaining to open drains also made a change in the fund from which the repair under this law is to be paid. The 1943 law said "from the general fund of the county". The 1947 amendment says "from the Ditch Fund or funds of the county or

counties". If the words *Ditch Fund* are taken to mean the general ditch improvement fund, here again is an additional load on the general ditch improvement fund which it cannot support if repairs are made under this 1947 amendment.

Let us analyze the 1943 law a little further. In some counties, it must have been the opinion of the surveyor and others that a major repair costing in excess of the limitations could be made under the 1943 law, and that the county should pay the first \$100 for the tile-drain repair or the first \$200 for the open-drain repair and the owners of property benefited pay the remainder. That is not a proper interpretation of that law. When the costs exceeded the limitation of the 1943 law, the provisions of the 1943 law were inoperative. The same thing is true under that law as amended in 1947. Therefore, when the costs exceed the limitations of 1/20 of the original cost or \$400, a contract must be let under the terms of the 1933 law as amended and the entire cost included in assessment against the property benefited.

Mr. Umbaugh called attention to the matter of paying the costs of ditches which extend into two counties. We believe that the county having jurisdiction should first pay the entire cost and that when the assessment roll is certified to the county not having jurisdiction, the county to which such costs are certified should immediately reimburse the county having paid the costs. Whenever a two-county ditch is proposed, there must be cooperative planning between the two counties in providing adequate funds to pay the costs.

There are many other features of our ditch laws which could be discussed if time permitted. Perhaps all that has been said could be summarized shortly by saying that there is danger in the present plan of attempting financing of ditch work by reason of burdens imposed upon the general ditch improvement fund with no offsetting plan of reimbursing the fund for those burdens. The ultimate result will be that tax dollars will bear up the deficits as they occur. Just how far tax money should go toward improvement or construction of ditches generally resolves itself into one which should not be considered lightly. At the present time the statutes do not contemplate use of more than ten thousand tax dollars annually in any one county, except for expenses which are reimbursable.

Ditch matters are serious matters and should be undergoing continuous study. You and the landowners in your respective communities are the ones most vitally interested, and there is no better group than you surveyors to camp on the trail of the legislature to suggest sound, equitable means of financing ditch work.