Volume II

ADMINISTRATION AND MANAGEMENT OF LOCAL STREETS AND ROADS

Indiana Laws Relating to Local Street and Road Work

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CHAPTER

INTRODUCTION

SETTING THE STAGE

INTRODUCTION

This volume contains the full text of those Indiana statutes and selected notes that, in the opinion of the editors of this volume, have a direct impact upon the management of local roads and streets. The statutes and their notes were extracted and reprinted with permission from *Burn's Statutes, Annotated*, a publication of Michie-Bobbs-Merrill.

In many cases, compiler's notes and notes to decisions were deleted during the process of compiling these statutes from *Burn's Statutes Annotated*. In most cases, notes to decisions that did not apply to road and street work were completely deleted. Should more detailed information be required for a specific issue or project, the editors strongly recommend consulting the full text of the applicable statutes in either Burns, Wests or a similar publication, or the complete Indiana Code. It is also recommended to seek the advice of the governmental unit's legal advisor when required.

This volume was not designed to be a definitive compilation of road and street statutes. It was designed as a companion to the User's Handbook (Volume 1), to provide those statutes in full text that are mentioned in that volume. These statutes are grouped under the appropriate Volume 1 chapter title and number, and are listed in numerical order. Thus, all statutes relevant to Local Authority can be found in Chapter 2, and are arranged in numerical order in that chapter, Road Revenue statutes are in chapter 8 in numerical order, etc.

This system makes it easier for the user to move from statute references in volume 1 straight to the appropriate section in this volume. This alleviates the problem of finding the statute in the library, except when more detailed notes are required.

Unfortunately, road and street laws will not remain in their present form forever, as the state legislature has passed a law, effective May 8, 1987, to establish a committee to revise the county road and bridge laws. SEA 226 establishes this committee, which shall examine the laws and conduct hearings to study possible substantive changes. According to the bill, "The study committee shall periodically report its progress to the legislative council and shall arrange for the introduction in the general assembly of a bill to revise the county road and bridge laws no later than January 1988" (SEA 226, p. 2). Once the revisions are complete, this volume will be updated and changes mailed to all users.
CHAPTER 2
LOCAL AUTHORITY

LOCAL AUTHORITY

8-6-2.1. RAILROAD CROSSING GRADE SEPARATIONS

8-6-2.1-1. Authority to require separation or alteration of grade levels. - The board of public works or board of public works and safety, referred to in this chapter as the board, of a city may, by resolution, require the separation or alteration of the grade levels of any public highway in the city and of any railroad crossing the public highway, either by carrying the public highway under or over the railroad, or by carrying the railroad under or over the public highway, or by any combination of these means. [IC 8-6-2.1-1, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-36. Jurisdiction and authority of board. - (a) The jurisdiction and authority of the board of each city are complete in relation to all matters provided for in this chapter, except in the levying of taxes. In carrying out this chapter it is not necessary to comply with any other statute, except as specifically provided.

If no procedure is provided for by this chapter for doing anything authorized or contemplated by it, the procedure provided by other statutes in similar cases may be followed. [IC 8-6-2.1-36, as added by Acts 1980, P.L. 8, § 70.]

8-17. COUNTY UNIT LAW

8-17-1-1 [36-301]. County highways. - The board of county commissioners of each county of the state is hereby authorized and empowered to locate, establish, widen, change, construct, reconstruct and improve, maintain and repair all public highways, bridges and culverts in the county, including highways, bridges and culverts under the supervision of the department, if approved by the department, or located in incorporated cities or towns, as hereinafter provided in this chapter. [Acts 1919, ch. 112, § 1, p. 531; 1980, P.L. 74, § 297; 1981, P.L. 41, § 57.]

NOTES TO DECISIONS

Constitutionality.

This statute is not unconstitutional for the reason that the title does not embrace the matter in the body of the act, nor for the reason that the administrative duties required of the county commissioners render them biased and prejudiced judges. Forrey v. Board of County Comrs. (1920), 189 Ind. 257, 126 N. E. 673; Van Hess v. Board of County Comrs. (1921), 190 Ind. 347, 129 N. E. 305.

Jurisdiction of Circuit Court.

In a proceeding under this act, the fact that the transcript on appeal to the circuit court from the board of county commissioners did not contain the plans for the road improvement, did not constitute grounds for dismissal of the proceedings in the circuit court, where the plans and specifications were sent to the state highway commission. Kelly v. Herbst (1930), 202 Ind. 55, 170 N. E. 853.

Jurisdiction of County Commissioners.

Jurisdiction once established, the orders, rulings, and judgments of the county commissioners are as invulnerable against collateral attack for error or irregularity in the proceedings, and are supported by the same presumption of regularity as if entered by the circuit court. If the record is silent on a matter necessary to be done, it will be presumed that it was done and done rightly. Hull v. Board of County Comrs. (1924), 195 Ind. 150, 143 N.E. 589.

8-17-1-2 [36-802]. Construction and repair. - The board of commissioners of the respective counties of the state shall have the power, as hereinafter provided, to construct public highways by laying out and improving a new public highway or the improving, reconstructing or repairing of any existing public highway or part thereof by grading, draining, paving, resurfacing or improving with gravel, stone, brick, concrete, bitumen or other road paving material. They shall have the power to establish, lay out, alter, widen, vacate, straighten or change a public highway in connection with the proceedings for such improvement, and they shall also have power to build all necessary bridges, culverts or approaches in the improvement of highways. [Acts 1919, ch. 112, § 3, p. 531.]

Opinions of Attorney-General. The county commissioners have the authority to construct sidewalks adjacent to a county road for the protection
and safety of those who by necessity must walk the road, and a special fund from the motor vehicle highway account allocated to the various counties should be used rather than any money from the general fund. 1959, No. 70, p. 367.

8-17-3. RESPONSIBILITY FOR COUNTY BOARDS OF COMMISSIONERS, SURVEYOR, AND HIGHWAY SUPERVISOR.

8-17-3-1 [36-1101]. County surveyor. - Except as hereinafter otherwise provided, the county surveyor shall have general charge of the repair and maintenance of the county highways situated in each county of the state. The surveyor shall receive from such services compensation which shall be fixed by the board of county commissioners: (1) The board of county commissioners shall allow and pay the county surveyor by way of expense, when furnishing his own conveyance, for necessary travel in the discharge of his duties as supervisor of highway, a sum for mileage equal to that sum per mile paid to state officers and employees. The rate per mile shall change each time the state government changes its rate per mile. The board of commissioners shall provide all tools and equipment and the housing and repair thereof. [Acts 1933, ch. 27, § 1, p. 139; 1945, c. 165, § 1, p. 388; 1975, P.L. 15, § 8, p. 41.]

Opinions of Attorney-General. County highway superintendent, other than the county surveyor, is not required to be a qualified registered professional engineer. 1939, p. 269.

NOTES TO DECISIONS

Liability.

A complaint alleging that defective road condition was called to the attention of highway superintendent, “an employee of defendant, board of commissioners,” was good against demurrer notwithstanding contention of defendant that this section released the board of commissioners from liability since the commissioners could employ a supervisor under § 3-1110. Davis v. Board of Comrs. (1971), - App. 17, 27 Ind. Dec. 110, 273 N.E. (2d) 551.

8-17-3-7 [36-1107]. Employees - Duties of assistants. - The board of county commissioners shall employ such teams, trucks and employees as may be necessary to assist in and carry on the repair work on the roads under the charge of the surveyor, and the board of commissioners shall designate and employ all such assistants and employees and shall determine the rate of wages to be paid for labor, trucks and teams. It shall be the duty of each assistant to make a careful inspection of the roads under his charge, at least once each month, noting all breaks or defects and he shall immediately repair the same or report to the county surveyor and ask for directions. [Acts 1933, ch. 27, § 7, p. 13; 1975, P.L. 34, § 6, p. 155.]

Cross-Reference. See note, 8-17-3-3. Keene v. Board of County Comrs. (1938), 105 App. 641, 1 N.E. (2d) 967.

8-17-3-10 [36-1110]. County highway supervisor - Employment - Duties - Bond. - (a) The board of county commissioners of any county of the state of Indiana shall have the right to employ any person other than the county surveyor as a supervisor of county highways, such person to be known as the county highway supervisor. Such county highway supervisor shall serve at the will of the board of county commissioners, and shall perform the duties that are provided in this chapter to be performed by the county surveyor.

(b) If a county highway supervisor, other than the county surveyor, shall be appointed by the board of county commissioners, such county highway supervisor shall be required to attend all the sessions of the annual road school during each and every year of his term. The expenses of the county highway supervisor, including the actual expenses of transportation to and from such school, together with the expense of lodging and tuition, if any there be, shall be paid from the county highway maintenance fund of the county.

(c) Before entering upon the discharge of his official duties, a county highway supervisor, other than a county surveyor, shall, in the manner prescribed by IC 5-4-1 [5-4-1-1-5-4-1-19], execute a bond conditioned on the faithful discharge of all duties required of the county highway supervisor. [Acts 1933, ch. 27, § 10, p. 139; 1943, ch. 161, § 1, p. 471; 1959, ch. 204, § 1; 1961, ch. 107, § 1; 1965, ch. 391, § 1; 1981, P.L. 47, § 10.]

Cross-Reference. Duty to cut weeds on highways, 8-17-14-1.

Opinions of Attorney-General. The county commissioners are not barred from paying a re-employed highway supervisor more than $5,000 per year under this act. 1968, No. 35, p. 240.

8-17-11. COUNTY LINE ROADS

8-17-11-1 [36-401]. Improved roads on county lines. - The boards for county commissioners of any two [2] or more counties of this state shall have power, as provided in this chapter, to lay out and construct on and along the boundary line between any two [2] or more counties, a turnpike, gravel, stone, or macadamized road, or improve by straightening, grading, graveling, or macadamizing any road or parts of road now running on and along the boundary line between any two [2] or more counties, and may issue and sell bonds, as provided in this chapter, to raise the money with which to
lay out and construct and improve such roads; Provided, That in laying out and improving, or in improving county line roads under this chapter, that such roads may vary from such county line or lines, whenever necessary in order to avoid bluffs, hills, ravines, or other obstacles, not to exceed one-half [1/2] mile, and such road, when so laid out and improved, or improved under the provisions of this chapter, shall be considered, paid for, and kept in repair the same and in the same proportions as if such roads were established and improved upon and along such county line or lines. [Acts 1907, ch. 209, § 1, p. 363; P.L. 86-1984, § 103.]

NOTES TO DECISIONS

Double Taxation.

The fact that there is another road law (8-17-1-1 to 8-17-1-45) operating in a subdivision of the same district does not mean that a taxpayer is taxed twice for the same road in violation of Const., art. 10, § 1. Folley v. Board of County Comrs. (1920), 189 Ind. 257, 126 N.E. 673.

8-20-8. TEMPORARY CLOSING OF ROADS

8-20-8-1. Authority of board of county commissioners - Time limitation. - A board of county commissioners may order a road or a portion of a road which is part of that county's road system closed for a period of time, not to exceed five [5] years. If the road or portion of road to be temporarily closed is located on a county line or if parts of the road are located in more than one county, the road or portion of the road may only be closed under this section by the joint action of the boards of county commissioners of all the counties involved. The order to close may be extended by the board in increments of no more than two [2] years. [IC 8-20-8-1, as added by Acts 1979, P.L. 97, § 1.]

34-4-16-4. PAYMENT OF JUDGMENTS

34-4-16-4-1. Judgments against counties or cities - Payment solely from appropriations therefor - Mandamus proceedings to compel county or city officers to provide for appropriating, levying, and collecting by taxation. (a) A judgment against a county or city may be enforced only from appropriations made for that purpose.

(b) The proper officers of the county or city may be compelled by mandamus proceedings to make the necessary provisions for the appropriating, levying, and collecting by taxation the sum necessary for the payment of a judgment. In the mandamus proceedings:

(1) The respective bodies and officers may be sued collectively by their legal names;

(2) Service of process may be made on any member of the respective bodies; and

(3) All members of the respective bodies are bound by the judgment.

(c) If a city is entitled to an appeal, the appeal shall be granted without bond. A judgment against a city may not be enforced pending an appeal. [IC 34-4-16-4-1, as added by Acts 1980, P.L. 8, § 170.]

34-4-16-4-2. Execution against real or personal property or interest therein of a city or town prohibited -- Mandate or injunction against city or town only from action in tort or express contract -- Exception. (a) Execution may not be had upon a judgment or award of a court or board against real or personal property owned by a city or town on the interest of a city or town in such property. A mandate or injunction
may not be issued by a court against a city or town or its officers concerning a judgment or award unless the judgment or award arises from or out of an action in tort or on an express contract.

(b) This section does not apply to judgments and awards arising out of actions between municipalities or in which the state may have an interest. [IC 34-4-16.4-2, as added by Acts 1980, P.L. 8, § 170.]

34-4-16.5 TORT CLAIMS [AGAINST GOVERNMENTAL ENTITIES.]

34-4-16.5-1. Application of Chapter. This chapter [34-4-16.5-1 — 34-4-16.5-19] applies only to a claim or suit in tort. [IC 1971, 34-4-16.5-1, as added by Acts 1974, P.L. 142, § 1, p. 599.]

Compiler's Notes.

The bracketed words in the chapter heading were added by the compiler.

NOTES TO DECISIONS

In General.

The object of this chapter, and more specifically of 34-4-16.5-17, is to protect the fiscal integrity of governmental entities by limiting their liability not only for damages in tort, but also for the interest recoverable upon those damages. Thompson v. State, -- Ind. App. --, 425 N.E.2d 187 (1981), appeal dismissed, -- U.S. --, 103 S. Ct. 23, 74 L. Ed. 2d 39 (1983).

Construction with IC 17-2-1.

With respect to tort claims this law implicitly repeals 17-2-1-1 et. seq., where there is any conflict. Gonsor v. Board of Comm'r's, 177 Ind. App. 74, 63 Ind. Dec. 253, 378 N.E.2d 425 (1978).

Retrospective Application.


34-4-16.5-3. Immunity from liability. A governmental entity or an employee acting within the scope of his employment is not liable if a loss results from:

(1) The natural condition of unimproved property;

(2) The condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person for a purpose which is not foreseeable;

(3) The temporary condition of a public thoroughfare which results from weather;

(4) The condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area;

(5) The initiation of a judicial or administrative proceeding;

(6) The performance of a discretionary function;

(7) The adoption and enforcement of or failure to adopt or enforce a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment;

(8) An act or omission performed in good faith and without malice under the apparent authority of a statute which is invalid, if the employee would not have been liable had the statute been valid;

(9) The act or omission of someone other than the governmental entity employee;

(10) The issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law;

(11) Failure to make an inspection, or making an inadequate or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety;

(12) Entry upon any property where the entry is expressly or impliedly authorized by law;

(13) Misrepresentation if unintentional;

(14) Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission; or

(15) Injury to the person or property of a person under supervision of a governmental entity and who is:

(A) On probation, or

(B) Assigned to an alcohol and drug services program under IC 16-13-6.1, a minimum security release program under IC 11-10-8, or a community corrections program under IC 11-12.

(16) The design of a public highway [as defined in IC 9-1-1-2(q)], if the claimed loss occurs at least twenty (20) years after the public highway was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition. [IC 1971, 34-4-16.5-3, as added by Acts 1974, P.L. 142, § 1; 1976, P.L. 140, § 2; P.L. 316-1983, § 1; 1987, HEA 1098, § 2.]
Amendments.

The 1983 amendment added subdivision (15) and made stylistic changes.

Opinions of Attorney General.

This section precludes any tort liability of the department of natural resources on account of its issuance of a permit. 1980, No. 80-9, p.--

Cited:


NOTES TO DECISIONS

City Liability for State Negligence.

Since § 34-4-16.5-2 distinguishes between state, state agency and political subdivision, there was no basis for imposing liability on the political subdivision of the city of Michigan City based upon any breach of duty by the state or a state agency. Garner v. City of Michigan City, 453 F. Supp. 33 (N.D. Ind. 1978).

The city of Michigan City was not liable for any failure to inspect and warn about the dangerous conditions of the waters of Lake Michigan because the city did not own either the waters of Lake Michigan or the lake bed. Garner v. City of Michigan City, 453 F. Supp. 33 (N.D. Ind. 1978).

Where city was not liable for failure to inspect the waters of Lake Michigan, it could not be held liable for any failure to warn or to post lifeguards or signs. Garner v. City of Michigan City, 453 F. Supp. 33 (N.D. Ind. 1978).

Common-Law Duties.

This section does not abrogate the common-law duty of a governmental entity to exercise reasonable care and diligence to keep its streets and sidewalks in a reasonably safe condition for travel. Walton v. Rap, - Ind. App. -, 77 Ind. Dec. 413, 407 N.E.2d 1189 (1980).

Constitutionality.


Discretionary Functions.

A government employee or official who has discretionary functions enjoys immunity for acts within the scope of his employment and will not be held liable for any errors, mistakes of judgment or unwise decisions he may make in the exercise of that discretion. Foster v. Peary, 270 Ind. 533, 68 Ind. Dec. 421, 387 N.E.2d 446 (1979), cert. denied, 445 U.S. 980, 100 S. Ct. 1846, 64 L. Ed. 2d 235 (1980).

The employment and supervision of deputies and employees in governmental offices is a discretionary function within the meaning a clause (6) and a prosecutor cannot be held liable in a libel action for statement made by his deputy on ground that prosecutor was negligent in hiring and supervising deputy. Foster v. Peary, 270 Ind. 533, 68 Ind. Dec. 421, 387 N.E.2d 446 (1979), cert. denied, 445 U.S. 960, 100 S. Ct. 1846, 64 L. Ed.2d 235 (1980).

Although the decision to widen a highway was found to be discretionary, the installation of signs or devices to warn motorists of the protrusion of a culvert into the travel lane was a ministerial act. State v. Magnuson, 488 N.E.2d 743 (Ind. App. 1986) (This annotation replaces the annotation taken from this case which appears under this heading in the 1986 Replacement Volume).

--Definition.

The definition of a discretionary duty includes the determination of how an act should be done. City of Hammond v. Cataldi, - Ind. App. -, 449 N.E.2d 1184 (1983).

-Ministerial Functions.

A person's duties in performance of an act after he has determined whether and how it should be done are ministerial. State, Dept' of Mental Health v. Allen, -- Ind. App. --, 427 N.E.2d 2 (1981).

--Defined.

A ministerial act is one which a person performs in a given state of facts in a prescribed manner, in obedience to the mandate of legal authority, without regard to, or the exercise of, his own judgment upon the propriety of the act being done. State Dept' of Mental Health v. Allen, -Ind. App. -, 427 N.E.2d 2 (1981).

--Road Maintenance.

The decision to construct a county road is a discretionary function for which the governmental entity is immune from liability. However, the installation and continuing maintenance are ministerial functions for which the governmental entity may be held liable for negligence. County of Laporte v. James, 496 N.E.2d 1325 (Ind. App. 1986).

-Sewer Installation.

A city's decision to install a sewer system was
the performance of a discretionary function and was
immune from liability under the Indiana Tort
Claims Act. Rodman v. City of Wabash, 497

-Warning Signs on Roads.

The decision of a county board of commissioners
not to place a warning sign at an intersection was a
discretionary function for which the board was
immune from liability. Board of Comm’rs v. Hout,

Where a portion of a roadway is shown to be
inherently dangerous, the duty to post proper warn-
ning signs becomes ministerial in nature. Moreover,
the mere placement of a warning sign does not pre-
clude a finding of negligence since the state still has
a general duty to exercise reasonable care in design-
ing, constructing, and maintaining its highways.
Peavler v. Board of Comm’rs, 492 N.E.2d 1086 (Ind.
App. 1986).

Legislative Intent.
The legislature’s amendment of this section has a
clarifying effect on the section insofar as all acts of
enforcement save false arrest and imprisonment,
now render the state immune. Semour Nat’l Bak v.
State, - Ind. -, 422 N.E.2d 1223, aff’d on rehearing.
- Ind. -, 428 N.E.2d 203 (1981), appeal dismissed, 457

Malicious Prosecution.

Under clause (5) of this section immunity is
granted to the state and municipal subdivisions and
police officers in actions for malicious prosecution.
Livingston v. Consolidated City of Indianapolis, --
Ind. App. --, 73 Ind. Dec. 369, 398 N.E.2d 1302
(1979).

The immunity given by clause (5) of this section
is not limited to law enforcement personnel or
activities but provides immunity to the state and
political subdivisions and their employees from suits
for malicious prosecution while acting within the
scope of their employment. Hedges v. Rawley, --

Statutory Duties.
The immunity statute does not apply where the
governmental entity is required to perform an act in
a certain way by state statute. Harvey v. Board of

Where county failed to follow the Indiana
Manual on Uniform Traffic Control Devices as
required by 9-4-2-1 in its signs, this section had no
application and it was not immune from liability.
Harvey v. Board of Comm’rs, -- Ind. App. --, 416

Temporary Condition Resulting from
Weather.

The disposing of water by an adjacent land-
downer into a highway, causing an icy slick spot
when it is cold, is not a natural accumulation or a
temporary condition resulting from the weather.
Walton v. Rap., -- Ind. App. --, 77 Ind. Dec. 413, 407
N.E.2d 1189 (1980).

Sidewalk Defective.

In an action against municipal corporation per-
sonal injuries allegedly caused by defective side-
walk, notice to city by pedestrian stating that he
fell when he stepped into hole in sidewalk at certain
place and received certain given injuries was
sufficient even though it did not refer to sidewalk
being cracked and broken as alleged in complaint,
since action was based upon negligence of city in
failing to discover cracked and broken sidewalk and
permitting it to remain. Loganport v. Gamill

State Highways.

Sovereign immunity is not available to the state
as a defense where the state has breached the duty
of reasonable care in designing, constructing and
maintaining its highways for the safety of public
users. State v. Clark, 175 Ind. App. 358, 60 Ind.

Street Defective.

The maintenance of a concrete post, commonly
called a silent policeman, in the street without any
guard or light, or other means of notifying persons
traveling upon the street, was a defect in the condi-
tion of the street. Titus v. Bloomfield (1923), 80
App. 483, 141 N.E. 360.

34-4-16.5-4. Limitation on amount of liability.
- The combined aggregate liability of all govern-
mental entities and of all public employees, acting
within the scope of their employment and not
excluded from liability under section [34-4-16.5-]
of this chapter, does not exceed three hundred
thousand dollars [$300,000] for injury to or death
of one [1] person in any one [1] occurrence and does
not exceed five million dollars [5,000,000] for injury
to or death of all persons in that occurrence.
A governmental entity is not liable for punitive
damages. [IC 1971, 34-4-16.5-4, as added by Acts 1974,
P.L. 142, § 1; 181, P.L. 290, § 2.]

Opinions of Attorney General.
The limits in this section would govern the lia-
iability of the township or other governmental unit
for whom work was performed by a poor relief recipi-
ent under 12-2-1-10 for injuries or damages
suffered by or caused by the recipient. 1977, No. 8,
p. --.

2-6
NOTES TO DECISIONS

Motion to Correct Errors.

--Consideration of Insurance.

Court found not to have erroneously considered defendant's liability insurance coverage in ruling on its motion to correct errors after judgment had been entered against it. See Board of Commrs v. Nevitt, -- Ind. App. --, 448 N.E.2d 333 (1983).

Purpose.

The Tort Claims Act limits the financial liability of the state; it does not give the jury a scale for determining damages nor is it material to evaluating injury or loss. State v. Bouras, -- Ind. App. --, 423 N.E.2d 741 (1981).

Retrospective Application.

Where prior to February 19, 1974, the date this section became effective, judgment was entered on a tort claim against the state in an amount greater than the limitation imposed by this section. This section could not be applied retrospectively since to do so would deprive the claimant of a vested right. State v. Dale (1975), 165 Ind. App. 513, 48 Ind. Dec. 456, 332 N.E.2d 845.

Decisions Under Prior Law

In General.

Since the common law doctrine of governmental immunity no longer has force and effect the provision limiting recovery to the maximum amount of insurance in force was an anachronism and no longer applicable and a judgment may be recovered against the state for tort committed in the exercise of either a governmental or a proprietary function without limitation as to amount. Klepinger v. Board of County Comrs. (1968), 143 App. 178, 15 Ind. Dec. 114, 239 N.E.2d 160 (Petition to transfer denied, November 4, 1968); State v. Turner (1972), 153 App. 197, 32 Ind. Dec. 409, 286 N.E.2d 697, overruling Knotts v. State (1971), -- App. --, 27 Ind. Dec. 425, 274 N.E.2d 40, 259 Ind. 55, 284 N.E.2d 733 (1972); State v. Daley (1972), 153 App. 330, 32 Ind. Dec. 595, 287 N.E.2d 552.

34-4-16.5-10. Action on claim. -- Within ninety [90] days of the filing of a claim the governmental entity shall notify the claimant in writing of its approval or denial of the claim. A claim is denied if the governmental entity fails to approve the claim in its entirety within the ninety [90] days, unless the parties have reached a settlement before the expiration of that period. [IC 1971, 34-4-16.5-10, as added by Acts 1974, P.L. 142, § 1, p. 599.]

Cited:


34-4-16.5-11. Form and service of notice of claim. -- The notices required by sections 6, 7, 8 [34-4-16.5-8 -- 34-4-16.5-10] and 10 [34-4-16.5-10] of this chapter must be in writing and must be delivered in person or by registered or certified mail. [IC 1971, 34-4-16.5-11, as added by Acts 1974, P.L. 142, § 1, p. 599.]

Cited:


34-4-16.5-12. Denial of claim prerequisite to suit. -- A person may not initiate a suit against a governmental entity unless his claim has been denied in whole or in part. [IC 1971, 34-4-16.5-12, as added by Acts 1974, P.L. 142, § 1, p. 599.]

Cited:


34-4-16.5-13. Settlement or compromise by governor. -- Except as provided in section 18 [34-4-16.5-19] of this chapter, the governor may compromise or settle a claim or suit brought against the state or its employees. [IC 1971, 34-4-16.5-13, as added by Acts 1974, P.L. 142, § 1, p. 599; Acts 1975, P.L. 313, § 2, p. 1761; 1978, P.L. 14, § 4, p. 687.

34-4-16.5-15. Settlement or compromise by political subdivision. -- Except as provided in section 18 [34-4-16.5-18] of this chapter, the governing body of a political subdivision may compromise, settle, or defend against a claim or suit brought against the political subdivision or its employees. [IC 1971, 34-4-16.5-15, as added by Acts 1974, P.L. 142, § 1, p. 59; Acts 1975, P.L. 3318, § 4, p. 1761; 1978, P.L. 14, § 6, p. 687.]

Retroactivity of Act.

Survey of Recent Development in Indiana Law, Section 9 of Acts 1976, P.L. 140 read: "(a) This act applies retroactively to the full extent that it can be so applied constitutionally.

(b) Nothing in the retroactive application of this act may be constructed to create a new cause of action which did not exist prior to its effective
date, nor may it be construed as reviving or reinstating any cause of action already barred under the law.

(c) If this act cannot be applied retroactively to absolve a present or former public official or employee from personal liability, the governmental entity employing him may pay any judgment, compromise, or settlement of the claim or suit and shall pay all costs and fees incurred in the defense of the claim or suit."

34-4-16.5-16. Enforcement of judgment against governmental entity. - A court which has rendered a judgment against a governmental entity may order that governmental entity to:

(1) appropriate funds for the payment of the judgment if funds are available for that purpose; or

(2) levy and collect a tax to pay the judgment if there are insufficient funds available for that purpose. [IC 1971, 34-4-16.5-16, as added by Acts 1974, P.L. 142, § 1, p. 599.]

34-4-16.5-17. Time for payment of claim or judgment. - Interest. - A claim or suit settled by, or a judgment rendered against, a governmental entity shall be paid by it not later than one hundred eighty [180] days after the date of settlement or judgment, unless there is an appeal, in which case not later than one hundred eighty [180] days after a final decision is rendered. If payment is not made within one hundred eighty [180] days after the date of settlement or judgment, the governmental entity is liable for interest from the date of settlement or judgment at an annual rate of ten percent [10%]. The governmental entity is liable for interest at that rate and from that date even if the case is appealed, provided the original judgment is upheld. [IC 34-4-16.5-17, as added by Acts 1974, P.L. 142, § 1; 1980, P.L. 198, § 1; 1981, P.L. 220, § 4.]

34-4-16.5-17.1. Section 17 of this chapter does not apply if there is a structured settlement under section 21 of this chapter. [1987, HEA 1987, § 3.]

34-4-16.5-18. Liability insurance. - (a) A governmental entity may purchase insurance to cover the liability of itself or its employees. Any liability insurance so purchased shall be purchased by invitation to and negotiation with providers of insurance and may be purchased with other types of insurance. If such a policy is purchased, the terms of the policy govern the rights and obligations of the governmental entity and the insurer with respect to the investigation, settlement, and defense of claims or suits brought against the governmental entity or its employees covered by the policy. However, the insurer may not enter into a settlement for an amount which exceeds the insurance coverage without the approval of (1) the governor if the claim or suit is against the state; or (2) the mayor, if the claim or suit is against a city, or the governing body of any other political subdivision, if the claim or suit is against such political subdivision.

(b) The state may establish a program of self-insurance to cover the liability of the state and its employees under this chapter. The state may administer its program of self-insurance or may contract with any private agency, business firm, or corporation to administer any part of the program. The attorney general shall, in the manner prescribed by IC 4-22-2, adopt the rules necessary to implement a program of self-insurance established under this section. [IC 1971, 34-4-16.5-18, as added by Acts 1974, P.L. 142, § 1; 1975, P.L. 318, § 5; P.L.28-1983, § 59.]

Amendments.

The 1983 amendment designated the provisions of this section as subsection (a) and added subsection (b).

Effective Dates.


Opinions of Attorney General.

A township, or any other governmental entity, may purchase comprehensive liability insurance for public purposes, even though the township or governmental entity neither owns nor hires vehicles at the time. 1980, No. 80-17, p. 54.

NOTES TO DECISIONS UNDER PRIOR LAW

In General.

As bridge repair work is a proprietary function a county was subject to an action for damages caused by its negligence in the repair of a bridge on a public highway although there was no insurance as authorized by statute. Klepinger v. Board of County Comrs. (1968), 143 Ind. App. 178, 15 Ind. Dec. 114, 23 N.E.2d 160. (Petition to transfer denied November 4, 1968.)

Governmental Immunity.

Where insurance is taken out insuring the state or municipal corporation as well as officers or agents the carrier writing such policy was precluded from raising the defense of governmental immunity. Flowers v. Board of Comrs. of Vanderburgh County (1960), 240 Ind. 668, 168 N.E.2d 224, rev'd on other grounds, 136 Ind. App. 596, -- Ind. Dec. --, 201 N.E.2d 571 (1964).

Limitation of Liability.

Since the outmoded common law doctrine of governmental immunity no longer had force and effect the provision limiting recovery to the max-
imum amount of insurance in force and effect was an anachronism and no longer applicable; and a judgment may be recovered against the state for tort committed in the exercise of either a governmental or a proprietary function without limitations as to amount. Klepinger v. Board of County Comrs. (1968), 143 Ind. App. 178, 15 Ind. Dec. 114, 239 N.E.2d 160 (Petition to transfer denied, November 4, 1968); State v. Turner (1972), 153 Ind. App. 197, 32 Ind. Dec. 409, 286 N.E.2d 697; State v. Daley (172), 153 Ind. App. 330, 32 Ind. Dec. 595, 287 N.E.2d 552.

34-4-18.5-21. (a) with the consent of the claimant, a political subdivision may compromise or settle a claim or suit by means of a structured settlement under this section.

(b) A political subdivision may discharge settlement of a claim or suit brought under this chapter by:

1. an agreement requiring periodic payments by the political subdivision over a specified number of years;
2. the purchase of an annuity;
3. by making a qualified assignment of the liability of the political subdivision as defined by the provisions of 26 U.S.C., Sec. 139(c);
4. payment in a lump sum; or
5. any combination of subdivisions (1) through (4).

(c) The present value of a structured settlement shall not exceed the statutory limits set forth in section 4 of this chapter; however, the periodic payments may be determined by discounting the periodic payments by the same percentage as that found in Moody’s Corporate Bond Yield Average—Monthly Average corporates, as published by Moody’s Investors Service, Incorporated. [1987, HEA 1098, § 4.]

36. LOCAL GOVERNMENT - GENERAL PROVISIONS

36-1-3. HOME RULE

36-1-3-1. Application of chapter. - This chapter applies to all units except townships. [IC 17-2-2.5-1], 18-1-1.5-1, 18-1-1.5-1.5, 18-1-1.5-30, recodified as IC 36-1-3-1 by Acts 1980, P.L. 211, § 1.]

NOTES TO DECISIONS

Townships.

The "home rule" concept, favoring a liberal construction of powers, was not intended to be extended to townships and their officials, but rather it was intended that townships be subject to the rules of strict construction traditionally applied to such entities. Osborne v. State, - Ind. App. --, 439 N. E. 2d 677 (1982).

36-1-3-4. Presumption that unit has powers necessary to conduct affairs. - (a) The rule of law that a unit has only:

1. Powers expressly granted by statute;
2. Powers necessarily or fairly implied in or incident to powers expressly granted; and
3. Powers indispensable to the declared purposes of the unit; is abrogated.

(b) A unit has:

1. All powers granted it by statute; and
2. All other powers necessary or desirable in the conduct of its affairs, even though not granted by statute.

(c) The powers that units have under subsection (b)(1) are listed in various statutes. However, these statutes do not list the powers that units have under subsection (b)(2); therefore, the omission of a power from such a list does not imply that units lack that power. [IC 17-2-2.5-1, 17-2-2.5-6, 18-1-1.5-16, 18-1-1.5-23, 18-1-1.5-29, 18-4-2-33, 18-4-2-36, recodified as IC 36-1-3-4 by Acts 1980, P.L. 211, § 1.]


Opinions of Attorney General.

The county commissioners may by ordinance provide penalties for violations of local public health rules adopted under 16-1-7-33. 1977, No. 19, p. 47.

The Indiana general assembly has not authorized a governmental subdivision to enter into an exclusive collective bargaining agreement between policemen and their governmental employers at the present time. Accordingly, a city council does not have authority to designate an exclusive bargaining agent for policemen by ordinance or otherwise. 1980, No. 80-30.

NOTES TO DECISIONS

In General.

Municipal corporations had such implied powers as were necessary to accomplish the purposes of their organization. City of Crawfordsville v. Braden, 130 Ind. 149, 28 N. E. 849 (1891).

An ordinance expressly authorized by specific legislative authority would be upheld unless it
conflicted with the constitution; while an ordinance which the municipality sought to uphold by virtue of its incidental powers, or under a general grant of authority, would be declared invalid, unless it was reasonable, fair and impartial. Stefy v. Town of Monroe City, 135 Ind. 466, 35 N. E. 121, 41 Am. St. R. 436 (1893); Champer v. City of Greencastle, 138 Ind. 339, 35 N. E. 14, 46 Am. St. R. 390, 24 L.R.A. 768 (1894); Rund v. Fowler, 142 Ind. 214, 41 N. E. 456 (1895); Pittsburgh, C., C. & St. L. Ry. v. Town of Crown Point, 146 Ind. 421, 45 N. E. 587, 35 L.R.A. 684 (1896).

Regardless of statutory authority, a town had implied an inherent power to contract for the purchase and installation of equipment for utility plants owned and operated by it. Underwood v. Fairbanks, Morse & Co., 205 Ind. 316, 185 N. E. 118 (1933).

Invalid Ordinances.

Taxpayers of a town could enjoin the enforcement of invalid ordinances. Meyer v. Town of Boonville, 162 Ind. 165, 70 N. E. 146 (1904).

36-1-3-5. Limitations on exercise of powers by statute or constitution. - A unit may exercise any power it has to the extent that the power:

(1) Is not expressly denied by the Indiana Constitution or by statute; and

(2) Is not expressly granted to another entity. [IC 17-2-2.5-1, 17-2-2.5-3, 18-1-1.5-1, 18-1-1.5-16, 18-1-1.5-19, 18-4-2-33, 18-5-10-2, recodified as IC 36-1-3-5 by Acts 1980, P.L. 211, § 1.]


NOTES TO DECISIONS

In General.

The ordinance enacted pursuant to the power granted was for the benefit of the municipality and not for the protection of private individuals. Nyers v. Gruber, 150 Ind. App. 117, 28 Ind. Dec. 8, 275 N. E. 2d 863 (1971).

Constitutionality.

The powers granted did not constitute an unconstitutional delegation of legislative authority, but such delegation of authority granted only those powers which were necessary or desirable in the public interest. Dortch v. Lugar, 255 Ind. 545, 24 Ind. Dec. 357, 266 N. E. 2d 25 (1971).

This is a general law which operates uniformly statewide and is not in violation of Ind. Const., art. 4, §§ 22, 23, but city ordinances enacted thereunder need not operate statewide. Massey v. City of Mishawaka, - Ind. App. —, 63 Ind. Dec. 257, 378 N. E. 2d 14 (1978).

Traffic Regulations.

The rights of municipalities are limited by statute (9-4-1-27) to the adoption of additional traffic regulations with respect to streets and highways under their jurisdiction and as more fully provided by 9-4-1-28. Mitsch v. City of Hammond, 234 Ind. 285, 125 N. E. 2d 21, 126 N. E. 2d 247 (1955).

36-1-3-6. Procedures for exercise of powers. - (a) If there is a constitution or statutory provision requiring a specific manner for exercising a power, a unit wanting to exercise the power must do so in that manner.

(b) If there is no constitutional or statutory provision requiring a specific manner for exercising a power, a unit wanting to exercise the power must either:

(1) Adopt an ordinance prescribing a specific manner for exercising the power; or

(2) Comply with a statutory provision permitting a specific manner for exercising the power.

(c) An ordinance under subsection (b)(1) must be adopted as follows:

(1) In a municipality, by the legislative body of the municipality.

(2) In a county subject to IC 36-2-3.5 [36-2-3.5-1--36-2-3.5-6] or IC 36-3-1 [36-3-1-1--36-3-1-12], by the legislative body of the county.

(3) In any other county, by the executive of the county. [IC 17-2-2.5-2, 17-2-2.5-7, 18-1-1.5-17, 18-4-2-32.6, 18-4-2-2(2), 18-4-2-55, recodified as IC 36-1-3-6 by Acts 1980, P.L. 211, § 1; 1981. P.L. 17, § 2.]

NOTES TO DECISIONS

In General.

The validity of ordinances or other defenses can be interposed without a special plea. Ridge v. City of Crawfordsville, 4 Ind. App. 513, 31 N. E. 207 (1892); Berkey v. City of Elkhart, 141 Ind. 408, 40 N.E. 1081 (1895).

Wherever there was a statutory grant of authority or power to a city or town and no method was provided for the exercise of such authority or power, the common council of any city or the board of trustees of any town, by ordinance, could provide such method. Schisler v. Merchants Trust Co., 228 Ind. 594, 94 N. E. 2d 665 (1950).

36-1-3-7. Limitations on exercise of powers by state or local agencies. - State and local agencies may review or regulate the exercise of powers by a unit only to the extent prescribed by statute. [IC 17-2-2.5-5, 18-1-1.5-22, 18-4-2-35(a), recodified as IC 36-1-3-7 by Acts 1980, P.L. 211, § 1.]
36-1-3-8. Powers specifically prohibited. - A unit does not have the following:

(1) The power to condition or limit its civil liability, except as expressly granted by statute.

(2) The power to prescribe the law governing civil actions between private persons.

(3) The power to impose duties on another political subdivision, except as expressly granted by statute.

(4) The power to impose a tax, except as expressly granted by statute.

(5) The power to impose a license or other fee greater than that reasonably related to the administrative cost of exercising a regulatory power.

(6) The power to impose a service charge greater than that reasonably related to the cost of the service provided.

(7) The power to regulate conduct that is regulated by a state agency, except as expressly granted by statute.

(8) The power to prescribe a penalty for conduct constituting a crime or infraction under statute.

(9) The power to prescribe a penalty of imprisonment for an ordinance violation.

(10) The power to prescribe a penalty of a fine of more than two thousand five hundred dollars [$2,500] for an ordinance violation.

(11) The power to invest money, except as expressly granted by statute. [IC 17-2-2.5-3, 17-2-2.5-4, 18-1-1.5-1, 18-1-1.5-4, 18-1-1.5-13, 18-1-1.5-19, 18-1-1.5-20, 18-3-1-47, 18-3-1-49, 18-4-2-2, 18-4-2-3, 18-4-2-35(b), 18-4-2-35(c), 19-10-3-1, recodified as IC 36-1-3-8 by Acts 1980, P.L. 211, § 1; 1981, P.L. 17, § 3.

Cross References. Taxation of property, generally, 6-1.1-1-1-6-1.1-37-13.

Opinions of Attorney General. Subsequent to the repeal of the law which required the wearing of protective headgear by motorcyclists, a validly enacted city ordinance prescribing the use of protective headgear for motorcyclists would create neither an impermissible conflict with a state statute nor would it violate the provisions of this section since there was no longer any state law with which the ordinance might conflict. 1978, No. 10, p. 29; 1 IR 879.

The Indiana general assembly by enactment intended that a local community (municipal corporation) may not require professionals already licensed by the state to obtain a local license and charge a fee for it unless the particular state licensing act provides otherwise. 1979, No. 79-15, p. 40.

If a city chooses to enforce 22-11-1-1 et seq., concerning the administrative building council, it may not prescribe penalties for violations thereof different from those provided for in that chapter. 1981, No. 81-16, p. ___.

A local prosecutor or city attorney may prosecute for the violation of the state statute or any local ordinances enacted pursuant to 22-11-1-19, 1981, No. 81-16, p. ___.

NOTES TO DECISIONS

In General.

Taxpayers of a town could enjoin the enforcement of invalid ordinances. Meyer v. Town of Boonville, 162 Ind. 185, 70 N. E. 146 (1904).

An impermissible conflict exists between a city ordinance and a criminal statute where the ordinance contradicts, duplicates, alters, amends, modifies or extends the subject matter of the statute. State, City of Indianapolis v. Sablica, 264 Ind. 271, 51 Ind. Dec. 423, 342 N. E. 2d 853 (1976).

Conflict with State Law.

Subdivision (2) specifically limits the power granted to cities so that 8-6-7.7-3 conferring authority on the public service commission to abolish grade crossings is controlling. City of Hammond v. Indiana Harbor Belt R.R., - Ind. App. ___, 61 Ind. Dec. 454, 373 N. E. 2d 893 (1978).

Constitutionality.

The Powers of Cities Act [repealed], was a general law which operated uniformly statewide and was not in violation of Ind. Const., art. 4, §§ 22, 23, but city ordinances enacted thereunder need not operate statewide. Massey v. City of Mishawaka, - Ind. App. ___, 63 Ind. Dec. 257, 378 N. E. 2d 14 (1978).

Criminal Offenses.

Where a defendant worked out a judgment including costs, the city did not become liable to the officers in whose favor costs were taxed for the payment of such costs. Tuley v. City of Logansport, 53 Ind. 508 (1876).

In order that a defendant could be compelled to labor on the streets on a commitment for failure to pay or replevy a judgment, the judgment must have specified that he should so labor. Tuley v. City of Logansport, 53 Ind. 508 (1876); Flora v. Sachs, 64 Ind. 155 (1878); Torbert v. Lynch, 67 Ind. 474 (1879).

Towns could not enact ordinances for the recovery of penalties for the commission of acts constituting criminal offenses, unless expressly authorized to do so. City of Indianapolis v. Higgins, 141 Ind. 1, 40 N. E. 671 (1894).
Cities had no authority to inflict penalties for doing acts that were made criminal by the law of
the state. City of Indianapolis v. Huegele, 115 Ind.
581, 18 N. E. 172 (1888); City of Indianapolis v.
Higgins, 141 Ind. 1, 40 N. E. 671 (1885).

Municipal corporations may enact penalties for
the commission of acts not crimes nor per se nuis-
ances. Bowers v. City of Indianapolis, 169 Ind.
105, 81 N. E. 1097 (1907).

A city ordinance providing for the punishment
of an act which constituted an offense under state
statute was invalid. City of Crawfordsville v.
Jackson, 201 Ind. 619, 170 N. E. 850 (1920).

Fact that ordinance follows and agrees with
statute making an act a criminal offense does not
avoid statute's effect of condemning as void an or-
dinance punishing acts which are made unlawful
offenses by statutes. Mitsch v. City of Hammond,
234 Ind. 285, 125 N. E. 2d 21, 126 N. E. 2d 247
(1955).

Cities and towns are prohibited from punishing
by ordinance any act which is made a public offense
by statute, and any such ordinance is void. Mitsch
v. City of Hammond, 234 Ind. 285, 125 N. E. 2d 21,

An impermissible conflict exists between a city
ordinance and a criminal statute where the ordi-
nance contradicts, duplicates, alters, amends,
modifies or extends the subject matter of the sta-
tute. State, City of Indianapolis v. Sablica, 264

A county ordinance which prohibited an owner
or manager from tolerating in his establishment any
activity or behavior "prohibited by the laws of the
State of Indiana" is effect added an additional
penalty to the penalty provided by state statute
and therefore was in violation of this section. State
v. Black, - Ind. App. --, 64 Ind. Dec. 566, 380 N. E.
2d 1261 (1979).

Traffic Regulations.

The rights of municipalities are limited by sta-
tute (9-4-1-27) to the adoption of additional traffic
regulations with respect to streets and highways
under their jurisdiction and as more fully provided
by 9-4-1-28, but there was no intention by the use
of this language to invalidate former provision simi-
lar to subdivision (10). Mitsch v. City of Hammond,
234 Ind. 285, 125 N. E. 2d 21, 126 N. E. 2d 247
(1955).

Where person was convicted of violating munici-
pal ordinance relating to motor vehicles, it was
within the power of the court to recommend the
suspension of the driving license under 9-2-1-9.
Randall v. Town of Highland, - Ind. App. --, 416 N.

36-1-4. GENERAL CORPORATE POWERS

36-1-4-1. Application of chapter. - This chapter
applies to all units except townships. [IC 18-1-1.5-1,
18-1-1.5-1.5, 18-1-1.5-30, recodified as IC 36-1-4-1 by
Acts 1980, P.L. 211, § 1.]

Cross References. Home rule, 36-1-3-1--36-1-
3-9.

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NOTES TO DECISIONS

In General.

An objection to the name used by the petitioner in a proceeding to annex territory to a town, not made before the board of commissioners or in a circuit court, was not available on appeal. Incorporated Town of N. Judson v. Chicago & E.R.R., 72 Ind. App. 550, 126 N. E. 323 (1920).

36-1-4-4. Seal. - A unit may have a corporate seal. [IC 18-1-1.5-2(2), 18-1-1.5-5(a), 18-3-1.21, 18-3-1.35, 18-4-1-4, recodified as IC 36-1-4-4 by Acts 1980, P.L. 211, § 1.]

36-1-4-5. Eminent domain. - A unit may acquire, by eminent domain or other means, and own interests in real and personal property. [IC 18-1-1.5-2(3), 18-1-1.5-5(a), 18-3-1.35, 18-3-1.45, 18-4-2-6, 18-4-2-7, 18-4-16-1, 18-5-10-4, recodified as IC 36-1-4-5 by Acts 1980, P.L. 211, § 1.]

Cross References. Condemnation of real or personal property by city works board, 36-9-6-4.

Eminent domain generally, 32-11-1.5-1--32-11-1.5-13.

Relocation assistance, 8-13-18.5-1--8-13-18.5-20.

NOTES TO DECISIONS

In General.

The legislature has the power to authorize the exercise of the right of eminent domain for the public use and for the public benefit. Anderson v. Kerns Draining Co., 14 Ind. 199, 77 Am. Dec. 63 (1860); Water Works Co. v. Burkhart, 41 Ind. 364 (1872); Blackman v. Halves, 72 Ind. 515 (1880); Bass v. City of Fort Wayne, 121 Ind. 389, 23 N. E. 259 (1890); Consumers’ Gas Trust Co. v. Harless, 131 Ind. 446, 29 N. E. 1062, 15 L.R.A. 505 (1891).

Appropriation proceedings by board of public works for the purposes of opening a street are statutory under the statutory power of eminent domain and the statutory provisions must be strictly followed. Elliott v. City of Indianapolis, 237 Ind. 287, 142 N. E. 2d 911 (1957).

Where city took private property for public improvement without eminent domain proceedings, assuming that it owned the property, the actual property owner was not limited to condemnation proceedings but properly brought an action to quiet title and for damages for wrongful taking. City of Indianapolis v. L & G Realty & Constr. Co., 132 Ind. App. 17, 170 N. E. 2d 908 (1960).

Proceedings to condemn real estate are statutory proceedings before a statutory board and must strictly comply with statutory requirements. City of Indianapolis v. Schmid, 251 Ind. 147, 15 Ind. Dec. 292, 240 N. E. 2d 66 (1968).
Notice.

In an appropriate proceeding by the board of public works for the purpose of opening a street, where board did not serve appellant with sufficient notice to meet the requirements of due process, he was entitled to have the determination of the board vacated as to him. Elliott v. City of Indianapolis, 237 Ind. 287, 142 N. E. 2d 911 (1957).

Parties.

An order of the circuit court, on appeal from an order of the board of county commissioners establishing a highway, that the damages be paid out of the county treasury was void where the county was not a party to the proceeding and no appropriation of funds had been made. Weaver v. Ferguson, 68 Ind. App. 169, 117 N. E. 659 (1917).

Where party who owned interest in the property was not included in assessment roll awarding damages in condemnation proceeding entered on record, such record did not constitute a final decision as to said party since the decision did not finally dispose of all the issues as to all of the necessary parties in the case. City of Indianapolis v. John Clark, Inc., 245 Ind. 828, 3 Ind. Dec. 110, 4 Ind. Dec. 1, 196 N. E. 2d 896, 201 N. E. 2d 338 (1964).

Time for Final Action.

The off-street parking commission had a right and privilege of arriving at a decision at a later date after giving the interested parties a full opportunity to be heard on their objections at the instance of the first meeting and whether the commission arrived at their decision at the time of the meeting or later would not be prejudicial as long as the objectors were given ample opportunity to file their remonstrances. Foltz v. City of Indianapolis, 254 Ind. 656, 130 N. E. 2d 650 (1955).

36-1-4-6. Acquisition, use and disposition of property. - A unit may use, improve, develop, insure, protect, maintain, lease, and dispose of its interests in property. [IC 18-1-1.5-2(4), 18-1-1.5-14, 18-5-1-35, 18-3-1-45, 18-4-2-6, 18-4-2-29, recodified as IC 36-1-4-6 by Acts 1980, P.L. 211, § 1.]

Cross References. Public purchases, 36-1-9-1-36-1-9-12.

Purchase and exchange of property and services between or among Indiana governmental entities, 36-1-7-12.

Sale or exchange of property between governmental entities authorized, 5-18-1-1, 36-1-7-2.

Opinions of Attorney General. Counties have no authority to expend county funds to repair buildings upon property acquired through tax sale and prior to receipt of a deed. 1944, No. 51, p. 208.

In absence of acceptance by the United States of jurisdiction ceded to it by the state over property purchased by federal government, persons living thereon were subject to personal property tax. 1945, No. 12, p. 59.

The board of commissioners is entitled to terminate any lease entered into at any time it determines that the leased premises are needed for county officers. 1965, No. 36, p. 173.

NOTES TO DECISIONS

In General.

Cities could not sell and convey property held for public use, such as waterworks and lighting plants, without legislative authority. Lake County Water & Light Co. v. Walsh, 160 Ind. 32, 65 N. E. 530, 98 Am. St. R. 264 (1902).

Where a municipally owned utility was to be sold, substantial compliance was required before the fact by the referendum published and the ballot furnished for the protection of the rights of all citizen consumers of power of a municipally owned utility. Baker v. Hawkins, 261 Ind. 143, 38 Ind. Dec. 409, 300 N. E. 2d 653 (1973).

Gifts.

Cities had power to accept testamentary gifts in trust for public hospitals and to agree to conditions and terms that were annexed to the acceptance of such gifts and the execution of such trusts. Dykeman v. Jenkins, 179 Ind. 549, 101 N. E. 1013 (1919).

Public Utilities

Cities had the power to sell and convey options to purchase public utilities. DeMotte v. City of Valparaiso, 161 Ind. 319, 67 N. E. 985, 66 L.R.A. 117 (1903).

Regardless of statutory authority, a town had implied an inherent power to contract for the purchase and installation of equipment for utility plants owned and operated by it. Underwood v. Fairbanks, Morse & Co., 205 Ind. 316, 185 N. E. 118 (1933).

--Aggregate Depreciated Value.

The finding of an "appraised value" of $175,000 was not controlling as to the "aggregate depreciated value" of less than $100,000 required for the sale of a municipally owned utility under the provisions of 8-1-20-3 [repealed]. Northern Ind. Pub. Serv. Co. v. Warren County Rural Elec. Membership Corp., 138 Ind. App. 581, 5 Ind. Dec. 19, 205 N. E. 2d 166 (1965).
Sale of Property.

Cities could not sell property held for public use, such as waterworks and lighting plants, without special legislative authority. Lake County Water & Light Co. v. Walsh, 160 Ind. 32, 65 N. E. 530 (1902).

36-1-4-7. Contracts - A unit may enter into contracts. [IC 18-1-1.5-2(5), 18-4-2-10, recodified as IC 36-1-4-7 by Acts 1980, P.L. 211, § 1.]

NOTES TO DECISIONS

Contracts with City Employees.

Former statute which accorded consolidated first-class cities the general power to contract for services was not applicable to contracts with city employees since that statute clearly provided for the formation of contracts only with private parties as independent contractors. Foley v. Consolidated City of Indianapolis, - Ind. App. --, 421 N. E. 2d 1160 (1981).

36-1-4-8. Payment of debts. - A unit may pay debts. [IC 18-1-1.5-2(6), 18-4-2-4, recodified as IC 36-1-4-8 by Acts 1980, P.L. 211, § 1.]

36-1-4-9. Borrowing money. - A unit may borrow money. [IC 18-1-1.5-2(7), 18-3-1-27, 18-4-2-5, recodified as IC 36-1-4-9 by Acts 1980, P.L. 211, § 1.]

NOTES TO DECISIONS

Constitutional Debt Limitation.

There was no authority for the inclusion of the assessed valuation of property located within excluded towns and cities with that of the consolidated city for purposes of ascertaining municipal debt limitation and the former law was not in evasion of article 13, § 1 of the state constitution. Dortch v. Lugar, 255 Ind. 545, 24 Ind. Dec. 357, 266 N. E. 2d 25 (1971).

36-1-4-10. Acceptance of gifts. - A unit may accept donations of money or other property and execute any documents necessary to receive money or other property from the state or federal government or any other source. [IC 18-1-1.5-2(8), 18-1-1.5-2(15), 18-4-2-30, recodified as IC 36-1-4-10 by Acts 1980, P.L. 211, § 1.]

36-1-4-11. Ordinances. - A unit may adopt, codify, and enforce ordinances. [IC 18-1-1.5-2(9), 18-3-1-48, recodified as IC 36-1-4-11 by Acts 1980, P.L. 211, § 1.]

Cross References. City ordinances, 36-4-6-12-36-4-6-19.

Codification of ordinances, 36-1-5-1--36-1-5-6.

Consolidated city-county ordinances, 36-3-4-11-36-3-4-17.

County ordinances, 36-2-4-5--36-2-4-9.

Enforcement of ordinances, 36-1-6-1--36-1-6-4.

Town ordinances, 36-5-2-9.2--36-5-2-10.2.

Ewbanks Indiana Criminal Law. (Symmes ed.) See § 3, Municipal ordinances and their relation to state statutes.

NOTES TO DECISIONS

In General.

An ordinance expressly authorized by specific legislative authority would be upheld unless it conflicted with the constitution; while an ordinance which the municipality sought to uphold by virtue of its incidental powers, or under a general grant of authority, would be declared invalid, unless it was reasonable, fair and impartial. Steffy v. Town of Monroe City, 135 Ind. 466, 35 N. E. 121, 41 Am. St. R. 436 (1893); Champert v. City of Green Castle, 138 Ind. 339, 35 N. E. 14, 48 Am. St. R. 390, 24 L.R.A. 768 (1894); Rund v. Fowler, 142 Ind. 214, 41 N. E. 456 (1895); Pittsburgh, C. & C. & St. L. Ry. v. Town of Crown Point, 146 Ind. 421, 45 N. E. 587, 35 L.R.A. 684 (1896).

Agents could be employed to perform services for a town without the enactment of an ordinance, bylaw, or resolution. Wilt v. Redkey, 29 Ind. App. 199, 44 N. E. 228 (1902).

Town ordinances, duly enacted, could not be set aside or disregarded except in the manner prescribed by law. Ristine v. Clements, 31 Ind. App. 328, 30 Ind. L. 924 (1903).

A town ordinance, providing that no person should remain a resident of a tourist camp for a period of more than 30 days was not invalid as being unreasonable. Spitzer v. Munster, 214 Ind. 74, 41 N. E. 2d 579, 115 A.L.R. 1395 (1938).

A resolution passed with all the formality required for passing ordinances could operate as an ordinance, regardless of the name. Town of Walkerton v. New York, C. & St. L.R.R., 215 Ind. 206, 18 N. E. 2d 799 (1939).

Criminal Law.

Towns could not enact ordinances for the recovery of penalties for the commission of acts constituting criminal offenses, unless expressly authorized to do so. City of Indianapolis v. Higgins, 141 Ind. 1, 40 N. E. 671 (1894).

Towns could suspend the operation of an ordinance for a specified time, and provide that, after the expiration of such time, the ordinance should be
in force. Thislethwaite v. State, 149 Ind. 319, 49 N. E. 150 (1898).

An impermissible conflict exists between a city ordinance and a state criminal law where the ordinance contradicts, duplicates, alters, amends, modifies or extends the subject matter of the statute. State, City of Indianapolis, v. Sablica, 264 Ind. 271, 51 Ind. Dec. 423, 342 N. E. 2d 853 (1976).


Invalid Ordinances.

Taxpayers of a town could enjoin the enforcement of invalid ordinances. Meyer v. Town of Boonville, 162 Ind. 165, 70 N. E. 146 (1904).

Resolutions.

The terms "resolution" and "ordinance" were frequently used interchangeably, and an ordinance merely connoted a more formal and solemn declaration. Town of Walkerton v. New York, C. & St. L.R.R., 215 Ind. 206, 18 N. E. 2d 799, cert. denied, 308 U.S. 556, 60 S. Ct. 75, 84 L. Ed. 467 (1939).

36-1-4-12. Attendance of witnesses and production of evidence. - A unit may require the attendance of witnesses and the production of documents relevant to matters being considered at meetings of a department or agency. [IC 18-1-1.5-2(10), 18-4-3-11, recodified as IC 36-1-4-12 by Acts 1980, P.L. 211, § 1.]

36-1-4-13. Contempt. - A unit may punish contempt and disorder in rooms of a department or agency. [IC 18-1-1.5-2(11), recodified as IC 36-1-4-13 by Acts 1980, P.L. 211, § 1.]

36-1-4-14. Hiring and discharge of employees - Merit personnel system. - A unit may hire and discharge employees and establish a system of employment for any class of employees based on merit and qualification. [IC 18-1-1.5-2(12), 18-1-1.5-2(14), 18-3-1-34, 18-4-2-28, recodified as IC 36-1-4-14 by Acts 1980, P.L. 211, § 1.]

Cross References. Accounting, taxation, and reporting system prescribed and installed by state board of accounts, 5-11-1-2, 5-11-12-1-5-11-12-3.

Advance payment of vacation benefits authorized, 5-10-6-1.

Budgets of cities and towns, preparation, adoption and review, 6-1-1.17-1-6-1.1-17-19.

County employees, 36-2-2-13.

Opinions of Attorney General. Members of the sanitary officers' pension fund are eligible to participate in the benefits conferred by 5-10.1-1-5-10.1-7-2, by complying with that law as well as the provisions of the federal Social Security Act. 1955, No. 40, p. 158.

Where there are statutory provisions for participation of city employees in retirement funds the city is precluded from enrolling eligible employees in other pension programs. 1976, No. 9, p. 27.

NOTES TO DECISIONS

In General.

Agents could be employed to perform services for a town without the enactment of an ordinance, bylaw, or resolution. Wilt v. Redkey, 29 Ind. App. 199, 64 N. E. 228 (1902).

Insurance.

The fact that one former law only authorized the purchase of insurance for general employees, while another law made mandatory the purchase of such insurance for policemen, did not constitute a denial of equal protection of the laws to such employees, the more favorable provision for policemen being justifiable as compensation. Dortch v. Lugar, 255 Ind. 545, 24 Ind. Dec. 357, 268 N. E. 2d 25 (1971).

Standards.

An ordinance which provided a method for making demotions and transfers in fire force was not in conflict with former law on ground it did not establish standards of merit and qualification. City of Fort Wayne v. Bentley, - Ind. App. --, 70 Ind. Dec. 238, 390 N. E. 2d 1096 (1979).

Injunction Improper.

Awarding a preliminary injunction reinstating an officer to his former rank following demotion without a hearing pending trial on the merits was an improper exercise of the trial court's discretion where the court's only findings of fact were loss of salary differential and inadequate administrative remedies. Wells v. Auberry, - Ind. App. --, 429 N. E. 2d 679 (1982).

36-1-4-16. Fixing compensation of officers and employees. - A unit may fix the level of compensation of its officers and employees. [IC 18-1-1.5-2(13), 18-4-2-14, 18-4-2-29, recodified as IC 36-1-4-15 by Acts 1980, P.L. 211, § 1.]

Cross References. Public employees' retirement fund, political subdivisions participating in fund, 5-10.3-8-1-5-10.3-6-11.

Opinions of Attorney General. - Salaries of employees of officials may be increased without reemployment. 1937, p. 324.
NOTES TO DECISIONS

In General.

Municipal corporations could not be compelled by mandate to increase the compensation of officers. State ex rel. Barnett v. City of Noblesville, 156 Ind. 590, 60 N. E. 453 (1901).

Insurance.

The fact that one former law only authorized the purchase of insurance for general employees, while another made mandatory the purchase of such insurance for policemen, did not constitute a denial of equal protection of the laws to such employees, the more favorable provision for policemen being justifiable as compensation. Dortch v. Lugar, 255 Ind. 545, 24 Ind. Dec. 357, 266 N. E. 2d 25 (1971).

36-1-4-16. Ratification of acts of officers and employees. - A unit may ratify any action of the unit or its officers or employees if that action could have been approved in advance. Ratification of an action under this section must be made by the same procedure that would have been required for approval of the action in advance. [IC 18-1-1.5-2(16), 18-4-2-32, recodified as IC 36-1-4-16 by Acts 1980, P.L. 211, § 1.]

36-1-4-18. Extraterritorial exercise of powers by municipalities - Eminent domain - Property. - A municipality may exercise powers granted by sections 5 and 6 [36-1-4-5 and 36-1-4-6] of this chapter in areas within four [4] miles outside its corporate boundaries. [IC 18-1-1.5-5(a), 18-1-1.5-14, 18-5-10-4, recodified as IC 36-1-4-18 by Acts 1980, P.L. 211, § 1.]

36-1-5. CODIFICATION OF ORDINANCES

36-1-5-4. Incorporation by reference. - The legislative body of a unit may incorporate by reference into an ordinance or code any material. The ordinance or code must state that two [2] copies of the material are on file in the office of the clerk for the legislative body for public inspection, and the copies must be on file as stated for public inspection. [IC 18-5-12-2, 18-5-12-6, recodified as IC 36-1-5-4 by Acts 180, P.L. 211, § 1.]

36-1-5-5. Code as evidence. - A printed code that has taken effect constitutes presumptive evidence in any legal proceeding:

(1) Of the provisions of the code;

(2) Of the date of adoption of the code;

(3) That the code has been properly signed, attested, recorded, and approved; and

(4) That any public hearings required have been held, with any notices required given. [IC 18-5-12-3, recodified as IC 36-1-5-5 by Acts 1980, P.L. 211, § 1.]

36-1-5-6. Restatement or reenactment of provisions. - If the legislative body determines, and declares in a provision of a code, that the provision is a restatement or reenactment of an original ordinance or amendment thereof, then the legal conditions for the effectiveness of an original ordinance need not be met. Such a restated or reenacted provision shall be considered reordained by the adoption of the code. [IC 18-5-12-5, recodified a IC 36-1-5-6 by Acts 1980, P.L. 211, § 1.]

36-2-2. COUNTY EXECUTIVE.


36-2-2-2. Board of county commissioners - County executive - Establishment. - The three-member board of commissioners of a county elected under this chapter is the county executive. In the name of "The Board of Commissioners of the County of . . . ." the executive shall transact the business of the county. [IC 17-1-14-1, 17-1-14-5, recodified as IC 36-2-2-2 by Acts 1980, P.L. 212, § 1.]

Cross References.

Board constitutes board of finance, 5-12-1-7.

Constitutional provisions as to boards, Const., art. 6, § 10.

County executive in counties with two or more cities of second-class and certain other counties, 36-2-3.5-3.

36-2-2-9. Location of meetings. - The executive may select a location other than the county courthouse for its meetings only if the courthouse is not suitable, is inconvenient, or has been replaced or supplemented by other buildings to house county government offices. [IC 17-1-14-13, recodified as IC 36-2-2-9 by Acts 1980, P.L. 212, § 1.]

36-2-2-10. Office open and member available during business hours. -

(a) The executive shall keep its office open on each business day, and at least one of its members shall be available during normal business hours for county offices.

(b) In a county subject to IC 36-2-3.5 [36-2-3.5-1 to 36-2-3.5-6], at least one member of the executive or its designee shall be in its office on each Monday, Tuesday, Wednesday, Thursday, and Friday, except for holidays designated by the county fiscal body. [IC 17-1-18-1, recodified as IC 36-2-2-10 by Acts
36-2-2-11. Minutes of meetings by county auditor - Evidence. -

(a) The county auditor shall attend all meetings of, and record in writing the official proceedings of, the executive.

(b) If a copy of the executive’s proceedings has been signed and sealed by the auditor and introduced into evidence in court, that copy is presumed to be an accurate record of the executive’s proceedings. [IC 17-1-14-6, 17-1-14-9, 17-1-14-12, reclassified as IC 36-2-2-11 by Acts 1980, P.L. 212, § 1.]

36-2-2-12. Certification of appointments made by executive. - Appointments made by the executive shall be certified by the county auditor, under the seal of the executive. [IC 5-5-1-4, reclassified as IC 36-2-2-12 by Acts 1980, P.L. 212, § 1.]

36-2-2-13. Employees authorized - Recording and challenging of nonstatutory employee contracts - Penalty for violation by county commissioner. -

(a) The executive may employ a person:

(1) To perform a duty required of a county officer by statute; or

(2) On a commission or percentage basis; only if the employment is expressly authorized by statute or is found by the executive to be necessary to the public interest.

(b) If a person’s employment under subsection "a." is not expressly authorized by statute, the contract for his employment must be filed with the circuit court for the county, and he must file his claims for compensation with that court. Any taxpayer may contest a claim under this section.

(c) A member of the executive who recklessly violates this section commits a class C misdemeanor and forfeits his office. [IC 17-2-44-8, reclassified as IC 36-2-2-13 by Acts 1980, P.L. 212, § 1.]

36-2-2-15. Administration of oaths. - Enforcement and execution of orders. -

(a) The county auditor or a member of the executive may administer all oaths required by this chapter.

(b) The executive may:

(1) Punish contempt by a fine of not more than three dollars ($3.00) or by imprisonment for not more than twenty-four [24] hours; and

(2) Enforce its orders by attachment or other compulsory process.

(c) Fines assessed by the executive shall be executed, collected, and paid over in the same manner as other fines.

(d) The county sheriff or a county police officer shall attend the meetings of the executive, if requested by the executive, and shall execute its orders. [IC 17-1-14-6, 17-1-14-10, reclassified as IC 36-2-2-15 by Acts 1980, P.L. 212, § 1; 1980, P.L. 125, § 15; P.L. 131-1983, § 11.]

36-2-2-16. Claims against county - Raising county funds. - The executive may:

(a) Approve accounts chargeable against the county; and

(b) Direct the raising of sums necessary for county expenses. [IC 17-1-14-11, reclassified as IC 36-2-2-16 by Acts 1980, P.L. 212, § 1.]

36-2-2-20. Acquisition and disposal of county property authorized. - The county executive may make orders concerning county property, including orders for:

(a) The sale of the county’s public buildings and the acquisition of land in the county seat on which to build new public buildings; and

(b) The acquisition of land for a public square and the maintenance of that square.

However, a conveyance or purchase by a county of land having a value of one thousand dollars ($1,000) or more must be authorized by an ordinance of the county fiscal body fixing the terms and conditions of the transaction. [IC 17-1-14-11, 17-1-24-33, reclassified as IC 36-2-2-20 by Acts 1980, P.L. 212, § 1.]

36-2-3. COUNTY FISCAL BODY

36-2-3-2. Establishment of county fiscal body - County council. -

(a) The seven [7] member county council elected under this chapter is the county fiscal body. The fiscal body shall act in the name of "The (County Name) County Council."


36-2-3-3. Election of members - Terms of office. -

(a) The fiscal body shall be elected at general elections. Except in a county having only single-member districts, members elected from districts and at large members, respectively, are to be elected in alternate, succeeding general elections under section 4 [3-2-3-4] of this chapter. In a county having only single-member districts, the terms of the members are staggered as was provided by law before September 1, 1980.
(b) The term of office of a member of the fiscal body is four [4] years, beginning January 1 after his election and continuing until his successor is elected and qualified. [IC 17-1-24-4, 17-1-25.1-1 -- 17-1-25.1-3, recodified as IC 36-2-3-3 by Acts 1980, P.L. 212, § 1; 1981, P.L. 11, § 143.]

36-2-3.5. DIVISION OF POWERS - CERTAIN COUNTIES

36-2-3.5-1. Applicability of chapter. This chapter applies to:

(1) Each county having two [2] or more second-class cities; and

(2) Any other county not having a consolidated city, if both the county executive and the county fiscal body adopt identical ordinances providing for the county to be governed by this chapter beginning on a specified effective date. [IC 36-2-3.5-1, as added by Acts 1981, P.L. 11, § 14; 1981, P.L. 307, § 1.]

36-2-3.5-2. Division of powers between governmental branches of county - Powers mutually exclusive. - The powers of the county are divided between the executive and legislative branches of its government. A power belonging to one [1] branch of the county's government may not be exercised by the other branch. [IC 36-2-3.5-2, as added by Acts 1981, P.L. 11, § 147.]

36-2-3.5-3. Designation of county executive - Designation of county legislative and fiscal bodies. - The board of commissioners elected under IC 36-2-2 [36-2-2-1 -- 36-2-2-29] is the county executive. The county council elected under IC 36-2-3 [36-2-3-1 -- 36-2-3-9] is the county legislative body as well as the county fiscal body. [IC 36-2-3.5-3, as added by Acts 1981, P.L. 11, § 147.]

36-2-3.5-4. County executive -- Powers and duties. --

(a) All powers and duties of the county that are executive or administrative in nature shall be exercised or performed by its executive, except to the extent that these powers and duties are expressly assigned to other elected officers.

(b) The executive shall:

(1) Report the state of the county annually before March 1 to the county legislative body and to the people of the county;

(2) Recommend annually before March 1 to the legislative body whatever action or program it considers necessary for the improvement of the county and the welfare of its residents;

(3) Submit to the legislative body an annual budget in accordance with IC 36-2-5 [36-2-5-1 -- 36-2-5-14];

(4) Establish the procedures to be followed by all county departments, offices, and agencies under its jurisdiction to the extent these procedures are not expressly assigned to other elected officers;

(5) Administer all statutes applicable to the county, and its ordinances and regulations, to the extent these matters are not expressly assigned to other elected officers;

(6) Supervise the care and custody of all county property;

(7) Supervise the collection of revenues and control all disbursements and expenditures, and prepare a complete account of all expenditures, to the extent these matters are not expressly assigned to other elected officers;

(8) Review, analyze, and forecast trends for county services and finances, and programs of all county governmental entities, and report and recommend on these to the legislative body by March 15 each year;

(9) Negotiate contracts for the county;

(10) Make recommendations concerning the nature and location of county improvements, and provide for the execution of these improvements;

(11) Supervise county administrative offices except for the offices of elected officers; and

(12) Perform other duties and functions that are imposed on it by statute or ordinance.

(c) The executive may:

(1) Order any agency under its jurisdiction to undertake any task for any other agency under its jurisdiction on a temporary basis, if necessary for the proper and efficient administration of county government;

(2) Approve or veto ordinances passed by the legislative body, in the manner prescribed by IC 36-2-4-8; and

(3) Establish and administer centralized budgeting, centralized personnel selection, and centralized purchasing. [IC 36-2-3.5-4, as added by Acts 1981, P.L. 11, § 147.]

36-2-4. LEGISLATIVE PROCEDURES

36-2-4.2. Proceedings of county executive and county fiscal body conform to this chapter. - A county executive or county fiscal body adopting an ordinance, order, resolution, or motion for the government of the county or the transaction of county business must comply with this chapter. [IC 17-1-18-3, 17-2-25.8, recodified as IC 36-2-4-2 by Acts 1980, P.L. 212, § 1; Acts 1981, P.L. 11 § 148.]

36-2-4.3. Quorum. -
(a) A majority of all the elected members constitutes a quorum, except as provided by subsection "b."

(b) A county fiscal body may, by a two-thirds [2/3] vote, adopt a rule specifying that a certain number of members greater than a majority constitutes a quorum. [IC 36-2-4-3 by Acts 1980, P.L. 212, § 1; 1981, P.L. 11, § 149; 1981, P.L. 1, § 14.]

36-2-4-4. "Majority vote" and "two-thirds vote" defined.

(a) A requirement that an ordinance, resolution, or other action be passed by a majority vote means at least a majority vote of all the elected members.

(b) A requirement that an ordinance, resolution, or other action be passed by a two-thirds [2/3] vote means at least a two-thirds [2/3] vote of all the elected members. [IC 17-1-24-10, 17-1-28-10, 17-2-2.5-8, recodified as IC 36-2-4-4 by Acts 1980, P.L. 212, § 1.]

36-2-4-5. Passage of ordinance requires majority vote - Exceptions. - A majority vote is required to pass an ordinance, unless a greater vote is required by statute. [IC 17-1-28-3, 17-1-28-10, 17-2-2.5-8, recodified as IC 36-2-4-5 by Acts 1980, P.L. 212, § 1.]

36-2-4-9. Record of ordinances adopted - Evidence. - Within a reasonable time after an ordinance is adopted, the county auditor shall record it in a book kept for that purpose. The record must include the signature of the presiding officer and the attestation of the auditor. The record, or a certified copy of the record, is presumptive evidence that the ordinance was adopted and took effect. [IC 17-2-2.5-8, recodified as IC 36-2-4-9 by Acts 1980, P.L. 212, § 1.]

36-2-4-10. Rules for transaction of business. - A county executive or county fiscal body may adopt rules for the transaction of business at its meetings. [IC 17-1-14-8, 17-1-24-7, recodified as IC 36-2-4-10 by Acts 1980, P.L. 212, § 1.]

36-2-4-11. Seal. - A county executive shall use a common seal. [IC 17-1-14-9, recodified as IC 36-2-4-11 by Acts 1980, P.L. 212, § 1.]

36-2-5. BUDGETS


36-2-5-2. Fixing of tax rates and appropriation of money by county fiscal body authorized.

(a) The county fiscal body shall fix:

(1) The rate of taxation for county purposes; and

(2) The rate of taxation for other purposes whenever the rate is not fixed by statute and is required to be uniform throughout the county.

(b) The county fiscal body shall appropriate money to be paid out of the county treasury, and money may be paid out of the treasury only under an appropriation made by the fiscal body, except as otherwise provided by law. [IC 17-1-24-14, recodified as IC 36-2-5-2 by Acts 1980, P.L. 212, § 1; 1981, P.L. 11, § 151.]

36-2-5-7. Annual budget estimates from county executive. - Before the Thursday after the first Monday in August of each year, the county executive shall prepare an itemized estimate of all money to be drawn by the members of the executive and all expenditures to be made by the executive or under its orders during the next calendar year. Each executive's budget estimate must include:

(a) The expense of construction, repairs, supplies, employees, and agents, and other expenses at each building or institution maintained in whole or in part by money paid out of the county treasury;

(b) The expense of constructing and repairing bridges, itemized by the location of and amount for each bridge;

(c) The compensation of the county attorney;

(d) The compensation of attorneys for indigents;

(e) The expenses of the county board of health;

(f) The expense of repairing county roads, itemized by the location of and amount for each repair project;

(g) The estimated number of precincts in the county and the amount required for election expenses, including compensation of election commissioners, inspectors, judges, clerks, and sheriffs, rent, meals, hauling and repair of voting booths and machines, advertising, printing, stationery, furniture, and supplies;

(h) The amount of principal and interest due on bonds and loans, itemized for each loan and bond issue;

(i) The amount required to pay judgments, settlements, and court costs;

(j) The expense of publishing delinquent tax lists;

(k) The amount of compensation of county employees that is payable out of the county treasury;

(l) The expenses of the county board of review; and

(m) Other expenditures to be made by the executive or under its orders, specifically itemized. [IC
17-1-24-15, 17-1-24-18, recodified as IC 36-2-5-7 by Acts 1980, P.L. 212, § 1.]

38-2-5-8. Certificate of budget estimate. - A certificate, verified by the officer preparing it and stating that in his opinion the amount fixed in each item will be required for the purpose indicated, must be attached to each budget estimate prepared under this chapter. [IC 17-1-24-15, recodified as IC 36-2-5-8 by Acts 1980, P.L. 212, § 1.]

38-2-5-9. Budget estimates filed with auditor for public inspection - Notice requirements. - Before the Thursday after the first Monday in August of each year, persons preparing budget estimates under this chapter shall present them to the county auditor, who shall file them in his office and make them available for inspection by county taxpayers.

The auditor shall also comply with the notice requirements of IC 6-1-1-17-3. [IC 6-1-1-17-3, 17-1-24-19, recodified as IC 38-2-5-9 by Acts 1980, P.L. 212, § 1; 1981, P.L. 45, § 9.]

38-2-6. ADMINISTRATION.

38-2-6-2. Filing and allowance of claims against county. - A person who has a claim against a county shall file that claim with the county auditor on forms furnished for that purpose by the county executive. The auditor shall present the claim to the executive, which shall examine the merits of the claim. The executive may allow any part of the claim that it finds to be valid. [IC 17-2-1-1, 17-2-1-2, 17-2-40-1, recodified as IC 38-2-6-2 by Acts 1980, P.L. 212, § 1.]

38-2-6-5. Documentation required for support of claim based on delivery of supplies to count. -

(a) A county officer or employee authorized to receive supplies contracted for by the county shall review the invoice or bill for the supplies item by item and certify in writing on the invoice or bill:

(1) The fact that the supplies listed on the invoice or bill have been delivered to him in compliance with the contract; or

(2) The facts showing a breach of contract.

If the officer or employee discovers a breach of contract on receipt of the supplies, he shall deduct a just amount from the invoice or bill. The officer or employee shall immediately file his certificate and the bill or invoice with the county auditor.

(b) The county executive may approve a claim on a contract for supplies only if:

(1) It finds that the claimant has complied with the contract; and

(2) The county auditor certifies in writing that the invoice or bill for the supplies corresponds with the contract as to quality and prices.

The executive may not use a county auditor's certificate as the sole basis for this finding.

(c) The county executive may make an allowance for the printed blanks or stationery for a county officer only if they are to be used for the benefit of the county. [IC 5-7-0-14, 17-1-24-37, recodified as IC 38-2-6-5 by Acts 1980, P.L. 212, § 1.]

38-2-6-6. Documentation required for support of claim for services performed for county. -

(a) The county executive may allow a contract claim for work that was to be conducted under the supervision of the county surveyor, or an architect, engineer, superintendent, or inspector appointed by the executive, only if that supervisor certifies in writing on the claim that the work listed in the claim has been performed according to the contract and that the claim is due and owing under the contract. The supervisor's certificate must be filed with the claim.

(b) A county executive may not allow a claim on a contract covered by this section solely on the basis of the supervisor's certificate. [IC 17-1-24-38, recodified as IC 38-2-6-6 by Acts 1980, P.L. 212, § 1.]

38-2-6-7. Issue of warrant by auditor to pay claim. -

(a) The county auditor may issue a warrant for money to be paid out of the county treasury in payment of a claim only if the claim is:

(1) Fully itemized;

(2) Verified by the claimant or someone acting in his behalf; and

(3) Filed with the auditor more than five [5] days before the first day of the meeting of the county executive at which it is allowed.

(b) The county auditor may issue a warrant for money to be paid out of the county treasury in payment of a claim:

(1) For supplies; or

(2) On a contract with the county executive for the execution of a public work; only if the supplies were purchased or the contract was made in compliance with this article. [IC 17-1-24-37, 17-1-24-38, recodified as IC 38-2-6-7 by Acts 1980, P.L. 213, § 1.]

38-2-12. COUNTY SURVEYOR.

38-2-12-6. Administration of oaths and ack-
Acknowledgements - Surveyor acting as commissioner of partition or as public highway viewer.

(a) The surveyor may:

(1) Administer oaths necessary in the discharge of his duties; and

(2) Administer and certify any oath required to be taken by:

(A) A commissioner for the partition of real property; or

(B) A commissioner or viewer to view, mark, locate, or relocate a public highway.

(b) If the surveyor is appointed to one or both of the offices covered by subsection "a" or "b", he is not required to take an oath under that provision. His duties as a commissioner or viewer comprise part of his official duties, and his signature on any proceedings required of a commissioner or viewer is sufficient.

(c) The surveyor may take, and certify with his seal and signature, acknowledgements of mortgages and deeds for the conveyance of real property. [IC 17-3-58-4, 1-3-58-7, 17-3-58-8, recodified as IC 36-2-12-6 by Acts 1980, P.L. 212, § 1.]

36-2-12-7. Delivery of engineering and survey work to successor at expiration of term - Continuing to perform duties with consent of successor.

(a) At the expiration of his term of office, the surveyor shall turn over to his successor all engineering and survey work in which he is engaged.

(b) At the expiration of the surveyor's term of office, his duties as surveyor, including his duties as county engineer or as the engineer on public improvement work of any work kind, cease, and those duties shall be performed by his successor, unless by mutual agreement the surveyor whose term is expiring is permitted to continue performing his duties on public improvements. [IC 17-3-65-1, recodified as IC 36-2-12-7 by Acts 1980, P.L. 212, § 1.]

36-2-12-8. Appointment of civil engineer by executive if county surveyor is not competent civil engineer.

(a) If he is a competent civil engineer, the surveyor shall plan and supervise all surveying and civil engineering work of the county under the direction of the county executive.

(b) If the surveyor is not a competent civil engineer, the county executive shall appoint a competent civil engineer for each surveying or civil engineering project that the executive orders or receives a petition for. If the executive refuses to appoint such as engineer for a project, the surveyor is entitled to a hearing in the circuit or superior court of the county to determine his competence to perform the project. The order of the circuit court under this section is final and conclusive. [IC 17-3-58-2, recodified as IC 36-2-12-8 by Acts 1980, P.L. 212, § 1.]

36-2-12-9. Survey is prima facie evidence. - A survey by the surveyor constitutes prima facie evidence in favor of the corners and lines it establishes. [IC 17-3-58-5, recodified as IC 36-2-12-9 by Acts 1980, P.L. 212, § 1.]

36-3. GOVERNMENT OF CONSOLIDATED CITIES AND COUNTIES (UNIGOV)

36-3-1. CONSOLIDATION AND TRANSFER OF POWERS

36-3-1-4. Establishment of consolidated city - Territory - Name - Abolishment of first-class city - Continuation of terms of officers. -

(a) When a first-class city becomes a consolidated city, the first-class city is abolished as a separate entity, and the territory of the consolidated city includes:

(1) All the territory that comprised the first-class city before it became a consolidated city; and

(2) All other territory in the county except territory of an excluded city.

However, certain departments and special taxing districts of the consolidated city may have jurisdiction as provided by law over more or less territory than that inside the boundaries of the consolidated city.

(b) The consolidated city is known as "City of ...," with the name of the first-class city inserted in the blank.

(c) Unless the executive and legislative body of the consolidated city are elected during the interim period and take office on the date prescribed by section 2(3) [36-3-1-2(3)] of this chapter, the members of the interim government prescribed by section 3 [36-3-1-3] of this chapter continue in office as officers of the consolidated city until an executive and a legislative body of the consolidated city are elected and qualified. [IC 18-4-1-2 -- 18-4-1-4, 18-4-3-1, 18-4-3-6, 18-4-3-10, recodified as IC 36-3-1-4 by Acts 1980, P.L. 212, § 2.]

36-3-1-5. County officers - County commissioners. -

(a) When a first-class city becomes a consolidated city, the officers who become the executive and legislative body of the consolidated city under section 4(c) [36-3-1-4(c)] of this chapter also become the executive and legislative body of the county.
(b) The members of the board of commissioners of the county are entitled to remain in office until their terms expire, although the board is no longer the executive of the county. As their terms expire or their positions become vacant, they shall be replaced by the following officers in the following order:

(1) The county treasurer.
(2) The county auditor.
(3) The county assessor.

These three officers then serve ex officio as commissioners under IC 36-3-3-10. [IC 18-4-1-2, 18-4-3-15, 18-4-4-7, recodified as IC 36-3-1-5 by Acts 1980, P.L. 212, § 2.]

36-3-1-6. Special service districts created - Territory - Special taxing districts continued - Territory.

(a) When a first-class city becomes a consolidated city, the following special service districts of the consolidated city are created:

(1) Fire special service district.
(2) Police special service district.
(3) Solid waste collection special service district.

(b) The territory of each special service district includes all the territory that comprised the district as of August 31, 1981, subject to IC 36-3-2-3(b).

(c) When a first-class city becomes a consolidated city, all of the following special taxing districts existing in the city continue as special taxing districts of the consolidated city including the following territory:

(1) Flood control district, including all the territory in the county.
(2) Park district, including all the territory in the county.
(3) Redevelopment district, including all the territory that comprised the district as of August 31, 1981.
(4) Sanitary district, including all the territory that comprised the district as of August 31, 1981.

Waste disposal district, including all the territory that comprised the district as of August 31, 1984.

In addition, a metropolitan thoroughfare district, including all the territory in the county, is created as a special taxing district of the consolidated city.

(d) The territory of each special taxing district is subject to IC 36-3-2-3(b). [IC 18-4-12-8(b), 18-4-12-8(b), 19-2-14.5-2, recodified as IC 36-3-1-6 by Acts 1980, P.L. 212, § 2; 1981, P.L. 1, § 15.]

36-3-1-9. Ordinances transferred -

(a) When a first-class city becomes a consolidated city, every ordinance of:

(1) The first-class city;
(2) The county;
(3) A mass transportation authority of the county; or
(4) Any other municipal corporation the functions of which are transferred to the consolidated city by this title;

becomes an ordinance of the consolidated city and shall be enforced only by the consolidated city.

(b) Such an ordinance continues to apply only in the territory in which it applied before becoming an ordinance of the consolidated city, subject to subsection "c".

(c) Such an ordinance may be codified, amended, or repealed by the city-county legislative body in the same manner as other ordinances under this title. [IC 18-4-5-9, recodified as IC 36-3-1-9 by Acts 1980, P.L. 212, § 2.]

36-3-2. POWERS OF POLITICAL SUBDIVISIONS IN THE COUNTY

36-3-2-2. Consolidated city.

(a) The consolidated city has home rule powers under IC 36-1-3 [36-1-3-1 -- 36-1-3-9], including all the powers that a first-class city has according to law. In addition, the consolidated city has the power to levy and collect taxes on taxable privileges and to regulate those privileges.

(b) If the consolidated city wants to annex territory inside the county, it must do so in the manner prescribed by section 7 [36-3-2-7] of this chapter.

(c) The consolidated city may not annex territory outside the county. [IC 18-4-1-2(f), 18-4-2-3, 18-4-2-33, 18-4-2-34, 18-4-15-1(a), recodified as IC 36-3-2-2 by Acts 1980, P.L. 212, § 2; 1981, P.L. 17, § 16.]

36-3-2-4. Excluded cities.

(a) An excluded city has home rule powers under IC 36-1-3-1 -- 36-1-3-9, including all the powers that municipalities of its class have according to law.

(b) An excluded city that wants to annex territory inside the county must do so in the manner prescribed by section 7 [36-3-2-7] of this chapter.]
(c) An excluded city that wants to annex territory outside the county may do so in any manner prescribed by IC 36-4-3 [36-4-3-1 -- 36-4-3-21]. [IC 18-4-14-5, 18-4-15-1(a), recodified as IC 36-3-2-4 by Acts 1980, P.L. 212, § 2.]

36-3-2-5. Included towns. -

(a) An included town has home rule powers under IC 36-1-3 [36-1-3-1 -- 36-1-3-9], including all the powers that municipalities of its class have according to law. However, an included town may not:

(1) Enforce an ordinance or regulation that is in conflict with or permits a lesser standard than an applicable ordinance or regulation of the consolidated city; or

(2) Issue general obligation bonds.

(b) An included town that wants to annex territory inside the county may annex only territory that is outside the corporate boundaries of the excluded cities in the county. This subsection applies notwithstanding IC 36-4-3-2; however:

(1) The included town must follow the procedures prescribed by IC 36-4-3 [36-4-3-1 -- 36-4-3-21] for other annexations; and

(2) All territory annexed under this subsection remains part of the consolidated city.

(c) An included town that wants to annex territory outside the county may do so in any manner prescribed by IC 36-4-3. [IC 18-4-4-6, 18-4-14-1, 18-4-15-1(b), recodified as IC 36-3-2-5 by Acts 1980, P.L. 212, § 2.]

36-3-3. EXECUTIVE AUTHORITIES

36-3-3-5. General powers of mayor. - As the chief officer of the executive branch of the consolidated city government as provided by IC 36-4-4 [36-4-4-1 -- 36-4-4-5], the executive shall supervise the work of the departments of the consolidated city, its special service districts, and its special taxing districts. [IC 18-4-4-1, recodified as IC 36-3-3-5 by Acts 1980, P.L. 212, § 2.]

36-3-3-6. Approval by mayor of ordinances and resolutions - Veto. - The executive shall approve or veto ordinances and resolutions of the legislative body under IC 36-3-4 [36-3-4-1 -- 36-3-4-24]. [IC 18-4-5-2, recodified as IC 36-3-3-6 by Acts 1980, P.L. 212, § 2.]

36-3-3-9. Performing duties of board of county commissioners - Exceptions. - The executive shall perform the duties and exercise the powers prescribed for the board of commissioners of the county by statutes other than this title, except for the following:

(a) Duties and powers vested in the city-county legislative body by IC 36-3-4 [36-3-4-1 -- 36-3-4-24].

(b) Duties and powers retained by the board of commissioners of the county under section 10 [36-3-3-10] of this chapter. [IC 18-4-4-7, recodified as IC 36-3-3-9 by Acts 1980, P.L. 212, § 2.]

36-3-3-10. Board of county commissioners. -

(a) The board of commissioners of the county is composed of the county treasurer, the county auditor, and the county assessor. These officers shall serve ex officio as commissioners without additional compensation for performing the duties of the board.

(a) The board of commissioners:

(1) Shall make the appointments required by statute to be made by the board of commissioners of a county;

(2) Shall perform the duties and exercise the powers prescribed by statutes pertaining to the issuance and payment of bonds of the county and the expenditure of the unexpended proceeds of those bonds; and

(3) May exercise the powers granted it by article 9, section 3 of the Constitution of Indiana and by IC 12-4-3 [12-4-3-1 -- 12-4-3-20]. [IC 18-4-3-15, 18-4-4-7, 18-4-15-1(b), recodified as IC 36-3-2-5 by Acts 1980, P.L. 212, § 2.]

36-3-4. LEGISLATIVE BODIES.

36-3-4-2. City-county council -- Election of members -- Qualification of members -- Vacancies. -- (a) A twenty-nine-member city-county council, which is the legislative body of both the consolidated city and the county, shall be elected by the voters of the county under IC 3-2-7 [3-2-7-1 -- 3-2-7-7].

(b) To be eligible to serve as a member of the legislative body, a person must:

(1) Be a registered voter on the date he is elected; and

(2) Have been a resident of the district from which he is elected for at least two [2] years immediately preceding the date he takes office.

(c) A vacancy in the legislative body occurs when a member:

(1) Dies, resigns, or is removed from office;

(2) Ceases to be a resident of the district from which he is elected; or

(3) Is incapacitated to the extent that he is unable to perform his duties for more than six [6] months.
The vacancy shall be filled under IC 3-2-9 or IC 3-2-10 [3-2-9-1 - 3-2-9-11 or 3-2-10-1 - 3-2-10-9], whichever is applicable. [IC 18-4-1-2(h), 18-4-3-6, 18-4-3-7, recodified as IC 36-3-4-2 by Acts 1980, P.L. 212, § 2.]

NOTES TO DECISIONS

Analysis

Election by voters of entire county.

Time of election.

Election by Voters of Entire County.

A provision for election of members of the city-county council by the voters of the entire county was not valid as extending to voters of excluded cities and towns unequal voting privileges, when compared to citizens of the consolidated city, in violation of Art. 1, § 23, of the state constitution. Dortch v. Lugar, 255 Ind. 545, 24 Ind. Dec. 357, 266

Time of Election.

The provisions of former statute concerning city-county council were not so vague and uncertain as to be void, but it was clear that the legislature intended the time of the election to be governed by 3-2-7-1. Dortch v. Lugar, 255 Ind. 545, 24 Ind. Dec 357, 266 N.E.2d 25 (1971). recodified as IC 36-3-3-10 by Acts 1980, P.L. 212, § 2.]

36-4. CITIES AND TOWNS GENERALLY.

[IC 18-2-1-1, 1-2-1-1.5, 18-2-1-2, 18-3-2-1, 18-3-3-1, recodified as IC 36-4 by Acts 1980, P.L. 212, § 3; 1981, P.L. 44, § 37.]

36-4-4-2. Division of powers. - The powers of a city are divided between the executive and legislative branches of its government. A power belonging to one [1] branch of a city's government may not be exercised by the other branch. [IC 18-1-1.5-25, 18-4-4-2, recodified as IC 36-4-4-2 by Acts 1980, P.L. 212, § 3.]

36-4-4-3. Exercise of executive powers. -

(a) All powers and duties of a city that are executive or administrative in nature shall be exercised or performed by the city executive, another city officer, or a city department.

(b) An ordinance of the city legislative body requiring an executive or administrative function to be performed may:

(1) Designate the department that is to perform that function; or

(2) Establish a new department or agency to perform that function.

(c) If an executive or administrative function is not assigned by a statute, ordinance, or resolution, the city executive shall assign that function to the proper department or officer. [IC 18-1-1.5-27, 18-1-6-4, 1-4-4-2, recodified as IC 36-4-4-3 by Acts 1980, P.L. 212, § 3.]

36-4-4-4. Exercise of legislative powers. -

(a) The legislative power of a city is vested in its legislative body. All powers and duties of a city that are legislative in nature shall be exercised or performed by its legislative body. The legislative body of a city may not elect or appoint a person to any office or employment, except as provided by statute.

(b) The legislative body may manage the finances of the city to the extent that that power is not vested in the executive branch. [IC 18-1-1.5-26, 18-1-4-3, 18-4-4-4, recodified as IC 36-4-4-4 by Acts 1980, P.L. 212, § 3.]

36-4-5. CITY EXECUTIVE.

36-4-5-3. Powers and duties. - The executive shall:

(a) Enforce the ordinances of the city and the statutes of the state;

(b) Provide a statement of the finances and general condition of the city to the city legislative body at least once a year;

(c) Provide any information regarding city affairs that the legislative body requests;

(d) Recommend, in writing, to the legislative body actions that he considers proper;

(e) Call special meetings of the legislative body when necessary;

(f) Supervise subordinate officers;

(g) Insure efficient government of the city;

(h) Fill vacancies in city offices when required by IC 3-2-10 [3-2-10-1 -- 3-2-10-9];

(i) Sign all bonds, deeds, and contracts of the city and all licenses issued by the city; and

(j) Approve or veto ordinances, orders, and resolutions of the legislative body under IC 36-4-6-15. [IC 18-1-6-2, recodified as IC 36-4-5-3 by Acts 1980, P.L. 212, § 3.]

36-4-6. CITY LEGISLATIVE BODY

36-4-6-12. Passage of ordinances requires majority vote. - A majority vote of the legislative body is required to pass an ordinance, unless a greater vote is required by statute. [IC 18-1-3-2, recodified as IC 36-4-6-12 by Acts 1980, P.L. 212, § 3.]

36-4-6-13. Passage of ordinance on day of introduction [effective until September 1,
1988]. - A two-thirds (2/3) vote of all the elected members, after unanimous consent of the members present to consider the ordinance, is required to pass an ordinance of the legislative body on the same day or at the same meeting at which it is introduced. [IC 18-1-3-6, recodified as IC 36-4-6-13 by Acts 1980, P.L. 212, § 3; 1982, P.L. 33, § 24.]

36-4-6-14. Adoption of ordinance, order or resolution passed by council - Subject to veto - Publication - Effective date - Exception [effective September 1, 1986]. -

(a) An ordinance, order, or resolution passed by the legislative body is considered adopted when it is:

(1) Signed by the presiding officer; and

(2) Either approved by the city executive or passed over his veto by the legislative body, under section 16 [36-4-6-16] of this chapter.

If required by statute, an adopted ordinance, order, or resolution must be promulgated or published before it takes effect.

(b) An ordinance prescribing a penalty or forfeiture for a violation must, before it takes effect, be published in the manner prescribed by IC 5-3-1 [5-3-1-1 -- 5-3-1-9], unless:

(1) It is published under subsection "c"; or

(2) There is an urgent necessity requiring its immediate effectiveness, the city executive proclaims the urgent necessity, and copies of the ordinance are posted in three [3] public places in each of the districts from which members are elected to the legislative body.

(c) If a city publishes any of its ordinances in book or pamphlet form, no other publication is required. If an ordinance prescribing a penalty or forfeiture for a violation is published under this subsection, it takes effect two [2] weeks after the publication of the book or pamphlet. Publication under this subsection, if authorized by the legislative body, constitutes presumptive evidence:

(1) Of the ordinances in the book or pamphlet;

(2) Of the date of adoption of the ordinances; and

(3) That the ordinances have been properly signed, attested, recorded, and approved. [IC 18-1-3-6, recodified as IC 26-4-6-14 by Acts 1980, P.L. 212, § 3.]

36-4-6-18. Powers of the city council. - The legislative body may pass ordinances, orders, resolutions, and motions for the government of the city, the control of the city's property and finances, and the appropriation of money. [IC 18-1-3-6, recodified as IC 36-4-6-18 by Acts 1980, P.L. 212, § 3.]

36-4-9. CITY DEPARTMENTS, BOARDS, APPOINTED OFFICERS.

36-4-9-4. Departments - Establishment - Enumeration - Termination - Transfer of powers and duties. -

(a) The city legislative body shall, by ordinance passed upon the recommendation of the city executive, establish the executive departments that it considers necessary to efficiently perform the administrative functions required to fulfill the needs of the city's citizens.

(b) The head of each city department or agency is under the jurisdiction of the executive.

(c) The following departments may be established:

(1) Department of finance or administration.

(2) Department of law.

(3) Department of public works.

(4) Department of public safety.

(5) Department of parks and recreation.

(6) Department of human resources and economic development.

(7) Any other department considered necessary.

These departments shall perform the administrative functions assigned by statute and ordinance.

(d) The city legislative body may, by ordinance passed upon the recommendation of the city executive:

(1) Terminate departments established under subsection "c"; and

(2) Transfer to or from those departments any powers, duties, functions, or obligations. [IC 18-1-6-5-1 -- 18-1-6-5-5, recodified as IC 36-4-9-4 by Acts 1980, P.L. 212, § 3; 1981, P.L. 17, § 23.]

36-4-9-6. Appointments by mayor in second-class cities. -

(a) This section applies only to second-class cities.

(b) The city executive shall appoint:

(1) A city controller;

(2) A city civil engineer;

(3) A corporation counsel;

(4) A chief of the fire department;

(5) A chief of the police department; and

(6) Other officers, employees, boards and commissions required by statute.
(c) The members of the board of public works
and safety are three [3] persons appointed by the
executive. A member may hold other appointive
positions in city government during his tenure. The
executive shall appoint a clerk for the board.

(d) If the board of public works and board of
public safety are established as separate boards,
each board has three [3] members who are
appointed by the executive. A member may hold
other appointive positions in city government
during his tenure. The executive shall appoint a
clerk for each board. [IC 18-1-6-14, 18-2-1-4.2,
recodified as IC 36-4-9-6 by Acts 1980, P.L. 212, § 3;
1981, P.L. 44, § 47.]

NOTES TO DECISIONS

Appointments.

In construing the words used in the statute with
reference to the power of the mayor to make
appointments, the rule of ejusdem generis applies,
and general words following specific provisions con-
cerning specific officers, boards, and commissioners
should be limited in their meaning to those officers
which fall within the same general branch of the
government, and should not be extended to appoint-

--City Civil Engineer.

The mayor of the city of Terre Haute had the
power to appoint and to remove the city civil
engineer from office upon notification to that effect,
and upon sending a message to the council stating
his reasons for such removal. City of Terre Haute
v. Burns, 69 Ind. App. 7, 116 N.E. 604, rehearing
denied, 70 Ind. App. 712, 117 N.E. 519 (1917).

36-5-2. TOWN LEGISLATIVE BODY AND
EXECUTIVE

36-5-2-2. Designation of town legislative body
and town executive. - The board of trustees
elected under this chapter is the town legislative
body. The president of the board of trustees
selected under section 7 [36-5-2-7] of this chapter is
the town executive. [IC 36-5-2-2, as added by Acts
1980, P.L. 212, § 4.]

36-5-2-9. Powers and duties of board. - The leg-
islative body may:

(a) Adopt ordinances and resolutions for the
performance of functions of the town;

(b) Purchase, hold, and convey any interest in
property, for the use of the town; and

(c) Adopt and use a common seal. [IC 18-3-1-35,
18-3-1-48, recodified as IC 36-5-2-9 by Acts 1980,
P.L. 212, § 4.]

36-5-7. TOWN MARSHALL

36-5-7-5. Service as street commissioner and
fire chief. - The town legislative body may require
the marshal to serve as street commissioner, chief of
the fire department, or both. [IC 18-3-1-20,
recodified as IC 36-5-7-5 by Acts 1980, P.L. 212, § 4.]

36-9-2. GENERAL POWERS CONCERNING
TRANSPORTATION AND PUBLIC WORKS

36-9-2-5. Establishment and maintenance of
public streets and ways. - A unit may establish,
vacate, maintain, and operate public ways. [IC 18-1-
1-5-8, 18-3-1-42, 18-3-1-43, 18-3-1-46, 18-4-2-23,
18-5-10-3-18-5-10-5, recodified as IC 36-9-2-5 by
Acts 1980, P.L. 211, § 4.]

Cross References. Bridges at street and alley
intersections, 36-9-6-18.

Cemeteries, restrictions on locating roads
through, 23-14-1-5.

Erection of lighting apparatus, 36-9-6-9.

Improvements and repairs, 36-9-6-7.

Vacation of public ways and places, 36-7-3-12.

Opinions of Attorney General. The county
commissioners have the authority to construct side-
walks adjacent to a county road for the protection
and safety of those who by necessity must walk the
road. A special fund from the motor vehicle high-
way account allocated to the various counties
should be used rather than any money from the
general fund. 1959, No. 70, p. 367.

NOTES TO DECISIONS

In General.

Boards of trustees in towns had exclusive power
over the streets of the town, and county boards
could not order the opening of a highway through a
town without the consent of the board of trustees.
Sparling v. Dwenger, 60 Ind. 72 (1877); State v.
Mainey, 65 Ind. 404 (1879).

Municipal corporations could not release their
power and control over streets. Vandalia R.R. v.
State ex rel. City of S. Bend, 166 Ind. 219, 76 N. E.
980, 117 Am. St. R. 370 (1905), writ dismissed, 207
U.S. 359, 28 S. Ct. 130, 52 L. Ed. 246 (1907).

The municipal authorities had almost unlimited
control of streets and alleys. State ex rel. Evans-
ville Independent Tele. Co. v. Stickelman, 182 Ind.
102, 105 N. E. 777 (1914).

The power of cities was not restricted to streets
which had been improved. Denny v. City of Mun-
cie, 197 Ind. 28, 149 N. E. 639 (1925).
The power of towns over their streets was a general and not a specific power, therefore the courts could examine the reasonableness of the exercise thereof. Stuck v. Town of Beech Grove, 201 Ind. 66, 183 N. E. 483 (1928).

Unless otherwise provided by law, every municipality had exclusive power over its streets, alleys, crossings, and public places. City of Hammond v. Jahnke, 178 Ind. 177, 99 N. E. 39 (1912); Schisler v. Merchants Trust Co., 228 Ind. 594, 94 N. E. 2d 665 (1950).

The control of streets by a town involved a discretionary power which was continuous and never exhausted. Larson v. Town of Wynnedale, 133 Ind. App. 337, 179 N. E. 2d 578, rehearing denied, 133 Ind. App. 345, 180 N. E. 2d 386 (1962).

Display of Placards.

An ordinance enacted under the authority of this clause, making it unlawful to display any placard in any public street or sidewalk except in processions, was not unconstitutionally arbitrary as to one alleged to have worn in public a shirt bearing the inscription, "Barber Shop Unfair to Organized Labor." Watters v. City of Indianapolis, 191 Ind. 671, 134 N. E. 482 (1922). Highways.

The State Highway Act of 1919 as amended relieved municipalities from the duty of maintaining the streets taken over by the state, impliedly repealing the provisions of the municipal code to that extent. Gardner v. City of Covington, 86 Ind. App. 229, 156 N. E. 830 (1927).

Highways established by use became streets of a city or town when they were annexed thereto. Larson v. Town of Wynnedale, 133 Ind. App. 337, 179 N. E. 2d 578, rehearing denied, 133 Ind. App. 345, 180 N. E. 2d 386 (1962).

As a general rule a highway on its inclusion by incorporation or annexation within the boundaries of a municipality ipso facto became a street subject to vacation by the municipality, the only exception to this jurisdictional rule being found in the Indiana state highway act which applied to federal and state highways only. Larson v. Town of Wynnedale, 133 Ind. App. 337, 180 N. E. 2d 386 (1962).

Inspector.


Markets.

Cities had no right to establish markets in the public streets. City of Richmond v. Smith, 148 Ind. 294, 47 N. E. 630 (1897).

Use for market purposes for more than 50 years, with city's permission, of sidewalks abutting a public market housed in a building, gave marketers no right to continue such use when the board of safety forbade further use. House-Wives League, Inc. v. City of Indianapolis, 204 Ind. 985, 185 N. E. 511 (1933).

Obstruction of Streets.


A permit given by a city to obstruct a portion of a street temporarily, while a building was being erected, could be revoked at any time. City of Indianapolis v. Miller, 27 Ind. 394 (1860).

If a city granted the right to obstruct temporarily a street, the city had to see that due care was used or the city could be liable for damages caused by such obstruction. City of Indianapolis v. Doherty, 71 Ind. 5 (1880).

Cites were required to keep the streets free from obstructions, and were liable for damages resulting from failure to do so. City of Indianapolis v. Gaston, 58 Ind. 224 (1877); City of Evansville v. Wilter, 86 Ind. 414 (1882).

If the encumbering or obstruction of streets or walks violated criminal statutes, a city could not provide for recovering a penalty for such acts. City of Indianapolis v. Higgins, 141 Ind. 1, 40 N. E. 871 (1895).

Cities had no authority to authorize the permanent obstruction of streets. Pettis v. Johnson, 56 Ind. 139 (1877); State v. Berdette, 73 Ind. 185, 38 Am. R. 117 (1880); City of Tell City v. Bielefeld, 20 Ind. App. 1, 49 N. E. 1090 (1898).

Tort Liability.

Towns had to keep their streets and alleys in a safe condition for use in the usual mode by persons using the same, and, on failure to do so, were liable for damages caused by such neglect. Town of Centerville v. Woods, 57 Ind. 192 (1877); City of Elkhart v. Ritter, 66 Ind. 136 (1879); Town of Boswell v. Wakley, 149 Ind. 64, 48 N. E. 637 (1897); Town of Salem v. Walker, 18 Ind. App. 687, 46 N. E. 90 (1897); Town of Kentland v. Hagen, 17 Ind. App. 1, 46 N. E. 43 (1897); Town of Worthington v. Morgan, 17 Ind. App. 603, 47 N. E. 235 (1897); Town of Onond v. Dobbs, 25 Ind. App. 522, 58 N. E. 582 (1900).

If a person was guilty of contributory negligence in the use of a street, he could not recover damages caused by defects in the street, but he was not necessarily guilty of negligence in using a street.
that he knew to be defective. Bruker v. City of Covington, 69 Ind. 33, 35 Am. R. 202 (1879); Town of Albion v. Hetrick, 90 Ind. 545, 46 Am. 220 (1883); Town of Boswell v. Wakley, 149 Ind. R. 64, 48 N. E. 637 (1897); Town of Salem v. Walker, 16 Ind. App. 687, 46 N. E. 90 (1897).

Towns had to have actual or constructive notice of defects in a street before they could be held liable for damages resulting from such defects. Town of Spiceland v. Aller, 98 Ind. 467 (1884); Jewell v. Town of Sullivan, 5 Ind. App. 188, 31 N. E. 829 (1892); Town of Monticello v. Kenard, 7 Ind. App. 135, 34 N. E. 454 (1893).

Traction Engines.

Cities could not prohibit the running of traction engines upon the streets and alleys of the city. Bogue v. Bennett, 156 Ind. 478, 60 N. E. 143, 83 Am. St. R. 212 (1901).

38-9-2-7. Regulation of use of public ways and school grounds. - A unit may regulate the use of public ways. A unit also may regulate the use of school corporation grounds if requested by the fiscal body of the school corporation. [IC 9-4-1-92, 18-1-1.5-8, 18-3-1-42, 18-3-1-52, 18-4-2-24, 18-5-10-8, recodified as IC 38-9-2-7 by Acts 1980, P.L. 211, § 4.]

Cross References. Setting speed limits authorized, 9-4-1-58.

Opinions of Attorney General. City has power to direct removal of structures on that part of street between curb and property line. 1947, No. 25, p. 106.

NOTES TO DECISIONS

In General.

Municipal corporations could not release their power and control over streets. Vandalia R.R. v. State ex rel. City of S. Bend, 168 Ind. 219, 76 N. E. 980, 117 Am. St. R. 370 (1908), writ dismissed, 207 U.S. 359, 28 S. Ct. 130, 52 L. Ed. 246 (1907).

The municipal authorities had almost unlimited control of streets and alleys. State ex rel. Evansville Independent Tele. Co. v. Stickelman, 182 Ind. 102, 105 N. E. 777 (1914).

The authority granted to cities to exercise that control over their streets which was necessary to protect the lives and provide for the safety of persons lawfully therein could not be surrendered or contracted away. Director Gen. of R.R.'s v. Nicewanner, 193 Ind. 463, 141 N. E. 1 (1923).

The power of cities was not restricted to streets which had been improved. Denny v. City of Muncie, 197 Ind. 28, 149 N. E. 639 (1925).

Bicycles.

Municipal corporations had power to prohibit use of vehicles, bicycles, on sidewalks. Mercer v. Corbin, 117 Ind. 450, 20 N. E. 132, 10 Am. St. R. 76, 3 L.R.A. 221 (1889).

Municipal corporations could prohibit bicycles on sidewalks. Town of Whiting v. Doob, 152 Ind. 157, 52 N. E. 759 (1899).

Fairs and Exhibitions.

Towns could authorize the temporary occupancy of portions of streets for the purpose of giving of public fairs or exhibitions. State v. Stoner, 39 Ind. App. 104, 79 N. E. 399 (1906).

Gates.

Municipal corporations could prohibit the construction of gates so that they would swing across sidewalks. Town of Rosedale v. Haner, 157 Ind. 390, 61 N. E. 792 (1901).

House Moving.


Safety Regulations.

The power granted a city to legislate on the subject relative to public safety related not merely to public physical safety, but also to public financial safety. Gordon v. City of Indianapolis, 204 Ind. 79, 183 N. E. 124 (1932).

Sidewalks.

Cities should prohibit the construction or continuance of anything overhanging a sidewalk that would render the use of such walk dangerous. Grove v. City of Fort Wayne, 45 Ind. 429, 15 Am. R. 262 (1874).

It was unlawful to ride a bicycle upon the sidewalk of a town. Mercer v. Corbin, 117 Ind. 450, 20 N. E. 132, 10 Am. St. R. 76 (1889); Town of Whiting v. Doob, 152 Ind. 157, 52 N. E. 759 (1899); Knouf v. City of Logansport, 26 Ind. App. 202, 59 N. E. 347, 84 Am. St. R. 292 (1901).

When it was a criminal offense to ride or drive on a sidewalk, towns could not enact ordinances to recover penalties for such acts unless expressly given authority to do so. City of Indianapolis v. Higgins, 141 Ind. 1, 40 N. E. 671 (1895); Town of Whiting v. Doob, 152 Ind. 157, 52 N. E. 759 (1899); Millett v. City of Princeton, 167 Ind. 582, 79 N. E. 903 (1907).

Towns could provide for the recovery of penalties for riding or driving on sidewalks that were not
constructed of either brick, stone, plank, or gravel. Town of Whiting v. Doob, 152 Ind. 157, 52 N.E. 759 (1899).

A "sidewalk" meant primarily a foot way along the side of a street, and the presumption was that such meaning was intended when the word was used in the statute. Marion Trust Co. v. City of Indianapolis, 37 Ind. App. 672, 75 N.E. 834 (1905).

A city ordinance which provided that "canvas awning of the folding or hinge class or metal awnings may be erected beyond the building line, when the same are not less than eight feet above the sidewalk," was held a valid exercise of the power conferred. City of Indianapolis v. Central Amusement Co., 187 Ind. 387, 115 N.E. 481 (1918).

An ordinance requiring property owners to remove snow and ice within a certain time imposed a public duty on such owners the violation of which could only be punished by some form of prosecution and not by a private action. Cowin v. Sears-Roebuck & Co., 125 Ind. App. 624, 129 N.E. 2d 131 (1955).

Speed Laws.

Ordinances relating to the speed of street-cars and interurbans within the corporate limits and at street crossings, the right-of-way of fire department, and the duty of cars to stop upon the approach of fire apparatus, were within the power granted and could not be divested by contract or otherwise. Union Traction Co. v. City of Muncie, 80 Ind. App. 260, 133 N.E. 160 (1921).

Town ordinance fixing speed limits on town streets as authorized by 9-4-1-58 was not in conflict with or a duplicate of state law and fines for the violation of such ordinance were to be for the benefit of the general fund of the town and not the state common school fund. State v. Town of Roseland, - Ind. App. --, 66 Ind. Dec. 474, 383 N.E. 2d 1076 (1978).

Traffic Regulation.

An ordinance giving preference to north and south traffic at intersections, did not relieve such traffic from the requirement of the exercise of ordinary care. Wolf v. Vehling, 79 Ind. App. 221, 137 N.E. 713 (1923).

An ordinance requiring vehicles to be operated "as near as possible to the right side of the street" was not a reasonable exercise of the power to regulate traffic. Bennighof-Nolan Co. v. Adcock, 194 Ind. 33, 141 N.E. 792, 29 A.L.R. 1244 (1923).

Cities had the power to regulate traffic and such power was not restricted by the general automobile law. Denny v. City of Muncie, 197 Ind. 28, 149 N.E. 639 (1925).

36-9-6. CITY WORKS BOARD

36-9-6.5. Approval of plats - The works board may approve plats under IC 36-7-3-3(d). [IC 36-9-6-5, as added by Acts 1981, P.L. 309, § 79.]

NOTES TO DECISION

In General

In the absence of a statute specifically covering the matter, cities had exclusive power to narrow the width of a city street. City of Princeton v. Hanna, 187 Ind. 582, 113 N.E. 999, 120 N.E. 598 (1918).

36-9-6-12. Culverts, bridges and aqueducts. - The works board may design, order, contract for, and cause the erection of any culvert, bridge, or aqueduct within the city, or may enter in a contract for the joint erection and maintenance of such a structure by the city and a company or individual. [IC 3-9-6-12, as added by Acts 1981, P.L. 309, § 79.]

Cross References Changing course, damming, dredging or otherwise changing a watercourse, 36-9-2-9.

Cumulative bridge fund authorized, 8-1-3-1 - 8-16-3-3.

NOTES TO DECISIONS

Canal Proprietors.

It was not the duty of a canal proprietor to construct or maintain bridges at highway crossings which were not in existence when the canal was constructed, even though such highways were laid out by duly authorized public officials. City of Indianapolis v. Indianapolis Water Co., 185 Ind. 277, 113 N.E. 289 (1916).

Maintenance of Bridges

It was the duty of cities to keep bridges and crossing places of streams within the city in good repair, no matter by whom such bridges were constructed. Lowrey v. City of Delphi, 55 Ind. 250 (1876); City of Logansport v. Justice, 74 Ind. 378, 39 Am. R. 79 (1881); City of Goshen v. Myers, 119 Ind. 196, 21 N.E. 657 (1889); City of Wabash v. Carver, 129 Ind. 552, 29 N.E. 25, 13 L.R.A. 851 (1891); City of Connersville v. Snider, 31 Ind. App. 21, 67 N.E. 55 (1903).

Plans and Specifications

One who builds a bridge over a watercourse at the instance of the board of county commissioners, but without plans and specifications or advertisement for bids, cannot recover the contract-price from the board. Rexford v. Board of County Comm'r's, 85 Ind. App. 281, 151 N.E. 830 (1926).
Viaducts

Municipal corporations could not contract for the erection and permanent maintenance of viaducts over railroads at public expense. Vandalia Ry. v. State ex rel. City of S. Bend, 188 Ind. 219, 76b N.E. 980, 117 Am. St. R. 370 (1906), writ dismissed, 207 U.S. 359, 28 S. Ct. 130, 52 L. Ed. 246 (1907).

36-9-7. CITY DEPARTMENT OF TRAFFIC ENGINEERING

36-9-7-1. Application of chapter - This chapter applies to all cities. [IC 36-9-7-1, as added by Acts 1981, P.L. 309, § 80.]

36-9-7-2. Establishment of department. - The city legislative body may, by ordinance, establish a department of traffic engineering. [IC 36-9-7-2, as added by Acts 1981, P.L. 309, § 80.]
In the construction of the interstate system of highways the laws and regulations require that these highways be limited access and also require the closing of certain streets and alleys, therefore consent for these closings must come from city and town officials in the following manner, to wit: by resolution or ordinance of the board of public works in cities of the first and second class, in cities of the third, fourth and fifth classes, by resolution or ordinance of the city council, and in towns, the approval of the board of town trustees; thus the necessary contemplated meeting of the minds as between the state and any of the affected municipalities will be achieved. 1957, No. 44, p. 213.

The local highway authorities do not need to act upon the petitions of property owners in order to express approval of a planned limited access highway which is designated and established by the state highway department, and such approval, though desirable, is not necessary to authorize action by the state highway department. 1958, No. 40, p. 177.

NOTES TO DECISIONS

In General.

This section does not require the Indiana state highway commission to obtain the consent of towns and cities before it can build a limited access highway within such municipalities. State ex rel. Ind. State Highway Comm. v. Porter Circuit Court (1969), 251 Ind. 566, 16 Ind. Dec. 386, 243 N. E. (2d) 764.

8-11-1-8 [36-3108]. Department of highways - Agreements with federal or local authorities. - The department of highways may enter into agreements with the respective counties, cities and towns of the state or with the federal government, and such cities and towns may enter into agreements with the federal government, respecting the financing, planning, establishing, improvement, maintenance, use, regulation or vacation of limited access facilities or other public ways in their respective jurisdictions, under this chapter or under any state or federal laws authorizing such cooperation, to carry out and facilitate the purposes of this chapter. [Acts 1945, ch. 245, § 8, p. 1113; 1980, P.L. 74, § 108.]
or near to the state line between the state of Indiana and any adjoining state, and to cause to be straightened, graded, drained, and improved in like manner, any public highway, or part of a highway, already established, and lying on, along or near to the state line between the state of Indiana and any adjoining state, and the board of commissioners of the several counties of this state, so adjoining another state, shall have authority to join with the county commissioners or other proper authorities of the adjoining counties of such other state in the construction and improvement of such highways; and such boards of commissioners are hereby authorized to enter into contracts jointly with the proper authorities of the adjoining counties in such adjoining state, for the construction and improvement of such highways. Any such contract so entered into shall provide that each of such adjoining counties shall pay such proportion of the cost of such improvement as shall be determined by and between the said board of commissioners of any county of this state and the proper authorities of any county of such adjoining state to be equitable and just. Such improvements shall be made by the said board of commissioners of the several counties of this state, on petition by the landowners, pursuant to the statutes in force on or after March 2, 1923, in this state providing for the improvement of highways by township assessment and taxation, and this chapter shall be construed as supplemental to all the laws in force on or after March 2, 1923, in this state providing for the improvement of highways by township assessment and taxation so far as the same can be made applicable.

(b) Any highway so constructed or improved under this section shall be kept in repair by the provisions of the statutes in force on or after March 2, 1923, in this state for the repair of highways which have been constructed by township assessment and taxation, so far as the same can be made applicable hereto, the said adjoining county or counties contributing proportionately in keeping the same in repair according to such proportion as shall be determined by and between the said boards of commissioners of this state and the proper authorities of the counties of such adjoining state to be equitable and just. [Acts 1923, ch. 46, § 1, p. 157; P.L. 66-1984, § 33.]

Cross-References. County-line roads, 8-17-11-1-8-17-11-13.

Township-line roads, 8-17-12-1-8-17-12-14.

8-11-9-2 [36-1002]. Previous proceedings legalized. - In all cases in this state where petitions have been filed before March 2, 1923, with the board of commissioners of any county of this state for the improvement of any highway or part of highway or highways lying on, along, or near to the state line between the state of Indiana and any adjoining state, and proceedings have been had before such board of commissioners, and an order has been made authorizing and establishing such improvement, and contracts for the construction of such improvement have been entered into, and contracts have been entered into by such board of commissioners with the proper authorities of such adjoining counties after March 2, 1923, the said bonds have been issued or are to be issued after March 2, 1923, the said proceedings and all steps taken therein are hereby legalized and declared valid, and the board of commissioners is hereby empowered to enter into contracts for the construction of the highways in all such cases aforesaid, and the board of commissioners of any county of this state is hereby empowered to issue and sell bonds as they are authorized to do under the statutes in this state providing for the improvement of highways in this state by township assessment and taxation; and the county treasurers of the several counties of this state are hereby authorized to sell any such bonds so issued and to be issued in like manner as they are authorized to sell other bonds pursuant to the statutes in this state providing for the improvement of highways in this state by township assessment and taxation; Provided, That nothing in this chapter shall affect or apply to any litigation pending on March 2, 1923. [Acts 1923, ch. 46, § 2, p. 157; P.L. 66-1984, § 34.]

8-13-4. GENERAL PROVISIONS FOR INDIANA STATE HIGHWAYS COMMISSION 1937.

8-13-4-3 [36-2903]. Openings and obstructions in streets - Permit - Penalty for violation. - No opening may be made in any highway in the state highway system, in the right-of-way of any such highway, or in the roadway of any street of any city or town over which the highway is routed, the maintenance of which street the department is charged with by law, nor may any structure or obstruction be placed in any such highway or roadway of any such street without the consent of the department. No such highway or roadway may be dug up for laying or placing any pipe, sewer, pole, wire, conduit, track, or railway or for any other purpose, and no trees may be removed from the right-of-way of any such highway without the written permit of the department, and then only in accordance with the regulations of the department; the work shall be done under the supervision and to the satisfaction of the department, and the entire expense of restoring the highway or street in as good condition as before shall be paid by the person to whom the permit is given. The department may require, before the granting of such a permit, that a sufficient bond be given, or cash deposit made, to insure the restoration of the highway or street. In granting any such permit, the department may designate the place in the street, highway, or right-of-way thereof where such pipe, sewer, pole, wire, conduit, track, railway, or other device or thing

Cross References. Infraction and ordinance violation enforcement proceedings, 34-4-32-1–34-4-32-5.

NOTES TO DECISIONS

Permit Requirement.

The requirement that a utility obtain a permit before digging in highway or adjoining right-of-way and agree to post a bond covering the cost of restoring the highway and agree to indemnify the state for liability arising from injuries or damage caused by the work did not impair the obligation of a contract in violation of U.S. Const. Art. 1, § 10, although the utility had a contractual right to the use of the highway. Southern Ind. Gas & Elec. Co. v. Cornelison, 289 Ind. 71, 63 Ind. Dec. 527, 378 N. E. 2d 845 (1978).

8-13-5. CONTRACTS - MISCELLANEOUS PROVISIONS.

8-13-5-20 [36-128]. Purdue University - Cooperation with state department of highways - Joint road meetings. - The department may cooperate with and assist Purdue University in developing the best methods of improving and maintaining the highways of the state and the respective counties thereof. In so cooperating with Purdue University and for the purpose of developing and disseminating helpful information concerning road construction and improvement, and the operation of the highways of the state and the several counties, the department may expend moneys annually from the funds appropriated to its use for the use and benefit of Purdue University in carrying on programs of highway research and highway extension, at or in connection with Purdue University and for the annual road school held at Purdue University. In addition, the said moneys may be increased by federal funds, which may be made available to the department for the engineering and economic investigation of projects for future construction and for highway research necessary in connection therewith. For the purpose of disseminating knowledge of such highway maintenance methods as are best suited to the various sections of the state, the county and state highway officials, in cooperation with Purdue University, may hold joint road meetings in the various sections of the state. The aid herein authorized shall be paid quarterly, by the department, to Purdue University, upon proper voucher, commencing on the first day of July 1963. [Acts 1933, ch. 18, § 26, p. 87; 1937, ch. 234, § 1, p. 1151; 1949, ch. 155, § 1; 1963, ch. 161, § 1; 1980, P.L. 74, § 189.]

Cross-Reference. The annual road school at Purdue University is also referred to in 8-17-3-10, 18-2-5-1 (Burns' § 48-1253), 17-3-66-1 (Burns' § 49-3323).

Opinions of Attorney-General. Limitation as to amount to be paid annually to Purdue University is not a limitation as to amount which state highway commission may expend for research. 1946, p. 192.

The maximum amount payable for research is a limitation on the total of both state and federal funds which may be paid. 1946, p. 192.

8-13-6.5. LIGHTING OF STATE HIGHWAYS

8-13-6.5-1. Lighting of dangerous curves and intersections - Sharing of costs. - The department is hereby authorized to illuminate dangerous curves and intersections and heavily traveled sections of the highways in the state highway system and also the bridges of such system. Such illumination shall be accomplished according to nationally recognized engineering standards.

The department shall enter into an agreement for the sharing of the utility costs of such illumination with cities, towns, and counties when such highway is located in part within such city, town or county before the installation of such lights. The cost of the installation of such lights may be paid by the state and the cities, towns and counties in accordance with the agreement entered into before installation. [IC 1971, 8-13-6.5-1, as added by Acts 1973, P.L. 68, § 1; 1980, P.L. 74, § 190.]

8-13-14. TESTING SERVICE TO LOCAL ROAD AND STREET DEPARTMENTS.

8-13-14-1 [36-176]. Cooperation with counties, cities and towns - Engineering service - Consultation - Testing laboratory - Reimbursement. - The department is authorized and empowered to cooperate with counties, cities and towns by furnishing on request of such counties, cities and towns engineering service or consultation and extending the facilities of the department's testing laboratory for the testing of highway construction and maintenance materials or for any other highway purpose. When such services are rendered by the department upon the request of any county, city or town, the department shall be reimbursed by any county, city or town requesting and receiving such services to the extent of the actual cost of such service including salaries or personal services. When payment is made to the department by such counties, cities or towns, the department shall receive such payments into the accounts or appropriations from which the expenditures were made by the department in providing the services.

8-13-16. MAINTENANCE OF COUNTY ROADS USED AS STATE HIGHWAY DETOURS.

8-13-16-1 [36-142]. Maintenance and repair of detours - Runarounds. - Whenever it shall become and be necessary for the department to designate and use any county highway as a detour, while any state highway, or any part thereof, or any state highway bridge thereon, is closed to the public as a thoroughfare, while under construction, or while being repaired, or when closed for any other reason, it shall be the duty of the department to keep such highway so used as a detour in a reasonable state of repair at all times while such highway is being used as a detour, and when the state highway which was temporarily closed shall be reopened to traffic, as a public thoroughfare, the department shall place such county highway so used as a detour in as good a condition as such highway was in when designated as a detour highway by the department. In all cases where practicable or expedient, the department shall establish runarounds, instead of detours, and for that purpose may install temporary structures or other facilities to render such runarounds usable by persons traveling over such highway. [Acts 1927, ch. 32, § 1, p. 87; 1980, P.L. 74, § 207.]

NOTES TO DECISIONS

In General.

The duty of maintaining a highway designated as a state detour, imposed upon the highway commission by this section, is not different from the duty devolved upon the county or township before such highway was so designated. Chicago, I. & L. R. Co. v. Downey (1937), 103 App. 672, 5 N.E. (2d) 656.

It was not the intention of the legislature in enacting this section, pertaining to state highway detours, to enlarge or increase any additional burden in respect to such county or township highway, which was not required of the county or township before such highway was designated as a state highway detour. Chicago, I. & L. R. Co. v. Downey (1937), 103 App. 672, 5 N.E. (2d) 656.

Where the state highway commission has designated any part of a county or township highway as a state highway detour, after the temporary use of the highway as a state highway detour the commission must place such county or township highway so used as a detour in as good condition as it was before it was designated as a state detour, and pay all expenses incurred by its use as a state highway detour. Chicago, I. & L. R. Co. v. Downey (1937), 103 App. 672, 5 N.E. (2d) 656.

Under this section, pertaining to the duties and liabilities of the state highway commission in designating county and township highways as state highway detours, it was evidently not the intention of the legislature to relieve railroads of their duty to maintain crossings and approaches to such detour roads. Chicago, I. & L. R. Co. v. Downey (1937), 103 App. 672, 5 N.E. (2d) 656.

8-14-1. MOTOR VEHICLE HIGHWAY ACCOUNT.

8-14-1-9. Agreements between department and city, town, or county under government cooperative statute - Mandatory transfer of funds. - (a) A written agreement between the department and a city, town, or county under IC 8-13-1-5.5, or a similar government cooperative statute, may provide for a mandatory transfer of funds by the auditor of state under this section if one [1] of the parties becomes more than sixty [60] days late in making a payment required by the agreement.

(b) To obtain a mandatory transfer of funds, the party to whom the funds were to be paid under terms of the written agreement must certify in writing to the auditor of state:

(1) That a written agreement between the parties authorizes the mandatory transfer of funds as provided in subsection (a).

(2) That the owing party was notified in writing of the amount owed;

(3) That the payment is more than sixty [60] days past due;

(4) The names of the parties; and

(5) The amount of the payment due.

(c) Upon receipt of a certificate as specified in subsection (b), the auditor of state shall:

(1) Immediately notify the delinquent party of the claim; and

(2) If proof of payment is not furnished to the auditor of state within thirty [30] days after the delinquent party has been notified, transfer the unpaid amount from the delinquent party’s allocations from the motor vehicle highway account to the other party. Transfers shall be made until the unpaid amount has been paid in full under the terms of the agreement. [IC 8-14-1-9, as added by P.L. 113-1983, § 2.]

36-1-7. INTERLOCAL COOPERATION

36-1-7-2. Joint exercise of powers. - (a) A power that may be exercised by an Indiana political subdivision and by one or more other governmental entities may be exercised:

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(1) By one or more entities on behalf of others; or

(2) Jointly by the entities.

Entities that want to do this must, by ordinance or resolution, enter into a written agreement under section 3 or 9 [36-1-7-3 or 36-1-7-9] of this chapter.

(b) Notwithstanding subsection (a), Indiana governmental entities that want only to buy, sell, or exchange services, supplies, or equipment between or among themselves may enter into contracts to do this and follow section 12 [36-1-7-12] of this chapter. [IC 17-4-18-3, 17-4-18-4, 18-5-1-4(a), 18-5-1-4(b), 18-5-1-5-3(a), 18-5-1-5-3(b), 18-5-1-5-7, 18-5-2-1, 19-5-25-1; Acts 1971, P.L. 300, § 3; 1972, P.L. 137, § 2, recodified as IC 36-1-7-2 by Acts 1980, P.L. 211, § 1.]

36-1-7-3. Contents of joint agreements. - (a) An agreement under this section must provide for the following:

(1) Its duration.

(2) Its purpose.

(3) The manner of financing, staffing, and supplying the joint undertaking and of establishing and maintaining a budget therefor.

(4) The methods that may be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon partial or complete termination.

(5) Administration through:

(A) A separate legal entity, the nature, organization, composition, and powers of which must be provided; or

(B) A joint board, on which all parties to the agreement must be represented.

(6) The manner of acquiring, holding, and disposing of real and personal property used in the joint undertaking, whenever a joint board is created under subdivision (5)(B).

In addition, such an agreement may provide for any other appropriate matters.

(b) A separate legal entity or joint board established by an agreement under this section has only the powers delegated to it by the agreement. [IC 18-5-1-4(c), 18-5-1-4(d), 18-5-1-5-3(c), 18-5-1-5-5, recodified as IC 36-1-7-3 by Acts 1980, P.L. 211, § 1.]

36-1-7-4. Approval of agreement by attorney general. - (a) If an agreement under section 3 [36-1-7-3] of this chapter:

(1) Involves as parties only Indiana political subdivisions;

(2) Is approved by the fiscal body of each party either before or after it is entered into by the executives of the parties; and

(3) Delegates to the treasurer or disbursing officer of one [1] of the parties the duty to receive, disburse, and account for all monies of the joint undertaking;

then the approval of the attorney general is not required.

(b) If subsection (a) does not apply, an agreement under section 3 of this chapter must be submitted to the attorney general for his approval. The attorney general shall approve the agreement unless he finds that it does not comply with the statutes, in which case he shall detail in writing for the executives of the parties the specific respects in which the agreement does not comply. If the attorney general fails to disapprove the agreement within sixty [60] days after it is submitted to him, it is considered approved. [IC 18-5-1-4(f), 18-5-1-5-2(a), 18-5-1-5-3(c)(4), 18-5-1-5-3(d), recodified.

36-1-7-5. Approval of agreement by appropriate state officer or agency. - Regardless of the requirements of section 4 [36-1-7-4] of this chapter, if an agreement under section 3 [36-1-7-3] of this chapter concerns the provision of services or facilities that a state officer or state agency has power to control, the agreement must be submitted to that officer or agency for approval before it takes effect. Approval or disapproval is governed by the same provisions prescribed by section 4(b) [36-1-7-4(b)] of this chapter for the attorney general. [IC 18-5-1-6, recodified as IC 36-1-7-5 by Acts 1980, P.L. 211, § 1.]

36-1-7-6. Recording and filing of agreements. - Before it takes effect, an agreement under section 3 [36-1-7-3] of this chapter must be recorded with the county recorder. Not later than sixty [60] days after it takes effect, such an agreement must be filed with the state board of accounts for audit purposes. [IC 18-5-1-5, 18-5-1-5-3(e), 18-5-1-5-3(f), recodified as IC 36-1-7-6 by Acts 1980, P.L. 211, § 1.]

36-1-7-7. Law enforcement or firefighting personnel. - (a) If an agreement under section 3 [36-1-7-3] of this chapter concerns the provision of law enforcement or firefighting services, the following provisions apply:

(1) Visiting law enforcement officers or firefighters have the same powers and duties as corresponding personnel of the entities they visit, but only for the period they are engaged in activities authorized by the entity they are visiting.

(2) An entity providing visiting personnel remains responsible for the conduct of its personnel, for their medical expenses, and for workmen's com-
pensation.

(b) A law enforcement agency of a unit or of the state may request the assistance of another such agency, even if no agreement for such assistance is in effect. In such a case, provisions (1) and (2) of subsection (a) apply, the agency requesting assistance shall pay all travel expenses, and all visiting personnel shall be supervised by the agency requesting assistance. [IC 17-3-6.5-1--17-3-6.5-4, 18-5-1-4.5, 18-5-1.5-6, recodified as IC 36-1-7-7 by Acts 1980, P.L. 211, § 1.]

Opinions of Attorney General. Generally speaking, public agencies have authority to receive and administer federal funds. 1964, No. 40, p. 218.

A county may contract with the municipal airport authority located in an adjoining county and desiring to locate a secondary airport in the first-mentioned county to share the revenue derived from the levying of personal property taxes upon aircraft based at such secondary airport. 1967, No. 48, p. 333.

36-1-7-8. Interstate compacts. - If any entities of other jurisdictions are parties to an agreement under section 3 [36-1-7-3] of this chapter, the agreement constitutes an interstate compact. However, in a case or controversy involving such an agreement, all parties to the agreement shall be considered real parties in interest; and if the state suffers any damages or incurs any liability as a result of being joined as a party in such a case or controversy, it may bring an action against any entity causing the state to suffer damages or incur liability. [IC 18-5-1-5, recodified as IC 36-1-7-8 by Acts 1980, P.L. 211, § 1.]

36-1-7-9. County and municipality joint highway construction and maintenance. - (a) This section may be used only for an agreement between an Indiana municipality and the executive of the county in which it is located concerning highway construction and maintenance and related matters.

(b) An agreement under this section must provide for the following:

(1) Its duration, which may not be more than four [4] years.

(2) The specific functions and services to be performed or furnished by the county on behalf of the municipality.

In addition, such an agreement may provide for any other appropriate matters.

(c) An agreement under this section may provide for either of the following:

(1) A stipulation that distributions from the motor vehicle highway account under IC 8-14-1 [8-14-1-1--8-14-1-7], the local road and street account under IC 8-14-2 [8-14-2-1--8-14-2-5], or both, be made to the county rather than to the municipality.

(2) A stipulation that the municipality will appropriate a specified part of those distributions for purposes listed in the agreement. [IC 19-5-25-1, 19-5-25-3, recodified as IC 36-1-7-9 by Acts 1980, P.L. 211, § 1.]

36-1-7-10. Approval, recording and filing of highway construction agreements. - Before it takes effect, an agreement under section § [36-1-7-9] of this chapter must be:

(1) Approved by the fiscal body of each party.

(2) Recorded with the county recorder;

(3) Filed with the executive of the municipality and the auditor of the county; and

(4) Filed with the auditor of state. [IC 19-5-25-2, 19-5-25-4, recodified as IC 36-1-7-10 by Acts 1980, P.L. 211, § 1.]

36-1-7-11. Parties to joint agreements authorized to provide funds and services. - An entity entering into an agreement under this chapter may:

(1) Appropriate monies; and

(2) Provide personnel, services, and facilities; to carry out the agreement. [IC 18-5-1-7, 18-5-1.5-4, recodified as IC 36-1-7-11 by Acts 1980, P.L. 211, § 1.]

36-1-7-12. Purchase and exchange of property and services. - (a) Whenever a contract provides for the purchase, sale, or exchange of services, supplies, or equipment between or among Indiana governmental entities only, notice by publication or posting is required.

(b) Whenever a contract provides for one [1] Indiana governmental entity to make a purchase for another, compliance by the one with the applicable statutes governing public bids constitutes compliance by the other. [IC 18-5-2-2, 18-5-2-2.5, recodified as IC 36-1-7-12 by Acts 1980, P.L. 211, § 1.]

Cross References. Sale or exchange of property between governmental entities authorized, 5-18-1-1, 36-1-7-2.

Opinions of Attorney General. Notice is required when contracts are negotiated between units of government and a non-governmental quantity purchase award supplier, and this section does not apply since a supplier is considered a non-governmental agency herein. 1970, No. 18, p. 41.
CHAPTER

TRANSPORTATION PLANNING AT THE LOCAL LEVEL

8-9.5-2. TRANSPORTATION COORDINATING BOARD

8-9.5-2-1. Establishment. -- There is established a transportation coordinating board, which shall have its office in Indianapolis. [IC 8-9.5-2-1, as added by Acts 1980, P.L. 74, § 1.]

8-9.5-2-2. Members. -- The board consists of the following seven [7] individuals:

(1) The director of the department of highways.

(2) The director of the department of transportation.

(3) An individual appointed by the governor who:

(a) Shall serve at the governor's pleasure;

(b) Shall serve as chairman of the board; and

(c) Is responsible for calling board meetings.

(4) Four [4] individuals appointed by the governor who:

(a) Serve at the governor's pleasure;

(b) May not hold any other public office or serve as a state or local employee while serving as a board member;

(c) Shall devote as much time as is needed to carry out their duties, but who are not required to devote their full time to their duties; and

(d) Shall have their compensation set by the state budget agency. [IC 8-9.5-2-2, as added by Acts 1980, P.L. 74, § 1; 1981, P.L. 41, § 5.]

8-9.5-2-6. Duties of Board. -- The board shall do the following:

(1) Develop and continuously update the state's transportation policies taking into consideration the policies and plans developed and adopted by the transportation planning office.

(2) Review, adopt, and revise as necessary:

(a) Transportation plans to implement the state's transportation policies; and

(b) Work programs to implement the state's transportation plans; taking into consideration the policies and plans developed and adopted by the transportation planning office.

(3) Approve applications for federal transportation grants as provided by IC 8-9.5-6-1(b) and loans to railroad companies as provided under IC 8-3-1.7.

(4) Recommend legislation to the governor that is needed to develop and maintain an efficient statewide transportation system.

(5) Review, revise, adopt, and submit budget proposals as provided by section 7 [8-9.5-2-7] of this chapter.

(6) Prepare in a manner and at a time prescribed by the governor or the legislative council reports on the status of any transportation activities and programs in Indiana.

(7) Review those rules that must be adopted by the departments under IC 4-22-2 before the publication of notice of a public hearing on those proposed rules as required by IC 4-22-2 and approve, disapprove, or amend those rules before final adoption by the departments.

(8) Approve or disapprove requests by the departments to issue bonds and make recommendations to the general assembly concerning bonding authorization sought by the departments.

(9) Supervise the planning office.

(10) Coordinate the responsibilities of the departments.

(11) Approve or disapprove all contracts of the departments except those that are:

(A) Subject to a bidding procedure;

(B) Not subject to a bidding procedure, but less than ten thousand dollars [§10,000];

(C) Entered into with another party that is a political subdivision as defined in IC 8-9.5-1-5 or a public utility; or

(D) Entered into for the purpose of distributing federal funds that have been pre-

Amendments. The 1981 amendment deleted former subdivision (11), which read "Prescribe uniform budget and accounting systems and forms to be used by the board, the planning office, and the departments," and redesignated former subdivisions (12) and (13) as present subdivisions (11) and (12); and in subdivision (3) substituted "IC 8-9.5-6-1(b)" for "IC 8-9.5-6-1."

The 1982 amendment by P.L. 51 added "and loans to railroad companies as provided under IC 8-3-1.7" in subdivision (3).

The 1982 amendment by P.L. 62, in subdivision (7), substituted "Review" for "Approve, disapprove, or amend" at the beginning of the subdivision and added "and approve, disapprove, or amend those rules before final adoption by the departments" at the end of the subdivision; in subdivision (11), inserted "all" and "except those" in the introductory clause, substituted present subdivisions (11)(A) and (B) for the former provisions which read: "(A) Not subject to a bidding procedure; and (B) In excess of ten thousand dollars," and added subdivisions (11)(C) and (D).

8-9.5-2-8. Public involvement. -- (a) The board may involve the public in carrying out its responsibilities by:

(1) Holding public hearings;

(2) Recommending the establishment of advisory groups by executive order of the governor, and appointing members to those advisory groups, subject to the governor's approval; and

(3) Other means considered appropriate.

(b) The state budget agency may provide for the compensation of individuals serving on advisory groups. [IC 8-9.5-2-8, as added by Acts 1980, P.L. 74, § 1.]

8-9.5-3. TRANSPORTATION PLANNING OFFICE

8-9.5-3-1. Establishment. -- There is established a transportation planning office, which shall have its office in Indianapolis. [IC 8-9.5-3-1, as added by Acts 1980, P.L. 74, § 1.]

8-9.5-3-2. Director. -- The director of the planning office:

(1) Shall be appointed by the board, subject to the governor's approval;

(2) Shall report to the board;

(3) May be dismissed only by:

(a) A majority of the board members; or

(b) The governor; and

(4) Shall have his compensation set by the state budget agency. [IC 8-9.5-3-2, as added by Acts 1980, P.L. 74, § 1; 1981, P.L. 41, § 10.]

8-9.5-3-3. Powers of board. -- The board may:

(1) Require the director of the planning office to execute and furnish a bond conditioned upon:

(a) The faithful discharge and performance of the duties of his position; and

(b) The accurate accounting of public funds that come into his custody or control.

(2) Prescribe an oath of office for the director of the planning office. [IC 8-9.5-3-3, as added by Acts 1980, P.L. 74, § 1.]

8-9.5-3-4. Duties of planning office. -- The planning office shall:

(1) Review, analyze, and submit recommendations to the board concerning:

(a) Transportation plans;

(b) Work programs; and

(c) Budgets; submitted by the departments to assure the orderly development and maintenance of an efficient statewide system of transportation.

(2) Develop, continuously update, and submit to the board proposed:

(a) Work programs; and

(b) Budgets; for the planning office.

(3) Provide staff services to assist the board.

(4) Identify, and provide to the board a continuously updated report on, applications for federal transportation grants for which political subdivisions have received approval.

(5) Assist, if requested, political subdivisions in preparing their reports to the planning office on their approved federal grant applications as required by IC 8-9.5-6-2.

(6) Identify, and provide to the board a continuously updated report on, applications for and receipts of other federal grants (as defined in IC 8-9.5-6-1(a)(3)) by state agencies.

(7) Assist, if requested, state agencies in prepar-
ing their reports to the planning office on their applications for and receipt of other federal grants (as defined in IC 8-9.5-6-1(a)(3)) as required of IC 8-9.5-6-1 to 8-9.5-6-4.

(8) Carry out all other responsibilities assigned to it by the board. [IC 8-9.5-3-4, as added by Acts 1980, P.L. 74, § 1; 1981, P.L. 41, § 11.]

Amendments. the 1981 amendment, in subdivision (7), substituted "IC 8-9.5-6-1(a)(3)" for "IC 8-9.5-6-1(a)(2)."

8-9.5-3-6. Powers of director. -- The director of the planning office may:

(1) Require an employee or agent of the planning office to execute and furnish a bond conditioned upon:

(a) The faithful discharge and performance of the duties of his position; and

(b) The accurate accounting of public funds that come into his custody or control.

(2) Prescribe an oath of employment for an employee or agent of the planning office. [IC 8-9.5-3-6, as added by Acts 1980, P.L. 74, § 1.]

8-9.5-4. DEPARTMENT OF HIGHWAYS

8-9.5-4-6. Responsibility of department. -- The department is responsible for the construction, reconstruction, improvement, maintenance, and repair of:

(1) State highways, including, but not limited to, the administration of IC 8-13-1 through IC 8-13-6 [repealed]; and

(2) A toll road project or toll bridge in accordance with a contract or lease entered into with the Indiana toll finance authority under IC 8-9.5-8-7 or IC 8-9.5-8-8. [IC 8-9.5-4-6, as added by Acts 1980, P.L. 74, § 1; P.L. 109-1983, § 1.]

Compiler's Notes. IC 8-13-6, referred to in subdivision (1), was repealed by Acts 1980, P.L. 74, § 434.

8-9.5-4-7. Duties of department. -- The department shall:

(1) Develop, continuously update, and submit to the board proposed:

(a) Transportation plans;

(b) Work programs, as developed, in part under IC 8-13-7 [8-13-1]; and

(c) Budgets; to assure the orderly development and maintenance of an efficient statewide system of highway transportation.

(2) Implement the policies, plans, and work programs as reviewed, adopted, or revised by the board.

(3) Organize by creating, merging, or abolishing divisions.

(4) Evaluate and utilize whenever possible improved highway maintenance and construction techniques. [IC 8-9.5-4-7, as added by Acts 1980, P.L. 74, § 1.]

Decisions Under Prior Law

Assessment of Damages

Where income is produced from the sale of minerals or other soil materials, then the "income approach" for valuing land with its incumbent use of the capitalization method is proper where such is the best method for ascertaining the fair market value. State v. Jones, 173 Ind. App. 243, 57 Ind. Dec. 62, 363 N.E.2d 1018 (1977).

8-9.5-4-8. Powers and duties of department. -- (a) The department, through the director or his designee, may do the following:

(1) Acquire, sell, abandon, own in fee or a lesser interest, hold, or lease property in the name of the state of Indiana or otherwise dispose of or encumber the same in order to carry out its responsibilities.

(2) Adopt rules under IC 4-22-2 to carry out its responsibilities, subject to IC 8-12-1-6.

(3) Establish regional offices.

(4) Adopt a seal.

(5) Contract with persons outside the department to do those things that in the director's opinion cannot be adequately or efficiently handled by the department.

(6) Enter into:

(a) A contract with the Indiana toll finance authority under IC 8-9.5-8-7; or

(b) A lease with the Indiana toll finance authority under IC 8-9.5-8-8; for the construction, reconstruction, improvement, maintenance, repair, or operation of one (1) or more toll road projects under IC 8-15-2 or one (1) or more toll bridges under IC 8-16-1.

(7) Sue and be sued, including, with the approval of the attorney general, the compromise of any claims of the department.

(8) Hire, with the approval of the attorney general, attorneys.

(9) Perform all functions pertaining to the
acquisition of property for highway purposes, including the compromise of any claims for compensation.

(10) Administer the traffic safety functions assigned to the department under IC 9-6-2.

(11) Hold investigations and hearings concerning matters covered by orders and rules of the department.

(12) Subject to IC 8-13-1-6, execute all documents and instruments in order to carry out its responsibilities.

(b) In the performance of contracts and leases with the Indiana toll finance authority as authorized under subsection (a)(6), the department has those powers under IC 8-15-2, in the case of toll road projects, and IC 8-16-1, in the case of toll bridges, necessary to carry out the terms and conditions of those contracts and leases.

(c) The department shall:

(1) Classify as confidential any estimate of cost prepared in conjunction with analyzing competitive bids for projects until a bid below the estimate of cost is read at the bid opening; and

(2) Classify as confidential that part of the parcel files which contain appraisal and relocation documents prepared by the department's land acquisition division.


8-9.5-5. DEPARTMENT OF TRANSPORTATION

8-9.5-5-2. Establishment. -- There is established a department of transportation, which shall have its central office located in Indianapolis. [IC 8-9.5-5-2, as added by acts 1980, P.L. 74, § 1.]

8-9.5-5-3. Director. -- (a) The Governor shall appoint a director who is responsible for administering the department.

(b) The director shall:

(1) Serve at the governor's pleasure; and

(2) Have his compensation set by the state budget agency. [IC 8-9.5-5-3, as added by Acts 1980, P.L. 74, § 1.]

8-9.5-5-6. Responsibility of department. -- (a) As used in this section, the term "coordinating" means directing agencies in a manner to assure compliance with the state's transportation policies and plans.

(b) The department is responsible for coordinating all transportation programs of the state of Indiana, except those administered by:

(1) The department of highways;

(2) The state police department; or

(3) Political subdivisions.

(c) The department is responsible for administering those provisions required by law, including the following:

(1) IC 8-3-1.5 (rail preservation).

(2) IC 8-21-1 (aeronautics).

(3) IC 8-21-9 (airports).

(4) IC 8-3-1 (railroad commission). [IC 8-9.5-5-6, as added by Acts 1980, P.L. 74, § 1; P.L. 89-1985, § 2; P.L. 83-1986, § 4.]

Amendments. The 1985 amendment, effective July 1, 1986, in subsection (c), added subdivisions (4)-(6).

The 1986 amendment, effective July 1, 1986, in subsection (c), added "the following" at the end of the introductory language, deleted former subdivisions (4) and (5), which read "IC 8-2-7 (Motor Carrier Act of 1935)" and IC 8-2-32 (transportation of passengers)," respectively, and redesignated former subdivision (6) as present subdivision (4).

Compiler's Notes. Sections 1 and 2 of Acts 1981, P.L. 330, provided: "The department of transportation shall conduct a study of the feasibility of providing passenger service, rail or intercity bus, between the general population centers in or near Bloomington, Indianapolis, the Indianapolis International Airport, and other traffic generating areas of central Indiana and southern Indiana. The department shall deliver the results of the study to the general assembly not later than November 1, 1983."

"This act expires January 1, 1984."

8-9.5-5-7. Duties. -- The department shall:

(1) Develop, continuously update, and submit to the board proposed:

(a) Long range comprehensive transportation plans;

(b) Work programs; and

(c) Budgets; to assure the orderly development and maintenance of an efficient statewide system of transportation.

(2) Implement the policies, plans, and work programs as reviewed, adopted, or revised by the board.

(3) Organize by creating, merging, or abolishing divisions.

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(4) Evaluate and utilize whenever possible improved maintenance and construction techniques.

(5) Carry out the following public transportation responsibilities:

(a) Develop and recommend to the board public transportation policies, plans, and work programs.

(b) Provide technical assistance and guidance in the area of public transportation to political subdivisions with public transportation responsibilities.

(c) Develop work programs for the utilization of federal mass transportation funds.

(d) Furnish data from surveys, plans, specifications, and estimates as may be required to qualify a state agency or political subdivision for federal mass transportation funding.

(e) Conduct or participate in any public hearings to qualify urbanized areas for an allocation of federal mass transportation funding.

(f) Serve, upon designation of the governor, as the state agency to receive and disburse any state or federal mass transportation funds that are not directly allocated to an urbanized area.

(g) Enter into agreements with other states, regional agencies created in other states, and municipalities in other states for the purpose of improving public transportation service to the citizens of Indiana, subject to the board's approval.

(h) Recommend through the board legislation to improve public transportation.

(i) Develop and include in its own proposed transportation plan a special transportation services plan for the elderly and the handicapped. [IC 8-9.5-5-7, as added by Acts 1980, P.L. 74, § 1; 1982, P.L. 62, § 7.]

8-9.5-5-8. Powers. -- The department, through the director or his designee may:

(1) Acquire, sell, own or lease property in the name of the state of Indiana in order to carry out its responsibilities.

(2) Adopt rules under IC 4-22-2 [4-22-2-1 -- 4-22-2-12] to carry out its responsibilities, subject to IC 8-9.5-2-8(7).

(3) Establish regional offices.

(4) Adopt a seal.

(5) Contract with persons outside the department to do those things that in the director's opinion cannot be adequately or efficiently handled by that department.

(6) Issue revenue bonds, under IC 8-21-9 [8-21-9-2 -- 8-21-9-37], only:

(a) After obtaining the board's approval;

(b) After the general assembly has, based on the recommendations of the board, provided for the issuance of the bonds by establishing each biennium in the appropriations act the maximum aggregate principal amount of bonds that the department may issue;

(c) After the department has delivered, to the state budget agency, a written guarantee that the aggregate amount of attorneys' fees for the particular proposed bond issue will not exceed two-tenths of one percent [0.2%] of the principal amount of the proposed issue; and

(d) With the specific approval of the state budget committee, the state budget agency, and the governor.

(7) Sue and be sued.

(8) Hire, with the approval of the attorney general, attorneys.

(9) Hold investigations and hearings concerning matters covered by orders and rules of the department. [IC 8-9.5-5-8, as added by Acts 1980, P.L. 74, § 1; 1982, P.L. 62, § 8.]

8-9.5-6. FEDERAL TRANSPORTATION FUNDS

8-9.5-6-1. Grant applications - Submission and review - Use of grants - Reports - Allocation of funds to agencies. -- (a) As used in this section, the term:

(1) "Agency" has the meaning given in IC 4-22-2-3.

(2) "Federal transportation grant" means federal funds allocated to the states:

(a) From the Highway Trust Fund (23 U.S.C.);

(b) From the Aviation Trust Fund (49 U.S.C.);

(c) Through the Urban Mass Transportation Administration (49 U.S.C. 1601 et seq.).

(3) "Other federal grant" means a federal grant, other than a federal transportation grant, which has a transportation component.
(b) An agency must:

(1) Submit to the board for its approval federal transportation grant applications; and

(2) Report to the planning office, at times prescribed by the planning office, all other federal grant applications.

(c) The board shall:

(1) Review as soon as possible all federal transportation grants submitted by agencies; and

(2) Approve or disapprove those applications.

(d) An agency shall:

(1) Use a federal transportation grant only for the purposes set out and approved by the board in the grant application.

(2) Use any other federal grant only for the purposes set out in the grant application as reported to the planning office.

(3) Report to the board all expenditures from federal transportation grants; and

(4) Report to the planning office all expenditures from other federal grants.

(e) The state budget agency shall only allot funds to an agency from:

(1) A federal transportation grant for the purposes set out and approved by the board in the grant application; and

(2) Other federal grants for the purposes set out in the application as reported to the planning office. [IC 8-9.5-6-1, as added by acts 1980, P.L. 74, § 1.]

8-9.5-6-2. Copies of grant application - Filing required. -- (a) Each political subdivision must file with the planning office, at times prescribed by the planning office, copies of approved federal transportation grant applications along with a copy of the grant approval letter.

(b) If a political subdivision does not comply with subsection (a) of this section after the board has made reasonable attempts to reach an agreement with that political subdivision to obtain compliance, the board may order the auditor of state to withhold from that political subdivision its allotted [allotted] distribution of state motor fuel tax revenues. The auditor of state shall comply with the board’s order.

(c) When compliance is obtained, the auditor of state shall release all funds withheld as provided by subsection (b) upon receipt of an order from the board. [IC 8-9.5-6-2, as added by Acts 1980, P.L. 74, § 1.]

Compiler’s Notes. The bracketed word "allotted" was inserted in the first sentence of subsection (b) by the compiler.

8-9.5-6-4. Public mass transportation fund. -- (a) There is established a "public mass transportation fund", which is a special revenue fund to be administered by the department of transportation.

(b) The monies in the public mass transportation fund at the end of any fiscal year do not revert to any other fund.

(c) The treasurer of state may invest the money in the public mass transportation fund in the manner provided by law for investing money in the state general fund.

(d) The public mass transportation fund is to be used only for the promotion and development of public mass transportation in Indiana. [IC 8-9.5-6-4, as added by Acts 1981, P.L. 41, § 25.]

8-9.5-7. AUTOMATED TRANSIT DISTRICTS

8-9.5-7-1. Creation of districts. -- (a) Any consolidated city may create, by an ordinance adopted by its legislative body, an automated transit district. The ordinance creating an automated transit district must specify the territory to be included initially in the district.

(b) An automated transit district may also be created by the procedures provided in sections 2 and 3 [8-9.5-7-2, 8-9.5-7-3] of this chapter. [IC 8-9.5-7-1, as added by Acts 1982, P.L. 77, § 1.]

Compiler’s Notes. According to 36-3-1-4 and the 1981 federal census, the only consolidated city is Indianapolis in Marion County.

Acts 1982, P.L. 77, § 30 provides: "(a) Sections 1 through 28 of this act comprise a codification, revision, or rearrangement of certain laws repealed by section 29. To the extent that this act repeals and replaces provisions of those laws in the same form or in a restated form, the substantive operation and effect of those provisions continue uninterrupted.

"(b) This act does not affect any:

"(1) Rights or liabilities accrued;

"(2) Penalties incurred;

"(3) Crimes committed; or

"(4) Proceedings begun; before the effective date of this act. Those rights, liabilities, penalties, crimes, and proceedings continue and shall be imposed and enforced under repealed laws as if this act had not been enacted."
8-13-7. SUFFICIENCY RATING SYSTEM AS BASIS FOR LONG RANGE PLANNING AND PROGRAMMING

8-13-7-1 [38-2948]. "Sufficiency rating" defined - Long-range plan and program for highway construction - Estimate of revenues - Reinspection of road system - Biennial plan - Emergencies and disasters - Year-end reports. -- (a) As used in this chapter, the term "sufficiency rating" means any rating which assigns numerical values to each road section reflecting its relative adequacy based on engineering appraisal of structural condition, safety and traffic service and upon economic appraisal of its actual or potential value to the total area served by the road including the effect of loss of traffic to and through the area resulting from deterioration or obsolescence of the road.

(b) The department shall prepare, formally adopt and publish a long-range program of its future activities with regard to the construction of highways under its jurisdiction. The sufficiency rating principle shall be applied, as far as it is practicable, in determining the projects to be included in the long-range construction program and may be applied by districts, but shall not be limited to such application. The long-range program shall contain an estimate of revenues which will become available during that period and a statement of intention with respect to the construction and other related work to be done insofar as it is possible to make such estimates. The department shall cause a periodic reinspection of the system of roads under its jurisdiction to be made in order to revise its estimates of future needs to conform to the actual physical and service condition of the highways and economic needs of the areas served by such highways from time to time. The long-range program, in addition to the engineering information required by this section, shall also contain such other information as will enable the public to have the most complete understanding of the needs of the state highway system. Before June 30, 1960 and annually thereafter, the department shall adopt from its long-range program and publish a biennial work program of construction to be accomplished within the following two [2] fiscal years. This biennial work program shall consist of a list of projects listed in order of urgency. Provided, That in case of emergencies and disasters resulting in the necessity for completely unforeseen demands for construction, or in the event of unforeseen difficulties in the acquisition of rights-of-way, materials, labor or equipment necessary for proposed construction or the availability of funds, a deviation from the adopted biennial work program will be permitted. The relative urgency of proposed construction shall be determined by a consideration of the physical condition, and the safety and service characteristics of the highways under consideration, the economic needs of the area served by such highways, and in arriving at and making such determination, the department shall utilize all studies, data and information made available to it from any appropriate source including economic data, relative to affected areas, from the state department of commerce.

The department shall prepare and publish and make public a report at the end of each fiscal year. The report shall contain appropriate financial data concerning receipts and disbursements, the past year's accomplishments, the current highway improvement program and a proposed program of construction to be accomplished within the following two [2] fiscal years, and an appraisal of the state's highway needs and the relative urgency of these needs.

(c) Notwithstanding any other provisions of this chapter, the department shall prepare and publish annually a supplement to the report, required under the provisions of subsection (b) of this section, containing appropriate financial data and status of projects financed from the state's primary highway system fund [IC 8-14-2-3]. [Acts 1957, ch. 60, § 1, p. 113, 1959, ch. 184, § 1; 1969, ch. 318, § 1; 1980, P.L. 74, § 191.]

38-7-1. DEFINITIONS

38-7-1-1. Application of chapter. -- The definitions in IC 38-1-2 [38-1-2-1 -- 38-1-2-24] and in this chapter apply throughout this article. [IC 38-7-1-1, as added by Acts 1980, P.L. 211, § 2; 1981, P.L. 309, § 1.]

38-7-1-2. "Advisory plan commission". -- "Advisory plan commission" means a municipal plan commission, a county plan commission, or a metropolitan plan commission. [IC 38-7-1-2, as added by Acts 1981, P.L. 309, § 2.]

38-7-1-3. "Blighted area". -- "Blighted area" means an area in which normal development and occupancy are undesirable or impossible because of:

1. Lack of development;
2. Cessation of growth;
3. Deterioration of improvements;
4. Character of occupancy;
5. Age;
6. Obsolescence;
7. Substandard buildings; or
8. Other factors that impair values or prevent a normal use or development of property. [IC 38-7-1-3, as added by Acts 1981, P.L. 309, § 3.]
36-7-1-4. "Board of zoning appeals". -- "Board of zoning appeals," unless preceded by a qualifying adjective, refers to a board of zoning appeals under either the advisory planning law, the area planning law, or the metropolitan development law. [IC 36-7-1-4, as added by Acts 1981, P.L. 309, § 4.]

36-7-1-5. "Comprehensive plan". -- "Comprehensive plan" means a composite of all materials prepared and approved under the 500 series of IC 36-7-4 or under prior law. It includes a master plan adopted under any prior law. The comprehensive plan is separate from any zoning ordinance as defined in section 22 [36-7-1-22] of this chapter. [IC 36-7-1-5, as added by Acts 1981, P.L. 309, § 5; 1981, P.L. 310, § 1; P.L. 192-1984, § 2; P.L. 335-1985, § 1.]

36-7-1-6. "Development plan" defined. -- "Development plan" means specific plans for the residential, commercial, or industrial development of property setting forth certain information and data required by the plan commission. This information and data may include:

1. The proposed name of the development;
2. The name and address of developers;
3. The location by public way, township, and section;
4. The legal description;
5. A map including date, scale and point north, location, size, capacity, and use of all buildings and structures existing or to be placed in the development;
6. The nature and intensity of the operations involved in or conducted in connection with the development;
7. The site layout of the development including the location, size, arrangement and capacity of area to be used for vehicular access, parking, loading, and unloading;
8. The name of public ways giving access to the development and location, width, and names of platted public ways, railroads, parks, utility easements, and other public open spaces;
9. The layout of proposed public ways, their names and widths, and the widths of alleys, walkways, paths, lanes, and easements;
10. A description of the use of adjacent property and an identification of that property;
11. The location, size, and arrangement of areas to be devoted to planting lawns, trees, and other site-screening activities;
12. The proposals for sewer, water, gas, electricity, and storm drainage;
13. The contours with spot elevations of the finished grade and the directions of storm runoff;
14. The layout of proposed lots with their numbers and dimensions; and
15. The land use density factors. [IC 36-7-1-6, as added by Acts 1981, P.L. 309, § 6; 1981, P.L. 310, § 2.]

36-7-1-10. "Metropolitan development commission". -- "Metropolitan development commission" means the plan commission established by IC 36-7-4-202(c) for a county having a consolidated city. The term does not include a metropolitan plan commission established under IC 36-7-4-202(a). [IC 36-7-1-10 as added by Acts 1981, P.L. 309, § 10.]

36-7-1-11. "Metropolitan plan commission". -- "Metropolitan plan commission" means an advisory plan commission cooperatively established by a county and a second class city under IC 36-7-4-202(a). The term does not include the metropolitan development commission established by IC 36-7-4-202(c). [IC 36-7-1-11, as added by Acts 1981, P.L. 309, § 11.]

36-7-1-12. "Municipal plan commission". -- "Municipal plan commission" means a city plan commission or a town plan commission. [IC 36-7-1-12, as added by Acts 1981, P.L. 309, § 12.]

36-7-1-13. "Park board". -- "Park board" means board of parks and recreation or board of park commissioners. [IC 36-7-1-13, as added by Acts 1981, P.L. 309, § 13.]

36-7-1-14. "Plan commission". -- "Plan commission," unless preceded by a qualifying adjective, means an advisory plan commission, an area plan commission or a metropolitan development commission. The term does not include a regional planning commission established under IC 36-7-7 [36-7-7-1 -- 36-7-7-13]. [IC 36-7-1-14, as added by Acts 1981, P.L. 309, § 14.]

36-7-1-15. "Planning department". -- "Planning department" refers to an area planning department under the area planning law. [IC 36-7-1-15, as added by Acts 1981, P.L. 309, § 15.]

36-7-1-16. "Public place". -- "Public place" includes any tract owned by the state or a political subdivision. [IC 36-7-1-16, as added by Acts 1981, P.L. 309, § 16.]

36-7-1-17. "Public way". -- "Public way" includes highway, street, avenue, boulevard, road, lane, or alley. [IC 36-7-1-17, as added by Acts 1981, P.L. 309, § 17.]

36-7-1-18. "Redevelopment". -- "Redevelopment" includes the following activities:

1. Acquiring real property in blighted areas.
(2) Replatting and determining the proper use of real property acquired.

(3) Opening, closing, relocating, widening, and improving public ways.

(4) Relocating, constructing, and improving sewers, utility services, offstreet parking facilities, and levees.

(5) Laying out and constructing necessary public improvements, including parks, playgrounds, and other recreational facilities.

(6) Restricting the use of real property acquired according to law.

(7) Repairing and maintaining buildings acquired, if demolition of those buildings is not considered necessary to carry out the redevelopment plan.

(8) Rehabilitating real or personal property, whether or not acquired, to carry out the redevelopment or urban renewal plan.

(9) Disposing of property acquired on the terms and conditions and for the uses and purposes that best serve the interests of the units served by the redevelopment commission.

(10) Making payments required or authorized by IC 8-13-18.5 [8-13-18.5-1 -- 8-13-18.5-17].

(11) Performing all acts incident to the statutory powers and duties of a redevelopment commission. [IC 36-7-1-18, as added by Acts 1981, P.L. 309, § 18; 1982, P.L. 77, § 7.]

36-7-1-19. "Subdivision" defined. -- "Subdivision" means the division of a parcel of land into lots, parcels, tracts, units, or interests in the manner defined and prescribed by a subdivision control ordinance adopted by the legislative body under IC 36-7-4 [36-7-4-100 -- 36-7-4-1213]. [IC 36-7-1-19, as added by Acts 1981, P.L. 309, § 19; 1981, P.L. 310, § 3; 1982, P.L. 211, § 1.]

36-7-1-20. "Thoroughfare", -- "Thoroughfare" means a public way or public place that is included in the thoroughfare plan of a unit. The term includes the entire right-of-way for public use of the thoroughfare and all surface and subsurface improvements on it such as sidewalks, curbs, shoulders, and utility lines and mains. [IC 36-7-1-20, as added by Acts 1981, P.L. 309, § 20; 1981, P.L. 310, § 4; P.L. 1986, § 1.]

Cross References. Municipal utility defined, § 8-15-1-10.

36-7-1-22. "Zoning ordinance", -- "Zoning ordinance" refers to an ordinance adopted under the 600 series of IC 36-7-4 or under prior law. The term includes all zone maps incorporated by reference into the ordinance as provided in the 600 series. [P.L. 335-1985, § 2; P.L. 220-1986, § 2.]

36-7-2. GENERAL POWERS CONCERNING PLANNING AND DEVELOPMENT

36-7-2-1. Application of chapter. -- This chapter applies to all units except townships. [IC 18-1-1.5-1, 18-1-1.5-1.5, 18-1-1.5-30, recodified as IC 36-7-2-1 by Acts 1980, P.L. 211, § 2.]

Cross References. Administrative building council, powers and duties, 22-11-1-1 -- 22-11-1-36.

Rules and regulations, city ordinance provisions, 22-11-1-19.

36-7-2-2. Zoning and planning -- Plating of property. -- A unit may plan for and regulate the use, improvement, and maintenance of real property and the location, condition, and maintenance of structures and other improvements. A unit may also regulate the platting and subdividing of real property and number the structures abutting public ways. In planning for and regulating the use of land or in regulating the platting or subdividing of real property, a unit may also regulate access to incidental solar energy for all categories of land use. [IC 18-1-1.5-6, 18-1-1.5-10, 18-1-1.5-11, 18-3-1-51, 18-4-2-18, 18-4-5-10-7, recodified as IC 36-7-2-2 by Acts 1980, P.L. 211, § 2; 1981, P.L. 311, § 1.]

Amendments. The 1981 amendment added the present third sentence of the section.

NOTES TO DECISIONS

Building Restrictions.

Cities could prevent the making of such repairs to buildings as would endanger the public safety, but the owner of property could not be prevented from making necessary repairs when the public safety was not thereby imperiled. First Nat'l Bank v. Sallie, 129 Ind. 201, 28 N.E. 518, 13 L.R.A. 481, 28 Am. St. R. 185 (1891).

Change of Use.

The city of Indianapolis was not precluded, by the fact that original plat of the city as approved by the general assembly designated half of a square as "market" and that for over 125 years the city used the half-square as a public market, from discounting such use and diverting the land to another use. Wetter v. City of Indianapolis, 248 Ind. 367, 10 Ind. Dec. 512, 226 N.E.2d 886 (1967), cert. denied, 390 U.S. 37, 88 S. Ct. 820, 19 L. Ed. 2d 813 (1968).

Powers Beyond Boundaries.

The powers conferred of municipalities had to be read in pari materia with statute giving municipalities power to effect planning beyond their boundaries, and they may not be construed so as to render it meaningless or without effect. Board of Comm'rs v. Kokomo City Planning Comm'n, -- Ind.
NOTES TO DECISIONS

Substantial State Interest.


36-7-4-102. "Area planning law". - The "area planning law" consists of those parts of this chapter that are applicable to area planning. Sections and subsections of this chapter with headings that include "AREA" apply to area planning. In addition, sections and subsections of this chapter without headings apply to area planning as well as advisory planning and metropolitan development. [IC 36-7-4-102, as added by Acts 1981, P.L. 309, § 23.]

36-7-4-103. "Metropolitan development law". - The "metropolitan development law" consists of those parts of this chapter that are applicable to metropolitan development. Sections and subsections of this chapter with headings that include "METRO" apply to metropolitan development. In addition, sections and subsections of this chapter without headings apply to metropolitan development as well as area planning and advisory planning. [IC 36-7-4-103, as added by Acts 1981, P.L. 309 § 23.]

36-7-4-104. "Series". - A citation in this chapter to the term "series" preceded by a numerical designation and two [2] zeroes, shall be construed as a reference to all the sections of this chapter (including the advisory planning law, the area planning law, and the metropolitan development law) that have that same numerical designation. [IC 36-7-4-104, as added by Acts 1981, P.L. 309, § 23.]

Compiler's Notes. The language appearing in parentheses so appeared in the printed act.

NOTES TO DECISIONS

Territorial Limits.

Municipal corporations may be authorized to exercise police powers beyond their corporate limits. Lutz v. City of Crawfordsville, 109 Ind. 466, 10 N.E. 411 (1887); City of Frankfort v. Aughe, 114 Ind. 77, 15 N.E. 802 (1888); Emerich v. City of Indianapolis, 118 Ind. 279, 20 N.E. 795 (1889); Jourdan v. City of Evansville, 163 Ind. 512, 72 N.E. 544, 67 L.R.A. 613 (1904).

The powers conferred on municipalities had to be read in pari materia with former statute giving municipalities power to effect planning beyond their boundaries and could not be construed so as to render it meaningless or without effect. Board of Comm'r v. Kokomo City Plan Comm'n, - Ind. App. -, 42 Ind. Dec. 23,310 N.E. 2d 877 (1974), rev'd on other grounds, 263 Ind. 282, - Ind. Dec. -, 330 N.E.2d 92 (1975).

36-7-4-101. "Advisory planning law". - The "advisory planning law" consists of those parts of this chapter that are applicable to advisory planning. Sections and subsections of this chapter with headings that include "ADVISORY" apply to advisory planning. In addition, sections and subsections of this chapter without headings apply to advisory planning as well as area planning and metropolitan development. [IC 36-7-4-101, as added by Acts 1981, P.L. 309 § 23.]

Collateral References. 73 Am. Jur. 2d Statutes § 429.

82 C.J.S. Statutes § 276.

[200 Series - Commission Establishment and Membership]

36-7-4-200. Citation of series. - This series (sections 200 through 299 [36-7-4-200 -- 36-7-4-223] of this chapter) may be cited as follows: 200 SERIES-
COMMISSION ESTABLISHMENT AND MEMBERSHIP. [IC 36-7-4-200, as added by Acts 1981, P.L. 309 § 23.]

Compiler's Notes. The section references appearing in parentheses so appeared in the printed act.

38-7-4-201. Purpose of chapter. - (a) For purposes of IC 36-1-6, a unit wanting to exercise planning and zoning powers in Indiana must do so in the manner provided by this chapter.

(b) The purpose of this chapter is to encourage units to improve the health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end:

1. That highway systems be carefully planned;

2. That new communities grow only with adequate public way, utility, health, educational, and recreational facilities;

3. That the needs of agriculture, industry, and business be recognized in future growth;

4. That residential areas provide healthful surroundings for family life; and

5. That the growth of the community is commensurate with and promotive of the efficient and economical use of public funds.

(c) Furthermore, municipalities and counties may cooperatively establish single and unified planning and zoning entities to carry out the purpose of this chapter on a countywide basis.

(d) METRO. Expanding urbanization in each county having a consolidated city has created problems that have made the unification of planning and zoning functions a necessity to insure the health, safety, morals, economic development, and general welfare of the county. To accomplish this unification, a single planning and zoning authority is established for the county. [IC 36-7-4-201, as added by Act 1981, P.L. 309, § 23; P.L. 310, § 5; P.L. 192-1984, § 3.]

Opinions of Attorney General. Any ordinance adopted by a city council establishing a city plan commission pursuant to statute must publish such ordinance as required by statute. 1949, No. 33, p. 131.

A member of the Marion County plan commission could not continue to serve and be compensated as such after being elected as a member of the Indiana house of representatives, whether the plan commission position were lucrative or not, in view of the incompatible nature of the two offices. 1954, No. 70, p. 258.

NOTES TO DECISIONS

Because of the extensive nature of this section, it was not included here. See notes to IC 36-7-4-201. Burns Statutes. Annotated for the complete set of notes.

38-7-4-202. Advisory plan commission -- Metropolitan plan commission in Delaware and Vanderburgh counties -- Area planning department -- Metropolitan development commissioner -- Establishment. -- (a) ADVISORY. The legislative body of a county or municipality may establish by ordinance an advisory plan commission. In addition, in each county having:

(1) A population of between ninety thousand [90,000] and one hundred seventy-five thousand [175,000]; and

(2) Only one [1] second-class city having a population of more than sixty-five thousand [65,000]; the legislative bodies of that county and that city may establish by identical ordinances a metropolitan plan commission as a department of county government. These ordinances must specify the legal name of the commission for purposes of section 404(a) [36-7-4-404(a)] of this chapter.

(b) AREA. There may be established in each county an area planning department in the county government, having:

(1) An area plan commission;

(2) An area board of zoning appeals;

(3) An executive director; and

(4) Such staff as the area plan commission considers necessary.

Each municipality and each county desiring to participate in the establishment of a planning department may adopt an ordinance adopting the area planning law, fix a date for the establishment of the planning department, and provide for the appointment of its representatives to the commission. When a municipality or a county adopts such an ordinance, it shall certify a copy of it to each legislative body within the county. When a county and at least one municipality within the county each adopt an ordinance adopting the area planning law and fix a date for the establishment of the department, the legislative body of the county shall establish the planning department.

(c) METRO. A metropolitan development commission is established in the department of metropolitan development of the consolidated city. [IC 36-7-4-202, as added by Acts 1981, P.L. 309, § 23.]

4-11
NOTES TO DECISIONS

Effect of Statute.

Statute providing for the creation of a metropolitan plan commission merely provided that such a commission was created by the board of county commissioners in conjunction with the city council and recognized the new creature as a unit of government Abrams v. Legbandt, 160 Ind. App. 379, 42 Ind. Dec. 314, 312 N.E.2d 113 (1974).

36-7-4-203. Functions of metropolitan plan commission and area planning department. --

(a) ADVISORY. After a metropolitan plan commission is established, it shall exercise exclusively the planning and zoning functions of the county and of the second-class city, and the separate planning and zoning functions of the county plan commission and the city plan commission cease.

(b) AREA. After the planning department is established and the participating legislative bodies have adopted a zoning ordinance, the planning department shall exercise exclusively the planning and zoning functions of the county and of the participating municipalities, except as provided in section 918 of the area planning law. Where other statutes confer planning and zoning authority on a participating municipality or a county, their plan commissions shall continue to exercise that authority until such time as the planning department is established and the participating legislative bodies adopt a zoning ordinance. [IC 36-7-4-203, as added by Acts 1981, P.L. 309, § 23; 1981, P.L. 310, § 6.]

NOTES TO DECISIONS

Board of Zoning Appeals.

While the Evansville-Vanderburgh Metropolitan Board of Zoning Appeals was a legal entity, it did not have the capacity to sue which was reserved to the metropolitan plan commission. Evansville-Vanderburgh Metropolitan Bd. of Zoning Appeals v. Meadow Ridge, Inc., 141 Ind. App. 135, 10 Ind. Dec. 505, 226 N.E.2d 710 (1967).

Plan Commissions.

--Advisory Capacity.

This section has the effect of leaving metropolitan plan commissions with the same advisory power previously possessed and boards of county commissioners with their legislative authority intact. Abrams v. Legbandt, 160 Ind. App. 379, 42 Ind. Dec. 314, 312 N.E.2d 113 (1974).

The legislature intended that metropolitan plan commissions have broad powers as to zoning and planning but not the power to legislate. Abrams v. Legbandt, 160 Ind. App. 379, 42 Ind. Dec. 314, 312 N.E. 2d 113 (1974).

The planning and zoning act did not grant county plan commissions exclusive countywide authority over planning and zoning, thereby depriving the board of commissioners of its powers to legislate in the area of planning and zoning, but rather activates them in an advisory capacity concerning the status of planning and reaffirms the legislative authority of boards of county commissioners and specifically restricts plan commissions to investigations, recommendations and reporting. Abrams v. Legbandt, 160 Ind. App. 379, 42 Ind. Dec. 314, 312 N.E.2d 113 (1974).

36-7-4-204. Adoption of area planning law by other municipalities -- Effect. --AREA. After the planning department is established, other municipalities within the county may adopt ordinances adopting the area planning law and provide for the appointment of their representatives to the area plan commission. In such a case, the membership of the commission shall be increased according to the formula provided in sections 207, 208, 209, and 211 of the area planning law, and the authority of a municipal plan commission and municipal board of zoning appeals ceases, except as provided in section 918 of the area planning law, as of the time specified in that ordinance. The composition of any such municipal board of zoning appeals, or of any such board later organized, under the advisory planning law, must conform with that law, except that those members of such a board to be appointed from the municipal plan commissioner shall instead be appointed from the area plan commission. [IC 36-7-4-204, as added by Acts 1981, P.L. 309, § 23.]

Opinions of Attorney General. A municipality may withdraw from an area plan commission by passing an ordinance to that effect and after withdrawal only those zoning ordinances enacted by affirmative act of the legislative body of that municipality would remain in effect. 1977, No. 25 p. 64.

Once a municipality has withdrawn from an area plan that municipality must follow the procedures set forth in order to again participate in the area plan commission. 1977, No. 25, p. 64.

36-7-4-205. Extent of territorial authority of comprehensive plan.

(a) ADVISORY. A municipal plan commission shall adopt a comprehensive plan, as provided for under the 500 series of the advisory planning law, for the development of the municipality and of the contiguous unincorporated area, designated by the commission, that is outside the corporate boundaries of the municipality, and that, in the judgment of the commission, bears reasonable relation to the development of the municipality.

(b) ADVISORY. Except as limited by the boundaries of unincorporated areas subject to the jurisdiction of other municipal plan commissions, an area
designated under this section may include any part of the contiguous unincorporated area within two [2] miles from the corporate boundaries of the municipality. If, however, the corporate boundaries of the municipality or the boundaries of that contiguous unincorporated area include any part of the public waters or shoreline or a lake (which lies wholly within Indiana), the designated area may also include:

(1) Any part of those public waters and shoreline of the lake; and

(2) Any land area within two thousand five hundred feet [2,500'] from that shoreline.

c) ADVISORY. Before exercising their rights, powers, and duties of the advisory planning law with respect to an area designated under this section, a municipal plan commission must file, with the recorder of the county in which the municipality is located, a description or map defining the limits of that area. If the commission revises the limits, it shall file, with the recorder, a revised description or map defining those revised limits.

d) ADVISORY. If any part of the contiguous unincorporated area within the potential jurisdiction of a municipal plan commission is also within the potential jurisdiction of another municipal plan commission, the first municipal plan commission may exercise territorial jurisdiction over that part of the area within the potential jurisdiction of both municipal plan commissions that equals the product obtained by multiplying a fraction, the numerator of which is the area within the corporate boundaries of that municipality and the denominator of which is the total area within the corporate boundaries of both municipalities times the area within the potential jurisdiction of both municipal plan commissions. Furthermore, this commission may exercise territorial jurisdiction within those boundaries, enclosing an area reasonably compact and regular in shape, that the municipal plan commission first acting designates.

e) ADVISORY. If the legislative body of a county adopts a comprehensive plan and ordinance covering the unincorporated areas of the county, a municipal plan commission may not exercise jurisdiction, as provided in this section, over any part of that unincorporated area unless it is authorized by ordinance of the legislative body of the county. This ordinance may be initiated by the county legislative body or by petition duly signed and presented to the county auditor by:

(1) Not less than fifty [50] property owners residing in the area involved in the petition;

(2) The county plan commission; or

(3) The municipal plan commission.

Before final action on the ordinance by the county legislative body, the county plan commission must hold an advertised public hearing as required for other actions of the county plan commission under the advisory planning law. Upon the passage of the ordinance by the county legislative body and the subsequent acceptance of jurisdiction by the municipal plan commission, the municipal plan commission shall exercise the same rights, powers, and duties conferred in this section exclusively with respect to the contiguous unincorporated area. The jurisdiction of a municipal plan commission, as authorized under this subsection, may be terminated by ordinance at the discretion of the legislative body of the county, but only if the county has adopted a comprehensive plan for that area that is as comprehensive in scope and subject matter as that in effect by municipal ordinance.

f) ADVISORY. Each municipal plan commission in a municipality located in a county having:

(1) A population of less than ninety-five thousand [95,000]; and

(2) A county plan commission that has adopted, in accord with the advisory planning law, a comprehensive plan and ordinance covering the unincorporated areas of the county; may, at any time, after filing notice with the county recorder and the county plan commission, exercise or reject territorial jurisdiction over any part of the area within two [2] miles of the corporate boundaries of that municipality and within that county, whether or not that commission has previously exercised that jurisdiction. Within sixty [60] days after receipt of that notice, the county plan commission and the county legislative body shall have the county comprehensive plan and ordinance revised to reflect the decision of the municipal plan commission exercising the option provided for in this subsection.

g) AREA. Wherever in the area planning law authority is conferred to establish a comprehensive plan or an ordinance for its enforcement, the authority applies everywhere:

(1) Within the county that is outside the municipalities; and

(2) Within each participating municipality.

h) ADVISORY -- AREA. Whenever a new town is incorporated in a county having a county plan commission or an area plan commission, that plan commission and its board of zoning appeals shall continue to exercise territorial jurisdiction within the town until the effective date of a town ordinance:

(1) Establishing an advisory plan commission under section 202(a) [36-7-4-202(a)] of this chapter; or
Adopting the area planning law under section 202(b) [36-7-4-202(b)] or 204 [36-7-4-204] of this chapter.

Beginning on that effective date, the planning and zoning functions of the town shall be exercised under the advisory planning law or area planning law, as the case may be. [IC 36-7-4-205, as added by Acts 1981, P.L. 309, § 23; 1982, P.L. 1, § 61.]

Compiler's Notes. According to the 1980 federal census, counties excluded from the terms of subsection (f) by the population bracket include Allen, Delaware, Elkhart, Lake, Laporte, Madison, Marion, Monroe, Porter, St. Joseph, Tippecanoe, Vanderburgh and Vigo.


NOTES TO DECISIONS

Advisory Capacity of Plan Commission.

See notes under heading "Advisory capacity of plan commission," 36-7-4-201.

Annexation.

Statute providing for adoption of master plan for development of the city and of certain contiguous, uninterrupted area outside the corporate limits did not provide an alternative to formal statutory annexation procedure. First Nat'l Bank v. Camp, 463 F.2d 595 (7th Cir. 1972).

Constitutionality.

The constitutionality of this section was not decided because plaintiff county had no standing to raise the constitutional question. Board of Comm'r's v. Kokomo City Plan Comm'n, -- Ind. App. --, 42 Ind. Dec. 23, 310 N.E.2d 877 (1974), rev'd on other grounds, 263 Ind. 282, 47 Ind. Dec. 450, 330 N.E.2d 92 (1975).

The provisions of this section are broad enough to apply to all counties and cities of the state under the same circumstances and it is not violative of Ind. Const., art. 4, § 23 as a local or special law. Board of Comm'r's v. Board of Trustees, -- Ind. App. --, 36 Ind. Dec. 431, 325 N.E.2d 482, aff'd, 263 Ind. 694, 338 N.E.2d 257 (1975).

The former provision for the plan commission of cities in counties of 84,000 or less population to exercise planning jurisdiction over unincorporated areas within two miles of the city corporate limits without consent of those affected was not a violation of equal protection as there is a rational relationship between the goal of long range planning for orderly development of urban and rural areas and the requirement of approval in the more densely populated counties. Board of Comm'r's v. Board of Trustees, -- Ind. App. --, 36 Ind. Dec. 431, 325 N.E.2d 482, aff'd, 263 Ind. 694, 338 N.E.2d 257 (1975).

The former provision for the plan commission of cities in counties of 84,000 or less population to exercise planning jurisdiction over unincorporated areas within two miles of the city corporate limits without consent of those affected was not a disenfranchisement as the orderly planning and development is a community interest and self-government does not require the consent of those affected by extraterritorial municipal planning. Board of Comm'r's v. Board of Trustees, -- Ind. App. --, 36 Ind. Dec. 431, 325 N.E.2d 482, aff'd, 263 Ind. 694, 338 N.E.2d 257 (1975).

Construction with Other Law.

The powers conferred on municipalities must be read in pari materia with this section giving municipalities power to effect planning beyond their boundaries and may not be construed so as to render it meaningless or without effect. Board of Comm'r's v. Kokomo City Plan Comm'n, -- Ind. App. --, 42 Ind. Dec. 23, 310 N.E.2d 877 (1974), rev'd on other grounds, 263 Ind. 282, 47 Ind. Dec. 450, 330 N.E.2d 92 (1975).

Outlying Areas.


36-7-4-206. Extent of territorial authority of nonparticipating municipalities -- Area planning. -- AREA. After the planning department is established, a nonparticipating municipality may not exercise planning and zoning powers outside its corporate boundaries. [IC 36-7-4-206, as added by Acts 1981, P.L. 309, § 23.]

36-7-4-207. Membership of city plan commission -- Representation on area plan commission -- Membership of metropolitan development commission. -- (a) ADVISORY. In a city having a park board and a city civil engineer, the city plan commission consists of nine (9) members, as follows:

(1) One (1) member appointed by the city legislative body from its membership.

(2) One (1) member appointed by the park board from its membership.

(3) One (1) member or designated representative appointed by the city works board.
(4) The city civil engineer or a qualified assistant appointed by the city civil engineer.

(5) Five (5) citizen members, of whom no more than three (3) may be of the same political party, appointed by the city executive.

(b) ADVISORY. If a city lacks either a park board, or a city civil engineer, or both, subsection (a) does not apply. In such a city, or in any town, the municipal plan commission consists of seven (7) members, as follows:

(1) The municipal legislative body shall appoint three (3) persons, who must be elected or appointed municipal officials or employees in the municipal government, as members.

(2) The municipal executive shall appoint four (4) citizen members, of whom no more than two (2) may be of the same political party.

(c) AREA. To provide equitable representation of rural and urban populations, representation on the area plan commission is determined as follows:

(1) Seven (7) representatives from each city having a population of more than one hundred five thousand (105,000).

(2) Six (6) representatives from each city having a population of not less than seventy thousand (70,000) nor more than one hundred five thousand (105,000).

(3) Five (5) representatives from each city having a population of not less than thirty-five thousand (35,000) but less than seventy thousand (70,000).

(4) Four (4) representatives from each city having a population of not less than twenty thousand (20,000) but less than thirty-five thousand (35,000).

(5) Three (3) representatives from each city having a population of not less than ten thousand (10,000) but less than twenty thousand (20,000).

(6) Two (2) representatives from each city having a population of less than ten thousand (10,000).

(7) One (1) representative from each town having a population of more than two thousand one hundred (2,100), and one (1) representative from each town having a population of two thousand one hundred (2,100) or less that had a representative before January 1, 1979.

(8) Such representatives from towns having a population of not more than two thousand one hundred (2,100) as are provided for in section 210 [38-7-4-210] of this chapter.

(9) Six (6) county representatives if the total municipal representation in the county is more than five (5), or five (5) county representatives if the total municipal representation is less than six (6).

(d) METRO. The metropolitan development commission consists of nine (9) citizen members, as follows:

(1) Four (4) members, of whom no more than two (2) may be of the same political party, appointed by the executive of the consolidated city.

(2) Three (3) members, of whom no more than two (2) may be of the same political party, appointed by the legislative body of the consolidated city.


Amendments. The 1985 amendment, effective June 1, 1985, in the introductory language of subsections (a) and (b) deleted "resident" preceding "city civil engineer" and, in subsection (a)(4), deleted "resident" preceding "city civil engineer" and added "or a qualified assistant appointed by the city civil engineer."

38-7-4-208. Membership of county and metropolitan plan commissions -- County representatives. -- (a) ADVISORY. The county plan commission consists of nine (9) members, as follows:

(1) One [1] member appointed by the county executive from its membership.

(2) One [1] member appointed by the county fiscal body from its membership.

(3) The county surveyor or a qualified deputy surveyor appointed by the surveyor.

(4) The county agricultural agent.

(5) Five [5] citizen members, of whom no more than three [3] may be of the same political party and all five [5] of whom must be residents of unincorporated areas of the county, appointed by the county executive.

(b) ADVISORY. The metropolitan plan commission consists of nine [9] members, as follows:

(1) One [1] member appointed by the county legislative body from its membership.

(2) One [1] member appointed by the second-class city legislative body from its membership.

(3) Three [3] citizen members who are residents of unincorporated areas of the county, of whom no more than two [2] may be of the same political party, appointed by the county legislative body. One [1] of these members must be actively engaged in farming.

(4) Four [4] citizen members, of whom no more than two [2] may be of the same political party,
appointed by the second-class city executive. One [1] of these members must be from the metropolitan school authority or community school corporation and a resident of that school district, and the other three [3] members must be residents of the second-class city.

(c) AREA. When there are six [6] county representatives, they are:

(1) One [1] member appointed by the county executive from its membership;

(2) One [1] member appointed by the county fiscal body from its membership;

(3) The county superintendent of schools, or if that office does not exist, a representative appointed by the school corporation superintendents within the jurisdiction of the area plan commission;

(4) The county agricultural agent;

(5) One [1] citizen member who is a resident of the unincorporated area of the county, appointed by the county executive; and

(6) One [1] citizen member who is a resident of the unincorporated area of the county, appointed by the county fiscal body.

When there are five [5] county representatives, they are the representatives listed in subdivisions (3), (4), (5), and (6) of this subsection and the county surveyor. [IC 36-7-4-208, as added by Acts 1981, P.L. 309, § 23; 1981, P.L. 310 § 7; P.L. 354-1983, § 1.]

Compiler's Notes. Section 2 of P.L. 354-1983 provided: "(a) Citizen members serving on a county plan commission affected by this act on January 1, 1984, continue in office until their terms expire.

"(b) County surveyor's appointees serving on January 1, 1984, continue in office until their terms expire.

"(c) This SECTION expires January 31, 1987."

36-7-4-209. Designation of municipal representatives for a municipality is two [2], one [1] is a member of the municipal legislative body appointed by the legislative body and the other is a citizen member appointed by the municipal executive.

(b) AREA. When the number of representatives for a municipality is three [3], one [1] is a member of the legislative body appointed by the legislative body and two [2] are citizen members appointed by the executive.

(c) AREA. When the number of representatives for a municipality is four [4], one [1] is a member of the works board or the board of sanitary commissioners, appointed by the executive, one [1] is a member of the legislative body appointed by the legislative body, and two [2] are citizen members appointed by the executive.

(d) AREA. When the number of representatives for a municipality is five [5] or more, one [1] is a member of the works board or the board of sanitary commissioners, appointed by the executive, one [1] is a member of the legislative body appointed by the legislative body, and the remainder are citizen members appointed by the executive. [IC 36-7-4-209, as added by Acts 1981, P.L. 309, § 23.]

Opinions of Attorney General. Persons appointed by town boards to serve as alternate representatives to area plan commissions may not represent their towns as voting members of those commissions unless they are also town board members. 1978, No. 28, p. 78; 2 IR 177.

36-7-4-210. Advisory council on town affairs -- Selection of representatives to area plan commission. --- (a) AREA. In a county where there are two [2] or more towns having a population of not more than two thousand one hundred [2, 100] neither of which has a representative on the area plan commission under section 207(c)(7) [36-7-4-207(c)(7)] of this chapter that are participating in an area planning department, there is established an advisory council on town affairs. Each participating legislative body of such a town shall select one [1] of its members as its representative on the advisory council. The advisory council shall meet as soon as possible after the establishment of the planning department. It shall meet in the town hall of the participating town having the largest population, on the call of the representative of that town, who shall act as chairman of the first meeting. Thereafter, the council shall elect its own chairman.

(b) AREA. The advisory council shall at its first meeting select from its membership an appropriate number of voting representatives to the area plan commission. If the advisory council is composed of five [5] or less, it is entitled to one [1] voting representative on the area plan commission. If the advisory council is composed of more than five [5], it is entitled to two [2] voting representatives on the area plan commission.

(c) AREA. The chairman and the representatives on the advisory council shall be elected for one [1] year terms, terminating at the end of the year.

(d) AREA. If there are not any cities located within a county, then the town having the largest population and participating in the planning department in the county shall select a citizen member to serve on the area plan commission. The legislative body of that town shall appoint that member as prescribed by section 218(e) [36-7-4-218(e)] of this chapter. [IC 36-7-4-210, as added by Acts 1981, P.L. 309, § 23; 1981, P.L. 310, § 8; 1982, P.L. 1, § 63.]
36-7-4-211. Area plan commission -- Change of representation. -- (a) AREA. Notwithstanding any other provision of the area planning law, the representation on any area plan commission may be charged by a similar ordinance adopted by the legislative body of each unit that is a participant in a planning department or by the legislative body of each unit that proposes to form a planning department.

(b) AREA. Each ordinance adopted under this section must provide for at least one [1] representative from each unit that is a participant in the planning department. [IC 36-7-4-211, as added by Acts 1981, P.L. 309, § 23; 1981, P.L. 310, § 9.]

Amendments. The 1981 amendment deleted "This subsection applies only to each county having a population of not less than one hundred eight thousand nor more than one hundred fourteen thousand five hundred" at the beginning of subsection (b).

36-7-4-212. Area plan commission -- Certification of members. -- ADVISORY. The clerk of the municipal legislative body and the secretary of the park board shall certify members appointed by their respective bodies, and the executive shall certify his appointments. The certificates shall be sent to and made a part of the records of the municipal plan commission. [IC 36-7-4-212, as added by Acts 1981, P.L. 309, § 23.]

36-7-4-213. Appointment of reciprocal representatives of county and municipal plan commissions. -- ADVISORY. If a municipality having a municipal plan commission is located in a county that has a county plan commission:

(1) A designated representative of the county plan commission shall serve as an advisory member of the municipal plan commission; and

(2) A designated representative of the municipal plan commission shall serve as an advisory member of the county plan commission.

Each advisory member has all the privileges of membership, except the right to vote. [IC 36-7-4-213, as added by Acts 1981, P.L. 309, § 23.]

36-7-4-214. Additional members to municipal plan commission required for unincorporated area. -- ADVISORY. When a municipal plan commission exercises jurisdiction outside the incorporated area of the municipality as provided for in section 205 of the advisory planning law, the executive of the county in which the unincorporated area is located shall appoint two (2) additional citizen members to the municipal plan commission. The citizen members must:

(1) Reside in the unincorporated area; and

(2) Not be of the same political party.

(b) ADVISORY. Initially, one (1) member under subsection (a) shall be appointed for a term of one (1) year and the other for a term of four (4) years. Thereafter, each appointment is for a term of four (4) years. The additional citizen members are entitled to participate and vote in all deliberations of the municipal plan commission.

(c) ADVISORY. If the unincorporated area referred to in subsection (a) lives in two (2) counties, the executive of each of those counties shall appoint one (1) of the additional citizen members. The executive of the county having the larger proportion of the unincorporated area shall appoint its member first, and the executive of the other county shall then appoint its member, who must not be of the same political party. [IC 36-7-4-214, as added by Acts 1981, P.L. 309, § 23; P.L. 7-1983, § 37; P.L. 220-1986, § 8.]

Amendments. The 1986 amendment, effective September 1, 1986, added the subsection (a) and (b) designations; in present subdivision (a) (2) substituted the present language for "Be of opposite political parties"; in present subsection (b) inserted "ADVISORY," and in the first sentence inserted "under subsection (a)"; and added subsection (c).

36-7-4-215. Additional members to town plan commission allowed for unincorporated area. -- ADVISORY. In addition to the requirements of section 214 [36-7-4-214] of this chapter, the executive of the county may also appoint as members of a town plan commission additional representatives from the unincorporated jurisdictional area, if the executive believes the additional representation is justifiable. The number of appointments shall be determined as follows:

(1) Two [2] citizen members, if the population of the jurisdictional area appears to be at least fifty percent [50%] but not more than one hundred percent [100%] of the population of the town itself.

(2) Four [4] citizen members, if the population of the jurisdictional area appears to be greater than that of the town itself.

These additional members must have the same qualifications and are entitled to the same terms and privileges as prescribed for the additional members appointed under section 214 of this chapter. [IC 36-7-4-215, as added by Acts 1981, P.L. 309, § 23; P.L. 7-1983, § 38.]

36-7-4-216. Qualifications of citizen members. -- Each citizen member shall be appointed because of his knowledge and experience in community affairs, his awareness of the social, economic, agricultural, and industrial problems of the area, and his interest in the development and integration of the area. A citizen member may not hold other elective or appointive office in municipal, county, or state government, except in the case of an area
plan commission membership on the school board or park board. A citizen member must be a resident of the jurisdictional area of the plan commission. [IC 36-7-4-216, as added by Acts 1981, P.L. 309, § 2; 1981, P.L. 310, § 10.]

36-7-4-217. Terms of certain members. -- ADVISORY -- AREA. The term of office of a member (who is appointed from the membership of a legislative body, a park board, or the advisory council on town affairs) is coextensive with the member's term of office on that body, board, or council, unless that body, board, or council appoints, at its first regular meeting in any year, another to serve as its representative. [IC 36-7-4-217, as added by Acts 1981, P.L. 309, § 23.]

Compiler's Notes. The language appearing in parentheses so appeared in the printed act.

36-7-4-218. Appointment of citizen members -- Terms -- Removal. (a) When an initial term of office of a citizen member expires, each new appointment of a citizen member is:

(1) For a term of four [4] years (in the case of a municipal, county, or area plan commission);

(2) For a term of three [3] years (in the case of a metropolitan plan commission); or

(3) For a term of one [1], two [2], or three [3] years, as designated by the appointing authority (in case of the metropolitan development commission).

A member serves until his successor is appointed and qualified. A member is eligible for reappointment.

(b) ADVISORY. Upon the establishment of a nine-member municipal plan commission, the citizen members shall initially be appointed for the following terms of office:


Upon the establishment of a seven-member municipal plan commission, two [2] citizen members shall initially be appointed for a term of three [3] years and two [2] shall initially be appointed for a term of four [4] years. Each member's term expires on the first Monday of January of the second, third, or fourth year, respectively, after the year of the member's appointment.

(c) ADVISORY. Upon the establishment of a county plan commission, the citizen members shall initially be appointed for the following terms of office:


Each member's term expires on the first Monday in January of the first, second, third, or fourth year, respectively, after the year of the member's appointment.

(d) ADVISORY. Upon the establishment of a metropolitan plan commission, the citizen members shall initially be appointed for the following terms of office:


(f) ADVISORY-AREA. The appointing authority may remove a member from the plan commission for cause. The appointing authority must mail notice of the removal, along the written reasons for the removal, or the member at his residence address. A member who is removed may, within thirty [30] days after receiving notice of the removal, appeal the removal to the circuit or superior court of the county. The court may, pending the outcome of the appeal, order the removal or stay the removal of the member.

(g) METRO. The appointing authority may remove a citizen member from the metropolitan development commission. The appointing authority must mail notice of the removal, along with written reasons, if any, for the removal, to the member at his residence address. A member who is removed may not appeal the removal to a court or otherwise. [IC 36-7-4-218, as added by Acts 1981, P.L. 309, § 23; 1981, P.L. 310, § 11; P.L. 192-1984, § 5.]

36-7-4-220. Vacancies. -- If a vacancy occurs among the members of a plan commission, the appointing authority shall appoint a member for the unexpired term of the vacating member. A member who misses three [3] consecutive regular meetings of the metropolitan development commis-
sion shall be treated as if he had resigned, unless the appointing authority reaffirms his appointment. [IC 36-7-4-220, as added by Acts 1981, P.L. 309, § 23; 1981, P.L. 310, § 12.]

36-7-4-222. Joining professional organizations or attending conferences. -- If a plan commission determines that it is necessary or desirable for members or employees to join a professional organization or to attend a conference or interview dealing with planning or related problems, the commission may pay the applicable membership fees and all actual expenses of the members or employees, if that amount has been appropriated by the fiscal body of the unit. [IC 36-7-4-222, as added by Acts 1981, P.L. 309, § 23; 1981, P.L. 310, § 13; P.L. 192-1984, § 6.]

36-7-4-223. Zoning matters -- Conflict of Interest. -- (a) As used in this section, “zoning matter” does not include the preparation or adoption of a comprehensive plan.

(b) A member of a plan commission or a legislative body may not participate in a hearing or decision of that commission or body concerning a zoning matter in which he has a direct or indirect financial interest. The commission or body shall enter in its records the fact that its member has such a disqualification. [IC 36-7-4-223, as added by Acts 1981, P.L. 309, § 23; 1981, P.L. 310, § 14.]

Amendments. The 1981 amendment deleted “ADVISORY” at the beginning of subsection (b), and deleted the former material at the end of subsection (b), which read: “and the remaining members of the commission or body shall appoint an elector to participate as a member in the hearing or decision concerning that zoning matter.”


Opinions of Attorney General. Since the four local individual grantees (the attorney for the city plan commission, a member of the city housing authority, the daughter of a city redevelopment commission member, and the secretary to the city economic development commission director) would be receiving grants from the federal Rental Rehabilitation Program through the state and city redevelopment commission, all city employees and their families and persons with whom the city employees have business ties may be prohibited by Federal Regulation 24 CFR 511.11 from receiving grants to rehabilitate private property owned by them, which will be rented to persons under the Federal Rule 8 Rental Assistance Program, unless the federal Department of HUD, which is the ultimate authority, grants an exception on a case-by-case basis, after disclosure and an opinion of the grantees’ attorney that the interest for which the exception is sought would not violate State or local law, as provided by 24 CFR 511.11. 1985, No. 85-23, p. --.

NOTES TO DECISIONS

In General

The existence of a prohibited conflict of interest is generally acknowledged to be a question of fact and where the evidence conflicts the court cannot say that error is committed. Fall v. LaPorte County Bd. of Zoning Appeals, 171 Ind. App. 192, 55 Ind. Dec. 184, 355 N.E. 2d 455 (1976).

Application.

Where there is a conflict of interests issue following a council decision to vacate a public way pursuant to 36-7-3-12 this provision will apply, 36-7-3-13 notwithstanding. Smith v. City of Shelbyville, 462 N.E. 2d 1052 (Ind. App. 1984).

[300 Series -- Commission Organization]

36-7-4-300. Citation of series. -- This series (sections 300 through 399 [36-7-4-300 -- 36-7-4-312] of this chapter) may be cited as follows: 300 SERIES -- COMMISSION ORGANIZATION. [IC 36-7-4-300, as added by Acts 1981, P.L. 309, § 23.]

Compiler’s Notes. The section references appearing in parentheses so appeared in the printed act.

36-7-4-301. Quorum. -- A quorum consists of a majority of the entire membership of the plan commission, who are qualified by this chapter to vote. [IC 36-7-4-301, as added by Acts 1981, P.L. 309, § 23.]

Indiana Law Review. Survey of Recent Developments in Indiana Law, XIV. Property (Debra A. Falendar), 12 Ind. L. Rev. 289.

Opinions of Attorney General. Advisory members were included in determination of what constitutes majority of plan commission. 1949, No. 54, p. 198.

NOTES TO DECISIONS

Court Review.

Fact that there was no official or final action taken by the plan commission did not prevent the court from taking jurisdiction to review the action of the commission. Tippecanoe County Area Plan Comm’n v. Sheffield Developers, Inc., -- Ind. App. --, 71 Ind. Dec. 55, 394 N.E.2d 176 (1979).

Collateral References. 82 Am. Jur. 2d Zoning and Planning § 49.
36-7-4-302. Official action. -- (a) ADVISORY-AREA. Action of a plan commission is not official, unless it is authorized, at a regular or special meeting, by a majority of the entire membership of the plan commission.

(b) METRO. Action of the metropolitan development commission is not official, unless it is authorized, at a regular or special meeting, by:

1. At least five [5] members, when eight [8] or more members are present at the meeting; or

2. At least four [4] members, when fewer than eight [8] members are present at the meeting. [IC 36-7-4-301, as added by Acts 1981, P.L. 309, § 23; 1982, 212, § 1; P.L. 192-1984, § 7.]

36-7-4-303. Election of president and vice-president of plan commission -- Vice-president as acting president. - At its first regular meeting in each year, the plan commission shall elect from its members a president and a vice-president. The vice-president may act as president of the plan commission during the absence or disability of the president. [IC 36-7-4-303, as added by Acts 1981, P.L. 309, § 23.]

36-7-4-304. Appointment of secretary. -- The plan commission may appoint and fix the duties of a secretary, who is not required to be a member of the commission. [IC 36-7-4-304, as added by Acts 1981, P.L. 309, § 23; 1981, P.L. 310, § 15.]

Amendments. The 1981 amendment deleted former subsection (a), which read: "ADVISORY. The advisory plan commission may appoint, prescribe the duties, and fix the compensation of a secretary; in the case of a metropolitan plan commission, the commission shall appoint a secretary. This compensation must be in conformity with salaries and compensation fixed up to that time by the fiscal body of the municipality of county, as the case may be;" deleted "(b) AREA -- METRO" at the beginning of the present section, and deleted the former second sentence of the present section, which read: "If the secretary is not a member, the commission may fix the secretary's compensation."

36-7-4-305. Offices -- Transfer of property to planning department -- Availability of records to plan commission. -- (a) ADVISORY. The municipality or the county shall provide suitable offices for the holding of advisory plan commission meetings and for preserving the plans, maps, accounts, and other documents of the commission.

(b) AREA. After the establishment of the planning department, the county plan commission and participating municipal plan commissions shall transfer their property to the planning department.

(c) AREA. Except as may be necessary for the exercise of the powers reserved to municipal boards of zoning appeals by the 900 series of this chapter, all ordinances, maps, reports, minute books, documents, and correspondence of any municipal or county plan commission or board of zoning appeals within the jurisdiction of a planning department shall be made available to or transformed to the plan commission on its written request. The plan commission shall procure suitable offices for the conduct of its work and the work of the planning department. [IC 36-7-4-305, as added by Acts 1981, P.L. 309, § 23; P.L. 192-1984, § 8.]

[400 Series -- Commission Duties and Powers]

36-7-4-400. Citation of series. -- This series (sections 400 through 499 [36-7-4-400 -- 36-7-4-411 of this chapter] may be cited as follows: 400 SERIES -- COMMISSION DUTIES AND POWERS. [IC 36-7-4-400, as added by Acts 1981, P.L. 309, § 23.]

Compiler's Notes. The section references appearing in parentheses so appeared in the printed act.

36-7-4-401. Duties of plan commission. -- (a) Each plan commission shall:

1. Supervise, and make rules for, the administration of the affairs of the commission (in the case of an advisory plan commission) or of the planning department (in case of an area plan commission or a metropolitan development commission);

2. Prescribe uniform rules pertaining to investigations and hearings;

3. Keep a complete record of all the departmental proceedings;

4. Record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the commission (in the case of an advisory plan commission) or of the planning department (in the case of an area plan commission or the metropolitan development commission);

5. Prepare, publish, and distribute reports, ordinances, and other material relating to the activities authorized under this chapter;

6. Adopt a seal; and

7. Certify to all official acts.

(b) ADVISORY -- AREA. Each plan commission shall:

1. Supervise the fiscal affairs of the commission (in the case of an advisory plan commission) or of the planning department (in the case of an area plan commission); and

2. Prepare and submit an annual budget in the same manner as other departments of county or municipal government, as the case may be, and be
limited in all expenditures to the provisions made for the expenditures by the fiscal body of the county or municipality. [IC 36-7-4-401, as added by Acts 1981, P.L. 309, § 23.]

Compiler's Notes. The language appearing in parentheses in subsections (a) and (b) so appeared in the printed act.

Indiana Law Journal. Wrongful Subdivision Approval by the Plan Commission, Remedies of the Buyer and City, 29 Ind. L.J. 408.


NOTES TO DECISIONS

Failure of Duty to Record Inspection Results.

Even if the commission had the duty to record the results of its members' on-site inspection, its failure to do so would not vitiate the validity of its decision. Wildwood Park Community Ass'n v. Fort Wayne City Plan Comm'n, -- Ind. App. --, 72 Ind. Dec. 169, 396 N.E.2d 678 (1979).

Legislative Authority.

This section does not derogate from the legislative authority of the board of county commissioners to enact or amend zoning ordinances. Abrams v. Legbandt, 160 Ind. App. 379, 42 Ind. Dec. 314, 312 N.E.2d 113 (1974).

36-7-4-402. Employees -- Public hearings. --

(a) ADVISORY. Each advisory plan commission shall prescribe the qualifications of, appoint, remove, and fix the compensation of the employees of the commission, which compensation must conform to salaries and compensations fixed before that time by the fiscal body of the county or municipality, as the case may be. The commission shall delegate authority to its employees to perform ministerial acts in all cases except where final action of the commission is necessary.

(b) AREA. Each area plan commission shall prescribe the qualifications of, and with the consent of the executive director, fix the compensation of the employees of the planning department, which compensation must conform to salaries and compensations fixed before that time by the county fiscal body. The commission shall delegate authority to its employees to perform ministerial acts in all cases except where final action of the commission or the board of zoning appeals is required by the area planning law.

(c) METRO. The metropolitan development commission shall delegate authority to employees of the department of metropolitan development to perform all ministerial acts in all cases except where final action of the commission or a board of zoning appeals is required by the metropolitan development law.

(d) The plan commission may designate a hearing examiner or a committee of the commission to conduct any public hearing required to be held by the commission. Such a hearing must be held upon the same notice and under the same rules as a hearing before the entire commission, and the examiner or committee shall report findings of fact and recommendations for decision to the commission. The commission shall by rule, provide reasonable opportunity for interested persons to file exceptions to the findings and recommendations, and if any exception is filed in accordance with those rules, the commission shall hold the prescribed hearing. If no exception is filed, the commission shall render its decision without further hearing. [IC 36-7-4-402, as added by acts 1981, P.L. 309, § 23; 1981, P.L. 310, § 19.]

Amendments. The 1981 amendment deleted "METRO" at the beginning of subsection (d), and inserted "plan" following "The" at the beginning of subsection (d).

Collateral References. 63 Am. Jur. 2d, Public Officers and Employees §§ 38 et seq., 261 et seq., 360 et seq.


36-7-4-403. [Repealed.]

Compiler's Notes. This section (Acts 1981, P.L. 309, § 23; 1981, P.L. 3310, § 20), concerning a list of commission members provided the state planning services agency, was repealed by P.L. 12-1983, § 24.

36-7-4-404. Right to sue and be sued. --

(a) ADVISORY. Each advisory plan commission shall sue and be sued collectively by its legal name, styled according to the municipality or county, "_______ Plan Commission," with service of process on the executive director or the president of the commission. No costs may be taxed against the commission or any of its members in any action.

(b) AREA. Each area plan commission shall sue and be sued collectively by its legal name, styled "The Area Plan Commission of _____ County" or a similar title adopted by official resolution of the commission, with service of process on the executive director or by leaving a copy at the office of the commission. No costs may be taxed against the commission or any of its members in any action.

(c) METRO. The metropolitan development
commission shall sue and be sued collectively by its legal name, styled "The Metropolitan Development Commission of County," with service of process on the director of the department of metropolitan development or by leaving a copy at the office of the department. No costs may be taxed against the commission or any of its members in any action. [IC 36-7-4-404, as added by Acts 1981, P.L. 309, § 23; P.L. 192-1984, § 9.]

[500 Series -- Comprehensive Plan]

36-7-4-501. Comprehensive plan required -- Policies. -- A comprehensive plan shall be approved by resolution in accordance with the 500 series [36-7-4-500 -- 36-7-4-512] for the promotion of public health, safety, morals, convenience, order, or the general welfare and for the sake of efficiency and economy in the process of development. The plan commission shall prepare the comprehensive plan. [IC 36-7-4-501, as added by Acts 1981, P.L. 309, § 23; 1981, P.L. 310, § 26; P.L. 335-1985, § 3.]

Compiler's Notes. Section 39 of P.L. 335-1985, effective September 1, 1986, provides: "This act does not affect a proposal initiated before September 1, 1986, to amend, repeal, or otherwise change a comprehensive plan or zoning ordinance under IC 36-7-4. Such a proposal may be considered, adopted, and approved under the statutes in effect before September 1, 1986, as if this act had not been enacted."

Section 33 of P.L. 200-1986 reads: "This act does not affect a proposal initiated before September 1, 1986, to amend, repeal, or otherwise change a comprehensive plan or zoning ordinance under IC 36-7-4. Such a proposal may be considered, adopted, and approved under the statutes in effect before September 1, 1986, as if this act had not been enacted."

Amendments. The 1985 amendment, effective September 1, 1986, added "A comprehensive plan shall be approved by resolution and in accordance with the 500 series" at the beginning of the section and at the end of the section deleted the language beginning "which may include policies for," which listed policies possibly included in a comprehensive plan, and made other minor and related technical changes.


36-7-4-502. Elements required in plan. -- A comprehensive plan must contain at least the following elements:

1. A statement of objectives for the future development of the jurisdiction.

2. A statement of policy for the land use development of the jurisdiction


Amendments. The 1985 amendment, effective September 1, 1986, rewrote this section.

36-7-4-503. Permissible contents of plan. -- A comprehensive plan may, in addition to the elements required by section 502 [36-7-4-502] of this chapter, include the following:

1. Surveys and studies of current conditions and probable future growth within the jurisdiction and adjoining jurisdictions.

2. Maps, plats, charts, and descriptive material presenting basic information, locations, extent, and character of any of the following:

   A. History, population, and physical site conditions.

   B. Land use, including the height, area, bulk, location, and use of private and public structures and premises.

   C. Population densities.

   D. Community centers and neighborhood units.

   E. Blighted areas and conservation areas.

   F. Public ways, including bridges, viaducts, subways, parkways, and other public places.

   G. Sewers, sanitation, and drainage, including handling, treatment, and disposal of excess drainage waters, sewage, garbage, refuse, and other wastes.

   H. Air, land, and water pollution.

   I. Flood control and irrigation.

   J. Public and private utilities, such as water, light, heat, communication, and other services.

   K. Transportation, including rail, bus, truck, air and water transport, and their terminal facilities.

   L. Local mass transit, including taxicabs, buses, and street, elevated, or underground railways.

   M. Parks and recreation, including parks, playgrounds, reservations,
forests, wildlife refuges, and other public places of a recreational nature.

(N) Public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions, and other civic and social service buildings.

(O) Education, including location and extent of schools, colleges, and universities.

(P) Land utilization, including agriculture, forests, and other uses.

(Q) Conservation of energy, water, soil, and agricultural and mineral resources.

(R) Any other factors that are a part of the physical, economic, or social situation within the jurisdiction.

(3) Reports, maps, charts, and recommendations setting forth plans and policies for the development, redevelopment, improvement, extension, and revision of the subjects and physical situations (set out in subdivision (2) of this section) of the jurisdiction so as to substantially accomplish the purposes of this chapter.

(4) A short and long range development program of public works projects for the purpose of stabilizing industry and employment and for the purpose of eliminating unplanned, unsightly, untimely, and extravagant projects.

(5) A short and long range capital improvements program of governmental expenditures so that the development policies established in the comprehensive plan can be carried out and kept up-to-date for all separate taxing districts within the jurisdiction to assure efficient and economic use of public funds.

(6) A short and long range plan for the location, general design, and assignment of priority for construction of thoroughfares in the jurisdiction for the purpose of providing a system of major public ways that allows effective vehicular movement, encourages effective use of land, and makes economic use of public funds. [IC 36-7-4-503, as added by Acts 1981, P.L. 309, § 23; 1981, P.L. 310, § 28; P.L. 335-1985, § 5; P.L. 220-1986, § 9.]

Amendments. The 1985 amendment, effective September 1, 1986, inserted "in addition to the elements required by section 502 of this chapter" in the introductory language, and rewrote subdivisions (1), (2)(R), and (3) through (5).

The 1986 amendment, effective September 1, 1986, added subdivision (6).

38-7-4-504. Governmental consideration of general policy and pattern of development set out in plan -- Validation of plans adopted or approved under prior law -- Consolidation of plans and ordinances. -- (a) After the comprehensive plan is approved for a jurisdiction, each governmental entity within the territorial jurisdiction where the plan is in effect shall give consideration to the general policy and pattern of development set out in the comprehensive plan in the:

(1) Authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities;

(2) Authorization, construction, alteration, or abandonment of public ways, public places, public lands, public structures, or public utilities; and

(3) Adoption, amendment, or repeal of zoning ordinances (including zone maps), subdivision control ordinances, historic preservation ordinances, and other land use ordinances.

(b) A comprehensive plan or master plan adopted or approved under any prior law is validated and continues in effect as the comprehensive plan for the plan commission in existence on September 1, 1986, or any successor plan commission until it becomes a part of, or is amended or superseded by, the comprehensive plan of the latter plan commission. In addition, a thoroughfare plan adopted or approved under any prior law is validated and continues in effect as a part of the comprehensive plan on and after September 1, 1986, until it is amended or superseded by changes in the comprehensive plan approved under this chapter.

(c) AREA. To effect the consolidation of the various plans and ordinances in force in the county and in the participating municipality into one [1] comprehensive plan, the area plan commission shall approve the comprehensive plans of the participating municipalities as its first comprehensive plan. The commission shall also recommend under applicable law to the participating legislative bodies, without amendment, the adoption of the zoning, subdivision control, thoroughfare, and other ordinances relating to the jurisdiction of the participating legislative body. If lands within the jurisdiction of the commission are not regulated by zoning ordinances, the commission shall classify those lands as residential or agricultural, until they can conduct such land use studies as are necessary for reclassification and zoning. Because the unification of the planning and zoning function is of an emergency character, the commission and the participating legislative bodies shall initially adopt these preliminary plans and ordinances by simple resolution,
to continue in effect until finally adopted in conformity with the area planning law. [IC 36-7-4-504, as added by Acts 1981, P.L. 309, § 23; P.L. 335-1985, § 6; P.L. 220-1986, § 10.]

Amendments. The 1985 amendment, effective September 1, 1986, so changed this section that a detailed comparison is impracticable.

The 1986 amendment, effective September 1, 1986, in subsection (b), in the first sentence substituted "September 1" for "January 1" and added the second sentence.

36-7-4-505. Commission request for information -- Compliance of government officials and departments and utility officials. -- (a) When the plan commission undertakes the preparation of a comprehensive plan, the commission may request any public or private officials to make available any information, documents, and plans that have been prepared and that provide any information that relates to the comprehensive plan.

(b) All officials and departments of state government and of the political subdivisions operating within lands under the jurisdiction of the plan commission shall comply with requests under subsection (a).

(c) All officials of public and private utilities operating within lands under the jurisdiction of the plan commission shall comply with requests under subsection (a) to furnish public information. [IC 36-7-4-505, as added by Acts 1981, P.L. 309, § 23; 1981, P.L. 310, § 29; P.L. 310, § 29; P.L. 335-1985, § 7.]

Amendments. The 1985 amendment, effective September 1, 1986, rewrote this section.

36-7-4-506. Thoroughfare plan. -- (a) A thoroughfare plan that is included in the comprehensive plan may determine lines for new, extended, widened, or narrowed public ways in any part of the territory in the jurisdiction.

(b) The determination of lines for public ways, as provided in subsection (a), does not constitute the opening, establishment, or acceptance of land for public way purposes.

(c) After a thoroughfare plan has been included in the comprehensive plan, thoroughfares may be located, changed, widened, straightened, or vacated only in the manner indicated by the comprehensive plan.

(d) After a thoroughfare plan has been included in the comprehensive plan, the plan commission may recommend to the agency responsible to constructing thoroughfares in the jurisdiction the order in which thoroughfare improvements should be made. [IC 36-7-4-506, as added by Acts 1981, P.L. 309, § 23; 1981, P.L. 310, § 30; P.L. 335-1985, § 8; P.L. 220-1986, § 11.]

Amendments. The 1985 amendment, effective September 1, 1986, in subsection (a) in introductory language substituted "Whenever the" for "After the plan commission has adopted a" and "of a unit" for "which" and inserted "adopted under IC 36-7-5," and in subdivision (1) substituted "territory under its jurisdiction" for "municipality or county, as the case may be."

The 1986 amendment, effective September 1, 1986, in subsection (a) substituted "A thoroughfare plan ... may determine lines" for "Whenever the comprehensive plan of a unit includes a thoroughfare plan adopted under IC 36-7-5, the plan commission may determine lines", substituted in the jurisdiction for "under its jurisdiction", and deleted the subdivision (1) designation preceding "determine" and deleted former subdivision (2), regarding required certification of the amended or additional plan"; and added subsections (c) and (d).

36-7-4-507. Notice, publication, and hearing before approval of plan. -- Before the approval of a comprehensive plan, the plan commission must:

(1) Give notice and hold one (1) or more public hearings on the plan;

(2) Publish, in accordance with IC 5-3-1, a schedule stating the times and places of the hearing or hearings. The schedule must state the time and place of each hearing, and state where the entire plan is on file and may be examined in its entirety for at least ten (10) days before the hearing. [IC 36-7-4-507, as added by Acts 1981, P.L. 309, § 23; 1981, P.L. 45 § 18; P.L. 335-1985, § 9.]

Amendments. The 1985 amendment, effective September 1, 1986, so changed this section that a detailed comparison is impracticable.

36-7-4-508. Approval and certification of plan. -- (a) After a public hearing or hearings have been held, the plan commission may approve the comprehensive plan and upon approval shall certify it to each participating legislative body.

(b) The plan commission may approve each segment of the comprehensive plan as it is completed. However, that approval does not preclude future examination and amendment of the comprehensive plan under the 500 series [36-7-4-500 -- 36-7-4-512].

(c) METRO. Approval of the comprehensive plan by the metropolitan development commission is final. However, the commission may certify the comprehensive plan to the legislative body of each municipality in the county, to the executive of the consolidated city, and to any other governmental entity that the commission wishes. One (1) copy of the plan shall be filed in the county recorder’s office. [IC 36-7-4-508, as added by Acts 1981, P.L. 309, § 23; P.L. 335-1985, § 10.]
Amendments. The 1985 amendment, effective September 1, 1986, so changed this section that a detailed comparison is impracticable.

36-7-4-509. Resolution by legislative body concerning plan -- Status of plan. -- (a) ADVISORY-AREA. After certification of the comprehensive plan, the legislative body may adopt a resolution approving, rejecting, or amending the plan. Such a resolution requires only a majority vote of the legislative body, and is not subject to approval or veto by the executive of the adopting unit, and the executive is not required to sign it.

(b) ADVISORY-AREA. The comprehensive plan is not effective for a jurisdiction until it has been approved by a resolution of its legislative body. After approval by resolution of the legislative body of the unit, it is official for each unit that approves it. Upon approval of the comprehensive plan by the legislative body, the clerk of the legislative body shall place one (1) copy of the comprehensive plan on file in the office of the county recorder. [IC 36-7-4-509, as added by Acts 1981, P.L. 309, § 23; P.L. 335-1985, § 11; P.L. 220-1986, § 12.]

Amendments. The 1985 amendment, effective September 1, 1986, so changed this section that a detailed comparison is impracticable.

The 1986 amendment, effective September 1, 1986, in subsection (b) inserted "of the legislative body" in the last sentence.


36-7-4-510. Rejection or amendment of plan. -- (a) ADVISORY-AREA. If the legislative body, by resolution, rejects or amends the comprehensive plan, then it shall return the comprehensive plan to the plan commission for its consideration, with a written statement of the reasons for its rejection or amendment.

(b) ADVISORY-AREA. The commission has sixty (60) days in which to consider the rejection or amendment and to file its report with the legislative body. However, the legislative body may grant the commission an extension of time, of specified duration, in which to file its report. If the commission approves the amendment, the comprehensive plan stands, as amended by the legislative body, as of the date of the filing of the commission’s report with the legislative body. If the commission disapproves the rejection or amendment, the action of the legislative body on the original rejection or amendment stands only if confirmed by another resolution of the legislative body.

(c) ADVISORY-AREA. If the commission does not file a report with the legislative body within the time allotted under subsection (b), the action of the legislative body in rejecting or amending the comprehensive plan becomes final. [IC 36-7-4-510, as added by Acts 1981, P.L. 309, § 23; 1981, P.L. 310, § 31; P.L. 335-1985, § 12; P.L. 220-1986, § 13.]

Amendments. The 1985 amendment, effective September 1, 1986, so changed this section that a detailed comparison is impracticable.

The 1986 amendment, effective September 1, 1986, in subsection (b) inserted the present second sentence; and in subsection (c) substituted "the time allotted under subsection (b)" for "sixty (60) days".

NOTES TO DECISIONS

Predecessor Statutes.

Although former 18-7-4-510(a) was not specifically referred to in former 18-7-4-511(a), stating procedure for amendments to the zoning plan, it was the legislative intent that the statute apply to the predecessor of this section. Common Council v. Fort Wayne Plan Comm’n, 443 N.E.2d 843 (Ind. App. 1982).

36-7-4-511. Approval of amendments. -- (a) Each amendment to the comprehensive plan must be approved according to the procedure set forth in the 500 series.

(b) ADVISORY-AREA. If the legislative body wants an amendment, it may direct the plan commission to prepare the amendment and submit it in the same manner as any other amendment to the comprehensive plan. The commission shall prepare and submit the amendment within sixty (60) days after the formal written request by the legislative body. However, the legislative body may grant the commission an extension of time, of specified duration, in which to prepare and submit the amendment. [IC 36-7-4-511, as added by Acts 1981, P.L. 309, § 23; P.L. 335-1985, § 13; P.L. 220-1986, § 14.]

Amendments. The 1985 amendment, effective September 1, 1986, so changed this section that a detailed comparison is impracticable.

The 1986 amendment, effective September 1, 1986, in subsection (b), in the second sentence deleted "plan preceding "commission," and added the last sentence.

NOTES TO DECISIONS

Predecessor Statute.

Although former 18-7-4-511(a) did not specifically refer to former 18-7-4-510(a), concerning
the rejection or amendment of the comprehensive plan and ordinance by the legislative body, it was the legislative intent that the predecessor statute apply to that section. Common Council v. Fort Wayne Plan Comm'n, 443 N.E.2d 843 (Ind. App. 1982).

36-7-4-512. Capital improvement projects. -- METRO. This section applies only to capital improvements projects consisting of real or personal property (or improvements) that have a useful life of more than one (1) year and a value of more than one hundred thousand dollars ($100,000). At least thirty (30) days before a governmental entity within the county:

(1) Undertakes or acquires any such capital improvement project;

(2) Starts the required proceedings to spend money or let contracts for such a project; or

(3) Authorizes the issuance of bonds for the purpose of financing such a project; the government entity must notify the metropolitan development commission in writing of the location, cost, and nature of the project. The commission may, by rule, limit the kinds of capital improvement projects that are subject to the notification requirement of this section. The commission may designate an agency responsible for fiscal analyses or control to receive notifications required by this section. [IC 36-7-4-512, as added by Acts 1981, P.L. 309, § 23; 1981, P.L. 310, § 32; P.L. 335-1985, § 14.]

Amendments. The 1985 amendment, effective September 1, 1986, deleted former subsections (a) and (b), deleted the subsection (c) designation, and rewrote the remaining language to the extent that a detailed comparison would be impracticable.

[600 Series -- Zoning Ordinance]

36-7-4-600. Citation of series. -- This series (sections 600 through 699 [36-7-4-600 -- 36-7-4-612] of this chapter) may be cited as follows: 600 SERIES -- ZONING ORDINANCE. [IC 36-7-4-600, as added by Acts 1981, P.L. 309, § 23.]

36-7-4-601. Purpose -- Classification and regulation. -- (a) The legislative body having jurisdiction over the geographic area described in the zoning ordinance has exclusive authority to adopt a zoning ordinance under the 600 series. However, no zoning ordinance may be adopted until a comprehensive plan has been approved for the jurisdiction under the 500 series of this chapter.

(h) When it adopts a zoning ordinance, the legislative body shall:

(1) Designate the geographic area over which the plan commission shall exercise jurisdiction; and

(2) Incorporate by reference into the ordinance zone maps, as prepared by the plan commission under subsection (e).

(c) When it adopts a zoning ordinance, the legislative body shall act for the purpose of:

(1) Securing adequate light, air, convenience of access, and safety from fire, flood, and other danger;

(2) Lessening or avoiding congestion in public ways;

(3) Promoting the public health, safety, comfort, morals, convenience, and general welfare;

(4) Otherwise accomplishing the purposes of this chapter.

(d) For the purposes described in subsection (c), the legislative body may do the following in the zoning ordinance:

(1) Establish one (1) or more districts, which may be for agricultural, commercial, industrial, residential, special, or unrestricted uses and any subdivision or combination of these uses. A district may include geographic areas that are not continuous. A geographic area may be subject to more than one (1) district.

(2) In each district, regulate how real property is developed, maintained, and used. This regulation may include:

[A] Requirements for the area of front, rear, and side yards, courts, other open spaces, and total lot area;

[B] Requirements for site conditions, signs, and nonstructural improvements, such as parking lots, ponds, fills, landscaping, and utilities;

[C] Provisions for the treatment of uses, structures, or conditions that are in existence when the zoning ordinance takes effect;

[D] Restrictions on development in areas prone to flooding;

[E] Requirements to protect the historic and architectural heritage of the community;

[F] Requirements for structures, such as location, height, area, bulk, and floor space;

[G] Restrictions on the kind and intensity of uses;

[H] Performance standards for the emission of noises, gases, heat, vibration, or particulate matter into the air or ground or across lot
(I) Standards for population density and traffic circulation; and

(J) Any other provisions that are necessary to implement the purpose of the zoning ordinance.

(3) In districts containing areas with special or unusual development problems or needs for compatibility, require that the plan commission approve development plans for consistency with general development standards.

(4) Provide for planned unit development.

(5) Establish in which districts the subdivision of land may occur.

(e) When it prepares a proposal to initially adopt a zoning ordinance for a jurisdiction, the plan commission shall also prepare zone maps. The purpose of the zone maps is to indicate the districts into which the incorporated areas and unincorporated areas (if any) are divided. [IC 36-7-4-601, as added by Acts 1981, P.L. 309, § 23; 1982, P.L. 212, § 2; P.L. 355-1983, § 1; P.L. 335-1985, § 15; P.L. 220-1986, § 15.]

Compiler’s Notes. Section 33 of P.L. 220-1986 reads: "This act does not affect a proposal initiated before September 1, 1986, to amend, repeal, or otherwise change a comprehensive plan or zoning ordinance under IC 36-7-4. Such a proposal may be considered, adopted, and approved under the statutes in effect before September 1, 1986, as if this act had not been enacted."

NOTES TO DECISIONS

Building Permits.

Predecessor statute left the authority to issue building permits with the town engineer under a town ordinance and provided no appeal therefrom. Southport Bd. of Zoning Appeals v. Southside Ready Mix Concrete, Inc., 242 Ind. 133, 176 N.E.2d 112 (1961).

Conflict with Other Statutes.

There was no conflict between predecessor statute and a statutory provision that existing plan commissions shall exercise only such powers as are specifically conferred by the act since that provision meant that such powers had to find authority in the act either by delegation or by express provision of the act itself. Mogilner v. Metropolitan Plan Comm’n, 236 Ind. 298, 140 N.E.2d 220 (1957).

Constitutionality.


Fact that a former paragraph similar to (b)(4)(E) of this section treated first class cities differently than other cities did not make it violative of U.S. Const., amend. 14 or Ind. Const., art 1, § 23. Mogilner v. Metropolitan Plan Comm’n, 236 Ind. 298, 140 N.E.2d 220 (1957).

--Zoning Regulations.

Reasonable zoning regulations are a proper exercise of the state’s police power and are not unconstitutional merely because they regulate the uses of private property. Field v. Area Plan Comm’n, 421 N.E.2d 1132 (Ind. App. 1981).

Where a person seeks to challenge the constitutionality of a zoning ordinance as applied to their property, the issue must first be presented to the board of zoning appeals. Field v. Area Plan Comm’n, 421 N.E.2d 1132 (Ind. App. 1981).

Legislative Authority.

The legislature could confer power upon boards of county commissioners to zone and regulate the construction, repair, and alteration of buildings in suburban areas. Board of County Comm’rs v. Sanders, 218 Ind. 43, 30 N.E.2d 713, 131 A.L.R. 1048 (1940).


Grant of Special Use.

Statute did not empower a city council to grant special use to a particular piece of property when that piece of property retained the original zoning classification and a provision of the zoning ordinance attempting to reserve such power was invalid. First Church of Nazarene v. Weaver, 154 Ind. App. 157, 33 Ind. Dec. 553, 289 N.E.2d 155 (1972).

Residential Districts.

The zoning into the residential class of property bordering on factories near railroad tracks deprived the owner of such property without due process of law, where the property could not be used properly for residential purposes and where such action would not promote the health, safety, convenience, and general welfare of the inhabitants of the part of the city affected. Nectow v. City of Cambridge, 277 U.S. 183, 48 S. Ct. 447, 72 L. Ed. 842 (1928).

Setback Lines.

An ordinance forbidding the erection of buildings nearer than a specified distance from the street line was constitutional, and the fact that it conferred authority to make exceptions in the applica-
tion of the ordinance did not render it unconstitutional. Gorieb v. Fox, 274 U.S. 603, 47 S. Ct. 675, 71 L. Ed. 1228 (1927).

Collateral References. 82 Am. Jur. 2d Zoning and Planning § 69, 79 et seq.


Access.

--Refusal of use of residentially zoning land for business access by abutter to street or highway. 73 A.L.R.2d 679.

--Variance or exception with respect to industrial, commercial, or business access to street or highway. 63 A.L.R.2d 1450.

Airport, use of land near or surrounding, validity of zoning ordinance limiting. 77 A.L.R.2d 1362.

Amortization of nonconforming uses, validity of provisions for. 22 A.L.R.3d 1134.

Annexation, zoning regulations applicable to territory annexed to a municipality. 41 A.L.R.2d 1483.

Area requirements for residential use. 95 A.L.R.2d 716, 95 A.L.R.2d 761.

Attack on validity of zoning ordinance on ground of improper delegation of authority to board or officer. 58 A.L.R.2d 1063.

Consent of neighboring property owners to permit or sanction specified uses or construction of buildings, validity of requirement. 21 A.L.R.2d 551.

Construction of zoning regulations prescribing minimum area for house lots or requiring an area proportionate to number of families to be housed. 95 A.L.R.2d 761.

Delegation of legislative authority by zoning ordinance or similar public regulation requiring consent of neighboring property owners to permit or sanction specified uses or construction of buildings. 21 A.L.R.2d 553.

Constitutionality of zoning based on size of commercial or industrial enterprises or units. 7 A.L.R.2d 1007.

Eminent domain, damages in, zoning as a factor in determination of. 9 A.L.R.3d 291.

Fences, hedges or the like, prohibiting or limiting. 66 A.L.R.2d 1294.

Fraternities or sororities, college, application of zoning regulations to. 25 A.L.R.3d 921.

Front setback provisions in zoning ordinance or regulation, construction of. 93 A.L.R.2d 1244.

Governmental projects or activities, applicability of zoning regulations to. 61 A.L.R.2d 970.

Nonconforming use.

Construction of front setback provisions in zoning ordinance or regulation. 93 A.L.R.2d 1244.

--Validity of provisions for amortisation. 22 A.L.R.3d 1134.

Parking places, privately owned. 29 A.L.R.2d 867.

Protest or petition by property owners, validity and construction of provisions of zoning statute or ordinance concerning. 4 A.L.R.2d 335.

Purchase of real property as precluded from attacking validity of zoning regulation existing at the time of the purchase and affecting the purchased property. 17 A.L.R.3d 743.

Racial or religious provisions of ordinance, validity where ordinance is not confined to that matter but embraces a broader zoning plan. 126 A.L.R. 638.

Remedies to compel municipal officials to enforce zoning regulations. 35 A.L.R.2d 1135.

Standing of lot owner to challenge validity or regularity of zoning changes dealing with neighboring property. 37 A.L.R.2d 1143.

Uncertainty and indefiniteness of district boundary lines, validity of zoning regulations in respect to. 39 A.L.R.2d 768.

Validity of statutory classifications based on population—zoning, buildings and land use statutes. 98 A.L.R.3d 679.

Validity of zoning ordinance or similar public regulation requiring consent of neighboring property owners to permit or sanction specified uses or construction of buildings. 21 A.L.R.2d 551.

What zoning regulations are applicable to territory annexed to a municipality. 41 A.L.R.2d 1483.

[700 Series--Subdivision Control]

36-7-4-700. Citation of series. -- This series (sections 700 through 799 [36-7-4-700 -- 36-7-4-713] of this chapter) may be cited as follows: 700 SERIES-SUBDIVISION CONTROL. [IC 36-7-4-700, as added by Acts 1981, P.L. 309, § 23; 1982, P.L. 211, § 4.]

36-7-4-701. Exclusive control over approval of plats and replats-- Primary approval of certain subdivisions without notice and hearing--Appointment of plat committee. -- (a) The legislative body shall, in the zoning ordinance adopted
under the 600 series of this chapter, determine the zoning districts in which subdivision of land may occur.

(b) The plan commission shall then recommend to each participating legislative body an ordinance containing provisions for subdivision control, which ordinance shall be adopted, amended, or repealed in the same manner as the zoning ordinance. After the subdivision control ordinance has been adopted and a certified copy of the ordinance has been filed with the county recorder, the plan commission has exclusive control over the approval of all plats and replats involving land covered by the subdivision control ordinance, subject to subsection (c) and subsection (f).

(c) ADVISORY. The municipal plan commission has exclusive control over the approval of plats and replats involving unincorporated land within its jurisdiction, unless the legislative body of the county has adopted a subdivision control ordinance covering those lands. In this case, the county plan commission has exclusive control over the approval.

(d) The subdivision control ordinance may provide that the subdivision of land that does not involve the opening of a new public way and that complies in all other respects with the subdivision control ordinance and the zoning ordinance may be granted primary approval by the plat committee without public notice and hearing, subject to appeal to the plan commission. Within ten (10) days after primary approval under this subsection, the plan commission staff shall provide for due notice to interested parties of their right to appeal under section 708 [36-7-4-708] of this chapter. The notice shall be given in accordance with section 706 [36-7-4-706] of this chapter.

(e) The plan commission may appoint a plat committee to hold hearings on and approve plats and replats on behalf of the commission. The plat committee consists of three (3) or five (5) persons, with at least one (1) of the members being a member of the commission. Each appointment of a member of the plat committee is for a term of one (1) year, but the commission may remove a member from the committee. The commission must mail notice of the removal, along with written reasons, if any, for the removal, to the member at his residence address. A member who is removed may not appeal the removal to a court or otherwise. The plat committee may take action only by a majority vote.

(f) AREA. A participating legislative body may, in the subdivision control ordinance, reserve to itself the power to waive any condition that is imposed upon primary approval of plat by the plan commission under section 702 [36-7-4-702] of this chapter. The legislative body shall prescribe the procedure under which a person may apply for a waiver of a condition under this subsection. [IC 36-7-4-701, as added by Acts 1981, P.L. 309, § 23; 1982, P.L. 211, § 5; P.L. 335-1985, § 29.]

Compiler's Notes. Section 39 of P.L. 335-1985, effective September 1, 1986, provides: "This act does not affect a proposal initiated before September 1, 1986, to amend, repeal, or otherwise change a comprehensive plan or zoning ordinance under IC 36-7-4. Such a proposal may be considered, adopted, and approved under the statutes in effect before September 1, 1986, as if this act had not been enacted."

Amendments. The 1985 amendment, effective September 1, 1986, added "and subsection (f)" at the end of subsection (b) and added subsection (f).


36-9-3. REGIONAL TRANSPORTATION AUTHORITIES

36-9-3-2. Establishment of authority -- Purposes. -- (a) A county fiscal body may, by ordinance, establish a regional transportation authority (referred to as "the authority" in this chapter) for the purpose of acquiring, improving, operating, maintaining, financing, and generally supporting a public transportation system that operates within the boundaries of an area designated as a transportation planning district by the state department of transportation. However, only one [1] public transportation authority may be established within an area designated as a transportation planning district by the state department of transportation.

(b) The ordinance establishing the authority must include an effective date and a name for the authority. The words "regional transportation authority" must be included in the name of the authority. [IC 36-6-3-2, as added by Acts 1981, P.L. 309, § 76; P.L. 12-1983, § 23.]

36-9-3-3. Expansion of existing authority. -- The authority may be expanded to include one or more additional counties within the same planning district if resolutions approving the expansion are adopted by the fiscal bodies of:

(1) The counties to be added to the authority; and

(2) A majority of the counties already in the authority. [IC 36-9-3-3, as added by Acts 1981, P.L. 309, § 76.]

36-9-3-4. Removal of county from authority. -- If the fiscal body of any county finds that the county should be removed from the authority, it shall adopt a resolution favoring the removal of that county from the authority. The resolution must establish a date upon which the membership
ceases, but that date must be at least [6] months after the date of the adoption of the resolution. Removal of the county from the authority does not relieve the county from any obligations incurred on the county's behalf by the authority while the county was a member of the authority. [IC 36-9-3-4, as added by Acts 1981, P.L. 309, § 76.]

36-9-3-5. Regional transportation authority boards -- Composition. -- (a) An authority is under the control of a board (referred to as "the board" in this chapter) that, except as provided in subsections (b) and (c), consists of:

(1) Two [2] members appointed by the executive of each county in the authority;

(2) One [1] member appointed by the executive of the largest municipality in each county in the authority;

(3) One [1] member appointed by the executive of each second-class city in a county in the authority; and

(4) One [1] member from any other political subdivision that has public transportation responsibilities in a county in the authority.

(b) An authority that includes a consolidated city is under the control of a board consisting of:

(1) Two [2] members appointed by the executive of the county having the consolidated city;

(2) One [1] member appointed by the board of commissioners of the county having the consolidated city;

(3) One [1] member appointed by the executive of each other county in the authority; and

(4) One [1] member appointed by the fiscal body of any other political subdivision that has public transportation responsibilities in a county in the authority.

(c) An authority that includes a county having more than two [2] second-class cities is under the control of a board consisting of:

(1) One [1] person appointed by the governor who must be a resident of the transportation planning district that contains the authority; and

(2) For each county in the authority:

(A) One [1] member appointed by the executive of each of the three [3] largest cities;

(B) One [1] member appointed by the executives of the next four [4] largest municipalities acting jointly;

(C) One [1] member appointed by the executives of all other municipalities acting jointly;

[D] One [1] member appointed by the county executive who may be a member of the executive;

[E] One [1] member appointed by the county fiscal body who may be a member of the fiscal body; and

[F] The county surveyor or a person appointed by the surveyor. [IC 36-9-3-5, as added by Acts 1981, P.L. 309, § 76.]

36-9-3-18. Powers and duties of board. -- The board may:

(1) Exercise the executive and legislative powers of the authority as provided by this chapter;

(2) As a municipal corporation, sue and be sued in its name;

(3) Sell, lease, or otherwise contract for advertising in or on the facilities of the authority;

(4) Protect all property owned or managed by the board;

(5) Adopt an annual budget;

(6) Incur indebtedness in the name of the authority in accordance with this chapter.

(7) Acquire real, personal, or mixed property by deed, purchase, or lease and dispose of it for use in connection with or for administrative purposes;

(8) Receive gifts, donations, bequests, and public trusts, agree to conditions and terms accompanying them, and bind the authority to carry them out;

(9) Receive federal or state aid and administer that aid;

Erect the buildings or structures needed to administer and carry out (10) this chapter;

(11) Determine matters of policy regarding internal organization and operating procedures not specifically provided for by law;

36-9-6.1. THOROUGHFARE PROJECTS

36-9-6.1-1. Applicability. -- This chapter applies to each unit that:

(1) Has established an advisory plan commission or a metropolitan plan commission under IC 36-7-4-202; or

(2) Is participating in an area planning department established under IC 36-7-4-202. [P.L. 220-1986, § 30.]
38-9-6.1-2. **Tax levy.** -- (a) The fiscal body of a unit that has adopted a thoroughfare plan under IC 36-7-4 may levy a tax of fifteen cents ($0.15) on each one hundred dollars ($100) of taxable property in the unit. The tax may be levied annually, in the same way that other property taxes are levied.

(b) The taxes levied under this section shall be collected in the same manner as other property taxes and deposited in a separate and continuing fund to be known as the thoroughfare fund. The fiscal officer of the unit may make payments or transfers from this fund only on warrants of the works board for work related to the thoroughfare plan. [P.L. 220-1986, § 30.]

38-9-6.1-3. **Powers of works board.** -- Except as provided in section 5 [38-9-6.1-5] of this chapter, a works board carrying out a thoroughfare plan under this chapter:

(1) Has the same powers to:
   (a) Appropriate or condemn property;
   (b) Lay out, change, widen, straighten, or vacate public ways or public places;
   (c) Award and pay damages; and
   (d) Assess and collect benefits;

(2) Shall proceed in the same manner; and

(3) Is subject to the same rights of property owners, including the right to appeal; as a works board that appropriates property under IC 32-11 and lays out, changes, widens, straightens, or vacates public ways or public places under IC 36-9-6. [P.L. 220-1986, § 30.]

38-9-6.1-4. **Adoption of resolution.** -- A works board that wants to proceed with a project in order to carry out a thoroughfare plan may adopt a resolution:

(1) Describing the proposed project;

(2) Setting out the items necessary for completion of the project;

(3) Including complete plans and specifications for all parts of the project other than the appropriation of property;

(4) Including an estimate by the civil engineer of the unit of the total cost of the project; and

(5) Describing the property benefited by the project, if any, that will be subject to assessment for that benefit. [P.L. 220-1986, § 30.]

38-9-6.1-5. **Plans, specifications, and contracts.** -- Plans, specifications, and contracts for a project proposed under section 4 [38-9-6.1-4] of this chapter must be prepared, adopted, and let in the manner required by IC 36-9-18, except that the provisions of IC 36-9-18 for remonstrance by resident freeholders do not apply. Separate phases of a project may be included in separate plans and specifications, and the work on separate phases may be done by contract or otherwise, as separate improvements. [P.L. 220-1986, § 30.]

38-9-6.1-6. **Contents of projects.** -- Projects proposed under section 4 of this chapter may include:

(1) The appropriation of property;

(2) The opening, changing, widening, straightening, or vacating of any public way, public way crossing, railway, right-of-way, or public place in the unit;

(3) The removal of any pavement, sidewalk, curb, parkway, building, or other structure;

(4) The grading of any public way or public place; or

(5) The construction or reconstruction of any pavement, street, sidewalk, curb, or structure. [P.L. 220-1986, § 30.]

38-9-6.1-7. **Notice of public hearing.** -- After publication of notice in accordance with IC 5-3-1, the works board shall hold a public hearing on the resolution adopted under section 4 [38-9-6.1-4] of this chapter. The notice must:

(1) Fix the date of the hearing;

(2) State that the resolution will be considered at the hearing; and

(3) State that persons interested in or affected by the proposed project may speak at the hearing. [P.L. 220-1986, § 30.]

38-9-6.1-8. **Consideration of objections at hearing -- Determinations.**

-- At the hearing under section 7 [38-9-6.1-7] of this chapter, the works board shall consider objections to the proposed project and, if it decides to proceed with the project shall:

(1) Determine what part of the cost of the project or any separate phase of the project, including damages increased by a court on appeal, shall be paid by the unit out of the thoroughfare fund as a benefit to the unit at large;

(2) Determine what part, if any, of the cost of the project or any separate phase of the project, including damages awarded by the works board, shall be assessed as benefits on the real property within a special benefit district, and fix the boundaries of that district; and

(3) Take final action, which is conclusive on all persons, confirming, modifying, or rescinding its original resolution. [P.L. 220-1986, § 30.]
36-9-6.1-9. Assessments -- Duties of board. -- If the works board approves a project and decides to assess a part of the cost of that project against the property specially benefited, the board shall:

(1) Advertise for bids;

(2) Let contracts; and

(3) Assess costs; for the whole project or separate phases of the project, in the manner prescribed by IC 36-9-18. [P.L. 220-1986, § 30.]

36-9-6.1-10. Assessments -- Rights of property owners. -- The owners of property affected by an assessment under section 9 [36-9-6.1-9] of this chapter have the same rights as property owners affected by an assessment under IC 36-9-18. [P.L. 220-1986, § 20.]

36-9-6.1-11. Bonds -- Issuance. -- If a unit's costs in acquiring property and paying benefits assessed against the unit under this chapter exceed the balance in the unit's thoroughfare fund, the unit may issue bonds in an amount sufficient to pay all or part of those costs. The bonds must be:

(1) Approved by the executive of the unit;

(2) Authorized by ordinance of the fiscal body of the unit;

(3) Issued and sold in the same form and manner, including the same interest rate and maturities, as bonds for general purposes of the unit [P.L. 220-1986, § 30.]

36-9-6.1-12. Bonds -- Use of proceeds. -- Proceeds from the sale of bonds under section 11 [36-9-6.1-11] of this chapter shall be deposited in the thoroughfare fund and used by the unit to pay for:

(1) Property acquired by the unit;

(2) Benefits assessed against the unit at large; and

(3) Damages increased by a court on appeal under this chapter. [P.L. 220-1986, § 30.]

36-9-6.5. METROPOLITAN THOROUGHFARE DISTRICT

36-9-6.5-1. Applicability of chapter. -- This chapter applies to each county having a consolidated city. [IC 36-9-6.5-1, as added by Acts 1982, P.L. 77, § 12.]

36-9-6.5-2. Definitions. -- As used in this chapter:

"Board" refers to the board of transportation of the consolidated city, subject to IC 36-3-4-23.

"Department" refers to the department of transportation of the consolidated city, subject to IC 36-3-4-23.

"Operation" includes control and engineering of traffic, traffic safety, road lighting, road access, utility locations, cuts in roads, vehicular parking and stopping, improvements of traffic movement, uses of the rights-of-way for roads, and mass transportation routes.

"Reconstruction" includes resurfacing, widening, and rebuilding. [IC 36-9-6.5-1, as added by Acts 1982, P.L. 77, § 12; P.L. 220-1986, § 31.]

36-9-6.5-3. Taxing district. -- The metropolitan thoroughfare district created by IC 36-3-1-6 constitutes a special taxing district for the purposes of programming thoroughfares within the district. [IC 36-9-6.5-3, as added by Acts 1982, P.L. 77, § 12.]

NOTES TO DECISIONS

Constitutionality.

The creation of a thoroughfare district did not violate article 13, § 1 of the state constitution by evading the bonding limit placed by such section on the consolidated city. Dortch v. Lugar, 255 Ind. 545, 24 Ind. Dec. 357, 286 N.E.2d 25 (1971).

36-9-6.5-4. Resolutions on projects of the district. -- Whenever the board determines that it is necessary for the general welfare of the persons residing within the district and that it will be of public utility and benefit to the property in the district to undertake and carry out any project of construction, reconstruction, or operation upon thoroughfares within the district, it shall adopt a resolution of the necessity of the project and the purpose of the department to proceed with it. The board, as a part of the resolution, shall adopt the plans and specifications proposed for the entire project, and shall determine the estimated cost of all work and all acquisitions necessary to carry out the project. [IC 36-9-6.5-4, as added by Acts 1982, P.L. 77, § 12.]

36-9-6.5-5. Notice of resolution. -- The resolution, plans and estimates, and all other matter included with the resolution shall be filed and opened to inspection by the public at the office of the department. The department shall give notice of:

(1) The adoption and general purport of the resolution;

(2) The fact that the resolution, and included material, have been prepared and are on file in the office of the department and can be inspected;

(3) That the board will on a date named receive and hear objections from any person interested in or who will be affected by the resolution.

The notice shall be published in accordance with IC 5-3-1 [5-3-1-1 -- 5-3-1-9]. [IC 36-9-6.5-5, as added by
36-9-6.5-6. Public hearing on resolution. -- At or before the time fixed for the hearing designated in the notice published under section 5 [36-9-6.5-5] of this chapter, any person interested in or who will be affected by the proposed project may file with the department a written remonstrance against the proposed project, in whole or in part. At the hearing, which may be adjourned from time to time, the board:

(1) Shall hear all persons who are interested in the proceedings;

(2) Shall finally determine whether or not the proposed project, in whole or in any part, is necessary for the general welfare of the persons residing within the district and will be of public utility and benefit to the property in the district; and

(3) May confirm, modify, or rescind the resolution.

The decision shall be entered in the records of the department. [IC 36-9-6.5-6, as added by Acts 1982, P.L. 77, § 12.]

36-9-6.5-7. Carrying out project after final approval of resolution -- Modification. -- After final approval of the resolution by the board, the department shall proceed with the project, work, and capital improvements, or any parts of them, and shall let all contracts, upon separate plans and specifications, in accordance with IC 36-1-12 [36-1-12-1 -- 36-1-12-18]. The projects authorized may be modified by the board if it considers modification necessary to carry out the purpose of the declaration and resolution, so long as the modifications do not increase the estimate of the total cost of the project as adopted in the original resolution. All other changes must be processed as new declarations. [IC 36-9-6.5-7, as added by Acts 1982, P.L. 77, § 12.]

36-9-6.5-8. Special benefit tax. -- All property located within the district is subject to a special tax for the purpose of providing money to pay the total cost of the project, including all necessary incidental expenses of programming, planning, and designing. The special tax constitutes the amount of benefits resulting to all of that property from the acquisition or work, and shall be levied as provided in this chapter. [IC 36-9-6.5-8, as added by Acts 1982, P.L. 77 § 12.]

NOTE TO DECISIONS

Constitutionality.

The thoroughfares authorized by former 18-4-10-9 were local improvements and the issuance of bonds to finance them, to be paid out of benefit taxes levied upon property within district, did not constitute an evasion of the debt limitation of article 13, § 1 of the state constitution. Dortch v. Lugar, 255 Ind. 545, 24 Ind. Dec. 357, 266 N.E.2d 25 (1971).

36-9-6.5-9. Special district bonds. -- (a) For the purpose of raising money to pay for any land or right-of-way to be acquired for thoroughfares within the district or to pay for any capital improvement necessary for the construction, reconstruction, or operation of thoroughfares within the district, and in anticipation of the special benefit tax, the board may cause bonds to be issued in the name of the consolidated city for the benefit of the district. The bonds shall be issued in accordance with IC 36-3-5-8.

(b) The bonds may be in an amount not to exceed the estimated cost of all land and rights-of-way to be acquired and the estimated cost of all capital improvements, including all expenses necessarily incurred in connection with the proceedings, together with a sum sufficient to pay the costs of supervision and inspection during the period of construction or reconstruction and all costs of programming, planning, and designing the capital improvements. The expenses to be covered in the amount of the bond issue include all expenses of every kind actually incurred preliminary to the acquisition of the property and the construction of work, such as the cost of necessary records, engineering expenses, publication of notices, salaries, and other expenses necessary to be incurred in connection with the acquisition of the property, the letting of the contract, and the sale of bonds.

(c) The bonds issued may not exceed the estimates for the project as determined by the board under section 4 [36-9-6.5-4] of this chapter.

(d) Any surplus of bond proceeds remaining after all costs and expenses have been fully paid shall be paid into the metropolitan thoroughfare district bond fund. The board may appropriate the proceeds of the bonds. [IC 36-9-6.5-9, as added by Acts 1982, P.L. 77, § 12.]

36-9-6.5-10. Limitations on special district bonds -- Payment. -- (a) When the total issue of bonds under section 9 [36-9-6.5-9] of this chapter for purposes of the district, including bonds already issued or to be issued, exceeds four percent [4%] of the total assessed valuation of the property within the district, additional bonds may not be issued. All bonds or obligations issued in violation of this subsection are void.

(b) Bonds issued under section 9 of this chapter are not, in any respect, corporate obligations or indebtedness of the consolidated city but constitute an indebtedness of the metropolitan thoroughfare district, and the bonds and interest on them are payable only out of revenues of the district. The bonds must recite these terms upon their face. [IC 36-9-6.5-10, as added by Acts 1982, P.L. 77, § 12.]
36-9-6.5-11. Proceeds of special district bonds. -- All proceeds from the sale of bonds issued under section 9 [36-9-6.5-9] of this chapter shall be kept as a separate and specific fund to pay for the cost of land, rights-of-way, and other property acquired and of the cost of the work and all costs and expenses incurred in connection with it, and no part may be used for any other purpose. The fund shall be deposited at interest with the depository or depositories of other public funds of the consolidated city, and all interest collected on it belongs to the fund. [IC 36-9-6.5-11, as added by Acts 1982, P.L. 77, § 12.]

36-9-6.5-12. Special bond tax -- Metropolitan district bond fund. -- (a) For the purpose of raising money to pay all bonds issued under section 9 [36-9-6.5-9] of this chapter and any interest on them, the legislative body may levy each year a special tax upon all of the property located within the district, in such manner as to meet and pay the principal of the bonds as they severally mature, together with all accruing interest on them. Other revenues and funds may be annually allocated by statute or ordinance to be applied to reduction of the bonds and their interest for the next succeeding year, but to the extent that monies on hand are insufficient for payments required in the next succeeding year, the special tax shall be levied.

(b) The tax so collected, and all other allocated monies, shall be accumulated and kept in a separate fund to be known as the "Metropolitan Thoroughfare District Bond Fund," and shall be applied to the payment of the district bonds and interest as they severally mature, and to no other purposes. All accumulations may be deposited, at interest, with one [1] of the depositories of other funds of the consolidated city, and all interest collected belongs to the fund. [IC 36-9-6.5-12, as added by Acts 1982, P.L. 77, § 12.]
CHAPTER 5

OBTAINING RIGHT-OF-WAY

4-17-7. STATE INSTITUTIONS - CONDEMNATION OF RIGHT-OF-WAY TO CONNECT INSTITUTION TO HIGHWAY

4-17-7-1 [22-119]. Connecting driveway with highway - Condemnation. - Whenever the board of trustees, board of managers, or other board of control of any benevolent, correctional, educational, or other institution belonging to the state of Indiana shall deem it necessary or desirable for the welfare or convenience of such institution to connect any driveway laid out on the premises of the same with a public highway located in the immediate neighborhood thereof, which public highway is separated from the premises of such institution by property belonging to any person, persons, corporation, or corporations, said institution by its board of trustees or managers is hereby authorized and empowered to condemn a right-of-way for a crossing over such intervening property, to connect said driveway with such public highway, and for that purpose shall possess the rights and powers secured by IC 32-11-1, shall be subject to the duties imposed thereby, and shall conduct such condemnation proceedings in conformity therewith. Whenever, in any case, the board of trustees, board of managers, or other board of control of any such institution shall institute proceedings under the authority of this chapter to condemn a right-of-way for such crossing over the right-of-way of any railway company, such board is hereby vested with full power to determine the manner of such crossing, as to whether the same shall be at grade, over grade, or under grade, and condemn a right-of-way for such crossing accordingly. [Acts 1907, ch. 238, § 1, p. 450; P.L. 5-1984, § 85.]

4-17-9. STATE INSTITUTIONS - ACQUISITION OF ALLEY, STREET, ETC.

4-17-9-1 [22-120]. Streets and highways in or adjacent to grounds - Acquiring. - Whenever the board of trustees, board of managers, or board of control of any penal, benevolent, correctional, educational, or other institution, belonging to the state of Indiana, shall deem it necessary or desirable for the welfare or convenience of such institution to acquire part or all of any street, alley or public highway, running through, abutting or adjacent to such institution and its lands, for its use, said institution by its board of trustees, board of managers or board of control, shall adopt a resolution to such effect, and duly spread the same upon its records, and shall direct the attorney-general of the state of Indiana to file a petition in the Marion Superior Court, of Marion County, Indiana, in which petition, the state of Indiana shall be plaintiff and the defendants to such petition shall be the owners of the real estate immediately abutting that part of the street, alley, or public highway which such institution desires to so acquire. The clerk of such court shall cause summons to be issued and served upon the defendants named in such petition as is now provided by law in other civil causes. If any such owners shall be nonresidents of the state of Indiana, or if the names of any owner [owners] shall be unknown, notice shall be given to them by such clerk by publication in some daily or weekly newspaper published in the county wherein it is sought to vacate and acquire such alley, street or public highway, as is now provided by law against nonresidents in cases to quiet title to real estate. Such attorney-general shall set forth in such petition a full and specific description of so much of the alley, street or public highway sought to be acquired by such institution and shall attach to such petition an accurate plat showing the same, with a description of the real estate owned by the state of Indiana, abutting and adjacent to the same, and praying for the condemnation and vacation of the same, so that the state of Indiana may acquire a full fee simple title to the same. [Acts 1913, ch. 257, § 1, p. 698.]

4-17-9-2 [22-121]. Streets and highways in or adjacent to grounds - Damages, appraisers, assessments. - (a) If any owner of real estate abutting immediately upon that part of the alley, street, or public highway sought to be acquired by such institution shall be shown to be specially damaged by reason of the vacation and condemnation by the state of the alley, street, or public highway described in such petition, whereupon it shall be the duty of the said Marion superior court to appoint three [3] disinterested freeholders resident of the county, or adjoining the county, wherein such alley, street, or public highway is situated. It shall be the duty of such appraisers, within ten [10] days after their appointment, to proceed to view the alley, street, or public highway described in such petition and determine in what sum, if any, such abutting owner will be damaged by reason of the acquirement by the state of Indiana for its use of the alley,
street, or public highway described in such petition, in fee simple, who shall, within ten [10] days thereafter, report, in writing, to such court, their report in the premises; such appraisers shall be duly sworn by some officer authorized to administer such oaths to faithfully and honestly appraise the damages as may be sustained by such complaining abutting property owners.

(b) In estimating such damages, such appraisers shall only consider any special damages which such abutting property owner will sustain on account of ingress and egress to and from his abutting property being destroyed, and his entire ownership interest therein, if the fee thereof is to be taken.

(c) In fixing such damages claimed by owners of abutting property, a majority of such appraisers shall be sufficient to determine the same; Provided, if such court shall find that public necessity requires that another street, alley, or highway shall be laid out and established to take the place of the street, alley, highway, or part thereof condemned, such court shall order and adjudge, if practicable, that such institution before it shall be permitted to exclude the traveling public from using the street, alley, or highway so condemned, it shall cause to be established on or near the land of such institution a like alley, street, or highway, so as to provide an ample way for public travel. And upon the question of the necessity of establishing the alley, street, or highway in place of the one so condemned, if the same be located in an incorporated city or town, such city or town shall be made a party defendant to such petition, who if it desires shall set forth by answer to the petition and furnish proof thereof showing the necessity of establishing the alley, street, or highway, or part thereof in place of the one so condemned, but such city or town shall have no right to place in issue or be heard upon any other question in such proceeding and the judgment of said court thereon shall be conclusive and final. For the purpose of acquiring the land to establish the street, alley, or highway in place of the one so condemned, such institution shall possess the rights and powers secured by IC 32-11-1 and all statutes supplemental to that chapter.

(d) The damages awarded and costs against the state, and the cost of the material, land, and work required to establish the street, alley, or highway, or part thereof, in the place of one so condemned, shall be paid out of the general fund of the state treasury, not otherwise appropriated and for such purpose the amount necessary is hereby appropriated: Provided, further, That inmates of the institution may be used in the work to establish, grade, and improve such new street, alley, or highway, as the superintendent of such institution may deem expedient. [Acts 1913, ch. 257, § 2, p. 698. P.L. 5-1984, § 86.]

CHASE OF REAL ESTATE DEED OF CONVEYANCE

4-17-10-1 [22-117]. Purchase of real estate. - Whenever the board of trustees, board of managers, or board of control of any penal, benevolent, correctional, educational, or other institution belonging to the state of Indiana shall deem it necessary or desirable for the welfare or convenience of such institution to acquire real estate for its use, said institution by its board of trustees, board of managers, or board of control is hereby authorized to purchase such real estate by contract with the owner, in case suitable and acceptable terms can be agreed upon. When real estate is purchased for said purpose by any such institution the deed of conveyance therefor shall be executed conveying such real estate to the state of Indiana, in trust for such institution; Provided, That no purchase of real estate authorized by this section shall be made without the written consent and approval of the governor of the state. [Acts 1913, ch. 59, § 1, p. 116; P.L. 5-1984, § 87.]

Opinions of Attorney General. In the absence of available money, no authority exists for board to either purchase property or secure an option thereon. 1945, No. 86, p. 343.

8-11-1. LIMITED ACCESS ROADS

8-11-1-5 [38-3105]. Acquisition of property and property rights - Condemnation. - For the purposes of the act [8-11-1-1--8-11-1-11], such authorities of the state, counties, cities, or towns, may acquire private or public property and property rights for limited access facilities and service roads, including rights of access, air, view, and light, by gift, devise, purchase or condemnation in the same manner as is now or hereafter may be provided by law to acquire such property or property rights for the laying out, widening or improvement of highways and streets within their respective jurisdictions. In the acquisition of property or property rights for any limited access facility or portion thereof, or service road in connection therewith, the state, county, city or town, may, in its discretion, acquire an entire lot, block, or tract of land, if by so doing, the interest of the public will be best served, even though said entire lot, block, or tract is not immediately needed for the right-of-way proper but is otherwise useful or necessary in the carrying out of the purposes of this act. The rights of all property owners who may claim damages, as provided by the Constitution of the state of Indiana, are preserved herein and may be enforced under the present laws of the state of Indiana. [Acts 1945, ch. 245, § 5, p. 1113.]


4-17-10. STATE INSTITUTIONS - PUR-
NOTES TO DECISIONS

In General.

Sovereign immunity cannot prevail in face of statutes giving property owner a remedy when right of access to property is taken for public use. State v. Marion Circuit Court (1958), 238 Ind. 637, 153 N. E. (2d) 327.

There was substantial evidence for the jury to find that appellee's access was substantially and materially impaired and to award damages on the basis that the value of appellee's property had been reduced by the new construction. State v. Geiger & Peters, Inc. (1984), 245 Ind. 143, 3 Ind. Dec. 133, 196 N. E. (2d) 740; State v. Diamond Lanes, Inc. (1968), 251 Ind. 520, 16 Ind. Dec. 279, 242 N. E. (2d) 632.

Property owners were not entitled to compensation when state improved existing access highway by construction of limited access highway and such owners were left with reasonable means of continued ingress and egress. Beck v. State (1971), - Ind. --, 25 Ind. Dec. 335, 268 N. E. (2d) 746.

Annoyance and Inconvenience.

Where there was a taking, not of the real estate itself, but of rights and interests in the real estate held prior to the highway construction, the enjoyment of the rights and use of the benefits of the property have been impaired and the market value diminished and such "annoyance and inconvenience" may be considered in determining damages. State v. Stefaniak (1968), 250 Ind. 631, 14 Ind. Dec. 649, 238 N. E. (2d) 451.

Evidence of Price.

In condemnation proceeding, price paid for subject property by defendant-landowner seven years and two months prior to taking, was not inadmissible solely on grounds of passage of such period of time. State v. Valley Development Co., Inc. (1971), 25 Ind. Dec. 230, 268 N. E. (2d) 73.

Interlocutory Appeal.

The condemnor in an inverse condemnation proceeding has no right of interlocutory appeal from an adverse ruling by the trial court. State v. Jordan (1968), 247 Ind. 361, 8 Ind. Dec. 58, 215 N. E. (2d) 32.

Right of Access.

Where the right of ingress and egress formerly enjoyed by landowner has been taken under the provisions of this section, such taking requires compensation therefor to landowner but profits from a business cannot be used as a determinant in arriving at the value of such access. State v. Hastings (1965), 246 Ind. 475, 5 Ind. Dec. 438, 206 N. E. (2d) 874.

While existence of highway across property owners' land, prior to acquisition of limited access facilities, gave such owners right of ingress and egress from their property to highway, they were not entitled to free access at every foot along their road frontage. Beck v. State (1971), - Ind. --, 25 Ind. Dec. 335, 268 N. E. (2d) 746.

Taking of Adjacent Property.

Where land on all sides of property in question was taken for highway purposes, placing the residence in an unorthodox position, placing the lot in a cul-de-sac, placing dwelling in violation of zoning ordinance, and reducing the value of the property substantially, the question of a compensable taking is a matter for the jury's determination. State v. Stefaniak (1968), 250 Ind. 631, 14 Ind. Dec. 649, 238 N. E. (2d) 451.

8-13-2. ACQUISITION OF LAND-PLANNING

8-13-2.1. Municipalities not prohibited from acquiring rights-of-way - Department to file and record legal description - Tax exemption for lands and interests in lands acquired for permanent highway purposes. - The authority given the department under this chapter to acquire lands by purchase or by the exercise of the right of eminent domain shall not be construed as prohibiting any municipality of the state from acquiring at its own expense, either by grant, purchase or condemnation, the necessary right-of-way required by the department for the maintenance, construction or improvement of a street of such municipality as a part of a highway under the control of the department, nor to prohibit any such municipality from entering into an agreement to pay all or any part of the costs of such necessary right-of-way.

The department, whenever it has acquired land and the rights necessary for the construction, repair and maintenance of any highway, either by purchase or by the exercise of the right of eminent domain, shall file and record the legal description, including the area of the land acquired, for the purpose of relieving the transferor of taxation of the land or rights conveyed with the date of the conveyance with both the county auditor and recorder of the county in which the land may be found. Lands and interests in lands acquired for permanent highway purposes shall be exempt from taxation from the date of acquisition, provided that all taxes, interest and penalties spread of record on the property tax duplicates have been paid. Where lands or interests in lands are acquired after the assessment date of any year, but prior to December 31 of such year, the taxes on such lands in the ensuing year shall not be a lien thereon and shall be removed from the tax duplicates by the county auditor. Any property owner who on or after
March 1, 1965, shall have conveyed land or rights in
land to the commission and after July 8, 1965, who
is assessed taxes upon such land or rights conveyed
and who pays such taxes by reason of the failure of
the commission to properly record said interest in
such real estate conveyed with the county auditor
and recorder for tax purposes, may recover the
amount of such taxes from the department. [IC 8-
13-2-12.1, as added by Acts 1981, P.L. 41, § 38.]

8-13-2-12.2. Surveys - Entry upon, over, or
under lands and waters authorized - Pro-
cedure - Damages. - (a) Any authorized employee
or representative of the department of highways
engaged in any survey or investigation authorized
by the director or his designee, may enter upon,
over, or under any lands or waters within this state
for the purpose of conducting the survey or investiga-
tion by manual or mechanical means, which
include the following:

1. Inspecting.
3. Leveling.
4. Boring.
5. Trenching.
7. Archeological digging.
8. Investigating soil and foundation.
9. Transporting equipment.
10. Any other work necessary to carry out the
survey or investigation.

(b) However, before any authorized employee or
representative of the department of highways shall
enter upon, over, or under any lands or waters
within this state, the occupant, if any, of the lands
or waters shall be notified in writing by first class
United States mail of such purpose at least five [5]
days prior to the date of entry. However, upon entry
to, over, or under any lands or waters the
department of highways employee or agent shall
first present his written identification or authoriza-
tion from the department of highways to the occu-
pier of the lands or waters, if available.

(c) If by such entry and if in the doing of such
work as provided in this section any injury is done
to the lands or waters entered and any damages
result from such injury or work, the aggrieved party
shall be compensated therefor by the department
of highways. If the aggrieved party is dissatisfied
with the compensation as determined by the department
of highways, the amount of damages shall be
assessed by the county agricultural agent of the
county wherein the lands or waters are located and
two [2] other disinterested persons of the county,
one [1] appointed by the aggrieved party and one [1]
appointed by the department of highways. A written
report of the assessment of damages shall be
mailed to the aggrieved party and the department
of highways by first class United States mail. How-
ever, if either the aggrieved party or the department
of highways is dissatisfied with the assessment of
damages, either or both may file a petition,
within fifteen [15] days after receipt of the report,
in the circuit or superior court of the county in
which the lands or waters are located for a review
thereof. [IC 8-13-2-12.2, as added by Acts 1981,
P.L. 41, § 37; P.L. 111-1983, § 1.]

8-13-2-12.3. Description of rights-of-way and
 easements - Filing - Recordation. - Whenever
any land, interest in land, or easement for any state
highway is acquired, an accurate description of all
such rights-of-way and easements shall be filed by
the department in the office of the recorder of the
county in which such real estate is located, and
such description shall be recorded in the deed
records of said county, and no fee shall be charged
by recorders for such filing and recording. [IC 8-13-
2-12.3, as added by Acts 1981, P.L. 41, § 38.]

8-13-18.5. RELOCATION ASSISTANCE

8-13-18.5-1 [3-1771]. Relocation assistance -
Purpose of act. - The purpose of this chapter [8-
13-18.5-1-8-13-18.5-20] is to establish a uniform pol-
icy for the fair and equitable treatment of persons
displaced from homes, businesses or farms by reason
of acquisition of real property for a public improve-
ment of agencies of the state of Indiana, or other
agencies having the power of eminent domain under
the laws of this state, in order that such persons
shall not suffer disproportionate injuries as a result
of programs designed for the benefit of the public as
a whole. To carry out such purpose, this chapter
shall be administered as uniformly as practicable by
all affected agencies with respect to each class of
persons as to (1) relocation assistance payments, (2)
relocation services and advisory assistance, (3)
assurance of availability of comparable or better
housing for displaced persons meeting all applicable
code requirements for standard housing, and (4)
land acquisition policies: Provided, however, That
any agency required to comply with federal law
shall not be required to comply with those provi-
sions of this act [8-13-18.5-1-8-13-18.5-20] which are
in conflict therewith and shall have authority to
adopt rules and regulations necessary to comply
with such federal law including section 191 of title
23, United States Code. [IC 1971, 8-13-18.5-1, as
added by Acts 1971, P.L. 97, § 1, p. 445.]

Opinions of Attorney-General. The highway
commission is required by statute to abide by the
provisions of the United States Code, and to the
extent that the United States Code conflicts with
the Relocation Assistance Act (Acts 1967, ch. 316,
§§ 1-20, p. 1226 which was repealed by Acts 1971,
P.L. 97, § 2), the highway commission is authorized to make relocation payments in excess of the maximums set out in the state law. 1970, No. 10, p. 22.

8-13-20. PUBLIC LANDS FOR HIGHWAY RIGHTS-OF-WAY AND PROPERTY TAX ON ACQUIRED PARCELS

8-13-20-1 [36-2958]. Right to acquire land from political subdivisions of state - Eminent domain. - The right, power and authority given by any other act to the state highway department [commission] of Indiana to, in the name of the state of Indiana, purchase, or by voluntary grants and donations, receive or otherwise acquire the fee-simple title to public or private lands or rights or easements needed or reasonably necessary for the location, relocation, construction, reconstruction, repair or maintenance of any state highway, including such as may be reasonably necessary for the clearing and removing of obstructions to vision at highway crossings and curves or for other highway purposes or purposes reasonably incident thereto, is hereby extended to include, and given to acquire land or any such right in or to or over land owned, held or claimed by any city, town, township, county, school corporation or other municipal corporation, or political subdivision of the state, public corporation, instrumentality or agency supported in whole or in part by taxation. Whenever the state highway department [commission] shall be unable to agree with such owner of any land or right above set forth upon the damages sustained by such owner or upon the purchase price of the land in fee or the right, interest or easement sought to be acquired, the state highway department [commission] of Indiana may proceed in the name of the state of Indiana, in the exercise of the right of eminent domain to condemn and acquire the same. [Acts 1959, ch. 180, § 1, p. 420.]

8-13-20-3 [36-2960]. Acquisition of tax-delinquent property - Amount paid not to exceed delinquent taxes plus improvements - Eminent domain. - Whenever the land or right in land, which is sought to be acquired by the state highway department [commission] of Indiana, is land or a right or interest in land which was acquired by the county, municipality or political subdivision after the same had been unsuccessfully offered for sale for delinquent taxes, and had been acquired by or for the county as a result thereof for the delinquent taxes under the law providing therefor, the purchase price or condemnation award paid by the state highway department [commission] to such county, municipality or political subdivision shall not exceed the amount of the delinquent and general taxes due thereon at the time it was so acquired by such county, municipality or political subdivision, excluding penalties and not including any current taxes becoming due and payable in the year in which acquired by the state of Indiana for highway use. Any such county shall convey and transfer any such land or right or interest in land to the state of Indiana for the use of the state highway department [commission] of Indiana for such consideration whenever requested to do so by the state highway department [commission] of Indiana. The consideration paid by the state highway department [commission] shall be distributed among the several subdivisions of government in the manner provided by chapter 59 of the Acts of 1919 as amended [6-1-1-1--6-5-8-8], and as other collections of delinquent taxes are distributed. If any right of redemption exist in the owner of any interest in said land and which is asserted in the time and manner allowed and permitted by law, it shall be treated as any other private interest in land acquired for public use by the state highway department [commission] of Indiana. Provided, however, That if such county or municipality has placed any improvements upon such land after so acquiring the same, then the state highway department [commission] shall pay the reasonable value thereof. If such reasonable value of such improvements cannot be determined by agreement, the state highway department [commission] of Indiana may proceed in the name of the state of Indiana in the exercise of the right of eminent domain to condemn and acquire the same. [Acts 1959, ch. 180, § 3, p. 420.]

8-15-2. INDIANA TOLL ROAD COMMISSION

8-15-2-8 [36-3208]. Acquisition of land by eminent domain. - The authority may acquire by appropriation any land, property, rights, rights-of-way, franchises, easements, or other property necessary or proper for the construction or the efficient operation of any toll road project in the manner provided by IC 8-13-2. However, a compensation for the property so taken shall first be made in money as provided by law. Nothing in this chapter shall authorize the authority to take or disturb property or facilities belonging to any public utility or to a common carrier engaged in interstate commerce, which property or facilities are required for the proper and convenient operation of such public utility or common carrier, unless provision is made for the restoration, relocation, or duplication of such property or facilities elsewhere at the sole cost of the authority excepting, however, cases in which such equipment or facilities are located within the limits of existing highways or public thoroughfares being constructed, reconstructed, or improved under the provisions of this chapter. [Acts 1951, ch. 281, § 8, 1980, P.L. 74, § 232; P.L. 109-1983, § 11.]

8-17-1. COUNTY UNIT LAW

8-17-1-2 [36-303]. Eminent domain. - In all cases of a highway constructed under the provisions of this chapter, the right-of-way therefor, or any
required drainage courses, or approaches, or any land necessary for the opening, widening, or changing of a highway, or land necessary to build a bridge or a culvert, shall be acquired by the county, either by donation by the owners of the land through which such highway shall pass or by agreement between such owner or owners and the board of commissioners of such county, or through the exercise of such board of commissioners of the power of eminent domain, or the public may acquire such property as is necessary in the same manner as is provided by statute for the establishment, opening, and widening of public highways, and, in any event, the entire cost of such right-of-way shall be paid for by the county. [Acts 1919, ch. 112, § 4, p. 531; P.L. 66-1984, § 76.]

8-20-1. COUNTY ROADS - LOCATION, VACATION, AND EMINENT DOMAIN

8-20-1-9 [38-209]. Review as to public utility - Remonstrance as to utility and damages may be combined. - If any freeholder of, and residing in such county shall remonstrate against the proposed highway at any time before final action thereof as not being of public utility, other reviewers may be appointed, who shall, after having taken an oath faithfully to discharge the duties assigned them, meet at the time and place designated, and then, or on a day to be by them fixed, proceed to examine the proposed highway, and shall make report to such board at its next session, whether, in their opinion, the said highway or change will be of public utility. However, a remonstrance for want of public utility and for damages may be filed at the same time, and may be referred to the same reviewers, who shall then be required to report both as to public utility and as to damages. [Acts 1905, ch. 167, § 9, p. 521; P.L. 353-1983, § 9.]

Cross-References. See notes, 8-20-1-1. Coopprider v. Fritz (1934), 206 Ind. 130, 188 N. E. 579.

See note, 8-20-1-2. Lewis v. Bunnell (1921), 190 Ind. 585, 131 N. E. 388; State ex rel. Wyman v. Hall (1921), 191 Ind. 271, 131 N. E. 821.

NOTES TO DECISIONS

In General.

The right to remonstrate under this section is not lost or waived by filing a remonstrance on the ground of damages, nor by the dismissal of the petition on motion of remonstrants on ground that upon a former petition the viewers had reported against the public utility of the highway, and that no bond for costs had been filed with the subsequent petition. Bland v. Cassaday (1913), 181 Ind. 38, 102 N. E. 853.

After remonstrance before board of commissioners and in circuit, superior and Supreme Courts on appeal was construed as based on ground that proposed vacation of highway would not be of public utility, parties cannot insist on different construction on retrial. Boss v. Deak (1936), 210 Ind. 449, 4 N. E. (2d) 180.

Form of Remonstrance.

Remonstrance to petition for vacation of public highway, alleging such highway to be of public utility and asking that other viewers be appointed to examine such to determine whether or not it be of public utility, is sufficient to meet contention of such petition that such highway is not of public utility, as "negative pregnant" involves and admits of an affirmative implication, or at least an implication of some kind favorable to adverse party. Boss v. Deak (1936), 210 Ind. 449, 4 N. E. (2d) 180.

Remonstrance for Two Causes.

The filing of a remonstrance for another cause at a later date is not prevented by the filing of a remonstrance for a cause. Bronnenburg v. Gains (1915), 183 Ind. 225, 108 N. E. 862.

Remonstrants.

Any freeholder of the county residing therein may remonstrate on the ground that the proposed action will not be of public utility. It is only such freeholders who may remonstrate under this section. Aetna Life Ins. Co. v. Jones (1909), 173 Ind. 148, 89 N. E. 871.

32-5-3. WAY OF NECESSITY WHEN LAND LOCKED BY STREAM OR DITCH CONSTRUCTION

32-5-3-1 [38-2701]. Establishment. - In all cases where, heretofore or hereafter, the lands belonging to a landowner or to landowners in this state, shall have been shut off from a public highway, because of the straightening of any stream, or the construction of any ditch, under the laws of the state of Indiana, or by the erection of any dam constructed by the state of Indiana or the United States or any of their agencies or political subdivisions under the laws of the state of Indiana, and in case the owner or owners of lands thus affected cannot secure an easement or right-of-way on and over the lands adjacent thereto, and intervening between such lands and the public highways most convenient thereto, either because the adjacent and intervening landowner or landowners refuse to grant such easement, or because the interested parties cannot agree upon the consideration to be paid by the landowner or landowners so deprived of such access to the highway, he or they shall have such right of easement established as a way of necessity under the provisions of IC 1971, 32-11-1 [32-11-1-1-32-11-13]. [Acts 1935, ch. 56, § 1, p. 150; 1973, P.L. 302, § 1.]
NOTES TO DECISIONS

Subsequent Owners.

A subsequent owner of a peninsula, which peninsula had been cut off from access over other land when a dam was constructed, could not use this section to obtain an easement over the only submerged land adjoining the peninsula for his own private benefit. Continental Enterprises, Inc. v. Cain, - Ind. App. --, 68 Ind. Dec. 366, 387 N. E. 2d 86 (1979).

32-11-1. EMINENT DOMAIN PROCEDURES

32-11-1-1 [3-1701]. Entry, survey, effort to purchase, title. - Any person, corporation or other body having the right to exercise the power of eminent domain for any public use, under any statute, existing or hereafter passed, and desiring to exercise such power, shall do so only in the manner provided in this chapter except as otherwise provided herein. Before proceeding to condemn, such person, corporation or other body may enter upon any land for the purpose of examining and surveying the property sought to be appropriated or right sought to be acquired; and shall make an effort to purchase for the use intended such lands, right-of-way, easement or other interest therein or other property or right. In case such land or interest therein or property or right is owned by one who is of unsound mind or under eighteen [18] years of age, the person, corporation or other body seeking to obtain the land or interest therein for such use may purchase the same of the regularly constituted guardian of such insane person or person under eighteen [18] years of age; and if such purchase shall be approved by the court or judge thereof appointing such guardian, and such approval written upon the face of the deed, such conveyance of the premises so purchased, and the deed made and approved by such court or judge, shall be valid and binding upon such insane person [or person] under eighteen [18] years of age. The deed so given, when executed in lieu of condemnation, shall convey only the interest stated in the deed. Wherever the land is taken by condemnation proceedings, the entire fee simple title thereto may be taken and acquired if such land is taken for the site of a station, terminal, powerhouse, substation, roundhouse, yard, car barn, office building or any other purpose except for a right-of-way. [Acts 1905, ch. 48, § 1, p. 59; 1973, P.L. 23, § 24.]

NOTES TO DECISIONS

In General.

The mode provided by statute for the taking of property under the right of eminent domain had to have been closely pursued, but not necessarily to the extent of exact or literal compliance. Darrow v. Chicago, L.S. & S.B. Ry., 169 Ind. 99, 81 N. E. 1081 (1907).

A complaint counting upon a special statute had to allege facts substantially bringing the plaintiff within the terms thereof and the evidence had to sustain the allegations. Morrison v. Indianapolis & W. Ry., 166 Ind. 511, 76 N. E. 961, 77 N. E. 744, 9 Ann. Cas. 587 (1907).

An action for a writ of assessment of damages and the appointment of appraisers pursuant to the provisions of the eminent domain statute could not have been maintained against the state, where the owners had executed an instrument dedicating to the public the land in question, and the state highway commission accepted the dedication without it having been revoked by the grantors, and immediately constructed a highway thereon. Smith v. State, 217 Ind. 643, 29 N. E. 2d 786 (1940).

The Eminent Domain Act of 1905 superseded all other statutes prescribing condemnation procedure, save one mentioned in § 12 of the act. State v. Pollitt, 220 Ind. 593, 45 N. E. 2d 480 (1942).


This chapter expresses no requirement regarding authorization procedures necessary to commence condemnation proceedings and municipalities that do not elect to proceed under this chapter must follow the municipal procedures prescribed by the provisions of the cities and towns law relating to condemnations, as special law that acts as an exception to the general law. City of Greenfield v. Hancock County REMC, 160 Ind. App. 529, 42 Ind. Dec. 488, 312 N. E. 2d 867 (1974).

Action for Damages Against Condemnor.

Where the condemnor enters upon lands pursuant to the rights granted by this section and causes damage or destruction to the reality, an action for damages lies against the condemnor and the suit may not be enjoined on the grounds that it obstructs the condemnor's rights under this section. Indiana & Mich. Elec. Co. v. Stevenson, 166 Ind. App. 157, 49 Ind. Dec. 464, 337 N. E. 2d 150 (1975), aff'd, - Ind. --, 57 Ind. Dec. 738, 363 N. E. 2d 1254 (1977).

The destruction of corn and trees in making a preliminary survey, where there was evidence that the survey could have been made without such destruction, amounted to the taking of property in violation of Ind. Const., art. 1, § 21, for which both compensatory and punitive damages could be awarded. Indiana & Mich. Elec. Co. v. Stevenson, - Ind. App. --, 57 Ind. Dec. 738, 363 N. E. 2d 1254 (1977).

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Appeals.

The 1907 amendment to § 4-214 (since repealed) provided that thereafter all appeals in condemnation proceedings for the appropriation of lands for public use had to be taken directly to the Supreme Court. Northern Ind. Pub. Serv. Co. v. Darling, 128 Ind. App. 456, 149 N. E. 2d 702 (1958).

Attempt to Purchase.

The attempt to agree did not need to be pursued further than to develop the fact that an agreement to purchase was not possible at any price which the condemnor was willing to pay. Wampler v. Trustees of Ind. Univ., 241 Ind. 449, 172 N. E. 2d 67 (1961).

The reviewing court had to assume under the statutory obligation of a condemnor to first offer to purchase the easement, that the condemnor did make a good faith offer, which was identical with the demands in the condemnation action. Southern Ind. Gas & Elec. Co. v. Gerhardt, 241 Ind. 389, 172 N. E. 2d 204 (1961).

A good faith effort to purchase the property was a condition precedent to the right to maintain an action to condemn. Indiana Port Comm’n v. Davis, 8 Ind. App. 383 (1966).

Lack of good faith was not shown by a difference between the terms of the offer to purchase and the complaint for condemnation, or because the value of possible coal deposits was not included in the offered purchase price where the existence of such deposits was speculative. Wyatt-Rauch Farms, Inc. v. PSCI, 180 Ind. App. 228, 42 Ind. Dec. 115, 311 N. E. 2d 441 (1974).

In an action to condemn property pursuant to the eminent domain act an effort to purchase the property is a condition precedent and the burden is on the party seeking to condemn to show a good faith effort to purchase and an inability to agree. J.M. Foster Co. v. NIPSCO, 164 Ind. App. 72, 46 Ind. Dec. 570, 328 N. E. 2d 584 (1975).

In an action to condemn property pursuant to the eminent domain act, failure to negotiate in good faith as a condition precedent centers around negotiations as to price not the location of the property, as the decision as to the location of the particular property sought to be taken rests within the discretion of the condemnor. J.M. Foster Co. v. NIPSCO, 164 Ind. App. 72, 46 Ind. Dec. 570, 328 N. E. 2d 584 (1975).

The effort to purchase, required as a condition precedent to the exercise of condemnation under this section, does not contemplate an impossibility to purchase at any price, however large, but merely an unwillingness on the part of the owner to sell except at a price which in the petitionier’s judgment is excessive and in such an event the attempt to agree need not be pursued further than to develop the fact that an agreement to purchase is not possible at any price which the condemnor is willing to pay. City of Greenfield v. Hancock County REMC, 180 Ind. App. 529, 42 Ind. Dec. 488, 312 N. E. 2d 887 (1974).

Where school corporation knew of town’s negotiations to obtain land the school corporation’s suit to condemn the land for the purpose of thwarting the action of the town was properly dismissed. Greater Clark County School Corp. v. Public Serv. Co., - Ind. App. --, 67 Ind. Dec. 258, 385 N. E. 2d 952 (1979).

Constitutionality.

This act did not deprive landowners of their property without just compensation, nor did it violate any provisions of the federal or state constitutions. Vandalia Coal Co. v. Indianapolis & L. Ry., 168 Ind. 144, 79 N. E. 1092 (1907); Smith v. Cleveland, C., C. & St. L. Ry., 170 Ind. 382, 81 N. E. 501 (1907); Schnull v. Indianapolis Union Ry., 190 Ind. 572, 131 N. E. 51 (1921); Sisters of Providence v. Lower Vein Coal Co., 198 Ind. 645, 154 N. E. 659 (1928).


Due process of law was provided by these sections, which provided for determination of value of the property sought to be condemned, by three disinterested freeholders of the county, followed by a trial of the issues by a court of general jurisdiction, at the election of the parties aggrieved, and giving the right of appeal to the Supreme Court. Southern Ind. Gas & Elec. Co. v. City of Boonville, 215 Ind. 552, 20 N. E. 2d 648 (1939).

Contracts and Franchises.

Every contract, whether made between the state and an individual, or between individuals, had to yield to the right of eminent domain, whenever necessity for its exercise shall have occurred since every contract was made in subordination to it. Southern Ind. Gas & Elec. Co. v. City of Boonville, 215 Ind. 552, 20 N. E. 2d 648 (1939).

The compensation for additional improvements to utility property, purchased by a city pursuant to statute necessarily made after the assessment of damages for the original property, did not need to be determined and actually paid or tendered before possession passed, since the foundation of the city’s
right to acquire the property was contractual, and hence Const., art. 1, § 21 relating to assessment and tender of compensation before the taking of private property was not applicable. Public Serv. Co. v. City of Lebanon, 221 Ind. 78, 46 N. E. 2d 480 (1943).

Corporations.

When a corporation sought to appropriate land under the right of eminent domain, it had to show, before appraisers were appointed, that it was such a corporation as was entitled to exercise such right, and that it had made an effort to purchase the land desired. Slider v. Indianapolis & Louisville Traction Co., 42 Ind. App. 304, 85 N. E. 372, 721 (1908).

Electric Companies.

An electric company had authority to operate a telephone line for its own use over the land taken by it for a right-of-way for its electric transmission line. Jolliff v. Muncie Elec. Light Co., 181 Ind. 650, 105 N. E. 234 (1914).

An effort to purchase the property sought to have been acquired was a condition precedent to the right to maintain an action to condemn. Indiana Serv. Corp. v. Flora, 218 Ind. 208, 31 N. E. 2d 1015 (1941).


Evidence of Valuation.

In condemnation proceeding, price paid for subject property by defendant-landowner seven years and two months prior to taking, was not inadmissible solely on grounds of passage of such period of time. State v. Valley Dev. Co., 256 Ind. 278, 25 Ind. Dec. 230, 268 N. E. 2d 73 (1971).

Highway Proceedings.

Where the complaint filed by highway commission for condemnation of land alleged an effort to purchase the land sought, in the absence of an objection raising an issue of fact as to plaintiff's failure to make an effort to agree with the owners of the land touching the damages sustained or touching the purchase price of the land, exception by defendant to the court's ruling upon the objections which were filed presented no question on appeal as to the lack of an effort to purchase the land or agree upon damages. Root v. State, 207 Ind. 312, 192 N. E. 447 (1934).

An action to review the administrative determination of the state highway department denying opening of a driveway to a filling station was not available to try out the issues that should have been involved in a proceeding in eminent domain. Huff v. Indiana State Hwy. Comm'n, 238 Ind. 280, 149 N. E. 2d 299 (1958).

It could not have been successfully contended that the statutes of this state, namely the eminent domain act and the limited access statutes, did not authorize or give consent to a property owner or the owner of a leasehold's interest in real estate to bring action against the state for damages where the state through its highway department had taken away an abutting owner's existing right of access to a highway. State v. Marion Circuit Court, 238 Ind. 637, 153 N. E. 2d 327 (1958).

Where property owner suffered inconvenience and annoyance when a divider strip was placed in the newly constructed highway, it did not amount to a compensable appropriation of the right of access, even though ingress and egress was made more circuitous and difficult it did not constitute a "taking" of private property. State v. Ensley, 240 Ind. 472, 164 N. E. 2d 342 (1960).

Injunction.

The exercise of the right of eminent domain could not have been defeated by injunction as the statute gave the landowner an adequate legal remedy. Halstead v. City of Brazil, 83 Ind. App. 53, 147 N. E. 629 (1925).

Jurisdiction.

During the pendency of an action in which a court had jurisdiction to decide the issue of possession of real estate, another court of lesser or coordinate jurisdiction could not interfere therewith by another action in ejectment or in equity to restrain or enjoin such possession. State v. Marion Circuit Court, 239 Ind. 327, 157 N. E. 2d 481 (1959).

Lands Already Appropriated.

Land acquired by private persons for the purpose of being conveyed to a railroad company for a right-of-way could have been appropriated by another company. Toledo & Ind. Traction Co. v. Indiana & C. Interurban Ry., 171 Ind. 213, 86 N. E. 54 (1908).

Legislative Authority.

A presumption existed in favor of the public character of a use declared by the legislature to be public, but was not conclusive upon the courts. Sexauer v. Star Milling Co., 173 Ind. 342, 90 N. E. 474, 26 L.R.A. (n.s.) 609 (1910).

Legislative Intent.

In passing the eminent domain act it was the intention of the legislature to expedite such proceedings by turning the possession over to the condemnor upon the payment of the appraisal and

Offer to Purchase.

In condemnation proceedings under this section the offer to purchase had to be the same as that which was sought by such proceedings. Meyer v. Northern Ind. Pub. Serv. Co., 257 Ind. 670, 29 Ind. Dec. 230, 278 N. E. 2d 581 (1972).

Where property manager of airport sent letter to owner of land offering to purchase his property for a specified amount, such letter constituted a good faith offer to purchase notwithstanding that the subsequent approval by the airport board was required where such approval was a mere formality. Highland Realty, Inc. v. Indianapolis Airport Auth., - Ind. App. --, 72 Ind. Dec. 62, 395 N. E. 2d 1259 (1979).

Payment - Right of Review.

Payments by party condemning land did not jeopardize right to have the amount of benefits or damages reviewed as provided by statute. If, upon trial of the issue, the award was increased, condemning party had to pay or tender the additional amount or its right to possession ceased; if reduced, it was entitled to judgment for the excess. Board of Comm'rs v. Blue Ribbon Ice Cream & Milk Corp., 231 Ind. 436, 109 N.E. 2d 88 (1952).

Pleading.

Matters affecting the jurisdiction of the person and in abatement could have been presented by unverified objection filed at the same time as other objections, which could have severally constituted a demurrer or answer. Joint County Park Bd. v. Stegemoller, 228 Ind. 103, 88 N. E. 2d 686 (1949), rehearing denied, 228 Ind. 118, 89 N. E. 2d 720 (1950).

Possession.

A court in which a condemnation proceeding was pending had the jurisdiction to determine the possession of the real estate pending the litigation if the issue was presented. If such court decided erroneously, then the remedy was through an appeal. State v. Marion Circuit Court, 239 Ind. 327, 157 N. E. 2d 481 (1959).

Prior Statutes Superseded.

Except as provided in 32-11-1-13, it would seem the procedure provided herein superseded that provided in prior statutes conferring the power of eminent domain for certain purposes on specified corporations and associations and providing the method by which it was to be exercised. Alberson Cem. Ass'n v. Fuhrer, 192 Ind. 606, 137 N. E. 545 (1923).

The procedure prescribed by Acts 1889, ch. 157 (18-5-6-1) [since repealed], relating to condemnation of additional land for cemetery purposes, has not been in force since this act became effective. Dyar v. Albright Cem. Ass'n, 199 Ind. 431, 157 N. E. 545 (1927), overruled on other grounds, Joint County Park Bd. v. Stegemoller, 228 Ind. 118, 89 N. E. 2d 720 (1950).

Public or Private Purpose.

The determination as to the need for land where the use was clearly public as opposed to private was of legislative and not judicial concern in the absence of a showing that the condemnor's actions were fraudulent, capricious or illegal. Indiana Port Comm'n v. Davis, 8 Ind. Dec. 383 (1966).

Railroad Companies.


Constitutionality of statutes and right of street and interurban railroad companies to appropriate lands under the right of eminent domain was upheld. Mull v. Indianapolis & Cincinnati Traction Co., 169 Ind. 214, 81 N. E. 657 (1907); Smith v. Cleveland, C., & St. L. Ry., 170 Ind. 382, 81 N. E. 501 (1907).

Lateral railroad companies could appropriate lands under this act. Westport Stone Co. v. Thomas, 175 Ind. 319, 94 N. E. 406, 35 L.R.A. (n.s.) 646 (1911).

An interurban railroad that was compelled to permit cars of other companies to be transported over its tracks could appropriate land for its terminal notwithstanding it would have been used in part by such other companies, and by an express company handling goods carried over its road. Eckart v. Fort Wayne & N. Ind. Traction Co., 181 Ind. 352, 104 N. E. 762 (1914).

The procedure for the appropriation of a right-of-way for a lateral railroad under 8-4-10-1 was governed by this act. Sisters of Providence v. Lower Vein Coal Co., 198 Ind. 645, 154 N. E. 659 (1926), overruled on other grounds, Joint County Park Bd. v. Stegemoller, 228 Ind. 118, 89 N. E. 2d 720 (1950).

Railroad Crossing Another.

Lands owned in fee simple by a railroad company could have been appropriated by another public-service company unless the railroad company had legally located its road thereon. Southern Ind. Ry. v. Indianapolis & L. Ry., 168 Ind. 360, 81 N. E. 65, 13 L.R.A. (n.s.) 197 (1907).
Preliminary to the acquisition by a railroad of the right to cross another, the first railroad had to enter into negotiation with the second for the purpose of reaching an agreement as to compensation, and failing in that, had to institute condemnation proceedings. New Jersey, I. & I.R.R. v. New York Cent. R.R., 89 Ind. App. 205, 148 N. E. 111 (1925).

Right of Entry.

This section, while giving a condemnor the right to enter upon lands in order to survey and examine them prior to condemnation proceedings, does not permit the condemnor to destroy or damage trees, crops, brush or any other part of the realty in carrying out those activities. Indiana & Mich. Elec. Co. v. Stevenson, 166 Ind. App. 517, 49 Ind. Dec. 464, 337 N. E. 2d 150 (1975), aff'd, 57 Ind. Dec. 738, 363 N. E. 2d 1254 (1977).

State and State Agencies.

A general statute, such as this act, should have had the same interpretation when the state was the condemnor as would have applied in actions brought by private corporations possessing the privilege of eminent domain. State v. Pollitt, 220 Ind. 593, 45 N. E. 2d 480 (1942).

The word "or other body having the right to exercise the power of eminent domain," as used in this section, were broad enough to include the state or any of its administrative agencies. State v. Pollitt, 220 Ind. 593, 45 N. E. 2d 480 (1942).

The exercise of the right of eminent domain was prescribed by the constitution and regulated by statute, and when the legislature provided an exclusive method of procedure to condemn land, available alike to all bodies having the right to exercise the power of eminent domain, any such body seeking to exercise the right, even though it be the state itself by one of its administrative agencies was bound by the provisions of the statute. State v. Pollitt, 220 Ind. 593, 45 N. E. 2d 480 (1942).

The state highway commission, in taking land for highway purposes, was an administrative agency of the state, and as such could act only within the limits of authority conferred by statute. State v. Pollitt, 220 Ind. 593, 45 N. E. 2d 480 (1942).

Constitution, art. 1, § 21 did not forbid legislation permitting the state to take private property without first tendering compensation. But the provision was not self-executing. Under it, the state could have taken property whether or not compensation was first assessed and tendered if the legislature saw fit to so provide, but no such legislation had been enacted. Board of Comm'nrs v. Blue Ribbon Ice Cream & Milk Corp., 231 Ind. 438, 109 N. E. 2d 88 (1952).

Where the eminent domain act, applicable to the state and all subdivisions and agencies thereof was created by the same legislature which, by separate act, established the procedure by which "any city" should exercise the right of condemnation, the court would have to assume that the legislature intended a special law to operate as an exception to the general law, as relating to actions by cities and towns, therefore the special condemnation act was not superseded by conflicting portions of the general eminent domain act. Hagemann v. Mount Vernon, 238 Ind. 613, 154 N. E. 2d 33 (1958).

Telegraph Companies.

A telegraph company had the right to appropriate land for the location and maintenance of its necessary poles and lines. Western Union Tel. Co. v. Louisville & N. R. R., 183 Ind. 258, 108 N. E. 951, 1917B Ann. Cas. 705 (1915).

Tenants.

Tenants of lands could have been made parties and damages could have been assessed for their interest. Douglas v. Indianapolis & N. W. Traction Co., 37 Ind. App. 332, 76 N. E. 892 (1906).

Waiver.

In condemnation proceedings, a failure to appeal from an interlocutory order was a waiver of any claimed error which could have been raised thereby, consequently the issue of whether or not an effort was made to purchase the easement in question prior to the bringing of this suit was not before the reviewing court for consideration. Whitlock v. Public Serv. Co., 239 Ind. 680, 159 N. E. 2d 280, 161 N. E. 2d 169 (1959).

Applicability.

This chapter governs only eminent domain proceedings and is therefore inapplicable where it is alleged that an easement grant required the trial court to appoint three appraisers to determine the damages resulting from a permanent injunction. Rees v. Panhandle E. Pipe Line Co., - Ind. App. --, 452 N. E. 2d 405 (1983).

Archeological Digs.

The state highway commission's right to enter private property for the purpose of examination and survey under this section confers no license to engage in the process of conducting archeological digs. Indiana State Hwy. Comm'n v. Ziliak, - Ind. App. --, 428 N. E. 2d 275 (1981).

Cities and Towns.

There is nothing to prevent this section from including cities and towns within its sphere. Vickery v. City of Carmel, - Ind. App. --, 424 N. E. 2d 147 (1981).
Interest.


Purpose.

The fundamental purpose of the statutory eminent domain scheme, 32-11-1-1 et seq., is to ensure land owners are given just compensation when their property is taken. Ind. App. --, 451 N. E. 2d 673 (1983).

32-11-1-2 [3-1702]. Condemnation proceedings - Parties - Complaint - Contents - Venue. - If such a person, corporation or other body shall not agree with the owner of the land or other property or right, or with such guardian, touching the damage sustained by such owner, as provided in section 1 [32-11-1-1] of this chapter, the person, corporation or other body so seeking to condemn may file a complaint for that purpose in the office of the clerk of the circuit or superior court of the county where such land or other property or right is situated. Such complaint shall state:

(1) The name of the person, corporation or other body desiring to condemn such lands or other property or right, who shall be styled plaintiff;

(2) The names of all owners, claimants and holders of liens on the property or right, if known, or a statement that they are unknown, who shall be styled defendants;

(3) The use the plaintiff intends to make of the property or right sought to be appropriated;

(4) If a right-of-way be sought, the location, general route, width and termini thereof;

(5) A specific description of each piece of land sought to be taken, and whether the same includes the whole or only part of the entire parcel or tract. And in all cases where land is sought to be condemned by the state or by a county, for a public highway or by a municipal corporation for a public use, which confers benefits on any lands of the owner, a specific description of each piece of land to which the plaintiff alleges such benefits will accrue. Plats of lands alleged to be affected may accompany such descriptions; and

(6) That such plaintiff has been unable to agree for the purchase of such lands or interest therein or other property or right with such owner, owners or guardians, as the case may be, or that such owner is insane or under the age of eighteen [18] years, and has no legally appointed guardian, or is a non-resident of the state of Indiana.

All parcels lying in the county, and required for the same public use, whether owned by the same parties or not, may be included in the same or separate proceedings at the option of the plaintiff; but the court or judge may consolidate or separate such proceedings to suit the convenience of parties and the ends of justice. The filing of such complaint shall constitute notice of such proceedings to all subsequent purchasers and persons taking encumbrances of the property, who shall be bound thereby. [Acts 1905, ch. 48, § 2, p. 59; 1935, ch. 76, § 1, p. 228; 1973, P.L. 23, § 25; 1982, P.L. 187, § 166.]

NOTES TO DECISIONS

Description of Property Right.


Amendatory Act, Effect.

The effect of the amendatory act was to broaden the Eminent Domain Act of 1905, and provide an orderly method of condemnation, where a court had a final voice as to what was just compensation for the property taken. City of Lebanon v. Public Serv. Co. 214 Ind. 295, 14 N. E. 2d 719, appeal dismissed, 305 U.S. 558, 59 S. Ct. 84, 83 L. Ed. 352, rehearing denied, 305 U.S. 671, 59 S. Ct. 143, 83 L. Ed. 435 (1938).

Appeal.

While on appeal from a judgment dismissing a complaint in a condemnation action, the Supreme Court could not weigh the evidence to determine whether there was error in the court's decision that there was no necessity for the taking of the land, yet where it was undisputed that there had been a taking of a portion of land for a public purpose and that the remainder was necessary, there was no evidence to justify the court's decision and the judgment was reversed. Indianapolis Water Co. v. Lux, 224 Ind. 125, 64 N. E. 2d 790 (1946).

Award of Damages.

Award of damages for taking by condemnation made by a jury which was within the bounds of opinions given by witnesses would not have been reversed. Annee v. State, 256 Ind. 886, 26 Ind. Dec. 463, 271 N.E. 2d 711, rehearing denied, 256 Ind. 691, 274 N. E. 2d 260 (1971).

Description of Lands to Be Taken.

The application should have specifically described the lands taken. Indianapolis & V.R.R. v.
Newsom, 54 Ind. 121 (1876); Midland Ry. v. Smith, 109 Ind. 488, 9 N. E. 474 (1886); Miller v. Southern Ind. Power Co., 184 Ind. 370, 111 N. E. 308 (1916).

Where land was described as bounded by a river, public highway or railroad, the description was sufficient. Cleveland v. Obenchain, 107 Ind. 591, 8 N. E. 624 (1886); McDonald v. Payne, 114 Ind. 359, 16 N. E. 795 (1888); Joliff v. Muncie Elec. Light Co., 181 Ind. 650, 105 N. E. 234 (1914).

The description of the land in the complaint was sufficient if it would have enabled one skilled in such matters to locate the land. Darrow v. Chicago, L.S. & S.B. Ry., 169 Ind. 99, 81 N. E. 1081 (1907); Mull v. Indianapolis & Cincinnati Traction Co., 189 Ind. 214, 81 N. E. 657 (1907); Joliff v. Muncie Elec. Light Co., 181 Ind. 650, 105 N. E. 234 (1914).

Efforts to Purchase.

It was not error to sustain a demurrer to an objection tendering the issue of inability to agree for the purchase of the land, since such issue was fully before the court under clause 6 of this section. Clinton Coal Co. v. Chicago & E.I.R.R., 190 Ind. 465, 130 N. E. 798 (1921).

It should have been alleged in the complaint that the plaintiff had made efforts to purchase the land sought to have been appropriated. Slider v. Indianapolis & Louisville Traction Co., 42 Ind. App. 304, 85 N. E. 372, rehearing overruled, 85 N. E. 2d 721 (1908).

An effort to purchase the property sought to have been acquired was a condition precedent to the right to maintain an action to condemn, and the burden was on the condemnee to show a good faith effort to purchase and an inability to agree. Dahl v. Northern Ind. Pub. Serv. Co., 239 Ind. 405, 157 N. E. 2d 194 (1959).

The complaint which alleged that plaintiff "has endeavored to purchase an easement for a right of way" of the lands of the defendant and "has been unable to agree with them for the purchase thereof," was sufficient. Dahl v. Northern Ind. Pub. Serv. Co., 239 Ind. 405, 157 N. E. 2d 194 (1959).

Where the offer made by the appellee was for the entire easement and no reply was made thereto by any of the appellants, this was sufficient to show that appellee was unable to agree with the appellants for the purchase of the easement sought. Dahl v. Northern Ind. Pub. Serv. Co., 239 Ind. 405, 157 N. E. 2d 194 (1959).

Filing in Open Court.

Although the statute provided for filing the complaint in the office of the clerk of the court, it could have been filed in open court. Darrow v. Chicago, L.S. & S.B. Ry., 169 Ind. 99, 81 N. E. 1081 (1907).

**Highway Proceedings, Venue.**

By analogy to the rule when the highway commission was the moving party, venue of action for damages for wrongfully taking land for highway purposes was in the county where the land was situated even though the action was against the state highway commission. State v. Bragg, 207 Ind. 246, 192 N. E. 263 (1934).

**Interests in Property.**

The legislature did not intend that the court separate the cause of action as to all the various interests that might appear in the various parcels of real estate. State v. Montgomery Circuit Court, 239 Ind. 337, 157 N. E. 2d 577 (1959).

**Levee Proceeding.**

In a proceeding under this section, by a township levee committee, to condemn certain real estate for levee purposes, 13-2-19-1 was held to vest in the levee committee the fullest discretion; and, if in its judgment the land sought to have been condemned was necessary for the repair, maintenance or protection of the levee, the committee had the power to condemn such land for such purpose. Hallet v. Calvert, 207 Ind. 25, 191 N. E. 77 (1934).

**Nature of Proceedings.**

Proceedings to condemn property in the exercise of the right of eminent domain were not, strictly speaking, civil actions, but were actions of a special character, based upon a statute by which they were authorized, in view of 8-1-2-1. City of Lebanon v. Public Serv. Co., 214 Ind. 295, 14 N. E. 2d 719, appeal dismissed, 305 U.S. 558, 59 S. Ct. 84, 83 L. Ed. 352, rehearing denied, 305 U.S. 671, 59 S. Ct. 143, 83 L. Ed. 435 (1938).

**Necessity for Taking.**

The statute did not require the complaint to allege that there was a necessity for taking the land, but if it did, a general allegation that the land was necessary for the use of the plaintiff in its business was sufficient. Eckart v. Fort Wayne & N. Ind. Traction Co., 181 Ind. 352, 104 N. E. 762 (1914).

**Parties.**

Failure of condemner to name as a party the holder of a mineral lease on the condemned property was not a jurisdictional defect. Wyatt-Rauch Farms, Inc. v. PSCI, 160 Ind. App. 228, 42 Ind. Dec. 115, 311 N. E. 2d 441 (1974).

**Railroad Companies.**

A complaint by a railroad company for condemnation of a strip of land that belonged to another
railroad company had to set out, by a specific description, the location, general route, width and terminus of the proposed way. Southern Ind. Ry. v. Indianapolis & L. Ry., 168 Ind. 360, 81 N. E. 85, 13 L.R.A. (n.s.) 197 (1907).

The petitioner in a proceeding to condemn land for a railroad right-of-way was required to prove the averments of its petition, so far as to establish that it had the right to exercise the power of eminent domain for the use sought, without any answer being filed, and it was not error in such a proceeding for the court to overrule objections to the petition which were mere general denials of the facts alleged in the petition. Cottrell v. Chicago, T. H. & S. E. R. Co., 192 Ind. 692, 138 N. E. 504 (1923).


The owner of a right-of-way for an electric interurban railroad crossed by the proposed route of a lateral railroad was merely an owner of intervening lands concerning which neither allegation nor proof was required. Sisters of Providence v. Lower Vein Coal Co., 198 Ind. 645, 154 N. E. 639 (1928).

Separate Tracts of Land.

All lands in a county required for the same public use could have been included in the same proceedings, or separate proceedings could have been had for separate tracts. Vandalia Coal Co. v. Indianapolis & L. Ry., 168 Ind. 144, 79 N. E. 1082 (1907).

Sufficiency in General.

Complaints under this section had to substantially comply with all of the provisions hereof. Morrison v. Indianapolis & W. Ry., 166 Ind. 511, 76 N. E. 981, 77 N. E. 744, 9 Ann. Cas. 587 (1906); Indianapolis & L. Ry., 168 Ind. 144, 79 N. E. 1082 (1907); Slider v. Indianapolis & Louisville Traction Co., 42 Ind. App. 304, rehearing overruled, 85 N. E. 372 (1908).

Complaints which contain all the formal averments required by statute were sufficient. Sexauer v. Star Milling Co., 173 Ind. 342, 90 N. E. 474, 26 L.R.A. (n.s.) 609 (1910).

32-11-1-21. Offer to purchase prerequisite to filing complaints - Entry on property in case of emergency. - (a) Definitions. For the purpose of this section:

(1) "Owner" means the persons listed on the tax assessment rolls as being responsible for the payment of real estate taxes imposed on the property and the persons in whose name title to real estate is shown in the records of the recorder of the county in which the real estate is located.

(2) "Condemnor" means any person or entity authorized by this state to exercise the power of eminent domain.

(b) As a condition precedent to filing a complaint in condemnation, and excepting any action pursuant to IC 8-1-13-19, a condemnor may enter upon the property or interest therein as provided in this chapter, and shall at least thirty (30) days prior to filing such complaint make an offer to purchase the property or interest therein, in the form prescribed in subsection (d). The offer shall be served personally or by certified mail upon the owner of the land or easement thereon, or his designated representative, for which condemnation is sought.

(c) When the offer cannot be served personally or by certified mail, or if the owner or his designated representative cannot be found, notice of the offer shall be given by publication in a newspaper of general circulation in the county in which the real estate is located or in the county where the owner was last known to reside. The notice shall be in the following form:

NOTICE

TO: ..................................................
   (owner(s)), .................................. (condemnor) needs your land for a ................. (description of project), and will need to acquire the following from you: ......................... (general description of land or interest to be acquired). We have made you a formal offer for this land (or interest) which is now on file in the Clerk's Office in the ....... ....... (County Court House). Please pick up the offer. If you do not respond to this notice, or accept the offer by ...... (a date 30 days from 1st date of publication) 19 .. , we shall file a suit to condemn the land or interest therein.

.................

Condemnor

The condemnor shall file the offer with the clerk of the circuit court with a supporting affidavit that diligent search has been made and that the owner cannot be found. The notice shall be published twice; one [1] immediately, and a subsequent publication at least seven [7] days and not more than twenty-one [21] days after the prior publication.

(d) The offer to purchase shall be in the following form:

UNIFORM LAND OR EASEMENT ACQUISITION OFFER

............... (condemnor) is authorized by Indiana law to obtain your land or an easement across your
land for certain public purposes. (condemnor) needs (your land) (an easement across your land) for a (brief description of the project) and needs to take (legal description of land or interest in land to be taken; the legal description may be on a separate sheet and attached to this document if additional space is required).

It is our opinion that the fair market value of the (property) (easement) we want to acquire from you is $ . . . . , and, therefore (condemnor) offers you $ . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . ..
NOTARY'S CERTIFICATE

STATE OF ............  
COUNTY OF ............  

Subscribed and sworn to before me this ....... day of ....... ,  
My Commission Expires: ............  

(Signature)

(Printed) NOTARY PUBLIC

(e) If the condemnor has a compelling need to enter upon land to restore utility or transportation services interrupted by disaster or unforeseeable events, the provisions of section 2.1 (b), 2.1 (c) and 2.1 (d) are waived for the purpose of restoration of utility or transportation services interrupted by such disaster or unforeseeable events. However, the condemnor shall be responsible to the landowner for all damages occasioned by the entry, and the condemnor shall immediately vacate the land entered upon as soon as utility or transportation services interrupted by the disaster or unforeseeable event have been restored. [IC 32-11-1-2.1, as added by Acts 1977, P.L. 312, § 1.]

NOTES TO DECISIONS

Application to State Condemnations.

The provisions of this section requiring a condemnor to make an offer based on the actual fair market value of the property as a condition precedent to condemnation, being the most recent expression of the legislature, supersede the earlier provision in 32-11-1-9 relieving the state of the obligation to prove an offer to purchase. Decker v. State, - Ind. App. --, 426 N. E. 2d 151 (1981).

Fair Market Value.

Evidence of the degree of acceptance of offers made to other landowners in the area which were based on the same schedules in no way indicated the fair market value of the property and could not establish a good faith offer to purchase. Unger v. Indiana & Mich. Elec. Co., - Ind. App. --, 420 N. E. 2d 1250 (1981).

This section does not require the condemnor to offer an irrefutable fair market value figure which would include all the damages as a precondition to the taking. Oxendine v. Public Serv. Co., - Ind. App. --, 423 N. E. 2d 612 (1980).

Good Faith.

Where offer for easement through land was based on a schedule of a specified amount for a lineal foot plus another specified amount for each tower to be built which schedule applied to all land in the area without taking into consideration the fair market value of the property, it was not a good faith offer as required by this section before bringing suit. Unger v. Indiana & Mich. Elec. Co., - Ind. App. --, 420 N. E. 2d 1250 (1981).

Any condemnor, including the state, must make a good-faith offer to purchase in the particular manner described by this section before attempting to exercise its eminent domain authority. Decker v. State, - Ind. App. --, 426 N. E. 2d 151 (1981).

32-11-1-3 [3-1703]. Notice to defendants - Form - Service - Nonresident defendants. - (a) Upon the filing of such complaint the clerk shall issue a notice requiring the defendants to appear before said court, or the judge thereof in chambers, if said court is in vacation, on the day to be fixed by the plaintiff by endorsement on the complaint at the time of filing said complaint, and to show cause, if any, why the property sought to be condemned should not be appropriated. Said notice shall be substantially in the following form:

To the Sheriff of ________ County, Indiana:

You are hereby commanded to notify ________, defendants, to appear before the ________ County, Indiana (or if said court is in vacation) the Hon. ________, judge of the ________ County, Indiana, at his chambers in the courthouse of ________ County, Indiana, on the ________ day of ________, 19_____, at ______ o'clock, M. to show cause, if any, they have why the real estate sought to be appropriated in the complaint of ________ should not be appropriated.

Witness my hand and the seal of said court affixed at ________, Indiana, this ________ day of ________, 19_____.

______________________________
Clerk of ________ Court

(b) Said notice shall be served in the same manner as a summons is served in civil actions. Upon a showing by affidavit, that any defendant is a nonresident of the state of Indiana, or that his name or residence is unknown, publication and proof of such notice may be made as provided in section 4 [32-11-1-4] of this chapter. [Acts 1905, ch. 48, § 3, p. 59; 1935, ch. 76, § 2, p. 228; 1982, P.L. 187, § 187.]
NOTES TO DECISIONS

Effect of Notice.

The defendants were required to appear on the day named in the notice and show cause why the plaintiff had no right to condemn the land. Morrison v. Indianapolis & W. Ry., 166 Ind. 511, 76 N. E. 744, 9 Ann. Cas. 587 (1908).

The court, in condemnation proceedings, could retain jurisdiction obtained by service of statutory summons and notice, until rendition of final judgment. Sisters of Providence v. Lower Vein Coal Co., 198 Ind. 645, 154 N. E. 659 (1926).

Nonresidents.

Nonresidents of the state were to have been given notice of the proceedings by publication. Gwinner v. Gary Connecting Rys., 182 Ind. 553, 103 N. E. 794 (1914).

Sufficiency.

Notice in the form of civil summons to show cause for not condemning property was sufficient. Sisters of Providence v. Lower Vein Coal Co., 198 Ind. 645, 154 N. E. 659 (1926).

32-11-1-4 [3-1704]. Service of notice - Appraisers. - Upon return of such notice, showing service thereof for ten [10] days or proof of publication for three [3] successive weeks in a weekly newspaper of general circulation printed and published in the English language in the county in which the land sought to be appropriated is situated, the last publication to be five [5] days before the day set for the hearing, and its [it] shall be the duty of the clerk of the court in which the proceedings are pending, upon the first publication, to send to the post-office address of each nonresident landowner whose land will be affected by said proceedings a copy of said notice, if the post-office of the treasurer of said county, and the court or judge in vacation, being satisfied of the regularity of the proceedings and the right of the plaintiff to exercise the power of eminent domain for the use sought, shall appoint three [3] disinterested freeholders of the county to assess the damages, or the benefits and damages, as the case may be, which the owner or owners severally may sustain, or be entitled to, by reason of such appropriation. [Acts 1905, ch. 48, § 4, p. 59.]

NOTES TO DECISIONS

Appraisers.

Where issue was joined on electric power company's authority to take the fee of lands necessary to the carrying out of its objects, the trial court had jurisdiction to appoint appraisers to assess damages to landowners from the appropria-


--Disinterested.

Fact that appraisers' report was prepared on stationery supplied by defendant's attorneys does not show that the appraisers were not disinterested. State v. Smith, 260 Ind. 555, 37 Ind. Dec. 325, 297 N. E. 2d 809 (1973).

Damages.

The damages assessed and awarded by the appraisers, provided for in this section were the compensation for the land taken. State v. Kraszyk, 240 Ind. 524, 167 N. E. 2d 339 (1960).

Description of Land.

A notice by publication, omitting the county but giving the congressional township and range of the lands sought to have been condemned, was sufficient. Southern Ind. Ry. v. Indianapolis & L. Ry., 168 Ind. 360, 81 N. E. 65, 13 L.R.A. (n.s.) 197 (1907).

Nonresidents.

Publication of a notice for three successive weeks in a weekly newspaper was sufficient notice as to nonresidents, and the hearing could have been had at the end of five days after the last publication. Southern Ind. Ry. v. Indianapolis & L. Ry., 168 Ind. 360, 81 N. E. 65, 13 L.R.A. (n.s.) 197 (1907).

Nonresidents of the state were to have been given notice of the proceedings by publication. Gwinner v. Gary Connecting Rys., 182 Ind. 553, 103 N. E. 794 (1914).

Presumption on Appeal.

In a proceeding to condemn a public utility, which was appealed to the Supreme Court, such court was warranted in assuming, in the absence of some showing of fact, that the court appointed appraisers who were qualified as required by the statute. Southern Ind. Gas & Elec. Co. v. City of Boonville, 215 Ind. 552, 20 N. E. 2d 648 (1939).

Service on Railroad Agent.

When the notice was served on the agent of a railroad company, the return of service should have stated that no officer of a higher grade could be found in the county. Southern Ind. Ry. v. Indianapolis & L. Ry., 168 Ind. 360, 81 N. E. 65, 13 L.R.A. (n.s.) 197 (1907).

Waiver of Notice.

Statutory notice as required by this section is not waived by entering a general appearance. Joint County Park Bd. v. Stegemoller, 228 Ind. 112, 89 N. E. 2d 820 (1950).
32-11-1-5 [3-1705]. Objections - Pleadings - Appeal. - Any defendant may object to such proceedings on the grounds that the court has no jurisdiction either of the subject-matter or of the person, or that the plaintiff has no right to exercise the power of eminent domain for the use sought, or for any other reason disclosed in the complaint or set up in such objections. Such objections shall be in writing, separately stated and numbered, and shall be filed not later than the first appearance of such defendant; and no pleadings other than the complaint and such statement or objections shall be allowed in such cause, except the answer provided for in section 8 [32-11-1-8] of this chapter: Provided, That amendments to pleadings may be made upon leave of court. If any such objection shall be sustained, the plaintiff may amend his complaint or may appeal to the supreme court or court of appeals from such decision, as and in the manner that appeals are taken from final judgments in civil actions, of which appeal all the parties shall take notice and by which they shall be bound. But if such objections are overruled, the court or judge shall appoint appraisers as provided for in this chapter; and from such interlocutory order overruling such objections and appointing appraisers, such defendants, or any of them, may appeal to the supreme court or court of appeals from such decision as and in the manner that appeals are taken from final judgments in civil actions, upon filing with the clerk of such court a bond, with such penalty as the court or judge shall fix, with sufficient surety, payable to the plaintiff, conditioned for the diligent prosecution of such appeal and for the payment of the judgment and costs which may be affirmed and adjudged against the appellants, such appeal bond shall be filed within ten [10] days after the appointment of such appraisers. All the parties shall take notice of and be bound by such appeal. The transcript shall be filed in the office of the clerk of the supreme court within thirty [30] days after the filing of the appeal bond. Such appeal shall not stay proceedings in such cause. [Acts 1905, ch. 48, § 5, p. 59; 1982, P.L. 187, § 168.]

NOTES TO DECISIONS

Appeal.

--Order Not Stayed.


Prior to the passage of this act, an appeal would not lie from an order appointing or refusing to appoint appraisers. Stoy v. Indiana Hydraulic Power Co., 166 Ind. 313, 76 N. E. 1057 (1908); Westport Stone Co. v. Thomas, 170 Ind. 91, 83 N. E. 617 (1908).

If a complaint was held insufficient on objections, an appeal could not have been taken when a final judgment was not rendered. Westport Stone Co. v. Thomas, 170 Ind. 91, 83 N. E. 617 (1908).

If appraisers were appointed, an appeal could have been taken from the action of the court appointing the appraisers and the right of the plaintiff to appropriate the land could have been tested on the appeal. Sexauer v. Star Milling Co., 173 Ind. 342, 90 N. E. 474, 26 L.R.A. (n.s.) 609 (1910).

Where the interlocutory order appointing appraisers was reversed, judgment after trial by jury on exceptions to report of appraisers had to be reversed. Western Union Tel. Co. v. Louisville & N.R.R., 185 Ind. 690, 114 N. E. 406 (1916).

The sustaining of a demurrer to a purported objection based upon a ground not specified by statute was not available error on appeal. Clinton Coal Co. v. Chicago & E.R.R., 190 Ind. 465, 130 N. E. 798 (1921).

The sufficiency of facts alleged in a complaint to constitute a cause of action could not have been questioned by an independent assignment of error on appeal. Jones v. Indiana Power Co., 192 Ind. 67, 135 N. E. 332 (1922).

The defendants in an eminent domain proceeding could appeal from the judgment of the court appointing appraisers and overruling objections to the taking of such action, on the ground that plaintiff had no right to the exercise of such power for the use sought, and on the ground of want of jurisdiction. The court further held that this section was not repealed by § 2-3218 (since repealed; presently rule AP. 4). Lowe v. Indiana Hydro-Electric Power Co., 194 Ind. 409, 143 N. E. 165 (1924).

In eminent domain proceedings, appeals by plaintiff were taken "in the manner that appeals are taken from final judgments in civil actions." Hallett v. Calvert, 207 Ind. 25, 191 N. E. 77 (1934).

The school corporation Eminent Domain Act of 1907 supplemented but did not supersede or abrogate the general Eminent Domain Act of 1905, and the objections and appeal from overruling thereof were authorized on the part of a holder of property already dedicated to a public use in an eminent domain action to condemn such property for school purposes. Cemetery Co. v. Warren School Tp., 236 Ind. 171, 139 N. E. 2d 538 (1957).

An action in which the trial court found that no objections to the complaint in condemnation had been filed and proceeded to appoint appraisers whose report exceptions were filed and pending was not appealable under this section. Lake County Trust Co. v. Indiana Port Comm'n, 248 Ind. 362, 11 Ind. Dec. 133, 229 N. E. 2d 457 (1967).
An order overruling objections to a condemnation is an interlocutory order and the filing of an assignment of errors is the proper procedure in taking an appeal from such an order and a motion to correct errors is not required. J.M. Foster Co. v. NIPSCO, 164 Ind. App. 72, 46 Ind. Dec. 570, 326 N. E. 2d 584 (1975).

An order overruling objections and appointing appraisers is interlocutory and an appeal therefrom must be pursuant to the appellate rules governing interlocutory appeals rather than as provided in this section. Southern Ind. Rural Elec. Coop. v. Civil City of Tell City, - Ind. App. --, 67 Ind. Dec. 117, 384 N. E. 2d 1145 (1979).

---Bond.

Failure to file an appeal bond within the time limit prescribed by 32-11-1-5 did not of itself require affirmance or dismissal on motion, as the statute was not jurisdictional but rather discretionary with the court since no appeal bond was necessary under Trial Rule 62 (D) (1) and Appellate Rule 6 (B) when the appeal was in the nature of an appeal from an interlocutory order and the appellee was not prejudiced by the late filing of the bond. Dzur v. Northern Ind. Pub. Serv. Co., 257 Ind. 674, 29 Ind. Dec. 233, 278 N. E. 2d 563 (1972).

Where the transcript was not filed within the thirty-day period following the filing of the appeal bond, the court of appeals was without jurisdiction. Poucher v. Public Serv. Co., 185 Ind. App. 608, 48 Ind. Dec. 558, 333 N. E. 2d 812 (1975).

That portion of this section which deals with the posting of bond is invalid since it is in direct contravention of Rule AP 6 which provides that no appeal bond is necessary. Southern Ind. Rural Elec. Coop. v. Civil City of Tell City, - Ind. App. --, 67 Ind. Dec. 117, 384 N. E. 2d 1145 (1979).

---Harmless Error.

An appeal could not have been taken from the overruling of objections to the complaint, as the ruling might have become harmless by reason of the court's refusing to appoint appraisers. Sexauer v. Star Milling Co., 173 Ind. 342, 90 N. E. 474, 26 L.R.A. (n.s.) 609 (1910).

Where evidence as to necessity of taking by interurban railroad company showed that the land was required for the convenient operation of the railroad, and disclosed nothing to warrant an inference that the land would have been used for any purpose other than a legitimate one, error in permitting a witness for the company to testify that in his opinion the condemnation was a necessity was harmless. Eckart v. Fort Wayne & N. Ind. Traction Co., 181 Ind. 352, 104 N. E. 762 (1914).

---Mandate.

Where, on appeal from a judgment in a condemnation proceeding, the Supreme Court declared that the judgment should have been reversed for the sole reason that the offer to purchase embraced only a portion of the property sought to be acquired, no mention having been made in the opinion as to the validity of the election authorizing the property's acquisition, and the lower court ordered the opinion and mandate spread of record and as a part of the same entry set aside its former order appointing appraisers, and adjudged that appellee's objections were in all things sustained, there was no basis for a contention that the mandate also adjudicated that the election was invalid. Flora v. Indiana Serv. Corp., 222 Ind. 253, 53 N. E. 2d 161 (1944).

---Parties.

When an appeal was taken from an interlocutory order appointing appraisers, all of the coparties of the appellant had to be made parties to the appeal. Lake Shore Sand Co. v. Lake Shore & M. S. Ry., 171 Ind. 457, 86 N. E. 754 (1908).

Under this statute, only the persons whose lands were about to be taken or whose interests therein were affected by the proceedings could appeal. State v. Wood, 219 Ind. 424, 39 N. E. 2d 448 (1942).

The question as to whether the state had a statutory right to appeal from an interlocutory order appointing appraisers for the assessment of lands taken by the state for highway purposes was jurisdictional and could not have been waived. State v. Wood, 219 Ind. 424, 39 N. E. 2d 448 (1942).

---Objections.


---In General.

In an eminent domain proceeding by redevelopment commission of municipality it was proper for the defendant to have determined the question of the motive for taking the property and whether the proceedings were in good faith or a subterfuge used to convey private property to a private individual for private use and where to have such questions determined in the trial court was denied the case would be reversed. Derloshon v. City of Ft. Wayne ex rel. Department of Redevelopment, 250 Ind. 163, 13 Ind. Dec. 255, 234 N. E. 2d 289 (1968); Hayden v. City of Ft. Wayne ex rel. Department of Redevelopment, 250 Ind. 640, 14 Ind. Dec. 847, 238 N. E. 2d 449 (1968).

---Applications.

This section applied only to regular condemnation.
tion proceedings and not to appeals by defendant-taker of land where land had already been taken and damages only were sought by plaintiff-landowner. Evansville-Vanderburgh Levee Auth. Dist. v. Towne Motel, Inc., 247 Ind. 161, 7 Ind. Dec. 475, 213 N. E. 2d 705 (1966).

Authority of Trial Court.

In condemnation proceedings, the trial court had full authority under the statute to hear evidence and to grant full, true, and just compensation for all property taken. City of Lebanon v. Public Serv. Co., 214 Ind. 295, 14 N. E. 2d 719, appeal dismissed, 305 U.S. 558, 59 S. Ct. 84, 83 L. Ed. 352, rehearing denied, 305 U.S. 671, 59 S. Ct. 143, 83 L. Ed. 435 (1938). In connection with this case, see Public Serv. Co. v. City of Lebanon, 219 Ind. 82, 34 N. E. 2d 20, 36 N. E. 2d 852 (1941).

Change of Venue.

Motion for a change of judge in eminent domain proceedings fell under 34-2-12-1 and was not a pleading which was not allowed under this section. State ex rel. Indianapolis Power & Light Co. v. Daviess Circuit Court, 246 Ind 468, 5 Ind. Dec. 384, 206 N. E. 2d 611 (1965).

Construction of Act.

The word "plaintiff" used in this section referred to the state or corporation having the sovereign power of eminent domain, and the word "defendant" referred to the person against whom the power was sought to have been asserted. State v. Wood, 219 Ind. 424, 39 N. E. 2d 448 (1942).

This statute was special in character, and the party appealing thereunder had to bring himself clearly within the procedure which he undertook to invoke. State v. Wood, 219 Ind. 424, 39 N. E. 2d 448 (1942).

Estoppel.

The owners of land, a part of which was appropriated by the state highway commission for highway purposes, were not estopped to maintain an action for appointment of appraisers for assessment of damages caused by the taking of the land for such purpose, where the state representatives undertook to repair the injuries caused by the taking of plaintiff's land, and promised to pay the landowner's damages caused by the taking of the land, in view of 32-11-1-12. State Hwy. Comm'n v. Sandbrink, 215 Ind. 71, 18 N. E. 2d 382 (1939).

Federal Courts.

In a proceeding by the United States to condemn Indiana lands for use in connection with a demonstration recreational project, though the right of eminent domain had to be exercised, as near as might be, in conformity to the laws of this state, the federal conformity statutes were not intended to abrogate the plain terms of the federal statute governing appeals, and the order of the district court in overruling the landowner's objections to the complaint and appointing appraisers was not an order from which an appeal would lie to the circuit court of appeals, though under this section the order was an appealable one. Dieckmann v. United States, 88 F. 2d 902 (7th Cir. 1937).

Injunction.

Where the defendant in a condemnation action objected to the complaint and failed to appeal upon his objections being overruled, he could not raise the objections again by means of a petition to enjoin the plaintiff from taking the property. Thiesing Veneer Co. v. State, 254 Ind. 699, 23 Ind. Dec. 12, 262 N. E. 2d 382 (1970).

Matters Outside of Issues.

The fact that a city seeking to condemn an electric public service plant had contracted with third persons for the purchase of bonds to raise funds with which to pay for the utility which it sought to condemn, was of no concern to the defendant utility. City of Lebanon v. Public Serv. Co., 214 Ind. 295, 14 N. E. 2d 719 (1938).

In a proceeding by city to condemn an electric public utility plant serving the city, under its power of eminent domain, it was a matter of no concern to the utility that no funds were appropriated, or that funds were not available to pay for the property sought to have been taken, when taken. City of Lebanon v. Public Serv. Co., 214 Ind. 295, 14 N. E. 2d 719 (1938).

Objections.

Objections to the appropriation of land could have been filed after the day named in the summons for the defendants to have appeared. Morrison v. Indianapolis & W. Ry., 166 Ind. 511, 76 N. E. 961, 77 N. E. 744, 9 Ann. Cas. 587 (1906).

If objections to a complaint to condemn land set up facts to defeat the right of the plaintiff to condemn, such objections were regarded as a plea or answer and could have been tested by a demurrer. Toledo & Ind. Traction Co. v. Indiana & C. Interurban Ry., 171 Ind. 213, 86 N. E. 54 (1908).

Objections filed to a complaint in condemnation proceedings were regarded as a demurrer insofar as they were directed to the face of the complaint. Toledo & Ind. Traction Co. v. Ind. & C. Interurban Ry., 171 Ind. 213, 86 N. E. 54 (1908).

All objections to complaints in proceedings to appropriate lands had to be in writing and point out specifically the objections made, and a general denial of the allegations of the complaint did not raise any issue. Westport Stone Co. v. Thomas, 175
Objections filed to a complaint in condemnation proceedings could tender issues of law or fact, but a single objection could not have been used for both purposes. Miller v. Southern Ind. Power Co., 184 Ind. 370, 111 N. E. 308 (1916).

In a proceeding by a railroad company to condemn land for a right-of-way, it was not error to overrule objections merely denying petitioner's right under the law or merely denying facts alleged in the petition. Cottrell v. Chicago, T.H. & S.E. Ry., 192 Ind. 692, 138 N. E. 504 (1923).

This section made provision for objection to eminent domain proceedings on account of lack of jurisdiction either of the subject matter or person, or because plaintiff had no right to exercise the power of eminent domain for the use sought, or for any other reason disclosed in the complaint or set up in such objections, and contemplated that causes which would have ordinarily constituted grounds for plea in abatement, demurrer, or answer, could have been presented in objections authorized by said section. Root v. State, 207 Ind. 312, 192 N. E. 447 (1934); Guerreta v. Public Serv. Co., 227 Ind. 556, 87 N. E. 2d 721 (1949); Joint County Park Bd. v. Stegemoller, 228 Ind. 103, 88 N. E. 2d 666, rehearing denied, 228 Ind. 118, 89 N. E. 2d 720 (1949).

Since the objection contemplated by this section could serve the purpose of an answer or demurrer, or both, the objectors could introduce evidence in support of the allegations in their objections. Reuter v. Milan Water Co., 209 Ind. 240, 198 N. E. 442 (1935).

Where defendants appeared and filed objections that the court had no jurisdiction of the persons of the defendants, which objection served the purpose of a demurrer or answer or both, and did not move to quash the service of summons, on special appearance for the purpose, they thereby waived such objection. Reuter v. Milan Water Co., 209 Ind. 240, 198 N. E. 442 (1935).

Where a condemnation proceeding, the only question adjudicated was that the property was not necessary for the purpose for which it was sought to be condemned, all matters in the complaint not objected to, except the right of the petitioner to exercise the power of eminent domain for the use sought or taken, were admitted unless objected to. Indianapolis Water Co. v. Lux, 224 Ind. 125 , 64 N. E. 2d 790 (1946).

Where objections to the complaint denied that a joint county park board had been legally created and that it had power of eminent domain, but no facts were stated, the sustaining of the objections, treated as a demurrer, was error. Joint County Park Bd. v. Stegemoller, 228 Ind. 103, 88 N. E. 2d 686, rehearing denied, 228 Ind. 118, 89 N. E. 2d 720 (1949).

Under this section, statutory objections are to have been either demurrers or answers, but the same objection could not serve as both a demurrer and an answer. State ex rel. Joint County Park Bd. v. Verberg, 228 Ind. 280, 91 N. E. 2d 916 (1950).


Order of Condemnation.

An order for condemnation is an interlocutory order and need not contain a legal description of the property. Wyatt-Rauch Farms, Inc. v. PSCI, 160 Ind. App. 228, 42 Ind. Dec. 115, 311 N. E. 2d 441 (1974).

Pleadings.

If proceeding was dismissed, the landowner was not entitled to recover incidental costs or damages. Howard v. Illinois Cent. R.R., 64 F. 2d 267 (7th Cir. 1933).

Defendants could show cause why the plaintiff had no right to appropriate land before appraisers were appointed. Morrison v. Indianapolis & W. Ry., 166 Ind. 511, 76 N. E. 961, 77 N. E. 744, 9 Att. Cas. 587 (1906); Vandalia Coal Co. v. Indianapolis & L. Ry., 168 Ind. 144, 79 N. E. 1082 (1907).

No pleadings could have been filed by the defendant other than the written objections provided for in this section. Vandalia Coal Co. v. Indianapolis & L. Ry., 168 Ind. 144, 79 N. E. 1082 (1907).

Pleadings could have been amended by leave of court as in ordinary civil actions. Darrow v. Chicago, L.S. & S. B. Ry., 169 Ind. 99, 81 N. E. 1081 (1907).

Proceedings under this statute were summary in nature until the question of damages was reached, and the provisions of the code as to trial by jury and change of venue from the county were not applicable. Matlock v. Bloomington Water Co., 196 Ind. 271, 146 N. E. 852, rehearing overruled, 148 N. E. 198.

It was not competent to allege, in defense of a proceeding to condemn property under the power of eminent domain, that the plaintiff would apply it to a use different from that for which it was being appropriated. Sisters of Providence v. Lower Vein Coal Co., 198 Ind. 645, 154 N. E. 659 (1926).
This act set out clearly and completely the procedure that was to be followed in condemnation proceedings under the power of eminent domain. Dyar v. Albright Cem. Ass'n, 199 Ind. 431, 157 N. E. 545 (1927), overruled on other grounds, Joint County Park Bd. v. Stegemoller, 228 Ind. 118, 89 N. E. 2d 720 (1930).

Amendments.

Amendments under this section are proper only when necessary to make the complaint conform to the evidence. Continental Enterprises, Inc. v. Cain, Ind. App. --, 68 Ind. Dec. 366, 387 N. E. 2d 86 (1979).

In action to obtain easement over the land of another it was not error for trial court to deny plaintiff the right to amend pleading to allege a public purpose and to have title to easement vested in county where court denied motion on ground that evidence of public purpose had been taken into consideration when it made its finding that the easement sought was for a private purpose. Continental Enterprises, Inc. v. Cain, Ind. App. --, 68 Ind. Dec. 366, 387 N. E. 2d 86 (1979).

Review on Appeal.

The question whether the trial court should have appointed appraisers to assess damages resulting from the taking of plaintiff's land for highway purposes was a question of fact, and the Supreme Court would not weight the evidence to determine such question. State Hwy. Comm'n v. Sandbrink, 215 Ind. 71, 18 N. E. 2d 382 (1939).

An appeal from an order overruling a defendant's objections in an eminent domain proceeding was specifically authorized, but, except as to the time when the bond and transcript were to have been filed, the procedure was under the general statutes and rules relating to appeals, and not under those pertaining to interlocutory orders. Indiana Serv. Corp. v. Flora, 218 Ind. 208, 31 N. E. 2d 1015 (1941).

Orders appointing appraisers in condemnation proceedings were not embraced in Burns' § 2-3218 since repealed; presently Rule AP. 4, authorizing appeals from specifically enumerated order. Indiana Serv. Corp. v. Flora, 218 Ind. 208, 31 N. E. 2d 1015 (1941).

While the law looked with favor upon the right of litigants to have their cases reviewed, one who sought to take advantage of a method of appeal that was special in character and in derogation of the general regulations relating to that subject had to bring himself clearly within the proceeding which he undertook to invoke. Indiana Serv. Corp. v. Flora, 218 Ind. 208, 31 N. E. 2d 1015 (1941).

This section did not authorize an appeal from an order appointing appraisers, but that which was to have been reviewed by such appeal was the decision sustaining the objections to the complaint and denying plaintiff's right to take the land. State v. Wood, 215 Ind. 424, 39 N. E. 2d 448 (1942).

Separate and Severable Defenses.

In condemnation proceedings, separate and severable defenses could have been joined in written objections, any one of which, if well taken and established, was a sufficient answer to the complaint. Flora v. Indiana Serv. Corp., 222 Ind. 253, 53 N. E. 2d 161 (1944).

If, on appeal from the decisions of the court sustaining the objections to a complaint seeking to condemn real estate and denying plaintiff's right to take the land, the decision was sustained, the case was ended, but if it was reversed, appraisers were appointed, and the cause proceeded to final judgment from which either party could have appealed. State v. Wood, 219 Ind. 424, 39 N. E. 2d 448 (1942).

Sustaining Objections, Effect.

In condemnation proceedings, where objections filed to the complaint went mostly to questions of fact, the sustaining of the objections had the same legal effect as the sustaining of a demurrer to the complaint in a civil action, in view of 32-11-1-8. City of Lebanon v. Public Serv. Co., 214 Ind. 295, 14 N. E. 2d 719, appeal dismissed, 305 U.S. 558, 59 S. Ct. 84, 83 L. Ed. 752, rehearing denied, 305 U.S. 671, 59 S. Ct. 143, 83 L. Ed. 435 (1938).

32-11-1-6 [3-1706]. Appraisers - Oath - Duties - Reports. - Such appraisers shall take an oath that they have no interest in the matter and that they will honestly and impartially make such assessment. After being so sworn, the judge shall instruct said appraisers as to their duties as such and the measure of the damages and benefits if any they allow. They shall determine the report:

(1) The fair market value of each parcel of property sought to be appropriated, and the value of each separate estate or interest therein;

(2) The fair market value of all improvements pertaining to the realty, if any, on the portion of the real estate to be condemned.

(3) The damages, if any, to the residue of the land of such owner or owners to be caused by taking out the part sought to be appropriated; and

(4) Such other damages, if any, as will result to any persons or corporation from the construction of the improvements in the manner proposed by the plaintiff.

In case the land is sought to be taken by the state or by a county, for a public highway or by a municipal corporation for a public use that confers benefits on any lands of the owner, the report shall also state the benefits which will accrue to each
NOTES TO DECISIONS

Apportionment of Interests.

The appraisers must not only appraise the entire plot of ground but where there are several interests therein the appraisers must also apportion such interest, but an appraisal without such apportionment can be invalidated only by a proper plea. Best Realty Corp. v. State, - Ind. App. --, 74 Ind. Dec. 435, 400 N. E. 2d 1204 (1980).

Assessment of Damages.


Where there are no limitations on the mode of construction, damages will be assessed based on a lawful and non-negligent mode of construction most injurious to the condemnee. City of Elkhart v. No-Bi Corp., - Ind. App. --, 428 N. E. 2d 43 (1981).

Compensation, Items Included.

In determining the appropriate amount of damages in an eminent domain action, all of the landowner's interest is compensable, including the rights of ingress, egress, and air space. Southern Ind. Gas & Elec. Co. v. Russell, - Ind. App. --, 451 N. E. 2d 673 (1983).

Elements of Damages.

A condemnee may be compensated for all present and prospective damages which are the natural and reasonable result of the taking. City of Elkhart v. No-Bi Corp., - Ind. App. --, 428 N. E. 2d 43 (1981).

An owner cannot recover damages for an intended specific use of property to arise in the future, but this rule applies only to uses not in esse at the time of the taking, so that where property was already used as a warehouse, this use was in esse and was an intended specific future use only in the sense that it would be used as a warehouse after the taking as well as before, and since the property was used as a warehouse at the time of the taking, any evidence of its future use as a warehouse was not barred as evidence of an intended specific future use. City of Elkhart v. No-Bi Corp., - Ind. App. --, 428 N. E. 2d 43 (1981).

Jury Instructions.

It was not error to refuse to give instruction to jury which set forth the techniques of appraisal since the proper method of appraisal was to be considered by the jury from witness' testimony along with all other evidence tending to prove damages. Board of Comm'rs v. Joeckel, - Ind. App. --, 77 Ind. Dec. 165, 407 N. E. 2d 274 (1980).

Methods of Appraisal.

Three separate methods of appraisal are recognized in eminent domain cases: (1) the comparable sales approach; (2) the income or capitalization approach; and (3) when neither the comparable sales approach nor the income approach are applicable, the cost approach. Southern Ind. Gas & Elec. Co. v. Russell, - Ind. App. --, 451 N. E. 2d 673 (1983).


In General.

The appraisers should have taken into consideration and assessed all damages, both direct and consequential, which the landowner would have sustained from the appropriation of the property described in the complaint. Vandalia Coal Co. v. Indianapolis & L. Ry., 168 Ind. 144, 79 N. E. 1082 (1907).

In condemnation proceedings the true measure of damages for land having a market value when appropriated was the fair market value for which the land could have been sold if the owner was willing to sell. Alberson Cem. Ass'n v. Fuhrer, 192 Ind. 606, 137 N. E. 545 (1923).

In a proceeding to condemn land for highway purposes, testimony showing the value of land a
small part of which was taken for highway purposes with improved road constructed through it, and the value of the tract before such construction, was incompetent. State v. Brubeck, 204 Ind. 1, 170 N. E. 81 (1930).

Testimony offered to show market value of land, before and after the appropriation, was properly excluded. State v. Reid, 204 Ind. 631, 185 N. E. 449, 86 A.L.R. 1442 (1933).

The measure of damages was the difference between the value of the whole tract before the taking and the value of the remainder, irrespective of any benefits conferred by the appropriation. State v. Reid, 204 Ind. 631, 185 N. E. 449, 86 A.L.R. 1442 (1933).

Cemetery Lots.

In determining the value of cemetery lots taken it was proper to base such value on the new sales price of lots already sold in the affected area and on the net sales price of similar burial lots in other sections of the cemetery. State v. Lincoln Memory Gardens, Inc., 242 Ind. 206, 177 N. E. 2d 655 (1961).

Compensation, Items Included.

This act as amended authorized the court to require additional investment and expenditures to have been included in the compensation. City of Lebanon v. Public Serv. Co., 214 Ind. 295, 14 N. E. 2d 719, appeal dismissed, 305 U.S. 558, 59 S. Ct. 84, 83 L. Ed. 352, rehearing denied, 305 U.S. 671, 59 S. Ct. 143, 83 L. Ed. 435 (1938).

Where, in a condemnation proceeding, there was no evidence as to what, if any, benefits from the improvements were conferred upon any lands involved which were not condemned, it was proper to refuse to give requested instructions that the benefits conferred, if any, to the residue of the lands could be considered as determining the question of compensatory damages. State v. Stabb, 226 Ind. 319, 79 N. E. 2d 392 (1948), overruled, State v. Heslar, 257 Ind. 307, 27 Ind. Dec. 377, 274 N. E. 2d 281 (1971).

In an action by the state to condemn real estate for the purpose of widening, and in some places, changing the right-of-way of a highway which ran through defendants’ farm, it was proper for defendants to show, as an element of damage, that the improvement caused surface water to have been collected from a portion of land and to have been precipitated onto the remaining portion. State v. Ahaus, 223 Ind. 629, 63 N. E. 2d 199 (1945).

In an action by the state to condemn real estate for the purpose of widening, and in certain places, changing the right-of-way of a highway, every element of damage which would naturally and ordinarily result from the taking could have been considered in arriving at the amount of damages to have been awarded. State v. Ahaus, 223 Ind. 629, 63 N. E. 2d 199 (1945).

The general rules as to the measure of damages, where all or a part of a tract of land was taken for widening a highway, were the same as in other cases where property was taken or damaged for a public use. State v. Ahaus, 223 Ind. 629, 63 N. E. 2d 199 (1945).

In an action by the state to condemn real estate for the purpose of widening, and in some places, changing the right-of-way of a highway which ran through defendants’ farm, an instruction drawn on the theory of the accumulation of surface water and of the unlawful diversion of it onto land of another was not harmful to plaintiff, even though the evidence disclosed that the improvement caused the water to be collected from a portion of defendants’ land and to be precipitated onto the remaining portion, since the changing of the flow of surface water could be considered as an element of damage. State v. Ahaus, 223 Ind. 629, 63 N. E. 2d 199 (1945).

The alleged impairment of property owner’s easement of ingress and egress caused by a divider strip in the center of a newly constructed highway was not caused by the condemnation and taking of land since it was taken in order to widen the highway. State v. Ensley, 240 Ind. 472, 164 N. E. 2d 342 (1960).

The principle of substitution, that is, the price for which other property could be obtained for the same purpose, was not an element to have been considered in the assessment of damages in eminent domain proceedings. State v. Lincoln Memory Gardens, Inc., 242 Ind. 206, 177 N. E. 2d 655 (1961).

Evidence of the cost of constructing a drive so as to have access to part of parcel of land left after condemnation proceedings was proper in assessment of damages. Crumpacker v. State, 266 Ind. 1, 26 Ind. Dec. 439, 271 N. E. 2d 716 (1971).


Although the owner of property abutting on a public highway has an easement of ingress and egress which cannot be substantially or materially interfered with or taken away without just compensation, where the impairment of access was caused not by the condemnation of a part of the property but by the construction of a median strip which diverted traffic, the property owner has no property right in the free flow of traffic and can claim no

Consequential Damages.

In an action by the state to condemn real estate for purpose of construction of a limited access highway, there could have been no award in conformity to a claim concerning "such other damages" from the construction of the improvement in the manner proposed by the plaintiff, pursuant to this section, as evidence was inadmissible which went to loss of profit when the whole tract was taken, as was evidence as to damages for destruction of property inadmissible. State v. Heslar, 257 Ind. 307, 27 Ind. Dec. 377, 274 N. E. 2d 261 (1971), rehearing denied, 257 Ind. 625, 277 N. E. 2d 796 (1972).

Construction of Section.

By the use of the words "any persons or corporations," the legislature intended to include all persons suffering consequential damages. State v. Stabb, 226 Ind. 319, 79 N. E. 2d 392 (1948).


Evidence as to the value of a business being conducted on land condemned was not admissible where there was only one owner whose property was being taken. Elson v. City of Indianapolis ex rel. Department of Redevelopment, 246 Ind. 337, 4 Ind. Dec. 652, 204 N. E. 2d 857 (1965).

Deduction for Benefits.


Where part of plaintiff's property was condemned for highway construction, his sale of fill dirt from the residual property to the highway contrac-

tors did not constitute a special benefit such as could be considered and used as a setoff against damages to the residual land, since at the time he was served with notice of condemnation he had no agreement with the contractors that they should buy fill dirt from him. State v. Zehner, - Ind. App. --, 60 Ind. Dec. 105, 389 N. E. 2d 1103 (1977).

Defendants Withdrawing Claims.

In an eminent domain case, a defendant could withdraw his claim for damages to the residue and other damages and thus prevent the state from introducing evidence of benefits resulting to the remaining land because, if no claim was made for damages to the remaining land, the state had no right under the statute to show that the value of such remaining land was enhanced. State v. Furry, 252 Ind. 486, 18 Ind. Dec. 413, 250 N. E. 2d 590 (1969).

Elements of Damages.

In condemnation suit for a highway, of city land to be used for a sewage disposal system, damages sustained to engineering and plans which were in esse at the time of taking were proper; but damages concerning extension of the water main, increased diameter of water main, bends around bridge foundation, and highway permits were not proper elements of damage. State v. City of Terre Haute, 250 Ind. 613, 14 Ind. Dec. 584, 238 N. E. 2d 459 (1968).

One could not recover damages for intended use to arise in the future. State v. City of Terre Haute, 250 Ind. 613, 14 Ind. Dec. 584, 238 N. E. 2d 459 (1968).

In an action by the state to condemn real estate for purpose of construction of a limited access highway, there could have been no award pursuant to this section other than to recompense a person for damages resulting from the method of construction in a physical sense. State v. Heslar, 257 Ind. 307, 27 Ind. Dec. 377, 274 N. E. 2d 261 (1971), rehearing denied, 257 Ind. 625, 277 N. E. 2d 796 (1972).

In an action by the state to condemn real estate for the purpose of construction of a limited access highway every element of damage which would naturally have resulted should have been determined and reported in arriving at the amounts of damages to have been awarded in conformity to the provisions of this section. State v. Heslar, 257 Ind. 307, 27 Ind. Dec. 377, 274 N. E. 2d 261 (1971), rehearing denied, 257 Ind. 625, 277 N. E. 2d 796 (1972).

In eminent domain cases the measure of damages is the fair market value of the property at the time of taking. State v. Church of the Nazarene, - Ind. --, 63 Ind. Dec. 38, 377 N. E. 2d 607 (1978).
In order for the church to have been justly compensated, the state had to respond in damages for not only the market value of the strip of land which was appropriated, but also for damages resulting to the residue of the property of the church and as there was simultaneous unity of title, unity of use and contiguity, the church was entitled to severance damages the essence of which is the loss in value to the remainder tract by reason of a partial taking of land. State v. Church of the Nazarene, - Ind. --, 63 Ind. Dec. 38, 377 N. E. 2d 607 (1978).

The valuation of tract of land by witness according to its value as building lots although the land at that time was a single tract was not improper provided such utilization of the tract could be made without encountering development expenses and there would be no capital, skill, profit or other elements involved in a sale for such purpose. State v. Church of the Nazarene, - Ind. --, 63 Ind. Dec. 38, 377 N. E. 2d 607 (1978).

When land which is taken by condemnation has a fair market value at the time of its appropriation, the measure of damages is the fair market value for which the land could be sold if the owner were willing to sell and a buyer willing to buy, neither under compulsion to do so. City of Lafayette v. Beeler, - Ind. App. --, 65 Ind. Dec. 423, 381 N. E. 2d 1287 (1978).

**Highway Proceedings, Case Decided Prior to Amendment of Section.**

When condemning land for highway purposes, the state was not a "municipal corporation" entitled to deduct benefits resulting from the improvements, in assessing damages. State v. Brubeck, 204 Ind. 1, 170 N. E. 81 (1930); State v. Reid, 204 Ind. 631, 185 N. E. 449, 86 A.L.R. 1442 (1933).

In a proceeding to condemn land for state highway, the measure of damages was the difference between the value of whole tract before taking and the value of the remainder, irrespective of benefits conferred by the appropriation, in view of this section, and Ind. Const., art. 1, § 21. State v. Reid, 204 Ind. 631, 185 N. E. 449, 86 A.L.R. 1442 (1933).

In a proceeding to condemn land for state highways, the amount of damages could not have been measured by determining and comparing market values before and after the taking, since that would have permitted consideration of benefits, contrary to this section. State v. Reid, 204 Ind. 631, 185 N. E. 449, 86 A.L.R. 1442 (1933).

This section, construed as excluding consideration of benefits in determining the amount of compensation to have been paid for taking land for state highway, did not violate Ind. Const., art. 1, § 21, requiring payment of just compensation. State v. Reid, 204 Ind. 631, 185 N. E. 449, 86 A.L.R. 1442 (1933).

**Improvements by Condemnor.**

If proceedings were had against a person not the owner of the land, and the condemnor made improvements on the land, such improvements were not to have been considered as a part of the land in subsequent condemnation proceedings against the owner of the land. McClaren v. Jefferson School Tp., 169 Ind. 140, 82 N. E. 73, 13 L.R.A. (n.s.) 417, 13 Ann. Cas. 978 (1907).

**Instructions to Appraisers.**


**Interlocutory Orders Not Appealable.**

The determination by the trial court on motion of defendant to determine the aggregate award of the appraisers that there was no ambiguity in the award and that it reflected damages in the amount of $60,000 was an interlocutory order not appealable under this section. Anthrop v. Tippecanoe School Corp., 277 Ind. 169, 28 Ind. Dec. 649, 277 N. E. 2d 169 (1972).

**Judgment.**

When the amount of the damages to have been paid by the condemnor was the only question involved, a judgment for the amount thereof was proper at whatever point in the proceeding that question had reached a finality. Southern Ind. Power Co. v. Cook, 182 Ind. 505, 107 N. E. 12 (1914).

Where the plaintiff had taken possession of the land, and the parties agreed upon the appraisers to assess the damages and they waived the right to file exceptions and right of appeal, and no exceptions were filed to the report of the appraisers fixing the amount of damages, the court could have rendered judgment for the damages assessed, and the plaintiff could not have appealed from such judgment. Southern Ind. Power Co. v. Cook, 182 Ind. 505, 107 N. E. 12 (1914).

**Oath of Appraisers.**

Where there was no objection to the failure of appraisers to take an oath and there was no attempt to show the harm resulting from this defect, the oath requirement was satisfied by the appraisers' report which stated they were "duly sworn" by the court. State v. Smith, 260 Ind. 555, 37 Ind. Dec. 325, 297 N. E. 2d 809 (1973).

**Quantity of Estate.**

Where issue was joined on electric power company's authority to take the fee of lands necessary to the carrying out of its objects, the trial court had jurisdiction to appoint appraisers to
assess damages to landowners resulting from the appropriation of the fee. Pingry v. Indiana Hydroelectric Power Co., 197 Ind. 426, 151 N. E. 226 (1926).

Railroad Right-of-Way.

In assessing damages for lands taken by a railroad for a right-of-way, it was not proper for the appraisers to allow any sum for damages because of annoyance or inconvenience that might have resulted to the landowner because of the operation of the railroad. Indianapolis & Cincinnati Traction Co. v. Larrabee, 168 Ind. 237, 80 N. E. 413, 10 L.R.A. (n.s.) 1003, 11 Ann. Cas. 695 (1907); Toledo & C. Interurban Ry. v. Wagner, 171 Ind. 185, 85 N. E. 1025 (1908); Indianapolis & W. Ry. v. Hill, 172 Ind. 402, 86 N. E. 414 (1908); Cleveland, C., & St. L. Ry. v. Smith, 192 Ind. 674, 138 N. E. 347 (1923).

The damages recoverable for the condemnation of lands by interurban and electric railroad companies for transmission lines right-of-way included the value of the land appropriated, together with such damages as resulted from the proper construction of such lines. Mull v. Indianapolis & Cincinnati Traction Co., 169 Ind. 214, 81 N. E. 657 (1907); Indianapolis & W. Ry. v. Branson, 172 Ind. 383, 86 N. E. 834, rehearing overruled, 88 N. E. 594 (1909); Indianapolis & W. Ry. v. Hill, 172 Ind. 402, 86 N. E. 414 (1908); Union Traction Co. v. Pfeil, 39 Ind. App. 51, 78 N. E. 1052 (1906); Toledo & C. Interurban Ry. v. Wilson, 44 Ind. App. 213, 86 N. E. 508 (1908), rehearing overruled, 88 N. E. 864 (1909).

Whether farm divided by railroad track was operated as a single farm, or as two farms, was a question for the jury upon assessing damages for the taking of additional land by the railroad. Cleveland, C., & St. L. Ry. v. Smith, 177 Ind. 524, 97 N. E. 164 (1912); Chicago & E.R.R. v. Hoffman, 67 Ind. App. 281, 119 N. E. 169 (1918).

This section authorized adjacent landowner whose property was not acquired to recover for damages resulting from construction of a railroad only when the right-of-way was acquired by eminent domain, and not by purchase. Fink v. Cleveland, C., & St. L. Ry., 181 Ind. 539, 105 N. E. 116 (1914).

The measure of damages in condemnation proceedings for land taken by a railroad for additional drainage purposes was the value of the defendant's farm in its entirety before the change of drainage and its value after such change. Chicago & E.R.R. v. Hoffman, 67 Ind. App. 281, 119 N. E. 169 (1918).

The rule that the price paid for a railroad right-of-way settled future damages applied only to damages which might reasonably have been expected to result from the conveyance and the construction and maintenance of the road in a proper and lawful manner. Chicago & E.R.R. v. Hoffman, 67 Ind. App. 281, 119 N. E. 169 (1918).

Time for Computation.

The statute provided that the value of the land "at the date of the service of notice" as provided in a preceding section "shall be the measure of compensation." Fort Wayne & S. W. Traction Co. v. Fort Wayne & W. Ry., 170 Ind. 49, 83 N. E. 665, 16 L.R.A. (n.s.) 537 (1908).

Where the landowner rejected the tender of the appraisers' award, and successfully prosecuted his appeal, or in case the condemnor appealed and thereby prevented such owner from using the money thus tendered or paid into court, he was entitled to interest upon the full amount of the award as determined on appeal from the time the condemnor took possession. Schnull v. Indianapolis Union Ry., 190 Ind. 572, 131 N. E. 51 (1921).


Value of Property.

--Partial Taking.


The "fair market value" was a determination of what the land could have been sold for on the date of the taking if the owner were willing to sell. Anything affecting the sale value at that time was a proper matter for the jury's consideration in attempting to arrive at a "fair market value." Southern Ind. Gas & Elec. Co. v. Gerhardt, 241 Ind. 389, 172 N. E. 2d 204 (1961).

A mere offer to buy or sell property was not a measure of the market value of similar property. State v. Lincoln Memory Gardens, Inc., 242 Ind. 206, 177 N. E. 2d 655 (1961).

Neither an increase nor a decrease in the market value of the property sought to have been taken, which was brought about by the same project for which the property was being taken, could have been considered in determining the value of the property. State v. Sovich, 253 Ind. 224, 19 Ind. Dec. 456, 252 N. E. 2d 582 (1969).

In an action by the state to condemn real estate for the purpose of construction of a limited access highway the measure of damages where a leasehold interest was taken was the fair market.
value of the unexpired term of the lease over and above the rent stipulated to have been paid, in con-

An expert witness was entitled to use the sale of a lot to the city in forming his opinion of damages in a suit involving state condemnation. Best v. State, 167 Ind. App. 378, 50 Ind. Dec. 346, 339 N. E. 2d 82 (1975).

In a condemnation suit, a question asked of an expert witness on direct examination as to whether he determined the amount which the landowner had paid for the property was permissible where a motion of the landowner had been granted making admissible questions as to the amount was. Best v. State, 167 Ind. App. 378, 50 Ind. Dec. 346, 339 N. E. 2d 82 (1975).

-Future Value.

The market value of the condemned land insofar as that value is presently enhanced by the property's adaptability for subdivision use may be shown, but the possible future value of each prospective lot may not be proven. City of Lafayette v. Beeler, -Ind. App. --, 65 Ind. Dec. 423, 381 N. E. 2d 1287 (1978).

32-11-1-7 [3-1708]. Payment of damages - Possession of real estate - Appeal - Certificate filed with auditor - Transfer on tax records. - (a) If the plaintiff shall pay to the clerk of such court the amount of damages thus assessed, it shall be lawful for such plaintiff to take possession of and hold the interest in the lands so appropriated, for the uses stated in such complaint, subject to the appeal provided for in section 5 [32-11-1-5] of this chapter. But the amount of such benefits or damages shall be subject to review as provided in section 8 [32-11-1-8] of this chapter.

(b) Upon such payments by the plaintiff of the amount of the award of the court appointed appraisers, the plaintiff shall file or cause to be filed with the auditor of the county in which the real estate is located a certificate, certifying the amount paid to the clerk of the court and including therein the description of the real estate being appropriated. The auditor of the county shall then transfer the real estate being condemned to the plaintiff on the tax records of the county. [Acts 1905, ch. 48, § 7, p. 59; 1965, ch. 377, § 1; 1967, ch. 193, § 1; 1982, P.L. 187, § 170.]

NOTES TO DECISIONS

Appeal.

--Order Not Stayed.


In General.

No transfer of title could occur until all events and conditions provided for in this section had been met. Indiana Port Comm'n v. Davis, 8 Ind. Dec. 383 (1966).

Acceptance of Damages.

A landowner accepting payment of the appraisers' award was precluded from prosecuting his exceptions to the award. Schnull v. Indianapolis Union Ry., 190 Ind. 572, 131 N. E. 51 (1921).

Application to Corporate Merger.

This section, by reason of 23-1-5-7, applied to appraisal of stock of dissenting shareholder, and therefore corporation was properly required to deposit amount of assessor's award into court prior to trial or exception to appraiser's report. Apartment Properties Inc. v. Luley, 252 Ind. 201, 17 Ind. Dec. 384, 247 N. E. 2d 71 (1969).

Change of Venue.

In view of the intent of the legislature to expedite condemnation proceedings by permitting the payment of the award and the taking of possession pending the ultimate determination of the issues involved, there was no reason offered why a change of venue should have held up or stayed such possession, therefore the court held it was proper pending the perfection of the change of venue and until the Grant Circuit Court took jurisdiction to pay the amount of award to the court of the Delaware Superior court where the cause was pending at the time the change of venue was requested. State ex rel. Keesling v. Grant Circuit Court, 238 Ind. 577, 153 N. E. 2d 912 (1958).

Collateral Attack.


Highway Commission.

The eminent domain statute, including this section, was applicable to the state acting through the state highway commission. Thomas v. Lauer, 227 Ind. 432, 86 N. E. 2d 71 (1949).

Improvements, Compensation.

The provisions of this section and 32-11-1-8 had to be construed together, and by such sections the propriety of further proceedings after the damages
Initially determined were paid and possession passed was contemplated, and hence the court had continuing jurisdiction to provide for full and just compensation to the owner of all the property, including extensions, additions, and capital expenditures, made after the proceedings were commenced. Public Serv. Co. v. City of Lebanon, 221 Ind. 78, 46 N. E. 2d 480 (1943).

After a city's right to acquire public utility property was determined the court could adjudge that the utility was entitled to a purchase money lien on the property acquired by the city, for the sum fixed as compensation for additional improvements necessarily made after damages for the original property had been fixed, and could then proceed to determine the reasonable value of such improvements, and could, by appropriate orders, have seen that its judgment was carried out. Public Serv. Co. v. City of Lebanon, 221 Ind. 78, 46 N. E. 2d 480 (1943).

Injunction.

When the rights of parties could have been protected under this section, an injunction would not lie. Smith v. Goodnight, 121 Ind. 312, 23 N. E. 149 (1899); Halstead v. City of Brazil, 83 Ind. App. 53, 147 N. E. 629 (1925).

Void eminent domain proceedings could, however, have been enjoined. City of Ft. Wayne v. Fort Wayne & J.R.R., 149 Ind. 25, 48 N. E. 342 (1897).

An injunction would lie to prevent the taking of land by a city for a street where the owner thereof had no notice of the condemnation proceedings and was not made a party thereto. City of Ft. Wayne v. Fort Wayne & J.R.R., 149 Ind. 25, 48 N. E. 342 (1897).

Payment and Possession.

Where plaintiff was in possession of land before it commenced the condemnation proceeding, a judgment rendered upon the award of the appraisers for the amount thereof, and vesting the lands in the plaintiff upon its payment, was not erroneous. Southern Ind. Power Co. v. Cook, 182 Ind. 505, 107 N. E. 12 (1914).

In proceedings under this section, the state was neither bound to take possession of the condemned real estate nor to pay the award of damages prior to taking possession; but where the state, after the award was made and to which the state filed exceptions, elected to and did pay the damages as a condition precedent to exercising possessory rights, the payment was voluntary. State v. Pollitt, 220 Ind. 593, 45 N. E. 2d 480 (1942).

The trial court had no power to stay the taking of physical possession of the condemned property by the condemnor pending trial on the amount of damage nor to preserve the buildings and improvements upon the land for the purposes of viewing by a jury at a trial upon the amount of damages. State ex rel. City of Hammond v. LaPorte Circuit Court, 249 Ind. 494, 12 Ind. Dec. 634, 233 N. E. 2d 471 (1968).

Possession Pending Appeal.

The possession of the condemnor during the pendency of an appeal, and until compliance with the orders and judgment of the court, gave it no greater right than that of a licensee. Schnull v. Indianapolis Union Ry., 190 Ind. 572, 131 N. E. 51 (1921).

The water works company after paying to the clerk of court the amount of the appraiser's award held only as a licensee during an appeal from the old ruling of the exceptions and objections to the complaint, however as licensee such water company could occupy the real estate and possess the same to the extent necessary to the performance of its work. State ex rel. Keesling v. Grant Circuit Court, 238 Ind. 577, 153 N. E. 2d 912 (1958).

When the state paid the amount of the appraiser's award into the hands of the clerk, it was thereby enabled to, and did, deprive the landowners of the use of their land. Since the appraiser's award was the compensation for the land, and if the landowners were satisfied therewith, such sum represented the land appropriated and immediately became the property of the state, and in order to maintain its right to possession was required to keep the tender of compensation good pending the final determination of the amount of damages due the landowners. State v. Kraszyk, 240 Ind. 524, 167 N. E. 2d 339 (1960).

Public Utilities.

During proceedings by a city to acquire utility property pursuant to statute, and even after the damages for the property have been assessed and until the city pays the purchase price, it was incumbent on the utility to furnish adequate service to the community or run the risk of being mandated to do so or of losing its permit. Public Serv. Co. v. City of Lebanon, 221 Ind. 78, 46 N. E. 2d 480 (1943).

Purpose.

By the enactment of this section, the legislature intended to expedite condemnation proceedings by permitting the payment of the award and the taking of possession of the property pending the ultimate determination of the issues involved. The condemnee could accept the money and thereby waive its exceptions to the award of the appraisers with the prosecution of its exceptions to the appraisers' award, in which event the money would remain in

The purpose of this act was to protect the landowner against loss and if, before the question of damages was finally determined, the condemnor was permitted to withdraw part of the assessed damages as fixed by the appraisers and which it had paid to the clerk of the court in order to get possession of the land, the purpose of the statute was defeated. State v. Kraszyn, 240 Ind. 524, 167 N. E. 2d 339 (1960).

Requirement for Immediate Possession.

If the condemnor decided to take immediate possession of the lands condemned, it had to pay to the clerk of the court such assessed damages, as a condition precedent to taking possession. State ex rel. Socony Mobil Oil Co. v. Delaware Circuit Court, 245 Ind. 154, 3 Ind. Dec. 143, 196 N. E. 2d 752 (1964).

Parties to Withdraw Damages.

Parties defendant with any right, title or interest in the land appropriated could withdraw the sums allowed to them by the appraisers before the review of the damages were assessed by a court. State ex rel. Socony Mobil Oil Co. v. Delaware Circuit Court, 245 Ind. 154, 3 Ind. Dec. 143, 196 N. E. 2d 752 (1964).

Who Entitled to Damages.

The filing of a complaint or instrument for the appropriation of land constituted a taking of the property, and the then owner of the land was entitled to the damages assessed, and his subsequent conveyance of the land did not transfer the claim for damages. Fort Wayne & S. W. Traction Co. v. Fort Wayne & W. R. Co., 170 Ind. 49, 83 N. E. 665, 16 L.R.A. (n.s.) 537 (1908).

32-11-1-8 [3-1707]. Exceptions to appraisement - Procedure on trial - Appeal - Payment of share to one or more defendants - Interest - Any party to such action, aggrieved by the assessment of benefits or damages, may file written exceptions thereto in the office of the clerk of such court in vacation, or in open court if in session, within twenty [20] days after the filing of such report, and the cause shall further proceed to issue, trial and judgment as in civil actions; the court may make such further orders, and render such findings and judgments as may seem just. Notice of filing of the appraisers' report shall be given by the clerk of the court to all known parties to the action and their attorneys of record by certified mail. The period of exceptions shall run from and after the date of mailing. Such judgment as to benefits or damages shall be appealable by either party as in civil actions to the Court of Appeals or Supreme Court.

After twenty [20] days have passed following the filing of the report of the court-appointed appraisers, and if the plaintiff shall have paid the amount of damages thus assessed to the clerk of such court, any one or more of the defendants may file a written request or requests for payment of their proportionate share of said damages held by the clerk, together with sufficient copies of the same for service upon the plaintiff and all other defendants not joining in such request, and the defendant or defendants shall be permitted to withdraw and receive their proportionate share or shares of the damages upon the following terms and conditions:

First. Each such written request shall be verified under oath, and shall state the amount of the proportionate share of the damages to which the defendant or defendants joining therein are entitled, the interest of each such defendant, and the highest offer made by the plaintiff to each such defendant or defendants for their respective interest in or damages sustained in respect to the land or interest therein which has been appropriated by the plaintiff.

Second. Upon the filing of any such written request for withdrawal and payment of damages to any of the defendants [defendants], the clerk of the court shall forthwith issue a notice to the plaintiff and all defendants of record in said cause who have not joined in such request for payment, stating therein the names of the parties, number of the cause, the filing of the request for payment, and notice to appear on a day, to be fixed by the court, and show cause if any they have why the amounts requested should not be withdrawn and paid over by the clerk of the court to those defendants requesting the same. A copy of the request for payment shall be served with the notice, and if any defendant not requesting such payment is a non-resident of the state of Indiana, or if his name or residence is unknown, publication and proof of the notice and request for payment shall be made as provided in section 4 [32-11-1-4] hereof.

Third. Upon hearing duly held pursuant to notice of such written request of one or more of the defendants, the court shall determine and order the payment by the clerk of the proportionate shares of said damages due to the defendants requesting the same. From such order or orders the defendants or any of them may appeal to the Supreme Court within the same time and in the same manner as provided for allowable appeals from interlocutory orders in civil actions.

Fourth. If exceptions to the appraisers' report have been duly filed by the plaintiff or any defendant, no payment shall be made by the clerk of the court to any defendant of any part of the damages deposited with the clerk by the plaintiff, unless and until the defendants requesting the same have filed with the clerk a written undertaking, with surety
approved by the court, for the repayment to the plaintiff of all sums received by such defendant or defendants in excess of the amount or amounts awarded as damages to such defendant or defendants by the judgment of the court upon trial held on the exceptions to the assessment of damages by the appraisers: Provided, however, That the court may waive the requirement of separate surety as to any defendant who is a resident freeholder of the county in which the cause is pending, and who is owner of real property in this state, liable to execution, not included in the real property appropriated by the plaintiff, and equal in value to the amount by which the damages to be withdrawn, exceed the amount offered to said defendant or defendants as stated in their request, or determined by the court if the plaintiff has disputed such statement of the offer: Also Provided, That no surety or written undertaking shall be required in order for a defendant to withdraw those amounts previously offered by the plaintiff to the defendant, providing the plaintiff has previously notified the court in writing of the amounts so offered. Provided further, That the liability of any surety shall not exceed the amount by which the damages to be withdrawn exceed such amount offered to the defendant or defendants with whom such surety joins in said written undertaking. Each such written undertaking filed with the clerk shall be immediately recorded by the clerk in the order book and entered in the judgment docket, and from the date of such recording and entry such written undertaking shall be a lien upon all the real estate in such county owned by the several obligors, and the same shall also be a lien upon all the real estate owned by the several obligors in each county of this state in which the plaintiff shall thereafter cause a certified copy of said judgment docket entry to be recorded, from the date of such recording.

Fifth. The withdrawal and receipt from the clerk of the court by any defendant of his proportionate share of the damages awarded by the appraisers, as determined by the court upon such written request and hearing, shall not operate or be considered as a waiver of any exceptions duly filed by such defendant to the assessment of damages by the appraisers.

Sixth. In any trial of exceptions, the court or jury shall compute and allow interest at the rate of eight percent [8%] per annum on the amount of a defendant's damages from the date plaintiff takes possession of the property; but in no event shall any interest be allowed on any amount of money paid by the plaintiff to the clerk of the court after the same is withdrawn by the defendant, and furthermore, in no event shall interest be allowed on that amount of money paid by the plaintiff to the clerk of the court which is equal to the amount of damages previously offered by the plaintiff to any defendant and which amount can be withdrawn by the defendant without filing any written undertaking or surety with the court for the withdrawal of that amount. [Acts 1905, ch. 48, § 8, p. 59; 1961, ch. 317, § 1; 1965, ch. 344, § 1; 1973, P.L. 22, § 8; 1975, P.L. 301, § 1.]

NOTES TO DECISIONS

In General.

The 1975 amendment of this section contains no language implying a retrospective legislative intent, and in the absence of express language to the contrary, legislative enactments, including amendments to existing laws, are construed as being prospective in operation. State v. Denny, - Ind. App. --, 409 N. E. 2d 657 (1980).

In a condemnation proceeding, if neither party filed exceptions within ten days after the filing of the appraisers' report, no exception could have been thereafter filed by either party. State v. Redmon, 205 Ind. 335, 186 N. E. 328 (1933).

In a condemnation proceeding by the state to secure land for highway, where the state filed exceptions within ten days after the filing of the appraisers' report, but subsequently dismissed them, the court was without jurisdiction to try issue of damages on exceptions filed by defendants subsequent to such ten days. State v. Redmon, 205 Ind. 335, 186 N. E. 328 (1933).

In condemnation proceeding, if one party filed exceptions within ten days after the filing of the appraisers' report, and did not thereafter dismiss them, permission to the other party to file exceptions after ten days was not prejudicial. State v. Redmon, 205 Ind. 335, 186 N. E. 328 (1933).

Court erred in modifying report of appraisers in eminent domain proceeding and rendering judgment under modified report, where property owners failed to except to report within ten days of its filing. State v. Rousseau, 209 Ind. 458, 199 N. E. 587 (1936).

An appeal from condemnation proceedings taken while exceptions to the report of appraisers were pending was premature. Lake County Trust Co. v. Indiana Port Comm'n, 248 Ind. 362, 11 Ind. Dec. 133, 229 N. E. 2d 457 (1967).

Where one of the defendants withdrew his share of the deposited damages as determined by the appraisers and, by reason of his failure to appear, was not awarded any damages at the trial of the defendants' exceptions to the appraisement, it was error to permit the plaintiff to withdraw the difference between its total original deposit and the amount awarded to the two defendants whose exceptions were tried. Socony Mobil Oil Co. v. State, 248 Ind. 680, 11 Ind. Dec. 539, 230 N. E. 2d 530 (1967).
The trial court had full authority under this section to have the jury hear evidence on the actual amount of land appropriated by the state and to grant full, true and just compensation for all property taken in this one action, as otherwise defendants would have had to resort to an inverse condemnation action and try the question of damages piecemeal. Flesch v. State, 250 Ind. 529, 14 Ind. Dec. 475, 237 N. E. 2d 374 (1968).


Additions and Improvements.

The provisions of this section and 32-11-1-7 had to be construed together, and by such sections the propriety of further proceedings after the damages initially determined had been paid and possession passed was contemplated, and hence the court had continuing jurisdiction to provide for full and just compensation to the owner of all the property, including extensions, additions, and capital expenditures, made after the proceedings were commenced. Public Serv. Co. v. City of Lebanon, 221 Ind. 78, 46 N. E. 2d 480 (1943).

Amount of Damages.

Parties who appropriated land under the right of eminent domain could have paid the damages awarded into court and had the question as to the amount of damages tried. Cleveland, C., C. & St. L. Ry. v. Nowlin, 163 Ind. 497, 72 N. E. 257 (1904); Union Traction Co. v. Basey, 164 Ind. 249, 73 N. E. 263 (1905); Indianapolis N. Traction Co. v. Dunn, 37 Ind. App. 248, 76 N. E. 269 (1905); Douglas v. Indianapolis & N. W. Traction Co., 37 Ind. App. 332, 76 N. E. 892 (1906).

Evidence of the price paid, by way of voluntary sale and purchase near the time the lands were appropriated, for other lands similarly situated in the immediate neighborhood, was competent on the question of the value of the lands taken, but evidence of the value of the business conducted thereon was not proper. Illinois Cent. R.R. v. Howard, 196 Ind. 323, 147 N. E. 142, rehearing overruled, 148 N. E. 43 (1925).

When the exceptions alleged that the damages were too low, all questions as to damages could have been inquired into. Toledo & C. Interurban Ry. v. Wilson, 44 Ind. App. 213, 86 N. E. 508 (1908), rehearing overruled, 88 N. E. 864 (1909).

Appeal Barred by Agreement.

If the parties agreed that neither party should appeal from the award of damages, the agreement could have been pleaded in bar of the appeal. Southern Ind. Power Co. v. Cook, 182 Ind. 505, 107 N. E. 12 (1914).

Burden of Proof.

The burden of proof was on the landowner to prove his damages and he was entitled to open and close. Alberson Cem. Ass’n v. Fuhrer, 192 Ind. 608, 137 N. E. 545 (1923); Consumers’ Gas Trust Co. v. Huntsinger, 12 Ind. App. 285, 40 N. E. 94 (1895); Indianapolis & Cincinnati Traction Co. v. Shepherd, 35 Ind. App. 601, 74 N. E. 904 (1905).

When the condemning established the right to take, the burden of proof was on the defendant-owner in respect of the value of the property taken. Van Sickle v. Kokomo Water Works Co., 239 Ind. 612, 158 N. E. 2d 460 (1959).

Change of Venue.

After appraisers were appointed and made their report, and after exceptions to such report by either or both parties presented an issue for submission to a jury as to the amount of damages, a change of venue from the county could have been taken. Clinton Coal Co. v. Chicago & E.I.R.R., 190 Ind. 465, 130 N. E. 798 (1921).

An order granting a change of venue from the county in a condemnation proceeding made prior to the appointment of appraisers was at most an irregularity, and not void. Clinton Coal Co. v. Chicago & E.I.R.R., 190 Ind. 465, 130 N. E. 798 (1921).

After the point was reached of trying the question of damages, the cause proceeded as in ordinary civil actions, and a change of venue from the county could have been had. Matlock v. Bloomington Water Co., 196 Ind. 271, 146 N. E. 812 (1925).

Civil Action.

Trials on the question of damages in appropriation proceedings have uniformly been regarded as civil actions, and trial by jury was demandable. Lake Erie, W. & St. L.R.R. v. Heath, 3 Ind. 558 (1857); Piper v. Connersville & L. Tpk. Co., 12 Ind. 400 (1859); Barrett v. Carthage Tpk. Co., 16 Ind. 105 (1861); Alberson Cem. Ass’n v. Fuhrer, 192 Ind. 606, 137 N. E. 545 (1923); Matlock v. Bloomington Water Co., 196 Ind. 271, 146 N. E. 852 (1925).

Parties aggrieved by the assessment of damages could file exceptions thereto and have a trial thereon as in civil actions. Vandalia Coal Co. v. Indianapolis & L. Ry., 168 Ind. 144, 79 N. E. 1082 (1907).

Dismissal.

In proceedings under the Eminent Domain Act of 1905, where the state had made voluntary payment of the award and had taken possession of the real estate, a dismissal of the proceeding ought not have been a matter of right but should have been subject to the discretion of the court which, as expressly provided in this section, may make such
further orders, and render such finding and judgment as may seem just," for this language contemplated judicial action other than proceeding "to issue, trial and judgment" as in civil actions. State v. Pollitt, 220 Ind. 593, 45 N. E. 2d 480 (1942).

In action by the state highway commission to condemn real estate, wherein, without objection, an order was made appointing appraisers who made an award, which the state contested but subsequently paid to the clerk of court from whom defendant withdrew the money, the state could not, as a matter of right, after the money had been voluntarily paid and withdrawn, dismiss the condemnation proceedings and obtain restitution of the money paid, for while this section provided that the "cause shall further proceed to issue, trial and judgment as in civil actions," it did not make available to a condemnor every right to a plaintiff in a civil action, since the only issue there referred to was the amount of damages, and Burns' §§ 2-901 and 2-902 (since repealed; presently Rule TR 41) were not applicable at this stage of the proceedings. State v. Pollitt, 220 Ind. 593, 45 N. E. 2d 480 (1942).

Exceptions.

If there are no exceptions to the appraisers' report the appraisers' award is conclusive but if there are exceptions to the appraisers' report, the appraisers' report becomes the complaint and the exceptions the answer in a trial to determine the damages with respect to all parties. Best Realty Corp. v. State, - Ind. App. --, 74 Ind. Dec. 435, 400 N. E. 2d 1204 (1980).

Under the condemnation statute the issue was formed as a matter of law upon the filing of exceptions to the appraiser's award. Van Sickle v. Kokomo Water Works Co., 239 Ind. 612, 158 N. E. 2d 460 (1959).

The appellant was precluded from accepting the payment made to the clerk if he would maintain his standing in court to prosecute his exceptions and when he chose to accept the money he thereby waived his exceptions to the award of the appraisers in a condemnation action. Denny v. State, 244 Ind. 5, 1 Ind. Dec. 343, 189 N. E. 2d 820 (1963).

Where exceptions were not filed until after ten-day period, exceptions were properly dismissed, and fact that appraiser's report was authorized later than the ten-day period prescribed by 32-11-1-9 had no effect on the ten-day period to file exceptions. Ray v. State, 252 Ind. 395, 18 Ind. Dec. 117, 248 N. E. 2d 337 (1969).

Filing Exceptions.

An exception to the appraiser's report had to be filed within the ten-day period from the filing of the appraiser's report. State ex rel. Agan v. Hendricks Superior Court, 250 Ind. 675, 13 Ind. Dec. 664, 255 N. E. 2d 458, rehearing denied, 238 N. E. 2d 446 (1968).

The filing of exceptions by either party is sufficient to submit the question of damages to the court or jury, and it is unnecessary that a landowner file exceptions as a condition precedent to his right of recovery, if exceptions have been filed by the condemning party. State v. Blount, 154 Ind. App. 589, 34 Ind. Dec. 370, 290 N. E. 2d 480 (1972).


Where defendants in a condemnation proceeding filed exceptions to the appraisers' report after the expiration of the 10-day period in effect at that stage of the proceedings, the subsequent amendment to this section extending the period to 20 days did not validate the failure to file timely exceptions even if the amendment would be found to apply retroactively to the cause of action and thus affect proceedings subsequent to its enactment. McGill v. Muddy Fork of Silver Creek Watershed Conservancy Dist., - Ind. App. --, 60 Ind. Dec. 64, 370 N. E. 2d 365 (1977).

Injunction Against Sale of Buildings.

In a condemnation proceeding, the court had authority under the petition for an injunction filed in the same proceeding to resolve the question of whether the state should have been enjoined from selling or disposing of the buildings upon so-called "temporary right-of-way." State v. Curtis, 241 Ind. 507, 173 N. E. 2d 652 (1961).

Interest.


Interest should be allowed on the judgment in accordance with the provisions of this section as it existed at the time the plaintiff took possession of the property, rather than under the provisions of this section as it existed at the time of the judgment. State v. Denny, - Ind. App. --, 77 Ind. Dec. 748, 409 N. E. 2d 652 (1980).

Even though this section now both permits a landowner to withdraw the amount of the state's final purchase order without posting surety and prohibits an award of interest on any amount that can be withdrawn without posting surety, landowners were entitled to interest for the time the money was on deposit because they could not at the time of the condemnation prior to the 1975 amendment.
to this section withdraw the money without posting surety. State v. Denny, - Ind. App. --, 409 N. E. 2d (1980).


In condemnation proceedings, the defendant had the option of whether or not to withdraw his award. If he decided not to withdraw his award, but await the final decision of the court, he was entitled to interest from the date the condemnor took possession until the date of the final decision. State v. Young, 246 Ind. 52, 3 Ind. Dec. 570, 199 N. E. 2d 694 (1964) (decision prior to 1965 amendment).

If the condemnor appealed and prevented the owner from using money tendered or paid into court, the owner was entitled to interest upon the full amount of the award as determined on appeal from the time the condemnor took possession of the property. Indiana & Mich. Elec. Co. v. Louck, 247 Ind. 24, 5 Ind. Dec. 404, 206 N. E. 2d 871 (1965) (decision on facts arising before 1961 amendment).

Irrespective of who filed objections to the appraisers' report or who appealed from judgment of circuit court after a trial de novo on the issue of damages, interest on the amount of the court award was payable from the time of the taking by the condemnor to the time of the judgment. Indiana & Mich. Elec. Co. v. Louck, 247 Ind. 24, 5 Ind. Dec. 404, 206 N. E. 2d 871 (1965) (decision prior to 1965 amendment).

Subsequent to the 1961 amendment and prior to the 1965 amendment, since the jury was not permitted to know the amount of the appraisers' award, they could not possibly make a determination as to whether there was any excess amount over and above the appraisers' award upon which interest should have been allowed and the allowance of interest was for the court and not the jury. State v. Jordan Woods, Inc. 248 Ind. 208, 10 Ind. Dec. 337, 225 N. E. 2d 767 (1967).

The purpose of awarding interest in an eminent domain proceeding is not to compensate the landowner for loss of value of his property but rather to measure the loss caused the landowner due to the deprivation of the use of his land, and interest thus should be allowed for the period of time between the entry or physical taking by the condemnor and the payment of just compensation therefor. State v. Blackiston Land Co., 158 Ind. App. 93, 39 Ind. Dec. 32, 301 N. E. 2d 663 (1973).

Provision of this section regarding allowance of interest apply to inverse condemnation actions, and trial court properly made award of interest to run from the date on which the state entered possession. State v. Blackiston Land Co., 158 Ind. App. 93, 39 Ind. Dec. 3, 301 N. E. 2d 663 (1973).

Where the state failed to notify the court in writing of the amount of the offer to purchase it made to defendants, the proviso in paragraph 9 was not met, and therefore defendants were entitled to have interest computed on the entire amount of the damage award. State v. Reuter, - Ind. App. --, 54 Ind. Dec. 169, 352 N. E. 2d 806 (1976).

Where jury's verdict for damages was greater than that offered by the state it was proper to compute the interest on the difference between the jury verdict and the state's offer from the time of taking to the time of withdrawal of the state's deposit and also to compute interest on the difference between the jury's verdict and the actual amount of state funds withdrawn until the final award. State v. Turner, - Ind. App. --, 67 Ind. Dec. 611, 386 N. E. 2d 208 (1979).

--Constitutionality.

The four percent interest rate prescribed by this section prior to the 1975 amendment was not so low as to be unconstitutional as a deprivation of just compensation. Struble v. Elkhart County Park & Recreation Bd., - Ind. App. --, 61 Ind. Dec. 466, 373 N. E. 2d 906 (1978).

Judgment.

Where the interlocutory order appointing appraisers was reversed, judgment after trial by reversed. Western Union Tel. Co. v. Louisville & N.R.R., 185 Ind. 690, 114 N. E. 460 (1916).

On appeal to the circuit court from an award of appraisers, the court could go further than the appraisers and could make such orders and findings and render such judgment as would constitute just compensation, and could use the statutory provisions directed to the appraisers in determining the same question submitted to the appraisers. Schnull v. Indianapolis Union Ry., 190 Ind. 572, 131 N. E. 51 (1921).

If the damages assessed were paid into court, and, on the trial, the damages were reduced below the sum paid, judgment could have been rendered against the landowner for the excess. Douglas v. Indianapolis & N. W. Traction Co., 37 Ind. App. 332, 78 N. E. 892 (1906).

Jurisdiction.

Where defendants in a condemnation proceeding filed exceptions to the appraisers' report after the expiration of the 10-day period, their exceptions
were a nullity and the jurisdiction of the trial court to try the issue of damages rested entirely on plaintiff's timely filed exceptions; when the trial court sustained plaintiff's motion to dismiss its exceptions, the trial court had no power to proceed further in the trial. McGill v. Muddy Fork of Silver Creek Watershed Conservancy Dist., - Ind. App. --, 60 Ind. Dec. 64, 370 N. E. 2d 365 (1977).

No Appraisal, Appeal.

In proceedings to condemn an electric public utility by a city, under its right of eminent domain, in which judgment was rendered in favor of the defendant utility, and plaintiff city appealed to the Supreme Court, and the record showed that no appraisal of said utility sought to have been condemned had been made, the appellate tribunal could not determine whether the utility's property was sought to be taken without just compensation and without due process of law, in view of Ind. Const., art. 1, §§ 21, 23; U.S. Const., amend. 14; 8-1-2-1 et seq. City of Lebanon v. Public Serv. Co., 214 Ind. 295, 14 N. E. 2d 719, appeal dismissed, 305 U.S. 558, 59 S. Ct. 84, 83 L. Ed. 352, rehearing denied, 305 U.S. 671, 59 S. Ct. 143, 83 L. Ed. 435 (1938).

Notice of Appraisers' Report.

The 1973 amendment requiring notice of the appraisers' report to be given to known parties is not to be applied retroactively. Cordill v. City of Indianapolis, 168 Ind. App. 685, 52 Ind. Dec. 158, 345 N. E. 2d 274 (1976).

Where defendants were present when the court entered an order of appropriation in a condemnation proceeding, at which time the court directed the appraisers to file their report on a specified date, the clerk was not required to serve defendants with a copy of the report either under TR. 5(A) or TR. 72(D). McGill v. Muddy Fork of Silver Creek Watershed Conservancy Dist., - Ind. App. --, 60 Ind. Dec. 64, 370 N. E. 2d 365 (1977).

Payment.

Where there was no showing of ownership of any property other than in the owner of real estate, the clerk could immediately pay all the condemnation damages held by him over to the real estate owner under this act. LaPinta v. State, 246 Ind. 512, 5 Ind. Dec. 477, 207 N. E. 2d 215 (1965).

Possession.

The possession of the condemnor during the pendency of an appeal, and until compliance with the orders and judgment of the court, gave it no greater right than that of a licensee. Schnull v. Indianapolis Union Ry., 190 Ind. 572, 131 N. E. 51 (1921).

In condemnation for railroad right-of-way, the landowner, in undistributed possession of the property until payment or tender of damages, was not deprived thereof by fixing the price at which it could have been taken. Sisters of Providence v. Lower Vein Coal Co., 198 Ind. 645, 154 N.E. 659 (1926).

Presumptions on Appeal.


In a proceeding to condemn a public utility, which was appealed to the Supreme Court, such court was warranted in assuming, in the absence of some showing of fact, that the court appointed appraisers were qualified as required by statute. Southern Ind. Gas & Elec. Co. v. City of Boonville, 215 Ind. 552, 20 N. E. 2d 648 (1939).

Purpose of Section.

The evident purpose of this section, which provided that the court could make such further orders and render such findings and judgment as might have seemed just, was to enable the court to meet any contingency or situation that might have arisen, and to have provided for full and just compensation to the owners of all the property, including extensions, additions, capital expenditures and the like, made after the proceedings were commenced. City of Lebanon v. Public Serv. Co., 214 Ind. 295, 14 N. E. 2d 719, appeal dismissed, 305 U.S. 558, 59 S. Ct. 84, 83 L. Ed. 352, rehearing denied, 305 U.S. 671, 59 S. Ct. 143, 83 L. Ed. 435 (1938). In connection with this case, see Public Serv. Co. v. City of Lebanon, 219 Ind. 62, 34 N. E. 2d 20 (1941); Public Serv. Co. v. City of Lebanon, 221 Ind. 78, 46 N. E. 2d 480 (1943).

In passing the eminent domain act it was the intention of the legislature to expedite such proceedings by turning the possession over to the condemnor upon the payment of the appraisal and pending any future litigation in the case. State v. Marion Circuit Court, 239 Ind. 327, 157 N. E. 2d 481 (1959).

Review on Appeal.

Since statute recognized the right of appeal from final judgments in proceedings for the assessment of damages for property taken by eminent domain, in such appeal the whole case could have been reviewed as in other appeals from final judgments. State v. Wood, 219 Ind. 424, 39 N. E. 2d 448 (1942).
Right to Trial.

--Timely Request

Defendant in an eminent domain proceeding would have until ten days after the filing of exceptions to timely file a request for jury trial. State ex rel. Board of Aviation Comm’rs v. Kosciusko County Superior Court, - Ind. --, 430 N. E. 2d 754 (1982).

Trials on the question of damages in eminent domain proceedings are regarded as civil actions and a trial by jury may be demanded under appropriate circumstances. State v. City of Terre Haute, - Ind. App. --, 54 Ind. Dec. 69, 352 N. E. 2d 542 (1978).

Surety.

Where bond would have been required in order to withdraw an offered amount from the court, that part of the statute which forbids an interest award where the defendant could have withdrawn such amount without a bond is inapplicable. State v. Simley Corp., - Ind. App. --, 53 Ind. Dec. 545, 351 N. E. 2d 41 (1976).

In condemnation proceeding where landowner withdrew the amount deposited by the state and furnished bond as provided in this section and such bond was entered in judgment docket such bond constituted a lien on all the landowner’s real estate and it was not necessary to comply with either 34-1-43-1 or 34-1-43-2 to perfect such lien. State v. Cox, - Ind. App. --, 63 Ind. Dec. 214, 377 N.E. 2d 1389 (1978).

Waiver of Appeal.

In a condemnation proceeding where the state has accepted a benefit from the judgment of the trial court based on the jury’s award of damages to landowners, the state has waived its right to appeal. State v. Krassky, 240 Ind. 524, 187 N. E. 2d 339 (1960).

Withdrawal of Appraisal.

Because this section provides that the court after hearing and determining the exceptions filed to the appraisers’ report should make such further orders and render such findings and judgment as justice requires, the court acted within its statutory power in allowing the original appraisers to withdraw their written report after situation changed. State v. Smith, 260 Ind. 555, 37 Ind. Dec. 325, 297 N. E. 2d 809 (1973).

Withdrawal of Appraisers’ Report.

It was not error for the court to allow the original appraisers to withdraw their written report when the situation on which they had based their appraisal changed. State v. Smith, 260 Ind. 555, 37 Ind. Dec. 325, 297 N. E. 2d 809 (1973).

32-11-1-8.1. Offer of settlement before trial. - (a) Not less than ten [10] days before any trial involving the issue of damages, plaintiff shall and defendant may file and serve on the other party an offer of settlement, and within five [5] days thereafter the party served may respond by filing and serving upon the other party an acceptance or a counter offer of settlement. The offer shall state that it is made under this section and specify the amount, exclusive of interest and costs, which the party serving the offer is willing to agree to as just compensation and damages for the property or interest therein sought to be taken. The offer or counter offer supersedes any other offer previously made under this chapter by the party.

(b) An offer of settlement is deemed rejected unless an acceptance in writing is filed and served on the party making the offer, before the commencement of the trial on the issue of the amount of damages.

(c) If the offer is rejected, it may not be referred to for any purpose at the trial, but may be considered solely for the purpose of awarding costs and litigation expenses under section 10 [32-11-1-10] of this chapter.

(d) This section does not limit or restrict the right of a defendant to payment of any amounts authorized by law in addition to damages for the property taken from him.

(e) This section shall not apply to any action pursuant to IC 8-1-13-19. [IC 32-11-1-8.1, as added by Acts 1977, P.L. 312, § 2.]

32-11-1-9. Proceedings by state department of highways - Proof of offer of purchase not required - Appraisers. - In all proceedings by the state department of highways, or any state board, agency or commission which has succeeded said department in respect to the duties duly charged by law to locate, relocate, and construct, reconstruct; repair or maintain the public highways of the state of Indiana, having the right to exercise the power of eminent domain for such public use, the said department in its action for condemnation shall not be required to prove that an offer of purchase was made to the landowner and the court or judge in vacation shall on the return day fixed at the time of the filing of the complaint appoint appraisers as provided by law and fix a day certain within ten [10] days thereof for said appraisers to appear, qualify and file their report of appraisal.

If said appraisers so appointed by the court or judge in vacation shall fail to appear, qualify and file their report of appraisal within said ten-day period, the court or judge in vacation shall discharge said appraisers and appoint new appraisers therein in the same manner as above provided.
All laws or parts of laws in conflict herewith as they pertain to condemnation proceedings by said department are hereby repealed. [Acts 1905, ch. 48, § 8a, as added by Acts 1961, ch. 317, § 2; 1980, P.L. 74, § 433.]

NOTES TO DECISIONS

Fair Market Value.

The provisions of 32-11-1-2.1 requiring a condemnor to make an offer based on the actual fair market value of the property as a condition precedent to condemnation, being the most recent expression of the legislature, supersede the earlier provision in this section relieving the state of the obligation to prove an offer to purchase. Decker v. State, - Ind. App. --, 426 N.E. 2d 151 (1981).

Good Faith Offer.

Any condemnor, including the state, must make a good-faith offer to purchase in the particular manner described by 32-11-1-2.1 before attempting to exercise its eminent domain authority. Decker v. State, - Ind. App. --, 426 N.E. 2d 151 (1981).

Appointment of Appraisers.

Where the deputy attorney general was present in court when appraisers were appointed and failed to object thereto, any objection to failure to appoint appraisers within the ten-day period required by this section was waived by the state. State ex rel. Agan v. Hendricks Superior Court, 250 Ind. 675, 13 Ind. Dec. 864, 235 N.E. 2d 458, rehearing denied, 250 Ind. 675, 238 N.E. 2d 446 (1968).


Where appraisers were ordered by the court to make their report at a time in excess of that set by this section, and where the parties were present and did not object thereto, such a matter of procedure and was not jurisdictional and a party was in no position to later claim error. Ray v. State, 252 Ind. 395, 18 Ind. Dec. 117, 248 N. E. 2d 337 (1969).

Offer to Purchase.

Under this section it was not necessary for the state to prove an offer of purchase was made. Sadlier v. State, 252 Ind. 525, 18 Ind. Dec. 516, 251 N. E. 2d 27 (1969).

32-11-1-10 [3-1709]. Costs. - The costs of the proceedings shall be paid by the plaintiff, except that in case of trial the additional costs thereby caused shall be paid as the court shall adjudge. However, if, in case of trial, the amount of damages awarded to the defendant by the judgment, exclusive of interest and costs, is greater than the amount specified in the last offer of settlement made by the plaintiff under section 8.1 [32-11-1-8.1] of this chapter, the court shall allow the defendant his litigation expenses in an amount not to exceed twenty-five hundred dollars [§2,500]. [Acts 1905, ch. 48, § 9, p. 59; 1977, P.L. 312, § 3.]

Opinions of Attorney General. In a state highway condemnation proceeding, the state of Indiana was not liable for ordinary court costs, but was liable for appraiser's fees and for the costs of publication of notice in cases involving nonresident defendants since such services were rendered by persons who were not obligated to render such services as court officers. 1947, No. 10, p. 32.

NOTES TO DECISIONS

Matters Included.

Although this section refers to "additional costs," there is no definition as to what a court may consider as costs and it would appear that the legislature never intended for the word "costs" to cover every conceivable expense incurred. State v. Holder, 260 Ind. 336, 36 Ind. Dec. 331, 295 N. E. 2d 799 (1973).


Exemption.

Section 4 of Public Law 312 exempts any project for which offers to purchase or negotiations have occurred prior to July 1, 1977 from the application of the provision allowing for litigation expenses. State v. Bircher, - Ind. App. --, 446 N. E. 2d 607 (1983).

32-11-1-11 [3-1710]. Damages - Failure to pay - Nonuser - Effect. Should the person, corporation or other body seeking such appropriation fail to pay the damages assessed within one [1] year after the report of the appraisers is filed in case no exceptions are filed thereto, or where exceptions are filed to the report of the appraisers, shall fail to pay the damages assessed if judgment is rendered against such exceptions, or to pay the judgment and costs in case such exceptions are sustained, within one [1] year after the rendition of any such judgment, provided such judgment is not appealed from; or in case of such appeal, shall fail to pay the damages assessed or the judgment rendered in the circuit or superior court, within one [1] year after final judgment or affirmation or reversal is rendered in the Supreme or appellate court [Court of Appeals]; or shall fail to take possession of such land and adapt it to the use for which it was appropriated within five [5] years after the payment of the award or judgment for damages, except where a fee simple
is authorized to be condemned and appropriated and is condemned and appropriated, such person, corporation or other body seeking such appropriation, in either of such cases, shall forfeit all rights in and to such real estate or other property as fully and completely as though no such appropriation of condemnation had been begun or made. An action to declare such forfeiture may be brought by any person having an interest in the real estate or other property sought to be appropriated, or the question of such forfeiture may be raised and determined by direct allegation in any subsequent proceedings by any other person, corporation or other body to condemn and appropriate such property for a public use, to which subsequent proceedings, the said person, corporation or other body seeking the former condemnation or appropriation, or their proper representatives, successors or assigns shall be made parties. [Acts 1905, ch. 48, § 10, p. 59; 1907, ch. 184, § 1, p. 306.]

NOTES TO DECISIONS

In General.

The power of eminent domain was an attribute of sovereignty and inured in every independent state. It was superior to all property rights and extended to all property within the state. State v. Flamme, 217 Ind. 149, 26 N. E. 2d 917 (1940).

The lack of funds to pay for the taking of property did not constitute a valid objection to a complaint for condemnation where assurance of payment was provided by statute. Indiana Port Comm'n v. Davis, 8 Ind. Dec. 383 (1966).

Abandonment.

The acts, both of the original owners of the land and railroad company to which the land was first awarded, amounted to an abandonment of all claims under the condemnation proceedings. Coburn v. Sands, 150 Ind. 141, 48 N. E. 786 (1897).

Where the state had made no entry upon the property, but had abandoned the condemnation, it was not bound by a judgment for damages, erroneously entered in the form of a personal judgment. State v. Flamme, 217 Ind. 149, 26 N. E. 2d 917 (1940).

Forfeiture of Rights.

Under this section, where less than a fee simple was condemned, a condemnor's rights in the condemned real estate could have been "forfeited," even after final judgment and payment of the damages, if it failed for five years to devote the land to the use for which it was condemned; and the word "forfeit" carried no suggestion of reimbursement to the condemnor of the price paid. State v. Pollitt, 220 Ind. 593, 45 N. E. 2d 480 (1942).

If the state or other condemnor could, by mere inaction, have avoided taking the property originally sought to have been acquired, then it logically followed that the condemnor could have, by positive action, waived the lapse of time, abandoned its action and permitted the condemnee to immediately make such use of the premises as it saw fit, without having to wait the passage of time allowed by the statute before the condemnor forfeited its right to take the property. Pendleton v. Poor, 244 Ind. 107, 1 Ind. Dec. 506, 191 N. E. 2d 3 (1963).

Injunction.

In the absence of an allegation that the condemnation award had not been paid within the proper time, the complaint, in an action to enjoin the condemnor from asserting title, was insufficient as against a demurrer, unless other facts were pleaded sufficient to stay the cause of action. Russell v. Trustees of Purdue Univ., 93 Ind. App. 242, 178 N. E. 180 (1931).

Judgment Not Paid Within Year.

The provision of the statute with reference to the payment of the judgment within one year was positive and self-executing, and if payment was not so made, the condemnor was in the same position as if no appropriate or condemnation had been begun or made. State v. Flamme, 217 Ind. 149, 26 N. E. 2d 917 (1940).

Where plaintiff brought a condemnation action against defendants and damages were paid into the clerk's office more than one year after the appraisers' report was filed, exceptions to which were filed by defendants but not by plaintiff, the provision of this section requiring damages to be paid 'within one year after the appraisers' report does not refer solely to exceptions filed by the condemnor but alludes equally to condemnor and condemnee so that condemnee, having filed exceptions, has waived his right to relief. Anthrop v. Tippecanoe School Corp., 156 Ind. App. 187, 36 Ind. Dec. 322, 295 N. E. 2d 637 (1973).

Possession.

In condemnation for railroad right-of-way, the landowner, in undisturbed possession of the property until payment or tender of damages, was not deprived thereof by fixing the price at which it might have been taken. Sisters of Providence v Lower Vein Coal Co., 198 Ind. 645, 154 N. E. 659 (1926), overruled on other grounds, Joint County Park Bd. v. Stegemoller, 228 Ind. 118, 89 N. E. 2d 720 (1950).

Proceeding Dismissed.

If proceeding was dismissed, the landowner was not entitled to recover incidental costs or damages. Howard v. Illinois Cent. R.R., 84 F. 2d 267 (7th Cir. 1939).
Condemnor had the right to dismiss its cause of action after the return of the verdict without being liable for payment of damages assessed. Pendleton v. Poor, 244 Ind. 107, 1 Ind. Dec. 506, 191 N. E. 2d 3 (1963).

Ejectment.

Where ejectment suit was pending in which defendant denied that state had made full payment within the year required by this section, it was proper for court to deny a writ of assistance by which state sought to obtain possession of the property. State ex rel. Department of Nat'l Resources v. Winfrey, - Ind. App. --, 419 N. E. 2d 1319 (1981).


32-11-1-12 [3-1711]. Lands taken without condemnation - Assessment of damages. Any person having an interest in any land which has been or may be taken for any public use without having first been appropriated under this or any prior law may proceed to have his damages assessed under this chapter, substantially in the manner herein provided. [Acts 1905, ch. 48, § 11, p. 59; 1982, P.L. 187, § 171.]


NOTES TO DECISIONS

In General.


A defendant in a condemnation action may not enlarge the appropriation made by the condemning authority or alternatively may not defeat the authority's right of condemnation because it elects not to condemn adjacent land, which the condemnor may or may not own but, if the owner is aggrieved, a remedy is available to him under this statute. Rockwell v. State, 260 Ind. 50, 35 Ind. Dec. 76, 291 N. E. 2d 894 (.973).

Alternative Remedies.

If lands were appropriated under the right of eminent domain, the landowner could sue for damages or pursue the remedy given by statute. Merchants' Mut. Tel. Co. v. Hirschman, 43 Ind. App. 283, 87 N. E. 2d 238 (1909).

Annoyance and Inconvenience.

Where there was a taking, not of the real estate itself, but of rights and interests in the real estate held prior to the highway construction, the enjoyment of the rights and use of the benefits of the property were impaired and the market value diminished and such "annoyance and inconvenience" could have been considered in determining damages. State v. Stefaniak, 250 Ind. 631, 14 Ind. Dec. 649, 238 N. E. 2d 451 (1968).

Constitutionality.


Date of Valuation.

The court held that date on which value of property condemned under 18-7-8-17 was provided for in 32-11-1-6 which stated that right to damages accrued at date of service of notice of condemnation upon owner, and not date of declaration that such property was in a blighted area; although appellant waived any question as to date by failing to object to court's instructions to appraisers to fix value as of certain date. Elson v. City of Indianapolis ex rel. Department of Redevelopment, 246 Ind. 337, 4 Ind. Dec. 852, 204 N. E. 2d 857 (1965).

Language requiring that damages be assessed "substantially in the manner as herein provided " encompasses the date as of which those damages are to be measured, that date being the date of the service of the notice, as provided in IC 32-11-1-6. State v. Blackiston Land Co., 158 Ind. App. 93, 39 Ind. Dec. 32, 301 N. E. 2d 663 (1973).

Deductions for Benefits.

In an action by the state to condemn real estate for the purpose of widening, and in some places, changing the right of a highway which ran through defendant's farm, an instruction that benefits, in order to be set off against the damage to the land not taken in making the improvement, had to have been special or local or such as resulted directly or peculiarly to the particular tract of land of defendants, and that general benefits resulting to the owners in common with the public could not have been set off, was proper on the question of benefits. State v. Ahaus, 223 Ind. 629, 63 N. E. 2d 199 (1945).

In order that benefits could have been set off against the damage to the land not taken as provided in this section, such benefits, if any, must have been special or local or such as resulted directly or peculiarly to the residue of the particular tract of land from which the appropriation was made. General benefits resulting to owners in common with the public or locality at large could not have been set off against damages to the residue of

Highway Commission.

Where the state highway commission threatened to take leased premises without purchases or condemnation of lessee's interest under a grant from the owners, this statute did not furnish an adequate remedy at law that would preclude the lessee from enjoining such taking. Thomas v. Lauer, 227 Ind. 432, 86 N. E. 2d 71 (1949).

Instructions.

An instruction that the jury could consider "in arriving at your verdict, the value of surrounding comparable property" while a correct statement of law was improper where there was no evidence of the value of comparable property. State v. Lincoln Memory Gardens, Inc., 242 Ind. 206, 177 N. E. 2d 655 (1961).

An instruction that limited a condemnation award to the "fair market value" of the land actually taken was erroneous, the true measure of damages having been the difference between the market value of the entire tract before the taking and the market value of the residue after the taking; and the error in giving such erroneous instruction could not have been cured by the giving of a contradictory instruction correctly stating the law. Stephenson v. State, 244 Ind. 452, 2 Ind. Dec. 278, 193 N. E. 2d 369 (1963).

Interest Without Condemnation.

An inverse condemnation suit against the state under this section was applicable where an interest in land was taken for public use, without having first been appropriated under the act. State v. Geiger & Peters, Inc., 245 Ind. 143, 3 Ind. Dec. 133, 196 N. E. 2d 740 (1964).

Judgment.

This section contemplated a judgment for the amount assessed by the court or jury. Southern Ind. Power Co. v. Cook, 182 Ind. 505, 107 N. E. 12 (1914).

Lands Taken Without Assessment.

If persons permitted their lands to have been wrongfully appropriated, they could afterwards have had their damages assessed under this act. Vandalia Coal Co. v. Indianapolis & L. Ry., 168 Ind. 144, 79 N. E. 1082 (1907).

Limitations and Prescription.

Twenty years' adverse use of land barred the right to recover damages. Sherlock v. Louisville, N. A. & C. Ry., 115 Ind. 22, 17 N. E. 171 (1889).

The application had to be filed before the claim was barred by the statute of limitations. Midland Ry. v. Smith, 125 Ind. 509, 25 N. E. 153 (1890).

Permission for Suit.

It was not necessary to obtain permission from the state to maintain an action under this section. State v. Geiger & Peters, Inc., 245 Ind. 143, 3 Ind. Dec. 133, 196 N. E. 2d 740 (1964).

Power Lines.


Right of Access.

Where a new interstate highway blocked the normal outlet to appellees' steel fabricating plant which did not abut the proposed new highway and left an insufficient alternate route, it had the effect of depriving appellees of any suitable access to their steel fabricating business. This constituted a denial of appellees' right of access to their property and was a taking of property rights which was compensable. State v. Tolliver, 246 Ind. 319, 5 Ind. Dec. 193, 205 N. E. 2d 672 (1965).

The operator of a filling station was not entitled to damages for loss of business due to his customers being obstructed from access to his station for a year as a result of the work of widening and resurfacing of the streets upon which his station site abutted. Papp v. City of Hammond, 248 Ind. 637, 11 Ind. Dec. 468, 230 N. E. 2d 326 (1967).

Although the state took no more of plaintiffs' land than the previously granted right-of-way for the reconstruction and improvement of the highway, the raising of the grade level of the highway so as to interfere with access to plaintiffs' property and cause surface water to drain from the highway on to plaintiffs' property constituted a taking for which plaintiffs were entitled to compensation. State v. Lovett, 254 Ind. 27, 21 Ind. Dec. 8, 257 N. E. 2d 298 (1970).

Taking.

In a proceeding under this section for the taking of property, where it was stipulated that in 1924 a resolution was adopted for the opening of the street in question but nothing was done with respect thereto until the street was constructed over the plaintiff's property in 1967, there was sufficient evidence to support the finding of the court that a taking occurred at the latter time. City of Hammond v. Drangmeister, - Ind. App. --, 58 Ind. Dec. 165, 364 N. E. 2d 157 (1977).
--Causing Zoning Violation.

The placing of appellant's building in violation of the zoning ordinances was a "taking" and should have been considered as a compensable injury to appellant's premises. Schuh v. State, 251 Ind. 403, 15 Ind. Dec. 667, 241 N. E. 2d 362 (1968).

--Adjacent Property.

Where land on all sides of property in question was taken for highway purposes, placing the residence in an unorthodox position, placing the lot in a cul-de-sac, placing dwelling in violation of zoning ordinance, and reducing the value of the property substantially the question of a compensable taking was a matter for the jury's determination. State v. Steffaniak, 250 Ind. 631, 14 Ind. Dec. 649, 238 N. E. 2d 451 (1968).

--Portion of Street.

Where appellant brought inverse condemnation action for alleged damages suffered when state took part of road in front of his house for a new highway, it would not succeed where he was still left with a two-way street although narrower, in front of his house that met intersecting streets at the end of his block because he did not show the injury was special and peculiar to his land and not some inconvenience suffered by the public generally. Young v. State, 252 Ind. 131, 17 Ind. Dec. 224, 246 N. E. 2d 377 (1969), cert. denied, 396 U.S. 1038, 90 S. Ct. 685, 24 L. Ed. 2d 683 (1970).

Time of Accrual of Damages.

Testimony of a real estate agent that he was familiar on February 11, 1957 with real estate values in the section where the land was located and that the defendants sustained damages in the amount of $8,000 was sufficient for the jury to base their verdict upon in concluding that the damages to defendants two days later, February 13, 1957, were in the amount of $5,500. Southern Ind. Gas & Elec. Co. v. Jones, 240 Ind. 434, 186 N. E. 2d 127 (1960).

Value-Evidence.

Where the parties in condemnation proceeding stipulated that evidence of the value of the property as of the date of the trial might be introduced, appellant's contention that evidence of value should have been strictly limited to the date that appellees were served with notice, under this statute, or as to the date of the taking under 18-7-7-17 was properly denied. City of Evansville ex rel. Department of Redevelopment v. Bartlett, 243 Ind. 464, 189 N. E. 2d 10, rehearing denied, 243 Ind. 471, 186 N. E. 2d 799 (1962).

Zoning Ordinance.

A zoning ordinance which purported to author-ize unlawful and unconstitutional appropriation of property rights without payment of compensation was wholly void and could have been collaterally attacked, the property owner having been under no duty to protect himself by inverse condemnation proceedings under this statute. Indiana Toll Rd. Comm'n v. Jankovich, 244 Ind. 574, 2 Ind. Dec. 243, 193 N. E. 2d 237 (1963).

32-11-1.13 [3-1712]. Repeal. - All laws and parts of laws in conflict with the provisions of this act [32-11-1.1-32-11-1.13] are hereby repealed: Provided, That this repeal shall not affect pending proceedings, but such proceedings may be completed as if this act had never been passed: And Provided, further, That this act shall not be construed to repeal an act entitled, "An act in relation to the crossings of street railroads, interurban street railroads, or suburban street railroads and railroads, and declaring an emergency," approved March 3, 1903, but such proceedings may be instituted and carried to completion under such act as though this act had not been passed. [Acts 1905, ch. 48, § 12, p. 59.]

NOTES TO DECISIONS

In General.

The Eminent Domain Act of 1905 superseded all other statutes prescribing condemnation procedure, save one mentioned in this section. State v. Pollitt, 220 Ind. 593, 45 N. E. 2d 480 (1942).

32-11-1.5. EMINENT DOMAIN PROCEDURES FOR CITIES AND TOWNS

32-11-1.5-1. Definitions. - (a) As used in this chapter, "fiscal officer" means:

(1) City controller, of a consolidated city or second class city;
(2) City clerk-treasurer, of a third class city; or
(3) Town clerk-treasurer, of a town.

(b) As used in this chapter, "municipality" means city or town.

(c) As used in this chapter, "works board" means:

(1) Board of public works or board of public works and safety, of a city; or
(2) Board of trustees, of a town. [IC 32-11-1.5-1, as added by Acts 1980, P.L. 8, § 145; 1981, P.L. 44, § 30.]

32-11-1.5-2. Alternate procedure for condemnation. - Whenever a municipality has the power to appropriate or condemn any real or personal property under this chapter, or whenever another statute provides for proceedings by a municipality for appropriation or condemnation of any real or per-
sonal property under this chapter, proceed under IC 32-11-1 [32-11-1-1 to 32-11-1-13]. [IC 32-11-1.5-2, as added by Acts 1980, P.L. 8, § 145.]

32-11-1.5-3. Applicability of chapter - Resolution - Notice - Remonstrances considered. - (a) This chapter applies whenever the works board of a municipality desires to appropriate or condemn, for the use of the municipality, any real or personal property, or to open, change, lay out, or vacate any street, alley, or public place in the municipality, including proposed street or alley crossings of railways or other rights-of-way.

(b) The works board shall adopt a resolution to that effect, describing the property that may be injuriously or beneficially affected. The board shall have notice of the resolution published in a newspaper of general circulation published in the municipality, once each week for two [2] consecutive weeks. The notice must name a date, at least ten [10] days after the last publication, at which time the board will receive or hear remonstrances from persons interested in or affected by the proceeding. The works board shall consider the remonstrances, if any, and then take final action, confirming, modifying, or resinding its original resolution. This action is conclusive as to all persons. [IC 32-11-1.5-3, as added by Acts 1980, P.L. 8, § 145.]

NOTES TO DECISIONS

Notice.

The "in the municipality" language of this section is to be read to include "or within four miles of the corporate limits." Vickery v. City of Carmel, - Ind. App. -, 424 N. E. 2d 147 (1981).

32-11-1.5-4. Preparation by works board of list of owners and property affected. - When the final action under section 3 [32-11-1.5-3] of this chapter is taken, the works board shall have prepared:

1. A list or roll of all the owners or holders of property, and of interests in it, sought to be taken or to be injuriously affected; and

2. If a street, alley, or public place is to be opened, laid out, changed, or vacated in the municipality, or within four [4] miles of it, a list of the owners or holders of property, and of interests in it, to be beneficially affected by the work.

The list must not be confined to the owners of property along the line of the proposed work, but must include all property taken, benefited, or injuriously affected. In addition to the names, the list must show, with reasonable certainty, a description of each piece of property belonging to those persons that will be taken or affected, either beneficially or injuriously. No greater certainty in names or descriptions is necessary for the validity of the assessment than is required in the assessment of taxes. [IC 32-11-1.5-4, as added by Acts 1980, P.L. 8, § 145.]

32-11-1.5-5. Award of damages sustained and assessment of benefits accruing - Notice. - Upon the completion of the list, the works board shall award the damages sustained and assess the benefits accruing to each piece of property on the list. When the assessments or awards are completed, the works board shall have a written notice served upon the owner of each piece of property, showing the amount of the assessment or award, by leaving a copy of it at his last usual place of residence in the municipality or by delivering a copy to the owner personally. If the person is a nonresident, or if his residence is unknown, then he shall be notified by publication in a daily newspaper of general circulation in the municipality, once each week for three [3] successive weeks. The notices must also name a day at least ten [10] days after service of notice or after the last publication, on which the works board will receive or hear remonstrances from persons with regard to the amount of their respective awards or assessments. Persons not included in the list of the assessments or awards and claiming to be entitled to them are considered to have been notified of the pendency of the proceedings by the original notice of the resolution of the works board. [IC 32-11-1.5-5, as added by Acts 1980, P.L. 8, § 145.]

32-11-1.5-6. Minors and other incompetents - Guardian - Notice. - If a person having an interest in land affected by the proceedings is of unsound mind or under eighteen [18] years of age, the works board shall certify that fact to the city or town attorney. The attorney shall apply to the proper court and secure the appointment of a guardian for the person under eighteen [18] years of age or of unsound mind. The works board shall give notice to the guardian, who shall appear and defend the interest of his ward. However, if the person of unsound mind or under eighteen [18] years of age already has a guardian, the notice may be served on that guardian. The requisites of notice to the guardian are the same as for other notices. If there is a defect in the proceedings with respect to one [1] or more interested persons, the defect does not affect the proceedings except as it may concern the interest or property of the person or persons, and it does not avail any other person concerned. In case of a defect, supplementary proceedings of the same general character as those prescribed by this chapter may be had in order to correct the defect. [IC 32-11-1.5-6, as added by Acts 1980, P.L. 8, § 145.]

32-11-1.5-7. Remonstrance - Appeal. - Any person notified, or considered to be notified under the preceding sections of this chapter, may appear before the works board on the day fixed for hearing
remonstrances to awards and assessments and 
remonstrate in writing against them. After the 
remonstrances have been received, the works board 
shall either sustain or modify the awards or assess-
ments in case remonstrances have been made, but 
in no other case. A person remonstrating in writing 
who is aggrieved by the decision of the works board 
may, within twenty [20] days, take an appeal to the 
circuit or superior court in the county in which the 
 municipality is located. The appeal affects only the 
assessment or award of the person appealing. [IC 
32-11-1.5-7, as added by Acts 1980, P.L. 8, § 145.]

NOTES TO DECISIONS

Temporary Restraining Order.

--Sewer Release System.

A landowner is not entitled to a temporary re-
straining order to prevent a city and its board of 
public works and safety from acquiring part of the 
landowner's property in implementation of a project 
for the construction and installation of a sewer 
release system where it does not seem probable that 
she would be able to prevail in her claim that her 
rights under the fourteenth amendment would be 
abrogated if the city proceeded under this chapter. 
Kozicki v. City of Crown Point, 560 F. Supp. 1203 
(N.D. Ind. 1983).

32-11-1.5-8. Procedure for appeal - Conse-
quences of judgment on appeal. - (a) The 
appeal may be taken by filing an original complaint 
in the court against the municipality within the 
time named, setting forth the action of the works 
board with respect to the assessment and stating 
the facts relied upon as showing an error on the 
part of the board. The court shall rehear the 
matter of the assessment de novo and confirm, 
lower, or increase the assessment. If the court 
reduces the amount of benefit assessed or increases 
the amount of damages awarded, the plaintiff may 
recover costs, otherwise not. The judgment of the 
court is conclusive, and no appeal may be taken.

(b) If upon appeal the benefits assessed or dam-
ages awarded by the works board are diminished or 
increased, the municipality may, upon the payment 
of costs, discontinue the proceedings. It may also, 
through the works board, make and adopt an addi-
tional assessment against all the property originally 
assessed in the proceeding, or that part that is 
benefited, in the manner provided for the original 
assessment. However, such an assessment against 
any one [1] piece of property may not exceed ten 
percent [10%] of the original assessment against it. 
In addition, if the municipality decides to discon-
tinue the proceedings upon payment of costs and if 
assessments for benefits have already been paid, the 
amounts paid shall be paid back to the person or 
persons paying them. [IC 32-11-1.5-8, as added by 
Acts 1980, P.L. 8, § 145.]

32-11-1.5-9. Assessment - Liens. - Upon comple-
tion of the assessment roll by the works board, the 
roll shall be delivered to the fiscal officer of the 
municipality. From the time the respective 
amounts of benefits are assessed, or if a lot or par-
cel of ground has sustained both benefits and dam-
ages because of an improvement as stated in the 
assessment roll, then the excess of benefits assessed 
over damages awarded constitutes a lien superior to 
all other liens except taxes against the respective 
lot or parcel of land. The fiscal officer of the mu-
icipality shall immediately prepare a roll of the 
excess of benefits, to be known as the local assess-
ment roll; in a second class city where the county 
treasurer collects monies due the city, the local 
assessment roll shall be delivered to him. The 
duties of the fiscal officer of the municipality and 
county treasurer are the same as prescribed with 
regard to assessments for street improvement. The 
provisions of the statute relating to the payment of 
street improvement assessments by installments on 
the signing of waivers and issuance of bonds and 
coupons in anticipation, the duties of the fiscal 
officer and the county treasurer in relation to them, 
and the enforcement of payment of assessments in 
proceedings for the improvements of streets by the 
works board applies to these assessments. [IC 32-
11-1.5-9, as added by Acts 1980, P.L. 8, § 145.]

32-11-1.5-10. Due date - Collection. - The 
benefit assessments are due and payable to the 
fiscal officer or county treasurer from the time of 
the preparation or delivery of the assessment duplic-
ate. If not paid within sixty [60] days, the municip-
ality, by its attorney, shall proceed to foreclose the 
liens as mortgages are foreclosed, with similar rights 
of redemption, and have them sold to pay the 
assessments. The municipality may recover costs, 
with a reasonable attorney's fee, and interest from 
the expiration of the sixty [60] days allowed for 
payment, at the rate of six percent [6%] per year. 
If the party against whom the assessments made is 
a resident of the municipality, demand for payment 
must be made by delivering to him personally, or 
leaving at his last or usual place of residence, a 
notice of the assessment and demand for payment. 
[IC 32-11-1.5-10, as added by Acts 1980, P.L. 8, § 
145.]

32-11-1.5-11. Damages paid by city. - The 
works board may determine if any part of the dam-
ages awarded shall be paid out of funds appropri-
ated for the use of the board. However, no more 
than two thousand dollars [$2,000] in damages may 
be paid out of the municipality's funds for any 
improvement or condemnation unless pursuant to 
an ordinance appropriating money for the specific 
improvement or condemnation. All benefits assessed 
and collected by the fiscal officer or county 
treasurer are subject to draft, in the usual manner, 
upon certificate by the works board in favor of per-
sons to whom damages have been awarded. Any
surplus remaining above actual awards belongs to the municipality. The works board may delay proceedings until the benefits have been collected. [IC 32-11-1.5-11, as added by Acts 1980, P.L. 8, § 145.]

32-11-1.5-12. Certificates for amounts of damages. - (a) Upon completion of the award of damages or whenever any time for delay as provided has expired, the works board shall make out certificates for the proper amounts and in favor of the proper persons. Presentation of the certificates to the fiscal officer of the municipality entitles the person to a warrant on him or the county treasurer. The certificates or vouchers shall, whenever practicable, be actually tendered to the persons entitled to them, but when this is impracticable, they shall be kept for the persons in the office of the works board. The making and fixing of the certificate must be delivered to him on request.

(b) If a dispute or doubt arises as to which person the money shall be paid, the works board shall make out the certificate in favor of the municipality's attorney for the use of the persons entitled to it. The attorney shall draw the money and pay it into court in a proper proceeding, requiring the various claimants to interplead and have their respective rights determined.

(c) If an injunction is obtained because damages have not been paid or tendered, the works board may tender the certificate for the amount with interest from the time of entry upon the property, if any has been made, including all accrued costs. The injunction shall then be dissolved. The pendency of an appeal does not affect the validity of a tender made under this section, but the municipality may proceed with its appropriation of the property in question. However, when a lot or parcel of land has sustained both benefits and damages because of improvements as stated in the assessment roll, only an excess of damages awarded over benefits assessed is payable under this section. [IC 32-11-1.5-12, as added by Acts 1980, P.L. 8, § 145.]

32-11-1.5-13. Harbors and watercourses - Condemnation proceedings. - (a) This section applies whenever the works board of a municipality situated upon or adjoining a harbor connected with a navigable stream or lake, or upon any navigable channel, slip, waterway, or watercourse, desires to appropriate or condemn for the use of the municipality any real or personal property for a right-of-way for seawalls, docks, or other improvement of the harbor, channel, slip, waterway or watercourse.

(b) The works board shall adopt a resolution to that effect, describing the property that may be injuriously or beneficially affected. All proceedings necessary to effect the completion of and payment for any such undertaking, including notice, remonstrance, appeal, letting of, and performance of contracts, assessment and collection of payment of damages to property, are the same to the extent applicable as those proceedings for street improvements of the municipality by its works board or other entity charged by statute with the performance of those duties on behalf of the municipality. [IC 32-11-1.5-13, as added by Acts 1980, P.L. 8, § 145.]

36-9-2. GENERAL POWERS CONCERNING TRANSPORTATION AND PUBLIC WORKS

36-9-2-6. Rights-of-way through public ways. - A unit may grant rights-of-way through, under, or over public ways. [IC 18-1-1.5-8, 18-4-2-3, recodified as IC 36-9-2-6 by Acts 1980, P.L. 211, § 4.]

Opinions of Attorney General. The county board of commissioners has no authority to permit the use of any public highway under its control for the laying of a natural gas pipeline if there is another private utility already furnishing substantially similar service, unless the public service commission has determined that public convenience and necessity require the service of the second utility. 1939, p. 238.

NOTES TO DECISIONS

In General.

The exclusive right to use the streets of a city for any purpose could not be granted by a city to any person. Citizens Gas & Mining Co. v. Town of Elwood, 114 Ind. 332, 16 N. E. 624 (1888); Crowder v. City of Sullivan, 128 Ind. 486, 28 N. E. 94, 13 L.R.A. 647 (1891); City of Rushville v. Rushville Nat'l Gas Co., 132 Ind. 575, 28 N. E. 853, 15 L.R.A. 321 (1891); City of Vincennes v. Citizens' Gaslight Co., 132 Ind. 114, 31 N. E. 573, 16 L.R.A. 485 (1892).

The municipal authorities had almost unlimited control of streets and alleys. State ex rel. Evansville Independent Tele. Co. v. Stickelman, 182 Ind. 102, 105 N. E. 777 (1914).

The power of cities was not restricted to streets which had been improved. Denny v. City of Muncie, 197 Ind. 28, 149 N. E. 639 (1925).

This clause, empowering the board of public works of city to authorize railroad companies to use streets under contract with the city, did not permit such contract with private person or corporation. City of Indianapolis v. Link Realty Co., 94 Ind. App. 1, 179 N. E. 574 (1932).

Constitutionality - Discretion of Authorities.

The statute which authorized cities and towns to grant to telephone and other public service corporations the right to use the streets, and operate
and carry on a business within the municipal corporation, was not in violation of the provisions of the constitution, but such statute vested in the municipal authorities a discretion as to the granting of such rights and privileges, and they could not be compelled by mandate to grant such rights. State ex rel. Evansville Independent Tel. Co. v. Stickelman, 182 Ind. 102, 105 N. E. 777 (1914).

Electric Utility.

Where by the term of a grant to an electric light company to occupy the streets of a city the common council had the authority to terminate the license at will, the failure of the company to remove its poles on receiving legal notice from the council to do so rendered them a nuisance per se, and the city had the right to remove them summarily. Coverdale v. Edwards, 155 Ind. 374, 58 N. E. 495 (1900).

Railroads.

Municipal corporations, under their general powers, had authority to grant railroad companies the right to lay their tracks longitudinally upon a street, provided that the use did not destroy or unreasonably impair the street as a highway for the general public. Town of Newcastle v. Lake Erie & W.R.R., 155 Ind. 18, 57 N. E. 516 (1900).

Towns had power to pass reasonable ordinances regulating the speed of railroad trains within their corporate limits. Baltimore & O.R.R. v. Town of Whiting, 161 Ind. 228, 68 N. E. 266 (1903).

Cities could authorize interurban railways to occupy the streets with their tracks, and to run cars carrying passengers and light articles of freight over the same. Mordhurst v. Ft. Wayne & S. W. Traction Co., 163 Ind. 268, 71 N. E. 642, 106 Am. St. R. 222, 66 L.R.A. 105 (1904).

This section did not authorize the board of public works to give permission to a railroad company to extend its tracks upon streets and alleys not occupied by it. Indiana Rys. & Light Co. v. City of Kokomo, 183 Ind. 543, 108 N. E. 771 (1915).

A city could remove a private railroad switch from its street without passing a general ordinance applicable to all switches similarly situated. City of Indianapolis v. Link Realty Co., 94 Ind. App. 1, 179 N. E. 574 (1932).

Telephone Companies.

The reasonable use of the streets of a city for the poles, wires, and necessary equipment of a telephone system was not a new and additional servitude for which the abutting property owner was entitled to compensation. Magee v. Overshiner, 150 Ind. 127, 49 N. E. 951, 65 Am. St. R. 358; 40 L.R.A. 370 (1898).

36-9-6. CITY WORKS BOARD

36-9-6-4. Acquisition of property for city use.
- The works board may condemn, rent, or purchase any real or personal property needed by the city for any public use, unless a different provision for purchase is made by statute or ordinance. However, the city legislative body may by ordinance:

(1) Require that these condemnations, rentals, or purchases be included in a long-range capital expenditure program to be proposed by the works board and updated as required by the legislative body, but at least annually;

(2) Require the works board to estimate, at least annually, expenditures needed for condemnations, rentals, and purchases for each successive fiscal year;

(3) Approve, amend, or reject all or part of the long-range capital expenditure program and the proposed annual expenditures, before or during the adoption of the city budget; and

(4) Specify the manner in which the works board must itemize the estimates of capital program expenditures for each fiscal year. [IC 36-9-6-4, as added by Acts 1981, P.L. 309, § 79; 1982, P.L. 33, § 45.]

Opinions of Attorney General. An Indiana municipality may sell electrical energy produced above its own requirements to individuals, firms and corporations located outside the corporate limits of the municipality. 1933, p. 280.

Municipalities may own and operate community antenna television systems. 1965, No. 75, p. 390.

NOTES TO DECISIONS

In General.

The cities and towns act vested the city's power to condemn in the board of public works or board of public works and safety subject to the power of the common council to enact an ordinance to impose certain limitations or requirements if it so chooses. City of Greenfield v. Hancock County Rural Elec. Membership Corp., 160 Ind. App. 529, 42 Ind. Dec. 488, 312 N. E. 2d 867 (1974).

Appropriation Proceedings.

Appropriation proceedings by board of public works for the purposes of opening a street are statutory under the statutory power of eminent domain and the statutory provisions must be strictly followed. Elliott v. City of Indianapolis, 237 Ind. 287, 142 N. E. 2d 911 (1957).

Assessment Roll.

Where party who owned interest in the property was not included in assessment roll awarding
damages in condemnation proceeding entered on record, such record did not constitute a final decision as to said party since the decision did not finally dispose of all the issues as to all of the necessary parties in the case. City of Indianapolis v. John Clark, Inc., 245 Ind. 628, 3 Ind. Dec. 110, 4 Ind. Dec. 1, 196 N. E. 2d 896, 201 N. E. 2d 336 (1964).

Eminent Domain.

The legislature has the power to authorize the exercise of the right of eminent domain for the public use and for the public benefit. Anderson v. Kerns Draining Co., 14 Ind. 199, 77 Am. Dec. 63 (1860); Water Works Co. v. Burkhart, 41 Ind. 384 (1872); Blackman v. Halves, 72 Ind. 515 (1880); Bass v. City of Fort Wayne, 121 Ind. 389, 23 N. E. 259 (1890); Consumers’ Gas Trust Co. v. Harless, 131 Ind. 446, 29 N. E. 1062, 15 L.R.A. 505 (1891).

Proceedings to condemn real estate under the former Eminent Domain Act for First-Class Cities were statutory proceedings before a statutory board and had to strictly comply with statutory requirements. City of Indianapolis v. Schmid, 251 Ind. 147, 15 Ind. Dec. 292, 240 N. E. 2d 66 (1968).

--Taking Without Eminent Domain Proceedings.

Where city took private property for public improvement without eminent domain proceedings, assuming that it owned the property, the actual property owner was not limited to proceedings under the provisions of former 18-4-16-1, but properly brought an action to quiet title and for damages for wrongful taking. City of Indianapolis v. L & G Realty & Constr. Co., 132 Ind. App. 17, 170 N. E. 2d 908 (1960).

Highway Proceeding.

An order of the circuit court, on appeal from an order of the board of county commissioners establishing a highway, that the damages be paid out of the county treasury was void where the county was not a party to the proceeding and no appropriation of funds had been made. Weaver v. Ferguson, 68 Ind. App. 169, 117 N. E. 659 (1917).

Notice.

In an appropriation proceeding by the works board for the purpose of opening a street, where board did not serve appellant with sufficient notice to meet the requirements of due process, he was entitled to have the determination of the board vacated as to him. Elliott v. City of Indianapolis, 237 Ind. 287, 142 N. E. 2d 911 (1957).

Purchase of Property.

Cities had the exclusive right to determine the expediency of purchasing real estate upon which to erect public buildings, and to purchase the same on credit and issue bonds for the purchase-money. City of Richmond v. McGrirr, 78 Ind. 192 (1891).

--Purchase Price.

A public utility was not entitled to an injunction preventing a city from taking possession of its electric system, which had been purchased pursuant to statute, on the ground that the purchase of the system had never been authorized by the voters of the city, because, preceding such election, the mayor, common council, and board of public works represented to the public that not more than a certain sum would be paid as the purchase price, where no official commitment was made in the proceedings of city council as to the amount of money that might be expended, and the question submitted to the voters by the ballot used at such election contained no such limitation, nor was it charged that the election was void or that the voters were coerced. Public Serv. Co. v. City of Lebanon, 221 Ind. 78, 46 N. E. 2d 480 (1943).

Purchase of Supplies.

In the purchase of supplies by the works board, the works board and not the city controller was the purchaser and the board was responsible for compliance with 5-17-1-1. State v. Schell, 248 Ind. 183, 10 Ind. Dec. 133, 224 N. E. 2d 49 (1967); Wetter v. City of Indianapolis, 248 Ind. 367, 10 Ind. Dec. 512, 226 N. E. 2d 86 (1967), cert. denied, 390 U.S. 37, 88 S. Ct. 820, 19 L. Ed. 2d 813 (1968).

36-9-20. BARRETT LAW FUNDING FOR MUNICIPAL IMPROVEMENT DISTRICT

36-9-20-10. Acquisition of property or property rights - Vacation of streets or alleys - Use of municipal property. - (a) If an improvement under this chapter requires the acquisition of property or property rights, and the acquisition cannot be made through the assessment proceedings established by this chapter, the municipality may proceed by eminent domain. The eminent domain proceeding shall be conducted in the manner provided by the statutes applicable to acquisition of property by the municipality for public purposes. Any property or property rights acquired belong to the municipality.

(b) If it is necessary to vacate streets or alleys, the vacation shall be made in the manner provided by statute.

(c) Any property owned by the municipality or another governmental entity may be made available for any public improvement under this chapter, without charge. [IC 36-9-20-10, as added by Acts 1981, P.L. 309, § 93.]
36-9-27. COUNTY DRAINAGE BOARD

36-9-27-71. Drains crossing public highways or railroad rights-of-way - Costs of crossing. -
(a) When, in the construction or reconstruction of a regulated drain, the county surveyor determines that the proposed drain will cross a public highway at a point where:

(1) There is no crossing; or

(2) The crossing will not adequately handle or will be endangered by the flow of water from the drain when completed;

he shall include in his plans the grade and cross section requirements for a new crossing. The surveyor shall mail a copy of the requirements addressed to the owner of the highway.

(b) When requested by the owner of the highway, the county surveyor shall meet with the owner at a time and place to be fixed by the surveyor [surveyor]. The surveyor shall hear objections to the requirements, and may then change the requirements as justice may require.

(c) When the board finds that in the construction, reconstruction, or maintenance of a regulated drain it is necessary to:

(1) Alter, enlarge, repair, or replace a crossing; or

(2) Construct a new crossing where none existed before;

The cost of the work on the crossing shall be paid by the owner of the public highway. This cost may not be considered by the county surveyor or by the board in determining the cost of the work on the drain or in assessing benefits and damages. However, if it is necessary for the owner of a public highway to construct a new crossing because of a cut-off for the purpose of shortening or straightening a regulated drain, the owner of the public highway shall pay one-half [1/2] of the cost of the new crossing, and the remainder shall be included in the cost of the work on the drain.

(d) A railroad company with a right-of-way that is:

(1) Crossed by the construction of a regulated drain; or

(2) Affected by the latering or enlarging of a crossing;

shall pay one-half [1/2] of the cost of the work on the crossing and the remainder shall be included in the cost of the work on the drain. [IC 36-9-27-71, as added by Acts 1981, P.L. 309, § 101; P.L. 206-1984, § 5.]

NOTES TO DECISIONS

Railroads - Culverts.

Where, in a proceeding to establish an open public ditch through a watershed which was previously drained by an old private drain not described in the proceeding, there were no facts in the record which would afford a basis for the conclusion that the new drain contained a "cut-off," but the difference in length of the old private drain and the one proposed to be constructed was only 15 feet, a railroad company was not entitled to have one-half the cost of the culvert across the drain borne by the improvement district. New York Cent. R.R. v. Burch, 216 Ind. 271, 23 N. E. 2d 586 (1939).
CHAPTER 6
LOCATION, RELOCATION, VACATION; AND RAILROAD ABANDONMENT

8-1-15. WATER UTILITIES, VACATION OF ROADS FOR WATER UTILITY PURPOSES.

8-1-15-1 [36-226] Petition to vacate or relocate highway. - Any corporation organized under the laws of the state of Indiana and authorized by its articles of incorporation to furnish water to any town or city or the inhabitants thereof, through or adjoining whose land any highway has heretofore been located and established, which desires to vacate or to relocate such highway or a portion thereof, may file with the circuit or a superior court in the county in which such lands or the major part thereof are located, its petition setting forth the following:

(a) The name of the petitioner.

(b) A distinct description of the highway or part thereof which petitioner seeks to be vacated or relocated and in case of relocation, a distinct description of the proposed new route, which may be over existing highways or right-of-way.

(c) A statement that petitioner has determined that such vacation or relocation is reasonably necessary or desirable in connection with petitioner's construction or maintenance of an impounding water reservoir.

(d) A statement that said vacation or relocation of said highway or portion thereof will not increase by more than four [4] miles the distance necessary for anyone to travel over highways which are or will be substantially similar to that proposed to be vacated or relocated.

(e) In case of vacation, the names and addresses of owners of the abutting land affected by the vacation proceedings. [Acts 1959, ch. 196, § 1.]

8-1-15-2 [36-227]. Hearing on petition - Notice. - Upon the filing of the petition described in section 1 [8-1-15-1] of this chapter, the court shall set a time for hearing not less than fourteen [14] days nor more than twenty-one [21] days thereafter and notice shall be given of the filing of said petition and the time set for hearing thereof by publication for two [2] full weeks in some newspaper, daily or daily except Sunday, of general circulation in each county wherein any portion of said highway is located. The notice shall be directed to the inhabitants of said county or counties and shall set forth a description of the highway or portion thereof which petitioner seeks to be vacated or relocated and in case of relocation, a distinct description of the proposed new route shall be given. A copy of the notice shall be personally served on the board of commissioners of each county in which said highway or any portion thereof is located in the same manner as a summons is served in civil cases. In case of vacation, the clerk of the court shall also send a copy of the published notice by registered mail to each of the owners of the abutting land affected by the vacation proceedings as set out in the petition, provided that the attorney of record who files said vacation proceedings shall deliver to said clerk sufficient postage and copies of the published notice to cover the mailing to such abutting owners. [Acts 1959, ch. 196, § 2; P.L. 59-1984, § 72.]

8-1-15-3 [36-228]. Remonstrances. - Any person feeling himself aggrieved by the proposed vacation or relocation may file a written remonstrance with the court at any time prior to the time set forth for hearing upon any one or more of the following grounds and no other to wit:

(a) That the highway or portion thereof proposed to be vacated or relocated is necessary to the growth of the county or counties in which it is located.

(b) That the proposed vacation or relocation will leave the real estate of the remonstrant without means of ingress or egress by a public highway.

(c) That such vacation or relocation will deny the public access to some public building, church or school or public grounds.

(d) That the material allegations of the petition or any of them are not true. [Acts 1959, ch. 196, § 3.]

8-1-15-4 [36-229]. Hearing if remonstrance filed - Granting of Petition - Costs. - If no such remonstrance shall be filed in writing with the court before the time set for the hearing, the court shall grant the prayer of the petition. If remonstrance thereto be made, the court shall set the time for hearing and trial by the court and if the facts in said remonstrance are found not true the court shall overrule the remonstrance and grant the
prayer of the petition. In either case, all costs of the proceedings shall be paid by the petitioner. [Acts 1959, ch. 196, § 4.]

8-3-1. RAILROAD COMMISSION LAW

8-3-1.21. Notice of intent to abandon rights-of-way -- Removal of crossing control devices. - (a) Upon receiving notice of intent to abandon railroad rights-of-way from any railroad company, it shall be the duty of the commission, upon receipt, to notify:

1. The boards of county commissioners and cities and towns of the counties affected;
2. The director of the department of highways;
3. The Indiana department of commerce;
4. The state department of transportation; and
5. The department of natural resources of the notice.

(b) Within one [1] year of a final decision of the Interstate Commerce Commission permitting an abandonment of a railroad right-of-way, the railroad shall remove any crossing control device, railroad insignia, and rails on that portion of the right-of-way that serves as a public highway and reconstruct that part of the highway so that it conforms to the standards of the contiguous roadway. The county, city, town, or state department of highways having jurisdiction over the highway may restore the crossing if the unit:

1. Adopts construction specifications for the project; and
2. Enters into an agreement with the railroad concerning the project. The cost of removing any crossing control device, railroad insignia, rails, or ties under this subsection must be paid by the railroad. The cost of reconstructing the highway surface on the right-of-way must be paid by the county, city, town, or state department of highways having jurisdiction over the crossing.

(c) If a railroad fails to comply with the requirements of subsection (b), the county, city, town, or state department of highways having jurisdiction over the crossing may proceed with the removal and reconstruction work. The cost of the removal and reconstruction shall be documented by the agency performing the work and charged to the railroad. Work by the agency may not proceed until at least sixty [60] days after the railroad is notified in writing of the agency's intention to undertake the work.

(d) This section does not apply to an abandoned railroad right-of-way on which service is to be reinstated or continued.

(e) As used in this section, "crossing control device" means any traffic control device installed by the railroad and described in the National Railroad Association's manual, Train Operations, Control and Signals Committee, Railroad-Highway Grade-Crossing Protection, Bulletin No. 7, as an appropriate traffic control device.

(f) Costs not paid by a railroad under subsection (b) may be added to the railroad's property tax statement of current and delinquent taxes and special assessments under IC 6-1.1-22-8. [IC 8-3-1-21.1, as added by Acts 1973, P.L. 65, § 1; 1980, P.L. 74, § 39; 1982, P.L. 62, § 3; 1982, P.L. 75, § 1; P.L. 63-1984, § 1.]

(g) Whenever the department of transportation notifies the department of natural resources that a railroad intends to abandon a railroad right-of-way under this section, the department of natural resources shall make a study of the feasibility of converting the right-of-way for recreational purposes. The study must be completed within ninety (90) days after receiving the notice from the department of transportation. If the department of natural resources find that recreational use is feasible, the department of natural resources shall urge the appropriate state and local authorities to acquire the right-of-way for recreational purposes. [IC 8-3-1-21.1 as added by SEA 395, 1987, § 30.]

Amendments. The 1984 amendment, effective March 7, 1984, deleted former subsections (b) and (c) and added present subsections (b)-(d), redesignated former subsections (d) and (e) as present subsection (e) and (f), and in subsection (a) substituted "notice of intent to abandon" for "notification of any abandonment of," deleted "federal agency, or court having jurisdiction in right-of-way abandonment proceedings" preceding "it shall be the duty," added "the" at the beginning of subdivision (3), and substituted "the notice" for "of such abandonment" at the end of the subsection.

8-3-1-22. Abandonment of right-of-way crossing public highway or street. - If the commission determines that the right-of-way of a railroad which intersects or crosses a public highway or street is abandoned, any unit of government may resurface that intersection or crossing. [IC 8-3-1-22, as added by Acts 1982, P.L. 75, § 2.]

8-3-8. RECORDATION OF RIGHT-OF-WAY DEEDS

8-3-8-1 (subdivision). Recording of conveyance, release or other contract affecting right-of-way. - Any railroad corporation, lessee or assignee or receiver, or other person or corporation, running, controlling or operating, or that may hereafter construct, build, run, control or operate any railroad into or through this state, shall, within forty-five [45] days from the date of execution of any conveyance, lease, release or other contract affecting.
the right-of-way of any railroad hereafter constructed, record, or cause to be recorded, in the proper records in the recorder's office of the county wherein the lands are situate so conveyed, leased, released or constructed. [Acts 1893, ch. 152, § 1, p. 335.]

8-3-8-2 [55-3508]. Failure to record -- Effect. - Every such conveyance, lease, release or other contract affecting any right-of-way of any railroad, not so recorded in forty-five [45] days, as provided for in section one [8-3-8-1] of this chapter shall be void as against any subsequent purchaser, lessee or mortgagee in good faith and for a valuable consideration. [Acts 1893, ch. 152, § 2, p. 335, P.L. 62-1984, §9.]

Decisions Under Prior Law

In General

Where a farmowner conveyed to a railroad a right-of-way eighty feet wide and the railroad took possession of forty feet only, the owner of the farm continuing to use the remaining forty feet as his own, the conveyance not having been recorded, a subsequent purchaser has not been given constructive notice of the extent of the railroad's purchase, either by its fencing and use of half the right-of-way, or by a recital in his deed that the title conveyed to him was subject to the railroad right-of-way. Cincinnati, I., St. L. & C.R.R. v. Smith, 127 Ind. 461, 26 N.E. 1009 (1891).

8-3-14. ALTERATION OF ROUTES

8-3-14-1 [55-618]. Procedure -- Location of highway on old line. - If, at any time after the location of the line of any railroad chartered by this state, and the filing of the map thereof, it shall appear to the directors of such company that the line thereof is necessarily dangerous, inconvenient, or expensive to operate, by reason of unavoidable causes, grades, or serious errors in location, such directors may make local alteration of the line, and cause a new map to be filed in the office where the map showing the first location is filed, and may thereupon take possession of the lands embraced in such new location which may be necessary for the construction and maintenance of such road on such altered line, either by agreement of the owner or by such proceedings as are authorized by the charter of such company, and may use such new line in place of the one for which it is substituted; but nothing in this chapter shall be so construed as to confer upon such railroad company any power to locate its road on any route which would not have been authorized by its charter; and nothing in this chapter contained shall authorize such company to make a location of its track within any city without the consent of the common council of such city, nor to change its road so as to avoid any point named in its charter. And any change so made by any railroad company shall subject said railroad company to the payment of all damages that may be sustained by any person, persons, or corporation of account of such change; Provided, That if any railroad company change or relocate any part of its track for a distance one [1] mile or more, such railroad company shall, previous to such change, relocation, or abandoning, pay to the owner or owners of any real estate lying upon, along or near the route or line of said road from which such track is proposed to be taken all damages which may accrue to such owner or owners on account of such removal; such damages shall be assessed in the same manner as lands taken for railroad purposes in pursuance of the statute in force on April 23, 1903, in his state; and said damages, when so assessed, shall be paid to the owner or owners of said lands, or paid into the office of the clerk of the county in which said lands are located, for the use of said owner or owners, previous to the relocation or abandonment of said track; Provided, further, That in all cases where any railroad company has made, before or after April 23, 1903, any such alterations as are provided for in this chapter, the board of county commissioners of the county in which said alterations are made may locate a public highway on the old line or route of such railroad for which such new line is substituted by the same proceedings and on the same terms as public highways are on or after April 23, 1903, located. [Acts 1885 (Spec. Sess.) ch. 23, § 1, p. 118; 1903, ch. 121, § 1, p. 218; 1907, ch. 211, § 1, p. 373; P.L. 62-1984, § 30.]

Amendments. The 1984 amendment, effective March 2, 1984, substituted "chapter" for "act" in three places, and substituted "in force on April 23, 1903" for "now in force," "made, before or after April 23, 1903" for "heretofore, or may hereafter, make," and "on or after April 23, 1903" for "now or may be hereafter."

8-13-15. PUBLIC USE OF RAILROAD LAND

8-3-15-1 [55-3501]. Public use of railroad land. - The use by the public [of the] right-of-way or depot grounds of any railroad in this state by riding, driving or walking thereon, shall not ripen into a right to continue to do so even though it has been so used for a period of twenty [20] years or more; nor shall such use be evidence of a grant to do so except where such use is made across such ground to connect a street or highway on each side thereof, and except where a court of competent jurisdiction has adjudged the existence of a street or highway. [Acts 1899, ch. 209, § 1, p. 477.]

Compiler's Notes. Bracketed words "of the" inserted by secretary of state.

NOTES TO DECISIONS

Connection Between Streets.

This section has no application where the evidence shows that the railroad crossing is used to connect a street or highway on each side of the railroad right-of-way. New York, C. & St. L.R.R. v. Lincoln Nat'l Life Ins. Co., 127 Ind. App. 608, 142 N.E.2d 437 (1957).

Dedication as Highway.

This section has no application where a railroad company dedicates land to the public for use as a highway. Cleveland, C.C. & St. L.R.R. v Christie, 178 Ind 691, 10 N.E. 299 (1912).

General Public Use

The general public use as a way of travel cannot convert a railroad right-of-way into a "public highway." Murphey v. Inter-Ocean Cas. Co., 98 Ind. App. 668, 186 N.E. 902 (1933).

Collateral References. Adverse possession of railroad right-of-way. 50 A.L.R. 303.

Right of railroad company to prevent operations for gas or oil or other mining operations on right-of-way. 61 A.L.R. 1068.

8-4-35. PROPERTY RIGHTS IN RAILROAD RIGHTS-OF-WAY

8-4-35-1. As used in this chapter, "railroad" includes a railroad company and its successors in title to railroad right-of-way property.

8-4-35-2. As used in this chapter, "right-of-way" means strip or parcel of real property acquired by a railroad company as an easement or lessor interest for use as a portion of the railroad company's transportation corridor.

8-4-35-3. (a) This chapter applies to a railroad right-of-way interest that is not within the corporate boundaries of any municipality (as defined in IC 36-1-2-11). (b) This chapter does not apply to railroad rights-of-way that are abandoned as a part of a demonstration project for the relocation of railroad lines from the central area of a city as provided under section 163 of the Federal-Aid Highway Act of 1973 (P.L. 93-87, Title I, Section 163), as amended.

8-4-35-4. (a) This subsection applies to railroad abandonments after February 27, 1920. For the purposes of this chapter, a railroad abandons its rights-of-way when:

(1) the Interstate Commerce Commission issues a certificate of public convenience and necessity relieving the railroad of its common carrier obligation on the right-of-way; and

(2) rails, switches, ties, and other facilities have been removed from the right-of-way.

(b) This subsection applies to railroad abandonments before February 28, 1920. For purposes of this chapter, a railroad abandons its right-of-way when:

(1) the railroad discontinues use of the right-of-way for railroad purposes; and

(2) rails, switches, ties, and other facilities have been removed from the right-of-way.

(c) Notwithstanding subsections (a) and (b), a railroad right-of-way is not considered abandoned if it is:

(1) purchased by a purchaser that is not a railroad; and

(2) purchased for use by the purchaser to transport goods or materials; even if the seller discontinues rail service.

8-4-35-5. If a railroad abandons its rights to a railroad right-of-way, the railroad's interest vests in the owner of fee simple real property with a deed that contains a description of the real property that includes the right-of-way. However, if such a deed does not exist, then the railroad's interest vests in the owner of the adjoining fee. The interest of the railroad that vests in the adjoining owner is for the portion of the right-of-way from the center line of the right-of-way to the adjoining property line.

8-4-35-6. (a) To establish record title upon an abandonment of a railroad right-of-way, an owner of fee simple real property in whom the railroad's interest vests under section 5 of this chapter may file an affidavit with the railroad, or with one holding the railroad's interest, stating:

(1) that the filer is the owner of fee simple real property in whom a railroad's interest has vested; and

(2) a legal description of the filer's property and a legal description of the portion of the right-of-way that has vested in the filer.

(b) The railroad shall, within one hundred eighty (180) days after receipt of the affidavit, execute and deliver to the fee simple owner who files under this section a quitclaim deed for the portion of the right-of-way described in the affidavit.

(c) The fee simple owner shall record the title and have it entered for taxation in the county where the right-of-way is located.

8-4-35-7. (a) The railroad may charge the grantee of a deed under this chapter an amount not to exceed the reasonable costs to the railroad of processing, executing and delivering the deed. The amount charged must not exceed one hundred dollars ($100).
8-4-35-8. (a) The fee simple owner takes title under this chapter to the right-of-way subject to any valid communication, fiber optic, or cable television easement, license, or legal occupancy granted by the railroad before the date of the recording of an affidavit under section 7 of this chapter or the recording of a quitclaim deed under section 6 of this chapter.

(b) An abandonment and vesting of title under this chapter does not deprive a communication, fiber optic, or cable television company of the use of all or part of the right-of-way if, on September 1, 1987, or at the time of abandonment and vesting (whichever is later):

(1) the company is occupying and using all or part of that right-of-way for the location and operation of its facilities; or

(2) the company has acquired an interest for use for all or part of the right-of-way.

8-4-35-9. (a) An abandonment and vesting of title under this chapter does not deprive a public utility of the use of all or part of the right-of-way if, on September 1, 1987, or at the time of the abandonment and vesting (whichever is later):

(1) the public utility is occupying and using all or part of that right-of-way for the location and operation of its facilities; or

(2) the public utility has acquired an interest for use for all or part of the right-of-way.

(b) The public utility may waive its rights under this section by providing the fee simple owner with a written waiver, if the owner provides the public utility with:

(1) a copy of the affidavit submitted to the railroad under section 6 of this chapter; and

(2) a copy of:

(A) the recorded quitclaim deed from the railroad; or

(B) the recorded affidavit under section 7 of this chapter.

8-4-35-10. In any action to establish title to real property, the following are not adverse possessions to the owner in such a manner as to establish title or rights to that real property:

(1) Possession of a right-of-way by a nonrailroad purchaser under section 4(c) of this chapter.

(2) Possession of a right-of-way under a communication, fiber optic, or cable television easement, license, or legal occupancy under section 8 of this chapter.

(3) Possession by a public utility under section 9 of this chapter.

8-4-35-11. The railroad is not liable for any errors, omissions, or intentional misstatements that are contained in the fee simple owner's affidavit and that are not actually known by the railroad before the delivery of the quitclaim deed.

8-11-2. FUNCTIONAL CLASSIFICATION

8-11-2-9. Relocating state highways -- Disposition and transfer of highways. - The department may change the location of a state highway for the purpose of reducing the length of the highway, of eliminating steep grades or sharp turns, of widening narrow portions, or of otherwise promoting public convenience and safety.

Whenever the department determines that because of a change in location of any state highway or for other reasons a part of the right-of-way of a highway will not be needed for highway, street, or road purposes, nor necessary to reach the premises of any person or persons other than the owner or owners of such portion of the original right-of-way, the director may, by executive order, declare such portion of the right-of-way to be no longer useful or necessary for highway purpose, and thereafter such portion of such right-of-way shall cease to be a public highway and shall revert to the person or persons lawfully entitled to take the same. In the event the highway was laid out, improved, or widened by the state department and the state, through the department, acquired by purchase, the portion or portions of right-of-way to be released, the department shall demand a consideration in money from such person, or persons, for such release and such release shall become final only upon payment of the consideration which shall be credited to the account of the department and allocated to the fund out of which the consideration was paid by the department in the purchase of the right-of-way. The amount of consideration shall be at least equal to the fair market value of the right-of-way as determined by appraisers employed by the department.

Whenever, the department determines that, because of the construction of a new state highway or the relocation of a state highway or a change in
general function or use, a portion of the state highway system no longer meets the criteria established by section 4 [8-11-2-4] of this chapter for a highway in the state system but that the highway continues to serve a useful purpose, that portion of the system may be transferred to a county highway system or a city or town street system.

Whenever a county, city, or town determines that, because of a change in general function or use, an arterial or local road serves a state function, that portion of the arterial or local road system may be transferred to the state system. [IC 8-11-2-9, as added by Acts 1976, P.L. 29, § 2; 1979, P.L. 90, § 1; 1980, P.L. 74, § 114.]

8-11-12. DISPOSITION OF VACATED FREE GRAVEL ROAD

8-11-12-1 [36-219]. Gravel roads to highways - Vacation. - In all cases where free gravel roads have been constructed on the order of the board of county commissioners over and upon any of the highways of the state, and the viewers, in laying out the line of the same, have departed on or after February 23, 1895, from the line of such highway, and have constructed on or after February 23, 1895, portions of such free gravel road over and upon a different line, then all of such portions of said highway thus abandoned shall be deemed vacated without further proceedings, and the landowner or owners over whose land such abandoned portions of said highway shall pass shall have the right to fence and improve the same as his or their own; Provided, the provisions of this chapter shall not apply where the fencing of such abandoned portion of such highway would deprive any person owning land along such abandoned highway from access to his land over a highway. [Acts 1895, ch. 16, § 1; p. 18; P.L. 66-1984, § 35.]

Cross References. Establishment of county roads, 8-20-1-1 et seq. Legalization of vacations, 8-20-2-1.

8-11-13. HIGHWAYS LOCATED ON ABANDONED RAILROADS’ RIGHT-OF-WAY

8-11-13-1 [36-1112]. Abandoned railroad - Repair of highway located on. - Any highway located, or that may be hereafter located, upon any abandoned railroad right of way within the state shall become a free gravel road and part of the free gravel road system of this state, and shall be kept in repair thereafter the same as other free gravel roads are kept in repair, and shall be subject to and governed by the same laws governing the repair and keeping in repair of free gravel roads; Provided, That such highway shall be in good condition and repair as a gravel road or turnpike when this act [8-11-13-1] shall take effect, or shall thereafter be put in good condition and repair. [Acts 1905, ch. 87, § 1, p. 153.]

8-13-2. ACQUISITION OF LAND PLANNING

8-13-2-7 [36-2950]. Land or property not needed within time -- Order of department -- Offer to sell to former or abutting property owner -- Sale as surplus state property -- Disposition of proceeds. (a) In the event the department determines that any parcel or combination of parcels of land which it owns in fee simple will not be needed for highway purposes, or a purpose incidental thereto, within a reasonable time in the future, and provided said land is not necessary to reach the premises of any person or persons, the director of the department may issue an order describing therein such land and offering said land for sale at or above its fair market value as determined by appraisers of the department.

(b) The department may combine or divide parcels of land declared surplus into a parcel or parcels for the purpose of facilitating the sale of the surplus property.

(c) When a parcel found to be surplus abuts a parcel of land from which the surplus parcel was separated and acquired by the department, the parcel must be first offered for sale to the owner of said abutting land. Such offer shall be made by registered mail addressed to the last known address of the owner, and such mailing shall be considered to be in full compliance with the equipment herein. If the owner accepts such offer, the parcel of land may be conveyed to the owner, by quitclaim deed upon the payment to the department of not less than the fair market value as determined by the appraisers of the department.

(d) If the owner fails to accept such offer within a period of thirty [30] days, the department may furnish a certified copy of the order and appraisal to the department of administration, and such land or lands affected thereby may be sold in the same manner as other real estate belonging to the state of Indiana is sold, and at no less than said appraised value. The proceeds of such sale shall be credited to the account of the state department. The sale is subject to the approval of the governor. In the event the appraised value of any parcel or combination of parcels of land does not exceed the sum of four thousand dollars [$4,000], the sale may be made by the department without advertisement or competitive bids, upon the approval of the director of the department and the governor, for not less than the full appraised value thereof. [Acts 1957, ch.
8-17-1. COUNTY UNIT LAW

8-17-1-0.1. "Department" defined. - As used in this chapter, the term "department" refers to the state department of highways. [C 8-17-1-0.1, as added by Acts 1980, P.L. 74, § 296.]

8-17-1-4 [36-304]. Petition - Meeting - Notice. - Whenever a petition signed by two hundred and fifty [250] or more freeholders and voters of any county of the state, not less than fifteen [15] of whom shall be from each of a majority of the townships of such county, praying that any public highway or highways within such county shall be laid out, established, changed or widened, and improved by grading, draining, resurfacing or paving with gravel, stone, brick, concrete, bitumen or other road paving material, or that any public highway or highways, or any part of any public highway, already established, shall be graded, drained, resurfaced, paved or improved with gravel, stone, brick, concrete, bitumen or other road paving material, shall be addressed to the board of commissioners of the county and filed in the office of the auditor of such county, it shall be the duty of the auditor of the county to designate, by endorsement upon said petition, the day in a regular session of such board of commissioners, not more than thirty [30] days thereafter, upon which the same shall be presented to such board of commissioners, and cause a notice thereof to be published one [1] time each week for two [2] consecutive weeks in a newspaper of general circulation, printed and published in said county, and cause to be posted one [1] of said notices in each of the townships of said county, and cause one [1] copy of said notice to be posted in the office of the board of commissioners of such county, and the last of said publications shall be published and all of said notices posted at least ten [10] days before the date set for hearing, each of said notices to be signed by said auditor and said notices shall set forth the fact that a petition has been filed, addressed to the board of commissioners, asking for the improvement of a certain highway or highways, which notice shall set forth concisely the character of the petition, the matter to be considered at such hearing, the beginning, course and termination of said proposed highway or highways, the character of the improvement recommended by the petitioners, and shall designate the date when and the place where said hearing will be had, and shall state that any interested party may appear at such hearing and show cause why the request prayed for in the petition shall not be granted. [Acts 1919, ch. 112, § 5, p. 531; 1921, ch. 280, § 1, p. 878.]

Cross References. Establishment of highway by public usage, 8-20-1-15.

Construction of Act of 1921, see note, 8-17-1-11.

Priority when two or more petitions filed, 8-19-1-8-1-- 8-19-8-5.

NOTES TO DECISIONS

In General.

The owner of land adjoining a county highway must follow the statutory method of recovering damages for injuries to his property resulting from the improvement. Board of County Comrs. v. Murray (1936), 210 Ind. 186, 1 N.E. (2d) 932.

Injunction and Mandamus.

When the board acts in a judicial character or a matter over which it has jurisdiction, the remedy is by appeal and not injunction. Meredith v. Crowder (1924), 81 App. 221, 142 N.E. 876.

The same principle applies to mandamus proceeding. State ex rel. Schulte v. Board of County Comrs. (1925), 196 Ind. 281, 148 N.E. 198.

Jurisdiction of County Commissioners.

Boards of county commissioners have exclusive jurisdiction over the subject of establishing highways outside of incorporated towns and cities, whether such highways are located in one or more townships. Hull v. Board of County Comrs. (1924), 195 Ind. 150, 143 N.E. 589.

Board of county commissioners have no equity powers and cannot set aside their own judgments and orders. Hull v. Board of County Comrs. (1924), 195 Ind. 150, 143 N.E. 589.

Township Highways.

One road may be constructed, repaired, and improved under the County unit Road Law and another under a law in which the township is used as a unit without violating Const., art. 10, § 1. Forrey v. Board of County Comrs. (1920), 189 Ind. 257, 126 N.E. 673.

8-17-1-5 [36-305]. Description -- Improvements. - The petition herein contemplated shall set forth the beginning, course and termination of the highway or highways proposed to be laid out, established, graded, drained or paved, together with a recommendation of the width of such highway and a recommendation of the character of the improvement desired; and such petition may include one more highways or parts of highways and may provide for change in the course or for the widening of the highways, at the option of the petitioners. [Acts 1919, ch. 112, § 6, p. 531.]

8-17-1-6 [36-306]. Proof of publication -- Appointment of surveyor or engineer. - On the day so designated by said auditor, the petitioners may make proof of publication and posting of notices and present such petition to such board of
commissioners, and any taxpayer of the county, or any person or corporation whose lands or property will be affected by the work therein prayed for, may file, in writing, his objections to the form or sufficiency of such petition, and in the event that such board shall deem such petition to be deficient in form or insufficient in substance, the petitioners shall be permitted to amend the same, but if such petition be not amended in such manner as to be in due form and sufficient, it shall be dismissed at the cost of the petitioners. If, on the other hand, such petition shall be adjudged by the board to be in due form and sufficient, either in the first instance or after the same has been amended, such board of commissioners shall make an order causing such petition to be spread of record and referring the matter therein prayed for to the county surveyor, if he be a civil engineer; if not, then to a competent civil engineer to be appointed by such board; and the said commissioners, together with the assistance of such county surveyor or competent engineer, shall proceed as hereinafter indicated; and, in the order of the board referring said matter to said surveyor or engineer, said board shall designate the day on which said engineer and the board shall file in the office of the auditor their determination, as hereafter specified, which day shall not be more than thirty [30] days after the date of such order, unless time therefor is extended by the board by a duly entered written order. [Acts 1919, ch. 112, § 7, p. 531.]

8-17-1-7 [38-307]. Directors to view - Survey and specifications. - The board of commissioners shall proceed, without delay, to view, and they shall cause the surveyor or engineer to make all needful surveys of the highways or proposed highways, or culverts or bridges, and approaches, described in said petition, and the board of commissioners shall determine:

(a) Whether the proposed highway or highways, or any part thereof, or changes or improvement thereof, as described in the petition, will be of public utility.

(b) They shall further determine whether it is necessary to construct any bridges, culverts or approaches, and shall determine the necessary drainage for the protection of the highway.

(c) They shall determine the beginning course, termination and length of the proposed highway or improvement.

(d) They shall determine the width of said highway and also the width of the part of said highway which is to be improved, and the part of said highway to be improved shall not be more than twenty-four [24] feet in width, exclusive of berms.

(e) The board shall determine the paving material best suited for the need of the traffic of said highway or highways, and all paving and other materials entering into the construction of such highway shall meet all tests and standards that may be adopted by the department, and the character of the improvement, including the grading, draining, and paving, and they shall require of the surveyor or engineer complete plans and specifications of such proposed improvement, together with all bridges, culverts, waterways and approaches required thereto.

(f) The board shall determine from the report of the surveyor or engineer the estimated cost of the highway or improvement thereof, and the board shall file in the office of the auditor of the county, for the benefit of the public, their report in writing, signed by a majority of them, setting forth their determination in said matter in respect to said highway or proposed highway or improvement thereof mentioned in the petition, including an accurate description of each new highway to be laid out, established, graded, drained and paved, and of each public highway to be graded, graded and paved, together with their recommendation in respect to the paving material to be used in each instance, and complete plans and specifications for each improvement to be made, including the specifications for bridges, culverts and approaches and such report shall be accompanied by an accurate profile of each highway or part of highway to be improved, together with proper drawings of bridges, culverts and approaches, showing by proper lines the elevation thereof at each one hundred [100] feet of its length, and the changes to be made therein by excavating or filling, or by the widening of bridges, culverts and approaches, which profiles shall be made by the surveyor or engineer and adopted by the board and made a part of their report. If it is necessary for the board of commissioners to employ a competent civil engineer to make the survey and prepare the plans and specifications of said highway or improvement, the board may pay to such engineer, for his services, a reasonable compensation. [Acts 1919, ch. 112, 8, p. 531; 1980, P.L. 74, 298.]

Cross-References. Change in surfacing material prior to letting of contract, 8-18-1-1.

Highways, standard specifications, adoption by state highway commission, 8-13-3-8.

NOTES TO DECISIONS

Judicial Capacity.

Members of the board of county commissioners acting as viewers under this statute and determining utility are acting in a judicial capacity. Forrey v. Board of County Comrs. (1920), 189 Ind. 257, 128 N. E. 673.

The board of commissioners shall have power to permit amendments to be made to the petition of freeholders or report of the board or of the viewers and may extend the time to make such reports and may continue any proceeding from time to time so as to subserve the ends of justice. It shall be the duty of the board of commissioners to appoint a competent inspector, who shall act under the direction of the county surveyor or engineer, to supervise the work contemplated within the provisions of this chapter and to see that said highways are improved according to the plans, profile and specifications of the surveyor or engineer on which the contract to construct was let. He shall possess the necessary qualifications for such work and is to be paid out of the construction fund of said highway, and he shall render an account of his time to the commissioners, at least once each week, and shall subscribe to a statement of his time and report of the work under oath. He may in the manner prescribed by IC 5-4-1 [5-4-1-1-5-4-1-19], be required to give bond for the faithful discharge of his duties. Acts 1919, ch. 112, § 18, p. 531; 1981, P.L. 47, § 8.]

Cross-Reference. Change in surfacing material prior to letting of contract, 8-18-1-1.

8-17-1-18 [36-325]. Inspector or surveyor’s sworn statement. - Whenever any inspector and the surveyor or engineer of any highway established, laid out, opened, widened, changed, constructed or improved under the provisions of this chapter, believes that the road, or any part thereof less than the whole thereof, is completed as required and according to the plans, plats, profiles, specifications and contract under which the improvement was let, then such inspector or surveyor or engineer shall each file their sworn statements with the auditor of the county, which sworn statements shall state that such highway or part thereof has been completed according to plans, plats, profiles, specifications and contract under which such improvement was let, and that the quantity and quality of material used in making such improvement was the kind of material and that the quality was used as required under standards and tests of the department, and that a competent roadway material chemist shall determine whether the tests and standards as to quality of said materials have been complied with and a copy of the chemist’s report shall be filed with the county auditor. [Acts 1919, ch. 112, § 19, p. 531; 1980, P.L. 74, § 299.]

8-17-1-25 [36-508]. Report to be filed with county auditor. - Such joint boards of commissioners, when considering the improvement of a county line highway, shall not be required to assess damages to any person or persons except as provided by section 9 [8-17-1-9] of this chapter, the provisions of which shall apply herein. Said boards, with the assistance of their surveyor or engineer, shall make a report in duplicate and file one [1] report with the auditor of each county, immediately upon completion of their work, and such report shall embody the finding of said joint board as set out in section 23 [8-17-1-23] of this chapter, all of which shall be done within thirty [30] days. It shall be the duty of the county auditor of the county where said petition is filed to attend all joint sessions provided for in this chapter, and he shall enter, at length, all proceedings of such joint session on the commissioners’ record of his county, without delay, and shall at once make true and certified copies of such records and transmit a copy thereof to the auditor of each county interested, who shall at once copy the same on the commissioners’ record of his county. [Acts 1919, ch. 112, § 26, p. 531; P.L. 66-1984, § 83.]

8-17-1-35 [36-701]. Street improvement by board of commissioners. - In all counties having one or more townships the entire territory of which is within the limits of two [2] or more cities or towns, the board of commissioners may construct, reconstruct, and improve such streets in said cities or towns as will create one [1] main improved thoroughfare therein, but no thoroughfare shall be improved in any one city or town unless it connects with an adjoining city or town and with a thoroughfare improved or to be improved under the provisions of this section; Provided, the board may adopt, in the manner provided in this section as a part of such thoroughfare. After March 12, 1919, the board of commissioners and the surveyor or engineer of such counties may determine the route of such thoroughfare in such cities or towns, (to be as direct as the plan of the streets therein will permit), the extent of the improvement thereof and the material to be used, and shall file in the office of the county auditor a full report of their determination, showing also what part or parts, if any, of said proposed thoroughfare, already have been improved, and shall thereupon designate, by an order duly entered, a day on which said matter will be heard, not less than thirty [30] days from the date of such order, and shall cause a notice of such hearing to be published in the manner herein provided for the publication of notice of the hearing of a petition, such notice to set forth the beginning, course, termination, and width of the thoroughfares proposed to be improved and the material proposed to be used. Such notice shall also set forth, what, if any, part or parts of said proposed thoroughfare already have been improved. At such hearing, any taxpayer of the county affected by said improvement may remonstrate, as in this chapter provided. The proceedings to establish and construct the improvements provided for in this section shall be governed, so far as applicable, by the provisions of this chapter, except that no petition and the proceedings incidental thereto shall be required, and except further that any limitation in this chapter contained as to the width of highway improvements, shall not be applicable to the improvements contemplated by this section. After the board shall
have entered an order establishing the proposed improvement as in this chapter provided, they shall cause the surveyor or engineer to prepare a plat of such thoroughfares, showing the location thereof and their relation with the other streets of said cities or towns, which plat shall be filed in the auditor's office of the county as a permanent file, and an order showing such action shall be entered in the records of said board, and thereafter the board shall have jurisdiction of such thoroughfares for maintenance purposes and shall keep the same in repair as other highways in said county. The action contemplated by this section shall not be taken without the consent of the trustees of any town and the common council or the board of public works of any city to be affected thereby, such consent to be by resolution duly adopted, a certified copy of which shall be filed in the office of the county auditor and entered upon the records of the board of commissioners. In the event the board of commissioners shall fail to keep said thoroughfares in repair, any one of such cities or towns may repair, at its own expense, such part of any thoroughfare as lies within its limits. [Acts 1919, ch. 112, § 35 1/2, p. 531; P.L. 66-1984, § 91.]

8-17-1-37 [36-703]. Street improvements - Consent of city officials. - No street in any incorporated town or city shall be improved under the provisions of this chapter without the consent of the trustees of said town, or the common council or the board of public works of any city where there is a board of public works, by resolution duly adopted, a certified copy of which shall be filed in the office of such auditor and entered upon the records of the board of commissioners before such improvements shall be ordered. If the board of trustees of any town or the common council, or the board of public works of any city where there is a board of public works, or ten [10] or more citizens of any unincorporated town, desires the improved part of the highway to be made wider or more substantial, they may cause the same to be done by paying the additional expense for such additional improvement, and such excess cost of such improvement shall be charged against so much of said taxing district as may lie in said city or town, and collected at the same time and in the same manner as the remainder of the cost of such road is collected, but where such excess cost is caused by improving through an unincorporated town, then such excess cost shall be paid into the treasury of the county and added to the road fund before a contract is let for such improvement. Such board of commissioners shall issue bonds for the entire cost of such improvement and levy an annual tax to pay the principal and interest thereof, as is provided by law where the highway passes through a city or an incorporated town. After any street shall have been improved thereunder, the trustees of such town, or the common council, or the board of public works of any city where there is a board of public works, shall have control of the same and shall maintain the same in repair. [Acts 1919, ch. 112, § 37, p. 531; P.L. 66-1984, § 92.]

8-17-1-44 [36-710]. Former laws not repealed. - Nothing in this chapter shall be taken to affect or repeal or modify any part of IC 8-20-1-52 through IC 8-20-1-72, and nothing in this chapter shall be taken to affect, repeal, or modify any supplement of those sections, and nothing in this chapter shall be taken to affect, repeal, or modify any statute which is supplemental to IC 8-17-11. [Acts 1919, ch. 112, § 44, p. 531; P.L. 66-1984, § 97.]

8-17-14A. CLOSING UNSAFE HIGHWAYS - PERMITS FOR OBSTRUCTING OR CUTTING HIGHWAY. *8-17-14A-1* [36-716]. County highways impractical or unsafe - Authority of county commissioners to close all or parts - Diversion of traffic by detours. Whenever, in the opinion of any board of county commissioners, the use of any public county highway or highways shall be or will become impracticable or unsafe because of obstructions or interruptions resulting from erosion, changes in natural or artificial drains, or any other cause of any kind or nature whatsoever, the said board of county commissioners of the county wherein such highway or highways is located, or the boards of county commissioners of adjoining counties acting together, if the obstructed or interrupted part thereof is located upon a county line or extends from one county to another, shall have the power to close said highway or highways, or the necessary parts thereof, and divert traffic therefrom by suitable detours, if in their judgment such detours are necessary, until such time as the conditions causing such obstruction or interruption no longer exist and the continued use of said highway or highways become practicable and safe. [Acts 1947, ch. 151, § 1, p. 473.]

*Compiler's Note.* The numbers assigned to this chapter are not official Indiana Code numbers. Acts 1947, ch. 151 was compiled in the Indiana code as 8-1-23-1--8-1-23-5, in a chapter designated "Chapter 23--Gas Pipelines--Closing County Roads for Pipeline Construction." Since the subject-matter of this law is only incidentally related to gas pipelines and in order to compile the law with related subject-matter it was removed to this position by the compiler.

8-20-1. COUNTY ROADS - LOCATION, VACATION AND EMINENT DOMAIN

8-20-1-1 [36-201]. Petition and notice. - Whenever twelve [12] freeholders of the county, six [6] of whom shall reside in the immediate neighborhood of the highway proposed to be located, or changed
therein made, shall petition the board of commissioners of such county for the location or change thereof, such board, if satisfied that said petition has been filed with the county auditor and notice thereof has been give by publication once each week for two [2] consecutive weeks successively in a newspaper published in said county, or by posting up notices thereof in three [3] of the most public places in the neighborhood of such highway at least twenty [20] days before the meeting of the board at which the petition is to be heard, and, in case of posting, by the auditor mailing a copy of such notice to the post office address of each landowner affected by such proceedings, as disclosed by the petition, twenty [20] days before the said day of hearing, providing said post office address can be ascertained from any record or files in his office, shall appoint three [3] disinterested freeholders of the county to view said highway. Said notices for publication, posting, and mailing shall be by and over the name of the county auditor. It shall not be necessary for the auditor to mail a copy of said notice to any person who is a petitioner. [Acts 1905, ch. 167, § 1, p. 521; 1907, ch. 232, § 1, p. 443; P.L. 353-1983, § 2.]

NOTES TO DECISIONS

In General.

The vacation and relocation of a highway or a portion thereof are authorized in the same proceeding. Kelley v. Augsperger (1908), 171 Ind. 155, 85 N. E. 1004; Scofield v. Miller (1925), 196 Ind. 635, 149 N. E. 345.

The statute provides for exactly the same proceeding when a highway is proposed to be "located, vacated, or a charge made therein." Scofield v. Miller (1925), 196 Ind. 635, 149 N. E. 345.

Jurisdiction of Circuit Court.

A circuit court, where the question of jurisdiction of a proceeding for the establishment of a highway was not raised before the commissioners, and lack of jurisdiction did not appear from the petition, had jurisdiction of the subject-matter. Emmons v. Clark (1930), 203 Ind. 622, 174 N. E. 87.

The circuit court has jurisdiction of an appeal from the board of county commissioners' refusal to grant petition for establishment of highway. Cooprider v. Fritz (1934), 206 Ind. 130, 188 N. E. 579.

Jurisdiction of County Commissioners.

Whether highways are located in one or more townships, boards of county commissioners have exclusive jurisdiction over the subject of establishing highways outside of incorporated towns and cities. Gary v. Much (1913), 180 Ind. 26, 101 N. E. 4; Waugh v. Board of County Comrs. (1917), 64 App. 123, 115 N. E. 356.

A board of county commissioners had jurisdiction of the subject-matter of landowner's petition for permission to change the location of a highway which was wholly upon his land, which change would not materially injure the public. Lemasters v. Williams Coal Co. (1934), 206 Ind. 369, 189 N. E. 414.

This section and 8-20-1-17--8-20-1-19 do not deprive the board of county commissioners of jurisdiction of petition asking to vacate existing highway and to establish a new highway, between which there were no different points of intersection. Lemasters v. Williams Coal Co. (1934), 206 Ind. 369, 189 N. E. 414.

New Highway.

In a proceeding for the location, opening and establishing of a new public highway, the board of county commissioners had jurisdiction to lay out a new highway 35 feet wide extending in part of its course along an existing highway 18 feet wide, thus widening the old highway for the distance that both follow the same route. Lewis v. Bunnell (1921), 190 Ind. 585, 131 N. E. 386.

The mere fact that, for part of its length, a highway, as relocated, will occupy one-half the width of the former road is no bar to the right of the petitioner to recover in an action under this section. Scofield v. Miller (1925), 196 Ind. 635, 149 N. E. 345.

Petition.

--Defects and Irregularities.

The proceedings are not subject to collateral attack on account of defects in the petition or notice. Eads v. Kumley (1918), 67 App. 361, 119 N. E. 219.

Judgment vacating highway not reversed for highly technical errors where remonstrants had had the benefit of a decision of the question of the utility of the road by two sets of viewers and a jury in the circuit court. Emley v. Schimmell (1934), 207 Ind. 9, 191 N. E. 89.

--Description.

The petition should give such a description of the proposed highway as to enable a surveyor to locate the same, and to identify the beginning, course, and terminus thereof. Kelley v. Augsperger (1908), 171 Ind. 155, 85 N. E. 1004.

Correction of trial court's error in finding that a proposed highway should be established and located in accordance with descriptions in petition does not require a new trial. Cooprider v. Fritz (1934), 206 Ind. 130, 188 N. E. 579.
--Jurisdiction

It is not necessary that the board enter of record a formal finding that the petition was signed by the requisite number or that they were qualified. If it assumes jurisdiction, and proceeds with the various steps provided by the statute, that is equivalent to a finding that it has jurisdiction. Pittsburgh, C., C. & St. L. R. Co. v. Gregg (1913), 181 Ind. 42, 102 N. E. 961.

--Number of Signers.

The statute requires that the petition shall be signed by 12 freeholders of the county, six of whom shall reside in the neighborhood of the highway proposed to be located or vacated, but it is not necessary that said facts be alleged therein. Hall v. McDonald (1908), 171 Ind. 9, 85 N. E. 707; Conrad v. Hansen (1908), 171 Ind. 43, 85 N. E. 710; Aetna Life Ins. Co. v. Jones (1909), 173 Ind. 149, 89 N. E. 871; overruling Conaway v. Ascherman (1884), 94 Ind. 187; Shields v. Pyles (1912), 180 Ind. 71, 99 N. E. 742; Pittsburgh, C., C. & St. L. R. Co. v. Gregg (1913), 181 Ind. 42, 102 N. E. 961; Eads v. Kumley (1918), 67 App. 361, 119 N. E. 219.

If the petition is not signed by 12 freeholders, six of whom live in the neighborhood of the road to be established, vacated or relocated, the board has no jurisdiction to proceed and the petition should be dismissed. Aetna Life Ins. Co. v. Jones (1909), 173 Ind. 149, 89 N. E. 871; Pittsburgh, C., C. & St. L. R. Co. v. Gregg (1913), 181 Ind. 42, 102 N. E. 961; Eads v. Kumley (1918), 67 App. 361, 119 N. E. 219; Current v. Current (1920), 72 App. 363, 125 N. E. 779.

When a petition is presented to a board of commissioners, the board must determine whether it is signed by 12 freeholders of the county, six of whom live in the immediate neighborhood of the highway which it is proposed to establish or vacate. Pittsburgh, C., C. & St. L. R. Co. v. Gregg (1913), 181 Ind. 42, 102 N. E. 961; Eads v. Kumley (1918), 67 App. 361, 119 N. E. 219; Current v. Current (1920), 72 App. 363, 125 N. E. 779.

--Qualification of Signers.

Any one opposed to the proceeding petitioned for may appear before the board and contest the jurisdictional fact whether the signers of the petition were duly qualified and present evidence on the proposition. Pittsburgh, C., C. & St. L. R. Co. v. Gregg (1913), 181 Ind. 42, 102 N. E. 961; Current v. Current (1920), 72 App. 363, 125 N. E. 779.

The fact that persons who signed the petition used initials to designate their Christian names does not render their signatures invalid or disqualify them as petitioners. Pittsburgh, C., C. & St. L. R. Co. v. Gregg (1913), 181 Ind. 42, 102 N. E. 961.

--Withdrawal of Names.

Persons who signed a highway petition may withdraw their names therefrom at any time before the petition has been acted on. Current v. Current (1920), 72 App. 363, 125 N. E. 779.

Viewers.

On appeal from the board of county commissioners' refusal to grant petition for establishment of highway, the circuit court can make final determination only as to public utility of the proposed highway, and on finding public utility, the court should have directed the board of commissioners to appoint viewers. Cooprider v. Fritz (1934), 206 Ind. 130, 188 N. E. 579.

Viewers' Report.

Where, in a proceeding to vacate a public highway, the respondent and remonstrator succeed in having the original report of the viewers superseded by another report, on the theory that the first report was in favor of the petitioners and the second report finds that the highway is not of public utility and should be vacated, they were thereafter estopped to claim that the first report was not in favor of the petitioners. Emley v. Schimmell (1934), 207 Ind. 9, 191 N. E. 89.

In a proceeding to vacate a public highway, where there is introduced in evidence what purports to be the original report of the first viewers, which differs from a later report by containing at the end of the report the words, "And we are of the opinion that said highway would *** be of public utility," the report of the county auditor certified to be correct must be considered to be correct, as against an unauthenticated exhibit. Emley v. Schimmell (1934), 207 Ind. 9, 191 N. E. 89.

Where, in a proceeding to vacate a public highway, respondent contends that the verdict is not sustained by sufficient evidence and is contrary to law because of technicalities in the viewers' report, which deprived the board of jurisdiction; it held that said contention being highly technical and not affecting the rights of the parties, cannot be sustained. Emley v. Schimmell (1934), 207 Ind. 9, 191 N. E. 89.

8-20-1-2 [36-202]. Duties of viewers. - (a) The auditor of such county shall issue a precept to the sheriff thereof, commanding him to notify such viewers of the time, place, and object of their meeting. Such viewers, at such time, after having taken an oath, before some officer authorized to administer the same, faithfully to perform their duties shall proceed to view the highway to be located, or the change to be made; and if they shall deem such location or change to be of public utility, they shall, in case of a new highway or change in an old one, proceed to lay out and mark the same on the best ground, not running through any person's inclosure of one [1] year's standing without the owner's con-
sent, unless, upon examination, a good way can not otherwise be had without departing essentially from the route petitioned for. However, where the road is laid out upon the line dividing the land of two [2] persons, it shall be laid one-half [1/2] on each side of such line.

(b) Whenever the location of a highway is petitioned for upon and along any line which forms also the boundary of any city or town, the board of commissioners shall, for the purpose of locating such highway, have jurisdiction over the lands and lots lying within such corporate limits, and immediately affected by such proceedings and location; and the owners of such lands and lots so affected shall have the same rights and remedies in the matter of location or change of such highway as the owners of the lands lying on the opposite side thereof, and outside of such city or town.

(c) Whenever the location of a highway is petitioned for which crosses the boundary or corporation line of any city or town and terminates therein, the county commissioners, with the approval of the board of public works of the city or the town board of the town, shall, for the purpose of locating or establishing such highway within such city or town a distance sufficient to connect or intersect said highway with some street, road, highway, or avenue within such city or town, have jurisdiction and power to extend, continue, and locate such proposed highway over such unplatted and unimproved lands, lying within such city or town, as it may be necessary to cross with such proposed highway, to reach the street, road, highway, or avenue in such city or town at which such proposed highway shall terminate, connect, or intersect, which said terminus shall in no case be beyond the first intersecting or connecting highway, street, road, or avenue, to be reached within such city or town, and the owners of such unplatted and unimproved lands shall have the same rights and remedies in the matter of the locating of such highway as they would have if their said lands were situated without such city or town. [Acts 1905, ch. 167, § 2, p. 521; 1913, ch. 244, § 1, p. 679; P.L. 353-1983, § 3.]

NOTES TO DECISIONS

Duty of Board.

After the board of commissioners has appointed viewers upon a proper petition and due notice, and after a majority of the viewers have reported that the proposed new highway will be of public utility, the board is required by law to go forward from that point by entertaining and acting upon remonstrances, if any are filed, and proceeding to the entry of a final judgment, either establishing the new highway and ordering it opened or dismissing the petition so that an appeal might be taken, and the performance of such requirement or duty may be enforced by mandamus. State ex rel. Wyman v. Hall (1921), 191 Ind. 271, 131 N. E. 821.

Inclosure on Line of Road.

On appeal from a decision of the board of county commissioners granting the prayer of a petition for the location, opening, and establishment of a new public highway, the court and jury have no authority to review and set aside the action of the viewers on the ground that there had been a violation of this section in that the highway was laid cut through an inclosure of more than one year's standing, without the owner's consent, and a good way could otherwise be had by departing only a short distance from the route petitioned for. Lewis v. Bunnell (1921), 190 Ind. 585, 131 N. E. 386.

8-20-1-3 [36-208]. Report of viewers. - Such viewers, or a majority of them, shall make a report of their proceedings at the ensuing session of the board of commissioners, giving a full description of such location or change by metes and bounds, and by its course, distance, and width. [Acts 1905, ch. 167, § 3, p. 521; P.L. 353-1983, § 4.]

8-20-1-4 [36-204]. No objection - Order and notice. - If no objection be made to such proposed highway or change, such board shall cause a record thereof to be made, and, in case of such location or change, shall order the highway to be opened and kept in repair, which order shall be transmitted to the trustee of the township or trustees of the townships in which such location or change is made; and such trustee or trustees shall cause a copy of such order to be entered at length on the township's record book or books, and notice thereof to be given to the proper supervisor or supervisors to work such highway as so located or changed. [Acts 1905, ch. 167, § 4, p. 521; P.L. 353-1983, § 5.]

NOTES TO DECISIONS

In General.

If the report of the viewers is that the highway petitioned for would not be of public utility, judgment denying the petition must be entered, and the proceeding is ended unless an appeal is taken as authorized by 8-20-1-10. Kelley v. Augsperger (1908), 171 Ind. 155, 85 N. E. 1004.

Appeal.

Under former laws, no appeal could be taken, but the present statute expressly authorizes an appeal. Kelley v. Augsperger (1908), 171 Ind. 155, 85 N. E. 1004; Gangloff v. Lawler (1909), 171 Ind. 726, 87 N. E. 131.

Width of Highway.

An order which fails to specify the width of the highway as required by 8-20-1-15 is void. Stauffenberg v. Makeever (1920), 72 App. 80, 125 N. E. 584.
An order of the board attempting to establish a highway by referring to the report of the viewers which only provided that it should not be less than 40 feet in width is void for uncertainty. Stauffenberg v. Makever (1920), 72 App. 80, 125 N. E. 584.

8-20-1-5 [36-205]. Remonstrance for damages - Reviewers. - If any person through whose land such highway or change may pass shall feel aggrieved by reason of such location or change, such person may, at any time before final action of the board thereon, set forth such grievances by way of remonstrance under oath, stating therein that he is damaged thereby in a sum mentioned, and the said board shall thereupon appoint three [3] disinterested freeholders of the county as reviewers and assign a day and place for them to meet. [Acts 1905, ch. 167, § 5, p. 521; P.L. 353-1983, § 6.]

NOTES TO DECISIONS

Objections to Remonstrance.

If no objection is made before the county board that a remonstrance is not properly verified, such objection cannot be raised on appeal to the circuit court. Pancher v. Coffin (1908), 41 App. 489, 84 N. E. 354.

Remonstrance for Two Causes.

Remonstrance for one cause does not prevent a remonstrance from being filed at a later date for another cause. Bronenberg v. Goins (1915), 183 Ind. 225, 108 N. E. 862.

Persons who remonstrate because of damages to their land may afterward remonstrate because the proposed action will not be of public utility. Bland v. Cassaday (1913), 181 Ind. 36, 102 N. E. 853; Bronenberg v. Goins (1915), 183 Ind. 225, 108 N. E. 862.

Remonstrance in Circuit Court.

Remonstrances for damages because of the location of a highway cannot first be filed in the circuit court on appeal. Williamson v. Houser (1907), 169 Ind. 397, 82 N. E. 771.

Remonstrants.

If a vacated highway touches any part of a tract of land, the owner of such land may remonstrate and recover damages. Houp v. Dutton (1908), 170 Ind. 69, 83 N. E. 634.

8-20-1-6 [36-206]. Reviewers - Oath and duties. - Such reviewers shall meet at the time and place designated, and take an oath faithfully to discharge the duties assigned them, and shall then, or on any other day to which a majority may adjourn, prior to the next session of such board, proceed to review the proposed highway and assess the damages, if any, which such remonstrator may sustain from such highway being opened or changed through his lands, and shall report the same to the ensuing session of such board. [Acts 1905, ch. 167, § 6, p. 521; P.L. 353-1983, § 7.]

NOTES TO DECISIONS

Public Utility.

Proceedings should be ordered dismissed when reviewers report against the public utility of the highway. Kelley v. Augsperger (1908), 171 Ind. 155, 85 N. E. 1004.

8-20-1-7 [36-207. Reviewers' report - Actions. - If a majority of the reviewers assess and report damages in favor of the remonstrator, and the board shall consider the proposed highway or change to be of sufficient importance to the public, it shall order the costs and damages to be paid out of the county treasury; otherwise such costs and damages shall be paid by the petitioners or others interested. If a majority report against the claim for damages, the remonstrator shall pay the costs. When payment of damages is made as herein provided, such highway shall be recorded and ordered to be opened and kept in repair, after notice to the proper trustees. [Acts 1905, ch. 167, § 7, p. 521; P.L. 353-1983, § 8.]

NOTES TO DECISIONS

Collateral Attack.

Where, on appeal to the circuit court from an order of the board of county commissioners establishing a highway, the court made an award of damages and ordered the same to be paid out of the county treasury, the award was erroneous rather than void as to those over whom the court had jurisdiction and they could not attack such judgment collaterally. Weaver v. Ferguson (1917), 68 App. 169, 117 N. E. 659.

8-20-1-8 [36-208. Another review. - If it shall be made to appear to the board that the damages assessed are unreasonable, it may set aside such assessment and order another review, under the same regulations as provided in case of the first review. [Acts 1905, ch. 167, § 8, p. 521.]

8-20-1-10 [36-210. Action on report. - If a majority of the reviewers last named report against the public utility of such highway or change, the petition shall be dismissed; but if they report favorably thereto, the remonstrator shall pay the cost of the review and the highway shall be recorded and ordered to be opened and kept in repair. However, an appeal shall lie to the circuit court from any such order dismissing such petition or ordering such highway established, as provided in section 72 [8-20-1-72] of this chapter. [Acts 1905, ch. 167, § 10, p. 521; P.L. 553-1982, § 10.]
NOTES TO DECISIONS

Under the present statute, if the proceedings are dismissed on an adverse report by reviewers, the petitioners may appeal to the circuit court. Kelley v. Augsperger (1908), 171 Ind. 155, 85 Ind. 1004; Gangloff v. Lawler (1909), 171 Ind. 726, 87 N. E. 131.

8-20-1-11 [36-211]. Highway not to be opened until damages paid - Nonpayment vacates proceedings. - No such highway shall be opened, worked, or used, until the damages assessed therefor shall be paid to the persons entitled thereto, or deposited in the county treasury for their use, or until such persons shall give their consent thereto in writing, filed with the auditor of the county; Provided, That if such damages are not so paid or deposited, or such consent given and filed within ninety [90] days after the filing of the report allowing such damages, the proceedings for the opening or change of such highway shall be deemed to be vacated and of no force or effect whatsoever; Provided, further, That if such proceeding be appealed, the damages, if any, allowed on such appeal shall be so paid or deposited, or such consent given and filed within ninety [90] days after the disposition of such appeal, and if not done in such time, such proceeding shall likewise be deemed to be vacated and of no force or effect whatsoever; Provided, That in cases where damages have been assessed before February 12, 1913, the same shall be paid within ninety [90] days from not later than May 13, 1913. [Acts 1905, ch. 167, § 11, p. 521; 1913, ch. 6, § 1, p. 11; P.L. 66-1984, § 117.]

NOTES TO DECISIONS

NOTES TO DECISIONS

A compliance with this section is a condition precedent to the right or authority to enter a final order establishing a highway, and any such order prematurely entered is void and subject to collateral attack. Weaver v. Ferguson (1917), 68 App. 169, 117 N. E. 659.

8-20-1-12 [36-213]. Second or subsequent petition - Payment of costs and bond necessary. - Whenever any petition for the location or change of any public highway has been presented to the board of commissioners of any county in this state, and such board shall have appointed viewers for the same, and such viewers shall have reported that they deem the proposed location or change of such highway of no public utility, no second or subsequent petition for the location or change of such highway shall be acted upon by the commissioners unless the petitioners shall first pay the former costs in full, and the costs of such review, and file with the county auditor a bond with surety to be approved by him, conditioned that such petitioners will pay all the costs and the costs of such review if the reviewers appointed to view such proposed location or change of such highway shall report that they deem the same of no public utility. [Acts 1905, ch. 167, § 12, p. 521; 1907, ch. 232, p. 443; P.L. 353-1983, § 11.]

NOTES TO DECISIONS

Appeal.

The present statute authorizes an appeal by the petitioners from an adverse report. Kelley v. Augsperger (1908), 171 Ind. 155, 85 Ind. 1004; Gangloff v. Lawler (1909), 171 Ind. 726, 87 N. E. 131.

8-20-1-13 [36-214]. Qualifications of viewers. - No person owning lands, or who is related by consanguinity within the sixth degree to any person owning lands, along any highway proposed to be opened or changed shall be competent to act as viewer, or reviewer thereof. [Acts 1905, ch. 167, § 13, p. 521; P.L. 353-1983, § 12.]

8-20-1-14 [36-212]. Fences - Removal - Notice. - Whenever any public highway shall have been laid out through any inclosed land, the supervisor shall give the occupant of such land, or the owner, if a resident of the road district, sixty [60] days' notice in writing, to remove his fences; but such owner or occupant shall not be compelled to remove any such fence between the first day of April and the first day of November; and if such fence is not removed pursuant to such notice, such supervisor shall cause the same to be done at such owner's expense, which may be recovered in an action by the supervisor, in the name of the township trustee, before any justice of the peace in the county, and, in case of recovery, the judgment shall also include costs and attorney's fees. [Acts 1905, ch. 167, § 14, p. 521.]

8-20-1-15 [36-1807]. Highway by use - Width. - (a) All county highways laid out before April 15, 1905, according to law, or used as such for twenty [20] years or more, shall continue as originally located and as of their original width, respectively, until changed according to law.

(b) From and after January 1, 1962, no county highway right-of-way shall be laid out which is less than twenty feet [20'] on each side of the centerline of said county highway, exclusive of such additional width as may be required for cuts and fills. [Acts 1905, ch. 167, § 15, p. 521; 1961, ch. 137, § 1; 1963, ch. 123, § 1; P.L. 66-1984, § 118.]

NOTES TO DECISIONS

In General.

Where public highway had been established by public use before plaintiff took title to his property, he took it with notice of the nature and extent of the roadway and therefore the use of this section as
a defense to an action for trespass did not amount to a taking of property for private use. Finley Farms, Inc. v. Clark, - Ind. App. --, 76 Ind. Dec. 228, 404 N. E. 2d 1164 (1980).

Actions of Public Authorities.

The fact that a roadway established by public usage has not been maintained by public authorities does not affect its status as a public highway. Smolek v. Board of County Comm’rs, 179 Ind. App. 603, 68 Ind. Dec. 129, 386 N. E. 2d 997 (1979).

Appeal.

The petitioners to have a highway established by use ascertained and recorded, and all persons over whose lands the highway runs, are interested parties and must be made parties to an appeal from the judgment. Souers v. Walter (1912), 178 Ind. 599, 99 N. E. 1002.

A circuit court, where the question of jurisdiction of a proceeding for the establishment of a highway was not raised before the petitioners, and lack of jurisdiction did not appear from the petition, had jurisdiction of the subject matter. Emmons v. Clark (1930), 203 Ind. 622, 174 N. E. 87.

Claim of Right.

In order to establish a highway under this section by use, it is not essential that there be positive evidence that the use of the road by the public was under a claim of right; since such continued use for 20 years or more unexplained, will be presumed to be under a claim of right, and therefore adverse. Cozy Home Realty Co. v. Ralston (1938), 214 Ind. 149, 14 N. E. (2d) 917.

On the question as to whether a public highway had been established by use by the public, the fact that the public did continue to use the road after the owner placed a sign at one end thereof reading, “Private Roadway,” held to support the inference that such use by the public was under claim of right. Cozy Home Realty Co. v. Ralston (1938), 214 Ind. 149, 14 N. E. (2d) 917.

Construction.

This section creates a method of establishing public highways by use, independent of the common-law dedication or strict prescription. Cozy Home Realty Co. v. Ralston (1938), 214 Ind. 149, 14 N. E. (2d) 917.

The words of this section, "or used as such for twenty [20] years or more," are positive terms and by well-established authority can mean nothing less than that twenty years' use of a strip of land by the public generally makes the same a public highway. Discher v. Klapp (1954), 124 App. 653, 117 N. E. (2d) 753.

Dedication.

The use of land as a highway for 20 years, with the owner's knowledge and consent, amounts to a dedication thereof to such use, or raises a presumption thereof. Michigan Cent. R. Co. v. Michigan City (1930), 94 App. 481, 169 N. E. 873.

--Implied Dedication.

The concept of implied dedication has no relevance to the establishment of a highway under this section. Finley Farms, Inc. v. Clark, - Ind. App. --, 76 Ind. Dec. 228, 404 N. E. 2d 1164 (1980).

Degree of Use.

The amount of traffic on the strip or the number of different users during the 20-year period of use by the public as a highway is not significant, so long as the strip was used as a highway and remained free and common to those members of the public who had occasion to use it. Smolek v. Board of County Comm’rs, 179 Ind. App. 603, 68 Ind. Dec. 129, 386 N. E. 2d 997 (1979).

Where roadway became highway because of usage by those doing business with ferry and after the abandonment of the ferry it was used by riverfront landowners, even though infrequently, it could not be said to be abandoned. Finley Farms, Inc. v. Clark, - Ind. App. --, 76 Ind. Dec. 228, 404 N. E. 2d 1164 (1980).

Description of Highway.

A board of county commissioners has no power to describe and enter of record any way that: substantially varies from that actually used by the public for 20 years or more. Kruse v. Kemp (1913), 179 Ind. 650, 102 N. E. 133.

Where, in an action to ascertain, describe, and record a highway, the land actually used as a highway, near a dividing line, is situated in its greater part on the land of appellant, its location cannot be changed so that one-half of the highway will be located on the appellee’s land. Boyer v. Everett (1918), 185 Ind. 272, 113 N. E. 1003.

Where public road was established under this section by persons using ferry and years later after ferry was abandoned riverfront landowners who used road had it bulldozed and under the location which was bulldozed there was a rock bed, there was sufficient evidence from which court could find that the exact location, width and description of such highway could be determined. Finley Farms, Inc. v. Clark, - Ind. App. --, 76 Ind. Dec. 228, 404 N. E. 2d 1164 (1980).

Easements.

This section prescribing the width of a highway has no application to easements established by
Establishment by Use.

If a road has been used as a highway for twenty years, this section fixes the status as a highway, and it is wholly immaterial whether the use has been with the consent, or over the objection of the landowner. Spindler v. Toomey (1953), 232 Ind. 328, 111 N. E. (2d) 715.

Where the public continued to use the roadway, acts of obstruction were not effective to avoid the operation of the statute, and road became a public highway. Spindler v. Toomey (1953), 232 Ind. 328, 111 N. E. (2d) 715.

The use of land for a highway for 20 years is an absolute bar to the right to dispute such use. Gillespie v. Duling (1908), 41 App. 217, 83 N. E. 728.

It is immaterial whether the highway has been established by user with or without the consent of the landowners. Stewart v. Swartz (1914), 57 App. 249, 106 N. E. 719.

The use of a road extending from a public highway to a cemetery, by all persons who had occasion to use it, for a period of 20 years continuously, constitutes the way a "public highway." Guard v. Cleveland, C., C. & St. L. R. Co. (1930), 91 App. 571, 171 N. E. 209.

In an action to recover damages for the death of a cow which entered defendant's right-of-way at the crossing of railroad and cemetery road, failure to instruct the jury that a user of the road continuously for 20 years would make the road a public highway was error. Guard v. Cleveland, C., C. & St. L. R. Co. (1930), 91 App. 571, 171 N. E. 209.

A road used by the public uninterrupted for 20 years, with the landowner's knowledge and consent, becomes a public highway. Michigan Cent. R. Co. v. Michigan City (1930), 94 App. 481, 169 N. E. 873.

In a suit to quiet title to an easement alleged to consist of a private right-of-way over several tracts of land owned by defendant, one of which tracts plaintiff subsequently acquired, held that the way did not become a public highway either by user for the statutory period or by dedication. Switzer v. Armantrout (1939), 106 App. 468, 19 N. E. (2d) 358.

Where roadway was used by wagons and buggies by persons doing business with ferry, such use amounted to a public use which established the roadway as a highway after 20 years' usage. Finley Farms, Inc. v. Clark, Ind. App. --, 76 Ind. Dec. 228, 404 N. E. 2d 1164 (1980).

Extent of Use.

Under this section, use is the sole test of establishment of a highway by use, though the frequency of the use or the number of users is important, it being enough if the use is free and common to all who have occasion to use it as a public highway. Cozy Home Realty Co. v. Ralston (1938), 214 Ind. 149, 14 N. E. (2d) 917.

Use is the sole test as to whether or not a road was established by user after more than twenty years usage, and frequency of use or number of users is unimportant, it being enough if use of the road in question was free and common to all who had occasion to use it as a public highway. Discher v. Klapp (1954), 124 App. 563, 117 N. E. (2d) 753.

Use is the sole test as to whether or not a road was established by user after more than twenty years' usage and frequency of use or number of users is unimportant, it being enough if use of the road in question was free and common to all who had occasion to use it as a public highway. New York, C. & St. L. R. Co. v. Lincoln Nat. Life Ins. Co. (1957), 127 App. 808, 142 N. E. (2d) 437.

 Interruption of Use.

The 20-year uninterrupted use of a highway by the public owner over plaintiff's land was not interrupted by the owner placing a sign at one end of the way, reading "Private Roadway," where there was no evidence as to the time such sign was maintained, or that it in any way deterred the public use of the way. Cozy Home Realty Co. v. Ralston (1938), 214 Ind. 149, 14 N. E. (2d) 917.

Where traffic over a railroad crossing was interrupted solely for the purpose of altering the old right-of-way in a manner suitable to the uses of the railroad, in a legal sense public user of the crossing was uninterrupted. New York, C. & St. L. R. Co. v. Lincoln Nat. Life Ins. Co. (1957), 127 App. 808, 142 N. E. (2d) 437.

Petition and Petitioners.

When the proceedings are instituted by an individual, a petition is proper, and should state the names of the landowners affected. Souers v. Walter (1912), 178 Ind. 599, 99 N. E. 1002.

In proceedings to have highways that have been established by use to be ascertained and recorded, the petition need not be signed by any person who owns land over which the highway runs, but all such landowners must be named in the petition and they must be given notice of the proceedings. Souers v. Walter (1912), 178 Ind. 599, 99 N. E. 1002.

Verdicts and Findings.

Verdicts in proceedings to establish highways need not specify all details but general findings on the facts stated in petitions or remonstrances are sufficient. Glendenning v. Stahley (1910), 173 Ind. 674, 91 N. E. 254.
Width of Highway.

An order establishing a highway of an undefined width is void. Stauffenberg v. Makeever (1920), 72 App. 80, 125 N.E. 584.

In establishing a highway, it is improper to go outside of the way as used or described in the petition. Boyer v. Everettts (1916), 185 Ind. 272, 113 N.E. 1003.

Judgments establishing highways must specify the width thereof. Glendenning v. Stahley (1910), 173 Ind. 674, 91 N.E. 234.

In proceedings to have highways that have been used for 20 years described and recorded, the road must be located in the same route that was used, and the described and recorded highway must be of the same width as the used road. Kruse v. Kemp (1913), 179 Ind. 650, 102 N.E. 133.

One seeking to have such a highway recorded has the burden of showing the width of the highway that was used. Kruse v. Kemp (1913), 179 Ind. 650, 102 N.E. 123.

Highways that are established by user may be described and recorded at a less width than 30 feet. Evans v. Bowman (1915), 183 Ind. 264, 108 N.E. 956; Boyer v. Everettts (1918), 185 Ind. 272, 113 N.E. 1003.

Where boundary lines have never been established by competent authority, the width of the road established by use is limited to that portion actually travelled and excludes any berm or shoulder. Board of Commrs v. Hatton, 427 N.E.2d 696 (Ind. App. 1981).

8-20-1-16 [33-1808]. Nonuser of highway. - Every public highway already laid out, or which may hereafter be laid out, and which shall not be opened and used within six [6] years from the time of its being so laid out, shall cease to be a highway for any purpose whatever; but if any distinct part thereof shall have been opened and used within six [6] years, such part shall not be affected by the provisions of this section, nor shall this section be applied to streets and alleys in any city or town. [Acts 1905, ch. 167, § 16, p. 521.]

NOTES TO DECISIONS

Application.

This section is applicable to a proceeding before the board of county commissioners to condemn land for use as a public highway, but it is not applicable to a voluntary dedication of land by a written instrument by the terms of which the owners parted with all their right, title, or interest in the strip to be used for a highway. Smith v. State (1940), 217 Ind. 643, 29 N.E. (2d) 786.

Vacation of Highway.

When a highway has been established by use, it can be vacated only by a complete abandonment or by proceedings under the statute. Small v. Binford (1908), 41 App. 440, 83 N.E. 507, 84 N.E. 19.

Construction with IC 8-20-1-15.

Failure of county commissioners to lay out and open roadway within six years after attempted but invalid action establishing highway could not affect the status of the highway where it had been established as a public highway by public usage under 8-20-1-15. Smolek v. Board of County Commrs, 179 Ind. App. 603, 68 Ind. Dec. 129, 386 N.E. 2d 997 (1979).

8-20-1-17 [36-215]. Petition to change location - Notice. - Any person through whose land any highway heretofore located and established, or hereafter to be located and established may run, may petition the board of commissioners of the proper county for permission to change the location of such highway on his land, or on the lands of any other person consenting thereto. Every such petitioner shall give notice of his intention to file such petition, by posting written or printed notices thereof, in three [3] or more public places in the vicinity of such proposed change, for twenty [20] days before the first day of the term of the board at which such petition is to be presented. [Acts 1905, ch. 167, § 17, p. 521.]


NOTES TO DECISIONS

In General.

The relocation of a highway and the vacation of the old road may be done in one proceeding. Scofield v. Miller (1925), 196 Ind. 635, 149 N.E. 345.

A vacation and relocation of a highway between two points thereof are authorized in the same proceeding. Scofield v. Miller (1925), 196 Ind. 635, 149 N.E. 345.

County commissioners had jurisdiction of petition for vacation of existing highway and establishment of new highway notwithstanding provisions of this section. Lemasters v. Williams Coal Co. (1934), 206 Ind. 369, 189 N.E. 414.

Change of Venue.

Where proceeding was appealed to circuit court, the filing of the transcript of the county commissioners' proceedings denying the petition for relocation of a road with the clerk of the circuit court, closed the issues for the purpose of determining the
date within which an affidavit for change of venue might be filed. State ex rel. Botkin v. Delaware Circuit Court (1959), 240 Ind. 261, 162 N. E. (2d) 611.

8-20-1-18 [36-216]. Viewers on relocating - Duties. - Upon the filing of such petition, and proof of notice as provided for in the preceding section, the board of commissioners shall appoint three [3] disinterested freeholders of the county as viewers, who shall meet at such time as the board may appoint, and, after having been duly sworn, or affirmed, shall then, or on any other day to which the majority may adjourn prior to the next session of such board, proceed to view the premises; and they, or a majority of them, shall report the respective lengths of the established and proposed highway, and the situation of the ground along each, and whether, in their opinion, the public would be materially injured by such proposed change, and shall file their report with the board of commissioners at its next session thereafter. [Acts 1905, ch. 167, § 18, p. 521.]

8-20-1-19 [36-217]. Report - Remonstrance - Proceedings - Costs. - Upon the filing of such report, and before action thereon, if the report be favorable to such change, any freeholder may file his remonstrance against the same, stating therein the reasons why such change ought not to be made, and an issue may be made thereon; and if the report of the viewers be unfavorable to such change, the petitioner may make an issue thereon, and any such issue shall be tried before the board of commissioners, as other issues of fact are tried; and if, upon the report of the viewers, or upon any issue tried as above, the board shall be of opinion that the public will not be materially injured by such proposed change, it shall make an order granting permission to the petitioner to make such change, and upon satisfactory proof, then or thereafter, that the new road has been opened and improved, and made equally convenient for travelers, the board shall make an order vacating so much of the former highway as lies between the different points of intersection. All the costs of such proceeding shall be paid by the petitioner: Provided, That when a remonstrance is filed, and the issue found against the remonstrant, he shall pay all the costs occasioned by such remonstrance. [Acts 1905, ch. 167, § 19, p. 521.]

8-20-1-20 [36-217a]. Compensation of viewers. - Viewers and reviewers, for each day engaged in viewing or reviewing a highway by order of any board of commissioners, shall receive:

1) The same per diem compensation for each day of actual service that the freehold members of the county board of review received under IC 6-1.1-28-3.


8-20-1-21 [36-220]. In two counties - Petitioner - Proceedings. (a) In case of the proposed location, straightening, or change of a public highway, extending into two [2] or more counties, or in case any portion of such proposed highway extends along or upon a county line dividing two [2] or more counties, jurisdiction as to all the proceedings shall be in the board of commissioners of the county before whom the petition is first filed; and such proceedings shall be the same as those provided for in this chapter in case of the location or change of a public highway in one county, so far as the latter are applicable; except that the petition shall be signed by not less than twenty-four [24] freeholders of one or more of the counties into which or along the county line of such counties into which such proposed highway to be located, straightened, or change therein made is to extend, six [6] of whom shall reside in the immediate neighborhood of the proposed highway, and not less than three [3] of whom shall reside in each of such counties; except, also, that each set of viewers or reviewers to be appointed by such board of commissioners, shall be equal in number to the number of the counties to be affected, and one [1] of whom shall be appointed by such board from each of such counties.

(b) Such viewers or reviewers so appointed shall have jurisdiction to act in all matters pertaining to such proposed location, straightening, or change of such highway the same as provided for the location, straightening, or change of highway in one [1] county, so far as the same are applicable. However, in case the number of such viewers or reviewers shall be even and they can not agree, the viewers or reviewers so appointed shall select another whose shall perform the same duties and receive the same fees as the viewers or reviewers first appointed.

(c) Costs and damages shall be paid as in case of proceedings for the location, straightening, or change in a highway in one [1] county; but the county having jurisdiction of the proceedings shall be entitled to recover from each of the other counties a proportionate amount of the expenses paid out of its treasury according to the proportion of the length or width of such highway, if located along and upon the line of such counties, in each of such other counties, to be recovered as any claim due from one [1] county to another.

(d) Whenever any such highway is located, straightened, or changed as provided in this section, a certified copy of the order therefor shall be transmitted by the auditor of the county having jurisdiction of the proceedings to the auditor of each of the other counties and entered of record in the order book of the board of commissioners of each of such counties, and a copy of the order shall be transmitted by each of such auditors to the

NOTES TO DECISIONS

County boards have authority under this section to locate a highway along and upon the line between two counties. Cooper v. Harmon (1908), 170 Ind. 113, 83 N. E. 704.

8-20-1-22 [36-221]. On county lines - Working - Proceedings. Whenever twelve [12] freeholders of any county shall present to the board of commissioners a petition setting forth that a public highway, describing it, in their road district or districts, township or townships, is situated upon or near a county line, and has not been worked for a time to be stated, in consequence of a difference of opinion as to whose duty it was to work such highway, such board shall appoint as viewers two freeholders of the county, not belonging to the road district where such highway is required to be worked, who shall employ the county surveyor to perform the duties required by this section. The auditor of such county shall immediately, through the auditor of the other county, give notice to the commissioners of the county upon whose border such highway is situated of the filing of such petition, sending a copy of the same, and also of the appointment of such viewers; whereupon it shall be the duty of the county board thus notified to appoint two [2] other viewers of like qualifications, and the four [4] persons so appointed, with such county surveyor shall meet at the time and place designated by such first board of county commissioners, and, having first been sworn according to law, shall proceed carefully to examine the condition of such highway, and, if practicable, shall locate the same upon the county line, one-half in each county. Such viewers shall make out a report of their proceedings, describing such highway by metes and bounds and showing its beginning, termination and width. One [1] copy of such report shall be transmitted to the board of commissioners of each county, and recorded as in case of other highways, and the proper township trustees shall each be furnished with a certified copy of the same. It is made the duty of such trustees to open and improve such highway as required by law. The said county surveyor is authorized to act with such four [4] viewers in locating such highway; and whenever the board of commissioners of either county shall fail, refuse or neglect to appoint viewers to act upon any petition filed according to the provisions of this section, the two [2] viewers appointed by the other county, in connection with the county surveyor, shall proceed to discharge all the duties required of the four [4] viewers, and their action in the premises shall have the same force and effect and be equally binding as the action of the four [4] viewers. [Acts 1905, ch. 167, § 22, p. 521.]

8-20-1-23 [36-222]. Stream Caving - Notice - Fence Removal. - When any public highway running or passing along the bank of any watercourse shall, by the falling in or washing away of the bank of such watercourse, become[s] unsafe or inconvenient for use as a public highway, or where now any public highway or any part thereof is in the bed of any watercourse otherwise than merely crossing such watercourse, it shall be the duty of the supervisor having such highway in charge forthwith to give the owner or occupant of the land over which such highway passes, notice to remove his fence from the bank of such watercourse far enough to admit of the opening and construction of a road at least forty [40] feet wide, and if said public highway is in the bed of such watercourse, the supervisor may open and construct the same on the side of the watercourse that in his judgment will make the best highway, and if the owner or occupant of such land should neglect to remove such fence, as required by such notice, after receiving the same, it shall be the duty of such supervisor to call out the hands liable to work on highways in his road district, and forthwith to remove such fence, doing to the owner or occupant no greater damage than is necessary for the removal of the fence. If any dwelling or building should stand so near such watercourse that a sufficient space is not left for such road, then such supervisor may open such highway in the rear of such dwelling-house or other building. [Acts 1905, ch. 167, § 31, p. 521; 1909, ch. 29, § 1, p. 72.]

8-20-1-24 [36-223]. Stream caving - Damages - Viewers. - Before any such fence shall be removed or road changed to the rear of buildings, as provided in the preceding section, the road supervisor shall state out the change as he desires to make it, and give to the owner or occupant or their agent, if their resident or post-office address be known, written notice, at least fifteen [15] days before he changes said highway, which notice shall state the change to be made in such highway and width thereof, and if said owner, occupant or agent shall, within said fifteen [15] days, file in the office of the county auditor of such county a claim for damages occasioned by such change, then said change shall not be made until all damages, if any, assessed by the viewers hereinafter provided for shall have paid in full or allowed by the board of commissioners of such county. If said owner, occupant or agent fails to file his claim for damages within said fifteen [15] days, then said road may be changed without the damages being first paid, but the owner, occupant or their agent may, at any time within two [2] years after such change is made, file his claim with the county auditor for damages for the removing of such fence or the change of such road and for the use of the ground over which said road shall pass; upon the filing of a claim for dam-

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ages, either before or after the road has been changed, it shall be the duty of such board of commissioners to appoint two [2] reputable freeholders of such county to view such premises, and assess the damages of such claimant by reason of the appropriation of his said land for such highway and the removal of such fence. [Acts 1905, ch. 167, § 32, p. 521; 1911, ch. 90, § 1, p. 150.]

- The viewers appointed as provided for in section 24 [8-20-1-24] of this chapter shall be sworn faithfully and impartially to perform their duty, and, upon actual view of such premises, to assess such damages and report the same to such board of commissioners. Such board of commissioners may allow and order the same to be paid out of the county treasury of such county, or if the board deem such assessment to be too high, it may appoint reviewers to make another assessment, who shall be sworn as above provided and shall proceed in like manner to assess such damages and report the same to such board, and such board shall order the amount of the assessment to be paid out of the treasury of the county. If such claimant shall be aggrieved by such assessment, he may demand a review of such premises and a new assessment of such damages, whereupon such board shall appoint reviewers, as aforesaid, who shall be sworn as above provided, and shall review such premises, and reassess such damages, but if such last named reassessment shall be for no greater sum than the first assessment, such claimant shall pay the cost of such last named review. The provisions of this section and section 24 of this chapter shall apply to all proceedings after March 2, 1911, had under this chapter, and to all proceedings instituted before March 2, 1911, under the provisions of Acts 1905, c. 187, where such change of highway has not actually been made. [Acts 1905, ch. 167, § 32, p. 521; 1911, ch. 90, § 2, p. 150; P.L. 66-1984, § 119.]

8-20-1-26 [36-1701]. Railroad - Crossing stream or highway. - Every steam or electric railroad company shall have the right to construct its railroad across any stream, watercourse, road, highway, railroad or canal which the route of its road shall intersect, in such manner as not to interfere with the free use of the same and so as to afford security for life and property; but such railroad corporation shall restore and maintain the stream or watercourse, road, highway or canal thus intersected to and in its former state, or in a sufficient manner not unnecessarily to impair its usefulness or injure its franchises. Whenever the track of such railroad shall cross a road or highway, such crossing may be at grade or such road or highway may be carried under or over the track, as may be most expedient; and, in cases where an embankment or cutting shall make a change in the line of such road or highway desirable, with a view to a more easy ascent or descent, the said railroad corporation may take such additional lands for the construction of such road or highway, or such new line as may be deemed requisite. Unless the lands so taken shall be purchased or voluntarily given for the purposes aforesaid, compensation therefor shall be ascertained in the manner provided by law, and duly made by such corporation to the owners and persons interested in such lands; and the same, when so taken and compensation made, shall become a part of such intersecting road or highway, in such manner and on such terms as the adjacent parts of such highway may be held for highway purposes. [Acts 1905, ch. 167, § 35, p. 521.]

NOTES TO DECISIONS

In General.

Where a railroad company constructing its road across a stream fails to restore and maintain the stream substantially in its former condition, it is liable in damages to any person injured thereby. Dunn v. Chicago, I. & L. R. Co. (1917), 63 App. 553, 114 N. E. 888.

Railroads have the right to construct their roads across any stream of water or watercourse so as not to interfere with the free use of the same, and the statute imposes the duty to restore the stream in such manner as not necessarily to impair its usefulness; and this obligation imposed on railroad companies is a continuing one, and attaches to a purchasing company, and each continuance of an obstruction is a new offense. Pennsylvania Co. v. Watson (1925), 82 App. 498, 146 N. E. 763.

Detours.

Where certain county or township roads have been designated as state detour roads, it is the duty of a railroad company or companies whose railroads intersect such detour roads to keep the highway crossing and approaches thereto in such condition and state of repair as not to impair its usefulness, nor interfere with its free use so as to afford security for life and property, in view of this section and 8-4-1-22. Chicago, I. & L. R. Co. v. Downey (1937), 103 App. 672, 5 N. E. (2d) 656.

Duty to Maintain Structures.

In analyzing the pertinent parts of this section, 8-4-1-14 and 8-8-3-2, the court concluded there was statutory authority for the railroad to construct its overhead structure subject to certain conditions, namely, the statutory duty to maintain its structures supporting its roadbed and tracks. New York Cent. R. Co. v. Sarich (1962), 133 App. 516, 180 N. E. (2d) 388.

Instructions to Jury.

In an action for damages to personal property
of plaintiff by the overflow of a stream caused by an obstruction by a bridge and trestle, by reason of the manner of construction, instructions, when taken together, relating to the duty of a railroad company which constructs and maintains structures in the channel of a natural stream, constituted a sufficient statement of the law. Pennsylvania Co. v. Watson (1925), 82 App. 496, 148 N. E. 763.

8-20-1-27 [36-1704]. Interurban - Extension on highway. - Any interurban or street railroad company, organized under the laws of the state of Indiana and operating such railway within any of the towns or cities of the state, desiring to extend its road beyond such town or city limits on any public highway, or any other company organized under the laws of the state of Indiana for similar purposes, or any corporation desiring to build an interurban electric railway outside of any city or town on any public highway, may do so by procuring the consent of the board of commissioners of the county in which such highway is situated. If such highway is graveled or planked by a gravel or plank road company, such interurban or street railroad company shall also be required to procure the consent of such gravel or plank road company to run its road over such gravel or plank road. Such interurban or street railroad company shall, in all cases in which any road or highway shall be used by it for the purposes expressed in this section, locate its tracks on such part of such highway, keep its track and roadbed in such condition and perform such other reasonable terms and conditions as may be fixed in the order of the board of commissioners of the county made in granting such consent or at any time afterwards. [Acts 1905, ch. 167, § 36, p. 521.]

NOTES TO DECISIONS

Crossing Steam Tracks.

If a street or interurban railway company has the right to locate its track in a highway, such company may lay its tracks across a steam railroad track, and within the limits of the highway, without the payment of damages. South East & St. L. R. Co. v. Evansville & M. V. Elec. R. Co. (1907), 169 Ind. 339, 82 N. E. 765, 13 L.R.A. (n.s.) 916, 14 Ann. Cas. 214.

8-20-1-30 [36-1902]. Bridges - Funds - Regulations. - Such board of commissioners shall receive and appropriate all donations for the erection and repair of bridges, and shall make such regulations in reference to payments and kinds of bridges as to it shall seem proper. [Acts 1905, ch. 167, § 40, p. 521.]

8-20-1-31 [36-1903]. Bridges - Advertisement for sealed proposals. - If any board of commissioners determines that a bridge should be erected or repaired out of funds appropriated from the county treasury, as provided in section 29 [8-20-1-29] of this chapter, the board shall direct the county auditor to advertise for sealed proposals to do the work according to the plans and specifications on file in his office in accordance with IC 36-1-12. [Acts 1905, ch. 167, § 41, p. 521; 1981, P.L. 57, § 24.]

NOTES TO DECISIONS

In General.

In letting contracts for the building of bridges, county commissioners have a discretion in determining who is the lowest and best bidder. Eigenmann v. Board of County Comrs. (1913), 53 App. 1, 101 N. E. 38.

8-20-1-32 [36-1904]. Purchase of bridge - Abandoned bridge. - The board of commissioners of any county may purchase any toll-bridge, or buy any private interest therein, and order the same to be paid for out of any money appropriated therefor out of the county treasury; and whenever any bridge company has abandoned, or may abandon, any bridge, or when the right to take toll has expired or may expire, it shall be lawful for the commissioners of the county in which such bridge may be situated to require the same and the grades leading thereto to be repaired; and, for that purpose, such board shall possess all the powers that are given by law to boards of commissioners for building and repairing bridges. [Acts 1905, ch. 167, § 42, p. 521.]


8-20-1-35 [36-2001]. Bridges on county line. - Whenever public convenience shall require the erection, repair or purchase of any bridge across a stream forming the boundary line between two [2] or more counties in this state (and in all cases where a stream crosses a public highway located on and forming the boundary line between two [2] or more counties in this state, and where such stream requires a bridge of more than twenty feet [20'] in length across the same and forming a part of such public highway) the board of commissioners of either of such counties, upon application therefor, may, by order entered of record, declare its willingness to aid in the erection, repair or purchase of such bridge, and shall cause notice of such order to be given to the board or boards of commissioners of such other county or counties interested therein. And whenever it may be ascertained that the board or boards of commissioners of such other county or counties interested therein, and to whom such notice has been so issued, has made a like order, as shown by the certificate of the auditor of such county, such boards shall, in case of the erection, repair or purchase of such bridge, by concurrent resolution, cause a survey and estimate to be made,
submitting plans and specifications therewith, by some competent person, to be presented to such boards at a specified time and place when and where they shall meet in joint session at or near the site of such bridge, to estimate and determine the kind of bridge which shall be erected or repairs made, and the manner and time of payment therefor; and they shall cause the plans and specifications that may be agreed upon at such meeting to be placed on file with the auditor of the county which first declared its willingness to aid in the erection or repair of such bridge, and a complete record shall be made by the auditor of such county of all the proceedings in relation to such bridge. Whenever a board of commissioners of any county shall have notified the board or boards of any other county or counties interested in the erection, repair or purchase of any bridge as specified in this section, and any such board of commissioners so notified shall fail or refuse for the period of thirty [30] days to accept or act on the same by joining in the building, repair or purchase of such bridge, then the board or boards of commissioners passing such order; may, if in their opinion public convenience requires it, build, repair or purchase such bridge, after first having obtained, in case of the erection of a bridge, the written consent of the landowner in the adjoining county whose land will be occupied by any part of such bridge. In case of the erection or repair of a bridge, it shall be the duty of such boards of county commissioners, while in joint session, to appoint one or more persons as superintendents, who shall have full control and supervision of the erection or repair of such bridge, subject, however, to such regulations as such boards of commissioners may determine. The superintendent or superintendents may be required to give bond in the manner prescribed by IC 5-4-1 [5-4-1-1 -- 5-4-1-19]. It shall be the duty of such board, in joint session, to fix the amount of the appropriation which should be made by their respective counties for payment of the cost of construction, repair or purchase of such bridge; which apportionment to each county of the whole cost of construction repair or purchase of such bridge shall be in proportion to the taxable property of such counties. In case of the refusal of any county, as aforesaid, to join in the construction, repair or purchase of such bridge, the county desiring such improvements may construct, repair or purchase such bridge as hereinbefore provided, and when the cost of such bridge or repairs does not exceed ten thousand dollars [$10,000], the county making such improvement by the erection, repair or purchase of such bridge shall be entitled to recover from each of such adjoining counties affected by such improvement the amount that such county should have paid had it joined in such improvement, such claim to be enforced as other claims are enforced against counties in this state; and when such claim is litigated, the judgment shall include a reasonable attorney's fee for the plaintiff's attor- ney. All boards of commissioners proceeding under this section to erect, repair or purchase joint bridges, in advertising for bids, letting contracts and requiring affidavits and bonds for bidders and contractors, shall be governed by IC 36-1-12. Each county shall be regarded as the owner of an interest in any bridge erected, repaired or purchased in pursuance of this section, and each shall have a voice in regulating the use thereof. [Acts 1905, ch. 167, § 45, p. 521; 1911, ch. 220, § 1, p. 537; 1913, ch. 74, § 1, p. 162; 1981, P.L. 57, § 25.]

Opinions of Attorney General. Bridges on county lines are to be maintained by the cooperation of both counties, and are not the sole responsibility of the county on whose eastern or southern boundary they lie, as with roads pursuant to 8-17-1-45. 1973, No. 29, p. 91.

NOTES TO DECISIONS

In General.

Section 8-17-11-5, providing, in a proceeding by townships to establish a highway on a county line, for a report on the cost of bridges such as townships are authorized by law to build, is not limited by this section. Wells v. Davis (1918), 185 Ind. 152, 113 N. E. 237.

8-20-1-38 [26-1301]. Construction by assessment - Proceedings. - The board of commissioners of every county in this state shall have the power, as hereinafter provided, to lay out, construct or improve by straightening, grading, paving, draining, graveling or macadamizing any public highway, or any part thereof, within such county, upon the presentation to the board of commissioners of any county of a petition stating the kind of improvement prayed for and the points between which the same is asked, signed by a majority of the resident landowners of the county whose lands lie within one [1] mile of the proposed improvement, and will be benefited thereby, and such majority shall represent a majority of the acres owned by said residents. Such board, if it shall be satisfied that due notice of application has been given by publication three [3] weeks successively in a newspaper of general circulation published in the county, the last of which publications shall have been at least ten [10] days before the meeting of the board at which such petition is to be presented, or by posting up notices in three [3] of the most public places in the neighborhood of such highway at least ten [10] days before such meeting of the board, shall appoint three [3] disinterested freeholders of the county as viewers, and a competent surveyor, or engineer, to proceed, upon a day to be named by the commissioners or any other day to which a majority may adjourn prior to the next session of such board, to examine, view, lay out or straighten such highway as in their judgment public utility or convenience may require; and the county auditor of the county shall notify
said viewers and surveyor of the time and place of their meeting, and they shall meet accordingly, and after taking an oath or affirmation faithfully and impartially to discharge the duties of their appointment respectively shall determine what lands will be benefited or damaged by the proposed improvements, and shall take to their assistance two [2] suitable persons as chain carriers and one [1] marker; and if the said viewers find that such improvement will be of public utility or convenience, and that the costs and expenses thereof and damages caused thereby will be less than the benefits to the land within two [2] miles of the improvements, excepting such lands and lots as lie within the limits of any incorporated town or city, they shall, upon actual view of all the lands within two [2] miles of the improvement, excepting such as lie within such incorporated town or city, apportion the estimated costs, expenses and damages upon all the said limits within said two [2] miles that will be benefited, according to the benefits to be derived therefrom. They shall assess the damages, if any, sustained by any person or persons through whose lands such road is proposed to be laid out, straightened or improved. In determining said majority, heirs under eighteen [18] years of age shall not be counted for or against such improvement unless represented by a legal guardian, and the action of such guardian shall be binding upon such heirs. [Acts 1905, ch. 167, § 46, p. 521; 1907, ch. 259, § 1, p. 561; 1973, P.L. 23, § 10, p. 90.]

NOTES TO DECISIONS

Appeal.

No appeal lies from the decision of a board of commissioners that a proposed improvement should be made, nor does an appeal lie from the decision of the circuit court on the questions that may be presented to it on appeal from the board of commissioners. Stockton v. Yeman (1912), 179 Ind. 61, 100 N. E. 2; Moody v. Irwin (1914), 181 Ind. 197, 104 N. E. 10.

8-20-1-37 [36-1302]. Viewers and surveyor - Report - Notice. - The viewers and surveyor, as soon as they have performed the duties prescribed by the preceding section, shall make a report to the board of commissioners, and file the same with the auditor of the county, which report shall show the public utility of the proposed improvement, an estimate of the costs and expenses thereof, including reasonable attorney's fees for the petitioners, the damages, if any, assessed to the several tracts of lands, the benefits to each forty [40] acre tract of land or less, where such exists, and give a description of the work proposed, the grade, drains, culverts, kind of improvement, the commencement, width and terminus of the road: Provided, That no lands shall be assessed for benefits that do not lie within two [2] miles of the contemplated work or improvement, nor lands within incorporated towns or cities. As soon as such report is filed with the auditor, it shall be his duty to give notice of the filing thereof by publication for two [2] successive weeks, once each week, in some newspaper published in the county where the improvement is to be made, and state therein the points between which such improvement is to be made, and the time set for the hearing of such report, the last of which publications shall be not less than ten [10] days before the time set for such hearing. [Acts 1905, ch. 167, § 47, p. 521.]

8-20-1-38 [36-1303]. Hearing of report - Order. - At the time fixed for the hearing of the report, the board of commissioners shall proceed to hear the same, and if it is found that notice has been given as required by the preceding section, that the proposed work is of public utility and that benefits assessed exceed the expenses and damages, such board shall enter upon its records an order that the improvement be made, which order shall state the kind of improvement and the width and extent of the same. [Acts 1905, ch. 167, § 48, p. 521.]

8-20-1-39 [36-1304]. Amendment to petition. - The board of commissioners shall have power to permit amendments to be made to the petition or report, and to extend the time to the viewers to make their report, and to continue the hearing from time to time, so as to subserve the ends of justice. [Acts 1905, ch. 167, § 49, p. 521.]

Cross-Reference. Change in surfacing material prior to letting of contract, 8-18-1-1.

8-20-1-40 [36-1305]. Remonstrance - Causes. - On or before the day fixed for the hearing of such report, the owners of any lands affected by the work proposed may remonstrate against the report, which remonstrance shall be sworn to, and may be for any or all of the following causes:

First. That the report of the viewers is not according to law, stating specifically the illegality claimed;

Second. That the lands of the party filing the remonstrance are not benefited, or are assessed too much as compared with the other lands assessed as benefited, specifying such lands;

Third. That the lands of the party filing the remonstrance are damaged, and that the damages assessed are inadequate;

Fourth. That it is not practicable to accomplish the proposed work without an expense exceeding the aggregate benefits;

Fifth. That the proposed work will not be of public utility.

If more than one party remonstrates, the remonstrances shall be consolidated and tried

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together, and the report of the viewers shall be prima facie evidence of the facts stated therein. The board of commissioners shall try the issues thus formed, and if such board finds for the remonstrants upon the fourth or fifth cause of remonstrance, the petition and report shall be dismissed at the cost of the petitioners: Provided, That if donations shall be made or secured to the satisfaction of the board sufficient, with the assessments, to equal the expenses of the work and damages allowed, the petition and report shall not be dismissed for the fourth cause of remonstrance, and such donations are hereby authorized to be made. If the board finds for the remonstrants upon the first cause of remonstrance, the report shall be referred back to the viewers for correction, or for a new report, to which new or amended report remonstrances may be filed as before and if the report shall finally be made according to law, the board shall find against the remonstrants for the first cause of remonstrance. If the board finds for the remonstrants upon [either] the second and [or] third cause of remonstrance, such board shall modify the assessments and equalize the same and assess the damages as justice may require, and, [as] thus modified and equalized, the assessments shall stand and be adjudged valid. The only questions that shall be raised shall be those raised by the remonstrance. If the assessment upon the lands of any remonstrant is not reduced more than twenty per cent [20%] of the damages claimed by any remonstrant are not increased twenty per cent [20%], such remonstrant shall pay all costs occasioned by such remonstrance; but if such assessment be reduced more than twenty per cent [20%], or the damages be increased more than twenty per cent [20%], then the remonstrant shall recover costs and the board shall apportion such costs pro rata upon the lands assessed for benefits. Such assessments, when confirmed by the board of commissioners, or higher court on appeal, shall constitute first and paramount liens on the real estate respectively assessed, as taxes are liens, which liens shall relate back and bind the real estate so assessed from the time of the filing of the report. The auditor shall at once enter such assessments upon the tax duplicate, to be collected by the county treasurer as state and county taxes are collected, with interest at six per cent [6%] per annum, [in] instalments as hereinafter provided, and the moneys collected shall be used exclusively in payment of the bonds, costs and expenses of such work, as hereinafter provided. [Acts 1905, ch. 167, § 50, p. 521.]

8-20-1-41 [36-1308]. Superintendent of construction. - After the improvement has been ordered and the assessments confirmed, as provided in section 40 [8-20-1-40] of this chapter, the board of commissioners shall appoint a competent person to superintend the construction of the work, who, before entering upon the duties of such trust, shall take an oath or affirmation honestly, faithfully and impartially to discharge the duties of such trust, and shall execute a bond in the manner prescribed by IC 5-4-1 [5-4-1-1--5-4-1-19]. [Acts 1905, ch. 167, § 51, p. 521; 1981, P.L. 47, § 12.]

8-20-1-42 [36-1807]. Superintendent’s duties. - The superintendent charged with the execution of the work provided for in sections 36 through 41 [8-20-1-36--8-20-1-41] of this chapter shall proceed to have the work constructed as ordered. He shall let the contract for the construction in accordance with IC 36-1-12. [Acts 1905, ch. 167, § 52, p. 521; 1981, P.L. 57, § 26.]

8-20-1-43 [36-1308]. Assessments - Payment - Issuance of bonds. - (a) As soon as the contract or contracts are let for the construction of the work as provided in section 42 [8-20-1-42] of this chapter, the superintendent shall assess upon all the lands benefited, ratably upon the amount of benefits as confirmed and adjudged by the board of commissioners, or court on appeal, such sum as may be necessary to pay for the work and all costs and expenses accrued or to accrue, not exceeding the whole benefits adjudged upon any one tract. He shall immediately thereafter make out a notice stating that the work has been established by the board of commissioners, setting out also the several assessments to the several tracts of land, as confirmed by the board, or court on appeal, and cause such notice to be recorded in the office of the recorder of the county.

(b) Whenever any assessment shall have been satisfied, it shall be the duty of the superintendent to enter satisfaction of the lien thereof in such record; and in case bonds are issued, as hereinafter provided, it shall be his duty to enter on the margin of such record the words "bond issued," which entry shall have the effect to transfer the record of the lien of any such assessment to the gravel road duplicate in the office of the county treasurer. Should such superintendent fail to enter such satisfaction, the board, by order duly entered, shall direct the auditor to make such entry of satisfaction in the recorder's office. Such superintendent shall be liable on his bond to any person interested for such failure of duty.

(c) The superintendent of construction, out of the funds collected from the assessment so made and confirmed, shall pay all costs of the gravel road improvement not otherwise adjudged, and all expenses incident to the construction of the work, including the reasonable attorney's fees of the petitioner or petitioners in the preparation and presentation of the petition, the establishment of the work and other services rendered in such work, and also such other costs and expenses as the board shall allow; but no claim for costs or expenses, except payments on the contract for constructing the work, shall be paid until such claim is allowed by the board.
(d) All costs not taxable to the petitioner or petitioners, remonstrants or appellants, shall, in the first instance, be paid out of the county treasury, and shall be refunded to the county by the superintendent of construction out of the first moneys collected by him; next in order he shall pay all awards of damages; and thereafter he shall pay to the contractor such sums as shall from time to time become due under the terms of the contract, reserving, however, twenty percent [20%] thereof, which shall be due and payable only on completion and approval of the whole work.

(e) For the purpose of raising funds for making such payments, the superintendent shall collect of the assessments of benefits adjudged by the board, such sums as may be necessary therefor, not exceeding the whole amount of benefits assessed against any tract, and require the same to be paid to him in installments not exceeding ten percent [10%] per month, at such times and places as he shall fix, after thirty [30] days' notice thereof given by one [1] publication in a newspaper of general circulation published in the county.

(f) If any such assessment is not paid in the amount and at the time by him required, the superintendent shall make his certificate showing the amount of the assessment against any tract, and the default in its payment as required, and shall file the same with the auditor of the county; thereupon the auditor shall place such amount, together with ten percent [10%] penalty for the default, upon the tax duplicate, to be collected as state and county taxes are collected, at the next ensuing date for semiannual payment of taxes. If such assessment and penalty are not then paid, an additional penalty of five percent [5%] shall be added, and the land shall be sold for such assessment and penalty with interest thereon at six percent [6%] from the date of last default to the date of sale, as lands are sold for the nonpayment of delinquent taxes; and the redemption from such sale may be had in the same manner, during the same time, and on the same terms as provided by law for the redemption of lands sold for delinquent taxes.

(g) Gravel road bonds may be issued to procure funds for the payment of the cost, damages and expenses of the construction of such work, and of the proceedings had therein, provided the owners of land assessed for benefits shall, within thirty [30] days from the establishment of the work and approval of the assessments of benefits and damages, file their written requisition therefor with the superintendent of construction. In such written request, any such landowner shall agree that, in consideration of the right to pay his assessment in ten [10] yearly installments, he will not make any objection to any illegality or irregularity, if any, in the proceedings up to and including the letting of the contract and the issuing of such bonds and that he will pay such assessments with interest as the same become due.

(h) The filing of such requests and the issue of bonds, if any there should be, shall in no manner affect the collection of assessments from landowners and others assessed for benefits who have not filed requests for the issue of bonds, and, as to them, the collection of the assessments as hereinbefore provided shall be made as if no bonds were issued; and bonds shall be issued to cover only so much of the cost, damages, and expenses of the work and of the proceedings had therein as [are] apportioned to the lands of those who have filed requests therefore, and shall be liens only on such lands and payable only out of the assessments made thereon. Such apportionment shall be made as follows: The superintendent of construction shall carefully ascertain the total original cost of the work, including all damages awarded to the owners of lands and all incidental expenses, and shall apportion such total cost, damages and expenses to the several tracts of land and parties assessed for benefits, in proportion to the assessments for benefits, not in any case exceeding such benefits. Thereupon the superintendent shall report all such facts to the board of commissioners together with all such requests for bonds and waivers of irregularities by landowners, which report and waivers the board shall examine, and if found correct, shall approve; whereupon such report and requests and waivers, with such approval, shall be entered in full in the order book of the board.

(i) The board of commissioners, after the entry of such order, shall direct the county auditor to prepare an assessment sheet, or gravel road duplicate showing the total cost apportioned to all the parcels of land for which the owners of lands request the issue of bonds, with proper columns for the payment of [installments] and interest. And such auditor shall assess ratably from year to year upon such lands a sum sufficient to pay such bonds and interest as they severally mature.

(j) The first of such assessments shall be due and payable at the semiannual payment of taxes next following the letting of the contract, and the remaining assessments on the same day each year thereafter for nine [9] successive years, with interest at six percent [6%] per annum, payable semiannually, on all unpaid assessments. Such assessments and interest shall be collected by the county treasurer as state and county taxes are collected, and shall be subject to the same penalties in case of nonpayment when due; and all laws for the collection of delinquent taxes, and for the sale of lands for taxes and redemption from such sale, shall apply equally to the collection of such assessments.

(k) Any landowner desiring to relieve his land of the lien of such cost of gravel road improvement may, at any time, pay the whole amount of the unpaid installments, with all interest due thereon. The treasurer shall receipt for any payment on such installments, and mark such payment on the duplicate, as in the case of the payment of taxes; and any
such payment shall be a release of the lien of such cost, and of the assessment for such work, to the extent of such payment.

(I) As soon as such duplicate is so prepared, the county shall issue the bonds of the county to the amount of the cost so placed on the duplicate for collection. The bonds shall be numbered consecutively, and shall be in denominations of one hundred dollars [$100] or any multiple thereof, except that one [1] bond may be for less than one hundred dollars [$100]. One tenth [1/10] of such bonds, as near as may be, shall fall due and be payable on the first day of June or December, as the case may be, following the next succeeding semiannual payment of taxes; and one tenth [1/10] of such bonds as near as may be, shall fall due and be payable on the same day every year thereafter, for nine [9] successive years.

(m) All such bonds shall bear interest from the date of letting the contract for such work until the bonds are paid, respectively, at any rate, payable semiannually, on the first day of June and first day of December, each year. They shall show on their face for what purpose issued; and shall be payable out of collections made on such assessments, and not otherwise.

(n) Upon the signing of such bonds by the board of commissioners and the attestation thereof by the county auditor, they shall be turned over to the county treasurer, who shall receipt to the auditor therefor. Thereupon the treasurer shall give notice, by publication once in a newspaper of general circulation published in the county, and by posting a copy of such notice at the door of the courthouse, that, at the office of such treasurer, on and after the hour of ten o'clock a.m., [10:00 a.m.] on a day to be named, not less than twenty [20] days thereafter, the treasurer will proceed to sell such bonds, at not less than the principal sum named in such bonds, to the highest and best bidder for cash. However, in lieu of selling the bonds, as herein provided, the board of commissioners, by order of record to that effect, may direct that the bonds shall be exchanged at par and held by the county treasurer for any unloaned school funds or other unused funds held in the county treasury, in which case the assessments and interest collected for the payment of such bonds shall be paid into and credited to the fund so used in their purchase.

(o) The proceeds of such bonds shall be drawn out of the county treasury only on the warrant of the auditor, upon the certificate of the superintendent, in payment of the cost of construction of such work and the expenses incident thereto.

(p) In case the bonds sell at a premium, the aggregate amount of such premium shall be apportioned pro rata to the several assessments of cost against the respective parcels of land; and the amount thus apportioned to each parcel shall operate as a payment, to that extent, of the first maturing installment. [Acts 1905, ch. 167, § 53, p. 521; 1981, P.L. 11, § 66.]

8-20-1-44 [36-1310]. Acceptance - Final reports - Surplus funds. - When the work of grading, macadamizing or otherwise improving such highway, as herein before provided, is completed, and the superintendent shall certify the same to the auditor of the county, the board of commissioners shall receive the improvement and provide for the keeping of such road in repair, as hereinafter required. It shall be the duty of the said superintendent, within sixty [60] days after certifying the completion of the improvement, to file his report with the auditor, showing the receipts and disbursements, accompanied with vouchers for all disbursements, which report shall be submitted by the auditor to the board of commissioners at their next ensuing term, for approval or rejection. As soon as such report shall have been approved by the board of commissioners, the superintendent shall, within ninety [90] days thereafter, distribute the surplus funds, if any, remaining in his hands to the persons from whom the same was collected, according to the several assessments, and take vouchers therefor; and as soon as he has completed such distribution, he shall file his report thereof, accompanied by such vouchers, with the board of commissioners, for approval or rejection, and when the same has been approved, he shall be discharged by order of the board. If, for any reason, any surplus funds remain in the hands of the said superintendent after having made distribution, the same shall be ordered paid into the gravel road repair fund, to be used only in the repair of the road for the construction of which the funds were collected. Whenever the owner of any tract of land assessed for the construction of any such road shall have paid off such assessments, it shall be the duty of the auditor to release and satisfy such assessment lien by writing the appropriate words of such payment and satisfaction upon the record where such assessment appears, and sign his official signature to such release, with the date thereof. [Acts 1905, ch. 167, § 54, p. 521.]

8-20-1-45 [36-1311]. Contractor - Purchase of materials. - Any contractor for the construction of such work, or any part thereof, as provided for in sections 36 through 44 [8-20-1-36–8-20-1-44] of this chapter, shall have the power to contract for and purchase any materials that may be necessary for the construction of such road, and if such contractor can not agree with the owner of such materials as to the price thereof, he may apply to the circuit court of the county to appoint appraisers to condemn and assess the value of such material as provided by law for the condemnation of real estate under the power of eminent domain. The appraisers shall also assess the damages that may
accrue to the owner of such materials by the removing of the same through his premises, and shall immediately return their award to such circuit court, and such court shall, upon the return of such award, on application of such contractor, furnish him with a copy of such award. Thereupon such contractor shall enter upon the lands, either inclosed or uninclosed, and remove such materials as may be required to make a good road. An appeal from such award by the owner shall not prevent the immediate entry upon the premises by the contractor for the purpose of taking such materials. If the contractor appeals and the award be not reduced ten percent [10%] thereof, he shall pay all costs occasioned by the appeal; and if the owner of the materials appeals and does not receive ten percent [10%] more than the award, such owner shall pay all the costs occasioned by the appeal. [Acts 1905, ch. 167, § 55, p. 521; P.L. 66-1984, § 120.]

8-20-1-46 [36-1812]. Appeal - Questions for trial - Costs. - Any person who appeared and filed a remonstrance before the board of commissioners as provided for in section 40 [8-20-1-40] of this chapter shall be allowed an appeal to the circuit court, in like manner as other appeals are allowed, and on such appeal, the only question that shall be tried in the circuit court shall be the question raised before the board of commissioners by the first, second, or third causes of remonstrance, which questions shall be tried by the court without a jury. On such trial, the report of the viewers shall be prima facie evidence of the facts therein contained. If more than one party appeals, all such appeals shall be consolidated and tried together, and the rights of each appellant separately determined. If the court finds for any appellant upon the first cause of remonstrance, the report shall be referred back to the viewers for correction, or for a new report, and if the report as so amended is found to be correct, it shall be approved by the court. If the court finds for any appellant upon the second or third cause for remonstrance, it may modify and equalize the assessments as justice may require, by diminishing or increasing any assessments or benefits, or by giving or withholding, increasing, or diminishing damages. For the purpose of so ruling upon such causes of remonstrance and so modifying the assessments, all persons or corporations who are reported as affected, or whose lands are reported as affected, or who are named in the petition as affected, or who have appeared to the petition, shall be deemed to be in court for all purposes by reason of such appearance or by virtue of the notices theretofore given them, and, as thus modified and equalized, the assessments shall stand and be adjudged valid. Such judgment of the court shall be final, and no appeal [shall] be allowed therefrom. If the assessment upon the lands of any appellant is not reduced twenty percent [20%] or the damages awarded by the board of commissioners are not increased twenty percent [20%] such appellant shall pay all the costs occasioned by such appeal, but if such assessment be reduced more than twenty percent [20%] then the appellant shall recover costs, and the court shall apportion such costs pro rata upon the lands assessed for benefits; Provided, That the decision of the board of commissioners as to the fourth and fifth causes for remonstrance shall be final and no appeal shall be allowed therefrom, and Provided, further, That if any appeal is taken from the board of commissioners to the circuit court, the bonds provided for in this chapter shall not issue until after the final judgment of the circuit court on such appeal. [Acts 1905, ch. 167, § 56, p. 521; P.L. 66-1984, § 121.]

NOTES TO DECISIONS

Judgment on Appeal.

Under the express terms of the statute, on an appeal from county commissioners to the circuit court, the decision of such court is final, and no appeal can be taken from its judgment. Stockton v. Yeoman (1912), 179 Ind. 61, 100 N. E. 2; Moody v. Irwin (1914), 181 Ind. 197, 104 N. E. 10.

8-20-1-47 [36-1813]. Error in proceedings. - No person shall be permitted to take advantage of any error committed in any proceedings to lay out, construct, or improve any highway under and by virtue of this chapter, nor of any error committed by the board of commissioners, or by the county auditor, or by the engineer, surveyor, superintendent, or other person or persons in the proceedings to lay out, construct, or improve any such road, nor for any informality, error, or defect apparent in the record of such proceedings unless the party complaining is affected thereby. [Acts 1905, ch. 167, § 57, p. 521; P.L. 66-1984, § 122.]

NOTES TO DECISIONS

Availability of Errors.

Errors or omissions can be taken advantage of only by persons who are affected injuriously by the same. Conrad v. Hansen (1908), 171 Ind. 43, 85 N. E. 710.

8-20-1-48 [36-1814]. Taxation in cities or towns. - When any highway to be improved under and by virtue of sections 36 through 47 [8-20-1-36-8-20-1-47] of this chapter begins or terminates in any city or town, the corporate authorities of such city or town may, on agreement with the board of commissioners, levy a tax for the payment of an amount not exceeding one-fifth [1/5] of the entire cost of such improvement, in addition to any amount that may be assessed upon the real estate in such city or town by virtue of the provisions of sections 36 through 47 of this chapter; Provided, That the entire tax to be imposed for road purposes.

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by virtue of this section shall not in any one year exceed fifty cents [50¢] on the one hundred dollars [$100] of taxable values of such city or town. [Acts 1905, ch. 167, § 58, p. 521; P.L. 66-1894, § 123.]

8-20-1-49 [86-1816]. Adjoining county. - When it may be desirable to continue any highway improvement contemplated under sections 36 through 48 [8-20-1-36 -- 8-20-1-48] of this chapter into or through an adjoining county, the same proceedings shall be had in such county as to petition, bonds, viewers, appraisements, and all other formalities as are prescribed in sections 36 through 48 of this chapter for the commencement of such improvement in the first county, and all such proceedings shall be had before the board of commissioners of the county in which such proposed extension is located. [Acts 1905, ch. 167, § 59, p. 521; P.L. 66-1894, § 124.]

8-20-1-50 [86-1816]. One-half mile or less. - Whenever there shall be constructed in any county of this state any public gravel road or turnpike not less than one-half mile in length, except where the entire length of the road is less than one-half mile, and connecting with any free gravel road or terminating at any town or city, the same having a substantially graded roadbed not less than twenty [20] feet wide, with suitable side drains, culverts and bridges, and with grades not exceeding the maximum of free gravel or turnpike roads of such county, and having placed thereon not less than one [1] yard of suitable gravel or broken stone for every three [3] feet in length, in such manner as to make a suitable road for public travel then, on the written request to the board of commissioners for such county of not less than three [3] freeholders residing in the road district wherein such road is situated, said board of commissioners shall make inspection thereof, and for such purpose may employ a competent engineer to assist them. If, upon such examination, such road, in their opinion, is of public utility, and shall conform to the requirements herein, they shall cause an entry to be made on their records of such facts, and also enter thereon a description of the commencement and terminus thereof and general description of the route of the same, and thereafter such road shall be deemed a part of the free gravel or turnpike roads of such county, and maintained as by law provided. [Acts 1905, ch. 167, § 59 1/2, p.521; 1913, ch. 328, § 1, p. 861.]

NOTES TO DECISIONS

In General.

The board of commissioners has no authority under this section to make an improved portion of a road less than one-half mile in length a part of the free gravel roads of the county when the entire road, improved and unimproved, exceeds one-half mile in length. Hamilton v. McMahan (1923), 80 App. 473, 141 N. E. 469.

An appeal may be taken from the decision of a board of commissioners under this section. Hamilton v. McMahan (1923), 80 App. 473, 141 N. E. 469.

8-20-1-51 [86-1317]. County line - Proceedings. - When it is desirable to make any gravel or other highway improvement upon the boundary line between two [2] counties, such as the improvements contemplated in sections 36 through 50 [8-20-1-36 -- 8-20-1-50] of this chapter, the petition therefor may be filed before the board of commissioners of either county, and such board shall direct the county auditor to transmit to the board of commissioners of the other interested county a copy of such petition and a notice of the time and place when and where both boards shall meet to act upon the petition. Such meeting shall be held not less than twenty [20] days nor more than thirty [30] days from the date of the giving of such notice and transmitting of such copy of such petition. The two [2] boards shall act together in all matters relating to such improvement. The same proceedings shall be had, as near as may be, as to the petition, viewers, assessments, superintendent, bonds, and all other matters as are prescribed in sections 36 through 50 of this chapter in relation to gravel road and other like improvements aforesaid when made in one [1] county. Should the board of commissioners of such second county refuse or neglect to meet and act with the board of the first county, then said first board, before which the petition was filed, may proceed to make the improvement on such boundary line as if the highway were wholly in the first county, and shall have power to make all assessments on lands within two [2] miles on each side of such line; and such first county shall have a claim upon such second county for one-half [1/2] of all necessary expenses paid out of the treasury of the first county in relation to such work, which claim may be collected from the second county as any other claim due from one [1] county to another. Whenever a petition for any such improvement of a highway on the boundary between this state and any other state is filed before the board of commissioners of any county adjoining such other state, such board of commissioners and the other proper officers of such county shall have authority to unite with the proper officials of any adjoining county in such other state in the doing of such work, in accordance, so far as may be, with the proceedings herein authorized when the highway is on the boundary line between two [2] counties; Provided, That the shall pay one-half [1/2] of all expenses and assessments for the construction of such improvement and shall thereafter keep one-half [1/2] of such highway in repair. The commissioners and other proper officers in such adjoining county in this state are given full power to enter into any equitable contract with the proper authorities in such adjoining county or counties in such other state to do such
work and keep up such repairs in accordance with the laws of this state, so far as the same can be made applicable. [Acts 1905, ch. 167, § 60, p. 521; P.L. 66-1984, § 125.]

Cross-References. County line road law of 1907, 8-17-11-1--8-17-11-13. County line road law of 1919, 8-17-1-20--8-17-1-34.

8-20-1-52 [36-1318]. Free of toll - Township road funds. - All highways improved under the provisions of sections 36 through 51 [8-20-1-36--8-20-1-51] of this chapter shall be free of toll. Nothing in said sections shall be so understood as to prevent township trustees from grading, graveling, macadamising, or otherwise improving the highways in their several townships and paying for the same out of the road funds of such townships. [Acts 1905, ch. 167, § 61, p. 521; P.L. 66-1984, § 126.]

Cross-Reference. Jurisdiction of township highways placed under county commissioners, 8-18-8-1--8-18-8-5.

8-20-1-53 [36-1201]. Improvement of highways by taxation - Contracts and bonds legalized. - Boards of commissioners of the several counties of the state of Indiana are hereby authorized and empowered to lay out, establish and cause to be graded, drained, and paved with stone, gravel, brick, or combination thereof, or other road paving material, any new highway or part of a highway in any township or townships in said state, and to cause to be straightened, graded, drained and improved in like manner any public highway or part of a highway already established in any such township or townships, in the manner and upon the conditions hereinafter prescribed: Provided, That where any such improvements are hereafter made of any highway or parts of highways extending into or through two [2] or more townships, the board of commissioners shall fix, in the order finally establishing and ordering such improvements made, the ratio, proportion or part that each of such townships affected and to be assessed shall pay and be assessable with, of the costs of such improvements by fixing and assessing against each such township that part of the costs according to the amount estimated for the improvement to be made in each such township, so that each township shall pay for the improvement therein made in such proportion as such board shall so fix in its order: Provided, however, That such improvements and all steps taken therein shall be taken and such improvements made under and in pursuance to the several sections of the above entitled act, and the several amendments heretofore made thereto, and that when such improvements shall be asked to be made to run into or through two [2] or more townships, the petition filed shall be signed by not less than twenty [20] legal petitioners from each township sought to be affected: Provided, further, That in all cases in said state where petitions have been filed for the improvement of any highway or part of highway or highways running into or through two [2] or more townships, and proceedings have been had as required for making such improvements in a township in said state, and an order has been made authorizing and establishing such improvements in two [2] or more townships under the provisions of the above entitled act, and, in such order, such board has fixed the proportion to be paid by each of such townships in proportion to the amount of improvements to be made in the several townships, as found and fixed by such boards, and contracts have been let for the making of such improvements, any and all bonds issued and hereafter issued, to be sold for the purpose of providing money for the construction of any such improvements, are hereby legalized, and any and all bonds heretofore sold under such proceedings, and the purchase-price received and retained or used in making the improvements for which such bonds were sold, are hereby legalized, and all proceedings or acts of any such boards or other officers under which such bonds were issued and sold are hereby fully legalized and declared valid; and the several boards of commissioners of this state are hereby empowered to issue and sell bonds in such cases aforesaid, and the county treasurer is hereby authorized to sell any and all such bonds issued and to be issued as he is authorized to sell other bonds for improvements under the said Act of 1905 and amendments thereto: Provided, That the rebuilding of free gravel or macadam highways shall be done in the same manner as the building or improvements of highways: And provided, further, That all petitions for rebuilding of such roads begun under an act entitled, "An act to amend section sixty-two of an act entitled, emergency," approved March 15, 1913, are hereby validated and continued the same as if the same had been filed under the provisions of this acts [8-20-1-1--8-20-1-72, 13-2-4-1--13-2-4-8]: Provided, That nothing in this act shall affect or apply to any pending litigation. [Acts 1905, ch. 167, § 62, p. 521; 1913, ch. 338, § 1, p. 914; 1915, ch. 180, § 1, p. 680.]

NOTES TO DECISIONS

Appeal.

Improvements cannot be made until after the report of the engineer and viewers has been confirmed, and an election had wherein the majority of the votes cast favor the proposed improvement, and the final order of the board establishing the same is not entered until after such election, so that the order of the board, in sustaining a petition for highway improvements and referring the same to an engineer and viewers for further action is not a final order from which an appeal may be taken. Nisiertis v. Chapman (1912), 178 Ind. 494, 99 N. E. 785.
Persons remonstrating against the action of the board of commissioners in increasing the rate of interest on the bonds previously authorized to be issued, have a right to appeal to the circuit court from the overruling of such remonstrance under 8-20-1-72. Chanley v. Zimmer (1913), 179 Ind. 350, 101 N. E. 81.

A trial by jury cannot be demanded on appeal from a decision of the board of commissioners in a highway matter. Layne v. Hoover (1926), 85 App. 399, 151 N. E. 352.

**Attempted Amendment.**

The attempted amendment of this section by Acts 1913, ch. 251, p. 690 is void. Metsker v. Whitsell (1914), 181 Ind. 126, 103 N. E. 1078.

**Discretion of Board.**

The board of county commissioners is vested with a discretion in determining whether the question of making a proposed highway improvement less than three miles in length shall be submitted to an election of the voters of the township affected. Bettenbrock v. Miller (1916), 185 Ind. 600, 112 N. E. 771.

**Enjoining Issuance of Bonds.**

A complaint to enjoin a board of commissioners from issuing bonds to pay for the construction of a highway, after a previous order for the issuance of bonds for the same road had been disapproved by the state board of tax commissioners, which merely averred that the order of the board to issue bonds was without right or authority, is insufficient. Bailey v. Board of County Comrs. (1924), 81 App. 474, 143 N. E. 690.

**Implements Used.**

The board of county commissioners is not deprived of the power of accepting a road constructed in all respects according to the contract and specifications, except the fact that a six-ton roller was not used as specified by the contract, but a one-ton roller was used under the advice of the road engineer; since there is nothing in the highway statute which gives the viewers authority to prescribe in the specifications what implement shall be used in grading the road and preparing it for paving, as distinguished from the result to be obtained by making the surface "smooth and firm" and with the required crown. Dipert v. Bacon (1925), 196 Ind. 485, 149 N. E. 64.

**Separation of Grade Crossings.**

In improving a highway under this section, the board of county commissioners is without jurisdiction to order and establish an undergrade crossing through a railroad embankment beneath the tracks without the consent of the company. Cincinnati, I. & W. R. Co. v. Board of County Comrs. (1922), 192 Ind. 1, 134 N. E. 782.

8-20-1-54 [36-1202]. Petition, notice. - Whenever a petition, signed by fifty [50] or more freeholders and voters of any township of any county in this state, praying that any public highway or highways, within such township shall be laid out, established, and improved by grading, draining, and paving with stone, gravel, or other road paving material, including brick, or that any public highway or highways already established shall be graded, drained, or paved with stone, gravel or other road paving material, including brick, or by fifty [50] or more freehold voters of two [2] or more townships in such county, praying that such public highway shall be laid out, graded, drained, and paved on a line dividing such townships, or that a highway on such line shall be graded, drained, and paved, shall be addressed to the board of commissioners of the county in which such township or townships are located and filed in the office of the auditor of such county, it shall be the duty of such auditor to cause to be published, in a weekly newspaper of general circulation printed and published in such county, and to be posted in not less than three [3] public places within each of the townships named in such petition, and at the door of the courthouse of such county, a notice setting forth the township in which the same is located, a description of the highway proposed to be improved, the term of court and the day upon which the same will be presented for the hearing before said board of commissioners: Provided, That in any township in this state in which there are not to exceed one hundred [100] freehold voters, then, upon a petition of a majority of the freehold voters of any such township to the board of county commissioners for the improvement of any road or roads, as required by fifty [50] freehold voters, as in this chapter provided, then this chapter shall apply in all such cases, and the board of county commissioners shall proceed under such petition and notice according to the provisions of this chapter the same as if upon the petition of fifty [50] freehold voters, as in this chapter provided. [Acts 1905, ch. 167, § 63, p. 521; 1907, ch. 96, § 1, p. 137; 1913, ch. 159, § 1, p. 418; 1915, ch. 176, § 4, p. 644; P.L. 66-1984, § 127.]

**NOTES TO DECISIONS**

**Collateral Attack.**

Where it appears from the record of the board of county commissioners that its jurisdiction was invoked in a highway proceeding and that it was required to decide on facts essential to such jurisdiction, the board's judgment thereon is conclusive against collateral attack, unless want of jurisdiction is apparent on the face of such record. Waugh v. Board of County Comrs. (1917), 64 App. 123, 115 N. E. 356.
Jurisdiction of Board.

Parties objecting to the jurisdiction of the board of commissioners had the burden of proving facts showing its lack of power to proceed. Whitesell v. Metsker (1918), 188 Ind. 1, 119 N. E. 865.

The question of what improvement shall be made, and whether along an existing highway, or along the line of a new one laid out and established for that purpose, is exclusively for determination by the qualified freeholders and voters of the township or townships affected, and jurisdiction is conferred by filing a petition signed by the required number of freeholders and voters, and may be taken away by an adverse vote of the township of townships affected, or, in event the improvement is not submitted to a vote, by a sufficient remonstrance, and except as petitioned, neither the viewers nor the board of commissioners have any power to lay out, establish, or construct an improvement. Cincinnati, I. & W. R. Co. v. Board of County Comrs. (1922), 192 Ind. 1, 134 N. E. 782.

Materials.

The authorities having control of the construction of improved highways have the power to determine the materials to be used in making the improvement. Metsker v. Whitesell (1914), 181 Ind. 126, 103 N. E. 1078; Cole v. Board of County Comrs. (1923), 82 App. 840, 138 N. E. 859, 140 N. E. 448.

Notice.

A notice of petition given by the auditor omitting the names signed to the petition was sufficient to notify the taxpayers that such a proceeding had been commenced before the board of commissioners of the county, the public highways to be improved, the character of the improvement and under what statute made, and the day when the petition would be presented to the board which was as much or more than the law and public policy required. Conrad v. Hansen (1908), 171 Ind. 43, 85 N. E. 710.

Where the jurisdictional notice required by this section has been given and all essential steps taken, a town through which the improvement extended was charged with notice that on the day set for the hearing the county commissioners would appoint an engineer and viewers and fix a day for them to report, and failure of the town to take such action as would prevent the letting of a contract based on such report, will be deemed a waiver of any objection thereto. Wise v. McKeever (1916), 184 Ind. 686, 112 N. E. 765.

Petitioners.

All freehold voters of a township are qualified petitioners for the improvement of highways. Smith v. Board of County Comrs. (1910), 173 Ind. 364, 90 N. E. 881.

8-20-1-55 [36-1203]. Contents of petition. - The petition herein contemplated shall set forth the beginning, course and termination of each new highway or part of highway sought to be laid out, established, graded, drained and paved, and the beginning and termination and a general description of each public highway sought to be graded, drained and paved, together with a recommendation of the width of each such highway and of the character of the improvement to be made, and such petition may include one or more of such highways at the option of the petitioners. [Acts 1905, ch. 167, § 64, p. 521.]

Cross-Reference. See note, 8-20-1-54, Cincinnati, I. & W. R. Co. v. Board of County Comrs. (1922), 192 Ind. 1, 134 N. E. 782.

NOTES TO DECISIONS

In General.

Petition for construction of a free gravel road requesting the road to be improved to the width as now established and alleging the highway to be improved ran in a northeasterly or southwesterly direction was sufficient where the highway was fixed by visible markers and showed its own location. Hall v. McDonald (1908), 171 Ind. 9, 85 N. E. 707.

Petition for highway improvement need not allege the number of freehold voters signing the petition and an allegation concerning the number of freehold voters is mere surplusage and must be disregarded. Conrad v. Hansen (1908), 171 Ind. 43, 85 N. E. 710.

Where the petition for the improvement of a highway recommended a pavement of broken stone, combined and held together with a durable binder, a recommendation of the viewers, on advice of the engineer, of cement as a binder was within the statute. Whitesell v. Metsker (1918), 188 Ind. 1, 119 N. E. 865.

8-20-1-56 [36-1204]. Presentation to commissioners. - Upon the filing of such petition, the auditor shall designate by endorsement thereon the day in a regular session of such board of commissioners, not more than thirty [30] days thereafter, upon which the same shall be presented to such board, and the notice herein prescribed shall be signed by such auditor and published for two [2] consecutive weeks in such newspaper and posted not less than fifteen [15] days before the day so designated by the auditor. [Acts 1905, ch. 167, § 65, p. 521.]
NOTES TO DECISIONS

Correction of Original Order.

Where the improvement of a highway had been ordered and the contract let, the board of commissioners had power under a supplemental petition to amend and correct the original order, that it might express the true line of improvement established by the viewers, which had been inaccurately described through mistake of the person who prepared their report. Kent v. Cowdin (1917), 187 Ind. 413, 118 N. E. 127.

8-20-1-57 [36-1205]. Hearing - Proof - Engineer - Viewers. - On the day so designated by such auditor, the petitioners may make proof of the publication and posting of such notices and present such petition to such board of commissioners, and any taxpayer of any township named in such petition, or any person or corporation whose lands or property will be affected by the work therein prayed for, may file in writing his objections to the form or sufficiency of such petition, and, in the event that such board deem such petition to be deficient in form, or insufficient in substance, the petitioners shall be permitted to amend the same, but if such petition be not amended in such manner as to be in due form and sufficient, it shall be dismissed at the cost of the petitioners. If, on the other hand, such petition shall be adjudged by the board to be in due form and sufficient, either in the first instance or after the same has been amended, such board of commissioners shall make an order causing such petition to be spread of record and referring the matter therein prayed for to a competent civil engineer to be appointed by such board and two [2] viewers, each of whom shall be a responsible freeholder and voter of such county, and not a resident of nor the owner of taxable property in any township named in such petition. [Acts 1905, ch. 167, § 86, p. 521.]


NOTES TO DECISIONS

Appeal.

If the sufficiency of the petition is not raised before the county board, the question cannot be raised on appeal. George v. Amos (1910), 173 Ind. 599, 90 N. E. 806.

If a board of county commissioners overrules a motion to dismiss a petition for the construction of a gravel road, an appeal cannot be taken from such action. Nisius v. Chapman (1912), 178 Ind. 494, 99 N. E. 785.

An injunction against highway construction proceedings will not lie where there is right of appeal. Ward v. Board of County Comrs. (1927), 199 Ind. 467, 157 N. E. 721.

Election.

A board of county commissioners is not required to call an election on highway construction when it overrules the remonstrance against it. Ward v. Board of County Comrs. (1927), 199 Ind. 467, 157 N. E. 721.

Petition Dismissed - Cost of Notices.

If a petition for the construction of a gravel road is dismissed by the board of county commissioners, the county is not liable for cost of the publication of notices. Butler v. Board of County Comrs. (1912), 177 Ind. 440, 98 N. E. 185.

Signing of Report.

The board of county commissioners has no jurisdiction to order the improvement of a highway on a report signed by the engineer and only one viewer. Metaker v. Whitstell (1914), 181 Ind. 128, 103 N. E. 1078.

8-20-1-58 [36-1206]. Engineer and viewers - Oath - Bond. - Such engineer and viewers shall meet at a time and place to be designated by such board of commissioners within ten [10] days after their appointment, and shall each take and subscribe an oath faithfully and impartially to discharge his duties, and such engineer shall execute and file with such auditor his bond, with good and sufficient sureties to the approval of such auditor, payable to the state of Indiana, in a penal sum of five thousand dollars ($5,000), conditioned for the faithful discharge of his duties as such engineer, which bond may be put in suit by person or corporation whose property shall be injured or damaged by any wrongful act or negligence of such engineer. [Acts 1905, ch. 167, § 87, p. 521.]

NOTES TO DECISIONS

Engineer.

The engineer is not a viewer. Metsker v. Whitstell (1914), 181 Ind. 126, 103 N. E. 1078.

The report of the two viewers appointed in a free gravel road proceeding is not affected by the failure of the engineer to file a written report of his conclusions as to the proposed work, since he is not a viewer within the meaning of the statute. Griffin v. Pearce (1918), 187 Ind. 287, 119 N. E. 8.

8-20-1-59 [36-1207]. Duties of engineer and viewers - Report - Profile - When such engineer and viewers shall have taken the oath, and such surveyor has executed the bond, herein prescribed, they shall proceed, without delay, to view and make all needful surveys of the road or roads mentioned
in the petition, and shall determine:

(a) Whether any proposed new highway or part of highway described in the petition will be of public utility;

(b) In respect to each separate highway or part of highway named in the petition, whether it will be of public utility to grade, drain and pave the same as therein prayed;

(c) The width of each highway or part of highway to be established or improved;

(d) The character of the improvement, including the grading, draining and paving, to be made of each highway mentioned in the petition which they shall find to be of public utility, together with complete plans and specifications of each such improvement and of all bridges, culverts and waterways required therein;

(e) The estimated cost of each improvement to be made. And on a day to be designated by such board of commissioners, in the order appointing them, said engineer and viewers, unless the time therefor shall have been extended by an order of said board, shall file in the office of said auditor their report in writing, signed by each of them, setting forth their determination in said matter in respect to each highway or proposed highway mentioned in the petition, including an accurate description of each new highway to be laid out, established, graded, drained and paved, and of each public highway to be graded, drained and paved, together with their recommendations in respect to the paving materials to be used in each instance and complete plans and specifications for each improvement to be made, and the estimated cost of each such improvement, and such report shall be accompanied by an accurate profile of each highway or part of highway to be improved, showing by proper lines and figures the elevation thereof at each one hundred [100] feet of its length and the changes to be made therein by excavation or filling, which profile shall be made by the engineer. [Acts 1905, ch. 167, § 68, p. 521.]

NOTES TO DECISIONS

Judgment Establishing Road.

The words “judgment establishing” a road, as used in 8-20-1-61, has reference to the approval of the report of viewers and engineer. State ex rel. Schulte v. Board of County Comrs. (1925), 196 Ind. 281, 148 N. E. 198.

Materials.

Where the petition for the improvement of a highway recommended a broken stone, combined and held together with a durable binder, a recommendation of the viewers, on advice of the engineer, of cement as a binder was within the statute, and the commissioners had power to approve the viewers' report if they deemed the changes essential to proper construction. Whitesell v. Metsker (1918), 188 Ind. 1, 119 N. E. 865.

Notice.

The statute does not contemplate special notice of the filing of the report of the engineer and the viewers or the fact that the board of commissioners had ordered additional improvements within a town. Wise v. McKeever (1916), 184 Ind. 686, 112 N. E. 765.

Under this section and 8-20-1-60, one interested in road proceedings is required to examine the report of the viewers to determine what land is to be taken, and a notation made on the profile by the engineer that additional land would be taken, was held not notice thereof. Greer v. Lake (1917), 186 Ind. 67, 114 N. E. 961.

Public Utility.

Where the viewers appointed under these sections report that the proposed improvement would not be a public utility, the board of county commissioners has no jurisdiction to proceed further. Griffin v. Pearce (1918), 187 Ind. 287, 119 N. E. 8.

Sufficiency of Report.

There being only two viewers provided for, they must concur in the report made by them in order that the report may be effective. Griffin v. Pearce (1918), 187 Ind. 287, 119 N. E. 8.

8-20-1-60 [86-1208]. Assessment of damages - Claims. - The report and profile of the engineer and viewers shall remain in the office of such auditor, open to the inspection of every person interested therein, and of his agents and attorneys, for at least ten [10] days, and, during such time, said viewers shall assess such damages as shall be justly due to any person under eighteen [18] years of age, idiot or person of unsound mind, and to any other persons or corporation making a written claim therefor, on account of the appropriation of or injury to his property by the laying out and establishment of any such new highway or any improvement of any highway prescribed in such report. At the next regular session of such board of commissioners after the expiration of said ten [10] days, said viewers shall make to said board their supplemental report in writing, setting forth the sums allowed as damages to each person under eighteen [18] years of age, idiot or person of unsound mind, and the sum allowed as damages to each other person or corporation making a written claim therefor as herein prescribed, together with a description of the property in each case on account of which such damages have been allowed. No damages shall be allowed to or recovered by any person other than a person under eighteen [18] years of age, idiot or per-
sons of unsound mind, unless claim therefor shall have been made by him to such viewers before the filing of such supplemental report. Every person or corporation who has made such written claim for damages, and every person under eighteen [18] years of age, idiot or person of unsound mind, or his guardian, who shall be dissatisfied in respect to the action of such viewers in respect to his claim or in respect to the damages allowed to him may except to such supplemental report in writing on that account at the session at which the same is filed, whereupon such board of commissioners shall appoint three [3] viewers to reconsider the same, which viewers shall take and subscribe an oath faithfully to discharge their duties, and shall examine the lands or property claimed to be affected and assess such damages in each case as they deem to be just and reasonable, and make report of their doings in writing to said board. The board shall cause said supplemental report and the report of such additional viewers to be spread of record, and, in event that the road or improvement on account of which such damages are allowed shall be finally established and ordered to be constructed, such damages shall be paid out of the proceeds of the sale of the bonds hereinafter authorized: Provided, That if the amount of damage awarded by the reviewers is not ten percent [10%] greater than the amount assessed by the reviewers, the claimant shall pay all costs made by said reviewers. [Acts 1905, ch. 167, § 69, p. 521; 1973, P.L. 23, § 11, p. 90.]

NOTES TO DECISIONS

Supplemental Report.

Where the viewers' report is filed and stands for over three months and no claims for damages are filed and lands of any infants or others under disability taken or affected adversely, it will be presumed that there is no occasion for a supplemental report, and the absence of such report does not justify the conclusion that the board had no jurisdiction to proceed under 8-23-1-61. Whitesell v. Metsker (1918), 188 Ind. 1, 119 N. E. 865.

8-20-1-61 [36-1209]. Improvement and construction - Procedure in certain cases. - When all matters in respect to damages have been determined finally, as provided in this chapter, such board of commissioners shall examine the reports and profile made by engineer and viewers and may either approve said report or may adopt such modifications and amendments to such report as said board may deem necessary and proper, and said board may require the services of the engineer and viewers in fixing and adopting such modifications and amendments, and when such report shall have been accepted and approved or modified and amended by said court they shall make an order requiring the auditor to give notice by publication for three [3] consecutive weeks in a weekly newspaper of general circulation, printed, and published in said county, that on a day to be named by the board the polls will be opened at the several voting places in each township named in the petition and report for the purpose of taking the votes of the legal voter thereof, whether the proposed new highway or highways named in the petition and report shall be laid out, established, graded, drained, and paved, or the public highway or highways named therein shall be graded, drained, and paved and that said petition and report and all records and matters pertaining to said matters may be found at the office of said auditor, and the auditor shall publish such notice as required by the order; Provided, That said publication shall contain the report of the viewers and engineer, excepting the plats and profiles, and, Provided further, That if any petition filed as provided in section 54 [8-20-1-54] of this chapter calls for the building or improvement of a road three [3] miles or less in length connecting at each end with an improved free gravel or macadamized road either within said township or townships or at the boundaries thereof, or connecting a free gravel or macadamized road with a boundary of said township, or connecting an improved free gravel or macadamized road with the boundary line of any incorporated city or town in the same township, or connecting the boundary line of any incorporated city or town with the boundary line of the township in which said incorporated city or town is situated, the board of county commissioners may, in their discretion, if they find said petition otherwise complies with this chapter, establish and order the construction of said road without submitting the question of building the same to an election of the voters of the township or townships concerned; Provided, That when any river forming the boundary line between the state of Indiana and any adjoining state has so changed its course that a portion of the territory of any county of this state is situated between the former channel of the river, which constitutes the legal boundary of the state, and the channel through which the greater volume of the waters of said river actually flows, a highway may be laid out, established, and constructed within such territory, under the provisions of this chapter, and subject to the provisions of this section, beginning at a designated point on the bank of the channel through which the greater volume of the waters of said river normally flows and extending for a distance of not to exceed three [3] miles over any prescribed route; Provided, That if within twenty [20] days after the day set for the hearing of said petition, there shall be filed with the board of commissioners, a remonstrance signed by a greater number of the freeholders and voters of the township or townships to be affected by such petition than appear upon said petition asking that said highway, three [3] miles or less in length, shall not be opened and improved, or improved as therein
asked, then said board of commissioners shall not order said road improved and said petition shall be dismissed at the cost of the petitioners. But if no such remonstrance is filed, as above provided, said board may proceed to have said road constructed in all other respects as if submitted to an election and voted as provided in this chapter; Provided, That no person signing said petition shall be counted on any remonstrance against such petition; Provided, further, That any taxpayer of the county aggrieved by the action of said board, may appeal from its decision to the circuit court of said county within ten [10] days in the same manner as other appeals are taken from the action of such board, and said cause shall by said circuit court be tried de novo. [Acts 1905, ch. 187, § 70, p. 521; 1907, ch. 46, § 1, p. 89; 1909, ch. 148, § 1, p. 353; 1913, ch. 159, § 2, p. 418; 1915, ch. 176, § 3, p. 644; 1929, ch. 30, § 1, p. 53; P.L. 66-1984, § 128.]

NOTES TO DECISIONS

In General.

County commissioners may authorize the improvement of a highway with brick when the highway is less than three miles in length and is outside of a city or town. Strange v. Board of County Comrs. (1910), 173 Ind. 640, 91 N. E. 242.

In a proceeding under this act, the members of the board of county commissioners are subject to the rule disqualifying a judge from acting when directly interested in the matter before him. Metsker v. Whitsell (1914), 181 Ind. 126, 103 N. E. 1078.

It is only after the freeholders and voters of the township have been given an opportunity to remonstrate against a proposed highway improvement, and after the board of commissioners shall have approved and adopted a report by the viewers and engineer that the improvement will be of public utility, fixing the width of the highway and the character of the improvement, that the board of commissioners has power to render a judgment "establishing" the improvement. State ex rel. Schulte v. Board of County Comrs. (1925), 196 Ind. 281, 148 N. E. 198.

Board of county commissioners has exclusive original jurisdiction of the establishment or improvement of county highways. Ward v. Board of County Comrs. (1927), 199 Ind. 467, 157 N. E. 721.

Breach of Contract.

Where the contractor for the construction of a public highway has refused to complete the work, and the board of commissioners has entered into a new contract for the completion of the work, it is not necessary in an action on the original contractor's bond, to show that the road had been completed and the amount for which the work was relet actually paid. Jackson v. State ex rel. Board of County Comrs. (1924), 194 Ind. 130, 142 N. E. 1.

Where the contractor for the construction of a public highway has refused to complete the work and the board of commissioners has relet the contract, the measure of damages for the breach of the contract is the actual cost of completing the work, in the absence of any showing that the advertisement and letting of the new contract were not fairly and honestly done, as the inference that the price at which the new contract was let was the reasonable cost necessarily follows. Jackson v State ex rel. Board of County Comrs. (1924), 194 Ind. 130, 142 N. E. 1.

Collateral Attack.

In a collateral attack on a highway construction, proceeding by suit for injunction, the complaint must show that the judgment attacked is absolutely void. Ward v. Board of County Comrs. (1927), 199 Ind. 467, 157 N. E. 721.

Constitutionality.

There is no constitutional objection to this section. Smith v. Board of County Comrs. (1910), 173 Ind. 364, 90 N. E. 881; Harmon v. Gephart (1910), 173 Ind. 391, 90 N. E. 890; Strange v. Board of County Comrs. (1910), 173 Ind. 640, 91 N. E. 242.

It is the power of the legislature to authorize the improvement of roads three miles or less in length without submitting the question to the voters of the township. Harmon v. Gephart (1910), 173 Ind. 391, 90 N. E. 890.

Estoppel of Petitioners.

Where the petitioners for the construction of a gravel road stood by without objection until the work was completed, and until they had obtained a road at the expense of the contractor, they will not be heard to deny the liability of the township on account of the mere technical reason that the contract ought to have called for "washed" gravel, as another clause in the specifications did; since the board of county commissioners had express authority, "at any time," to permit the petitioners to amend their petition so as to ask for "pit run" gravel, and the viewers had authority to amend their report so as to recommend and specify the same under 8-20-1-69, and the board had a wide discretion as to the materials with which the highway should be improved, under this section. Dipert v. Bacon (1925), 196 Ind. 485, 149 N. E. 64.

Petition Dismissed - Cost of Notices.

If a petition for the construction of an improved highway is dismissed by the board of county commissioners, the county is not liable for the cost of publication of notices. Butler v. Board of County
Comrs. (1912), 177 Ind. 440, 98 N. E. 185.

Remonstrances.

The sufficiency of a remonstrance against a proposed highway, if questioned, must be determined by the board of county commissioners. Ward v. Board of County Comrs. (1927), 199 Ind. 467, 157 N. E. 721.

The record need not expressly show that the board of county commissioners made findings of jurisdictional facts in action on remonstrance against a proposed highway, in order that it may be upheld. Ward v. Board of County Comrs. (1927), 199 Ind. 467, 157 N. E. 721.

In determining the sufficiency of a remonstrance against a proposed highway, the board of county commissioners acts judicially. Ward v. Board of County Comrs. (1927), 199 Ind. 467, 157 N. E. 721.

A remonstrator against the construction of a highway has the right to appeal from the judgment of the board of county commissioners overruling the remonstrance. Ward v. Board of County Comrs. (1927), 199 Ind. 467, 157 N. E. 721.

8-20-1-62 [36-1201]. Opening of polls - Rules - Ballot - Canvass of voter. - On the day named in said notice, such polls shall be opened and the votes of the legal voters shall be taken upon the matters named therein, and such election shall be governed in all respects by the general laws of this state concerning elections, insofar as the same are applicable. The board of election commissioners for such election shall consist of the auditor and two [2] commissioners to be appointed by the board of commissioners, and they shall prepare and cause to be printed the ballots therefor and distribute the same in the manner required by law. The ballots shall set forth a description of each highway and proposed highway in question, and following the description in each instance, there shall be printed two [2] squares and words as follows:

<table>
<thead>
<tr>
<th>NO.</th>
<th>Against the road.</th>
</tr>
</thead>
<tbody>
<tr>
<td>YES.</td>
<td>For the road.</td>
</tr>
</tbody>
</table>

Each voter desiring to vote for the establishment or improvement of any such road shall mark a cross with a blue pencil in the square containing the word "Yes," and each voter desiring to vote against such establishment or improvement shall mark such cross in the square containing the word "No." The votes cast at such election shall be canvassed at the office of such auditor on the Thursday next following the election, and a certificate of the votes cast for and against each road or improvement, signed by the inspectors, shall be filed with said auditor and by him shall be submitted to the board of commissioners at their next session. If a majority of the votes cast at any such election be found to be in favor of the establishment and improvement or improvement of any such road or proposed road, the board of commissioners shall make an order establishing such road or work and requiring the same to be laid out, established, drained and paved, or graded, drained and paved as the case may be, in accordance with the terms of the report and the plans and specifications and profile therefor. [Acts 1905, ch. 167, § 71, p. 521.]

Cross-Reference. Abandonment of road project, payment of expenses, 8-19-2-1, 8-19-5-1.

8-20-1-63 [36-1211]. Separate roads - Petition - Voting on whole - Town or city. - If all roads described in the report of the engineer and viewers are connected with each other so as to form one [1] system, the whole may be voted upon as one [1] road, if the petitioners so pray in their petition. If two [2] or more petitions respecting roads in the same township shall be pending at the same time, they shall be voted upon at the same election. No street in any incorporated town or city shall be improved under the provisions of this chapter without the consent of the trustees of said town or the common council of such city, by resolution duly adopted, a certified copy of which shall be filed in the office of the auditor of the proper county and entered upon the records of the board of county commissioners before such improvement shall be ordered. After any street shall have been improved under this chapter, the trustees of such town or the common council of such city shall have control of the same. [Acts 1905, ch. 167, § 72, p. 521; 1909, ch. 148, § 2, p. 353; 1913, ch. 185, § 1, p. 514; 1915, ch. 178, § 1, p. 644; 1919, ch. 228, § 1, p. 829; P.L. 66-1984, § 129.]

NOTES TO DECISIONS

In General.

Where the county commissioners are authorized by an election to construct a system of roads as one road, said commissioners are without authority to contract for the construction of less than the whole system. Wilson v. Board of County Comrs. (1923), 79 App. 250, 137 N. E. 783.

Amendment.

Where bonds were issued prior to the 1913 amendment, the 1913 amendment had no effect on the manner of taxing for the improvement. Wise v. McKeever (1916), 184 Ind. 686, 112 N. E. 765.

Cities and Towns.

Improvement of streets in cities and incor-
porated towns can be made under this section only with the consent of the municipal authorities. Strange v. Board of County Comrs. (1910), 173 Ind. 640, 91 N. E. 242.

Statute contemplated that the board of commissioners would levy a tax against the township, less the excess of the more costly improvement in city or town, and, at the same time, shall levy a tax against that part of the city or town within the taxing district for payment of the excess. Wise v. McKeever (1918), 184 Ind. 686, 112 N. E. 765.

8-20-1-64 [38-1213]. Notice to bidders. - When any highway or part of a highway shall have been ordered to be laid out, established, graded, drained and paved, the board of commissioners shall make an order requiring the auditor to give notice, in accordance with IC 5-3-1 [5-3-1-1-5-3-1-9], that on a day to be named in the order, sealed proposals will be received by the board for the making of the improvements in accordance with IC 36-1-12. If there are more roads than one [1], the notice shall relate to all. [Acts 1905, ch. 167, § 73, p. 521; 1981, P.L. 57, § 27.]

NOTES TO DECISIONS

Effect of Improper Provision in Notice.

Where the published notice informed bidders that the contractor or contractors must purchase or furnish a purchaser for the bonds to be issued to pay for the improvement and failure so to do would void the contract, such provision does not void all bids or contracts unless it is alleged and proved that such provision resulted in a sale of the bonds for less than par. Wilson v. Board of County Comrs. (1923), 79 App. 250, 137 N. E. 783.

Mandating Order for Notice.

If a board of county commissioners, after having ordered the construction of an improved highway, refuses to make an order directing the county auditor to publish notices that proposals will be received for the making of such improvements, such board may be compelled by mandamus to make such order. Recher v. State ex rel. Brunton (1914), 182 Ind. 301, 106 N. E. 355.

Nunc Pro Tune Entry.

When the auditor inadvertently omits to spread of record the order of the board establishing the road, the error may be cured by a nunc pro tune entry. Wilson v. Board of County Comrs. (1923), 79 App. 250, 137 N. E. 783.

8-20-1-67 [38-1220]. Tax to pay bonds. - For the purpose of raising money to meet said bonds and interest thereon, the board of commissioners shall annually thereafter, at the time the general tax levy is made, levy a special tax upon the property of the township or townships, in such manner as to meet the principal and interest of said bonds as they become due, and such tax shall be collected as other taxes and shall be applied to the payment of such bonds and interest. If the road or section thereof so constructed runs into or through two [2] or more townships, the amount paid thereon shall be divided and charged upon the property of each township, in the same ratio that the assessed valuation of all the property in each township bears to the assessed valuation of all the property in all of the townships through which the said road or roads run, and said special tax to be levied accordingly. When any contract shall have been awarded to any contractor for the construction of said road or roads under this chapter, he shall give preference in employing labor for the construction of said road or roads to the citizens of the township or townships, towns, or cities in which said road or roads are to be constructed; Provided, however, That said preferred labor shall be as good and effective as that which could be procured elsewhere, and at no highway cost; and Provided, further, That any taxpayer of the township or townships where said roads are, who may render any service or labor, or may furnish any material for the construction of said roads, may, if he shall so elect, demand of the contractor a certificate stating the value of the amount of service or material furnished, and if any such certificate shall be issued, the county treasurer shall receive the same, and it shall act as a quietus against a similar amount of taxes against the property of said taxpayer, and all such certificates shall be deducted from the contract price of the said road or roads by said contractor. [Acts 1905, ch. 167, § 76, p. 521; 1913, ch. 159, § 3, p. 418; P.L. 66-1984, § 131.]

8-20-1-68 [38-1221]. Free of toll - Repair. - All roads built under this chapter shall be free of toll, and shall be kept in repair the same as other free gravel roads constructed under other statutes are repaired. [Acts 1905, ch. 167, § 77, p. 521; P.L. 66-1984, § 132.]

8-20-1-69 [38-1216]. Amendments to petition and report of viewers - Superintendent - Bond. - The board of county commissioners shall have power to permit amendments to be made to the petition of said freeholders or report of viewers and to extend the time to the viewers to make their report and to continue the hearing from time to time, so as to preserve the ends of justice. It shall be the duty of the board of county commissioners to appoint a competent superintendent to supervise the construction of such road or roads according to the plans, profiles and specifications filed by the engineer and viewers on which the contract to construct such road or roads was let. He shall be a resident of one of the townships in which the road or roads are located, and his compensation shall not exceed two dollars $2.00 per day for the time actu-
ally employed, to be paid out of the construction fund of said road or roads, and he shall render an account of his time to the commissioners monthly at the regular term of their court, subscribed by oath. He shall give bond in the penal sum of five thousand dollars [$5,000] for the faithful discharge of his duties. The engineer of such road or roads shall also give bond in the penal sum of six thousand dollars [$6,000] for the faithful discharge of his duties, and said superintendent or engineer, or both, if in default, shall be liable to the township or townships constructing such road or roads on such bond or bonds at the suit of any taxpayer interested in such road or roads, for failure to cause said road or roads to be built and constructed according to the plans, profile and specifications under which the contract to construct same was let. [Acts 1905, ch. 167, § 79, p. 521.]

Cross-References. Change in surfacing material prior to letting of contract, 8-18-1-1.

See note. 8-20-1-56, Kent v. Cowdin (1917), 187 Ind. 413, 118 N. E. 127.

NOTES TO DECISIONS

In General.

Where a superintendent of highway construction under the Three-Mile Road Law sues for compensation under this section, it is competent to admit evidence to show that the road was not constructed in accordance with the specifications, as showing that the plaintiff was derelict in superintendency of the road as affecting the services. Board of County Comrs. v. Mason (1925), 82 App. 511, 146 N. E. 768.

8-20-1-70 [38-1222]. Record - County Auditor. - The county auditor shall make a complete record of all proceedings in making such improvements. [Acts 1905, ch. 167, § 80, p. 521.]

8-20-1-71 [38-1223]. Completion - Report - Finding - Appeal. - Whenever any superintendent and the engineer of any road or roads constructed under the provisions of this chapter believes that the road, or any part thereof less than the whole of such improvement, is completed as the improvement was let, then such superintendent and engineer shall each file their sworn statements with the auditor of the county, which sworn statements shall state that such road or roads, or part thereof, has been completed according to the plans, plats, profiles, and contract under which such improvement was let, and that the quantity and quality of material used in making said improvement was the kind of material, and that the quantity was used as required in the contract, the board of county commissioners shall not act on such proof of the completion of such road or roads, or part thereof, until the said sworn statements have been filed with the auditor at least ten [10] days before the first day of any regular term of said board, and if, within said ten [10] days, any taxpayer interested in such improvement shall file his sworn statement with the auditor that such road improvement or roads or part thereof has not been completed according to the plans, plats, profiles, and contract under which such improvement was let, and states specifically in what particular the same has not been completed, then, in such case, the board of county commissioners shall set a day for hearing such issue and hear other proof on such matter, and may cause witnesses to be subpoenaed, and hear sworn evidence in the same manner as other issues are heard before the board of commissioners. And if the board of county commissioners finds that such road or roads or part thereof has been completed according to the plans, plats, profile, and contract under which such improvement was let, then such board of commissioners shall accept and receive such road or roads or part thereof, but if the board of county commissioners finds that such road or roads or part thereof has not been so completed, then such board shall refuse to accept the same and require the contractor to complete the same according to the plans, plat, profiles, and contract; be it further Provided, That if the board of commissioners find, that such road or roads or part thereof has been completed according to contract, then, in such case, the taxpayer who filed his affidavit and formed said issue shall pay all costs made in any such hearing, and a judgment shall be rendered against him for the same, but if they find that the road or roads or part thereof has not been completed according to contract, then the costs made in such hearing shall be paid by and judgment rendered against the contractor for the same; Provided further, That such taxpayer or contractor may appeal from such decision and finding of the board of commissioners to the circuit court of the county at any time within thirty [30] days from such decision, upon filing a bond to the approval of the auditor of the county, conditioned for the payment of all costs in the cause that may be adjudged in the circuit court against the person taking such appeal, such proceedings to be tried de novo in the circuit court. [Acts 1905, ch. 167, § 82, p. 521; P.L. 66-1984, § 133.]

NOTES TO DECISIONS

In General.

An appeal does not lie from the action of county commissioners in striking out a recommendation of a road superintendent and engineer that the road be accepted, and continuing the contractor's claim for payment. Frankfort Constr. Co. v. Sims (1916), 185 Ind. 71, 113 N. E. 298.

Computation of Time.

The provision of the statute that the report of
the engineer in charge of the construction of the work of improving a highway has been completed must be filed ten days before the first day of a regular term of the board of commissioners means that the first day of the term of the board is to be included in the ten days, and a taxpayer may on the first day of such term, file his sworn statement denying the completion of the work. Ardery v. Dunn (1914), 181 Ind. 225, 104 N. E. 299.

County Auditor.

Where the county commissioners accepted a highway improvement notwithstanding taxpayers opposed the acceptance thereof, the county auditor acted at his peril in issuing a warrant to the contractors in full payment of the balance due them for making the improvement, though no exception to the board’s action was taken and no prayer for appeal was made or notice given thereof. Layne v. Hoover (1926), 85 App. 399, 151 N. E. 352.

Inquiry as to Completion.

When a contractor contends that he has completed the work of improving a highway and requests the board of commissioners to accept the work, such board may call the contractor before it and inquire as to the completion of the work, and if the board decides that the work has not been completed, the contractor may appeal to the circuit court, where the case is to be tried de novo. Board of County Comrs. v. Chastain (1916), 184 Ind. 441, 111 N. E. 630.

Where the county engineer refuses to certify as to the completion of a gravel road, the board of county commissioners may require the contractor to appear before it for the determination as to whether the road has been completed according to contract. Board of County Comrs. v. Chastain (1916), 184 Ind. 441, 111 N. E. 630.

Suit to Vacate Acceptance.

A board of county commissioners that has accepted a highway improvement and made and entered an order to that effect, has paid the contractor for his work and nothing else remains for it to do, cannot maintain a suit in equity to vacate its order of acceptance, but suit could only be maintained by an interested taxpayer. Sullivan v. Board of County Comrs. (1925), 85 App. 287, 149 N. E. 94.

8-20-1-72 [86-1501]. Appeal to circuit court. - Except as otherwise provided in this chapter, any person aggrieved by any decision of the board of commissioners of any county in any proceeding in regard to highways may appeal therefrom within thirty [30] days thereafter to the circuit court of such county, by filing a bond, with surety and penalty to be approved by the auditor of such county, conditioned for the due prosecution of such appeal, and the payment of costs, if costs be adjudged against him; and, in case proceedings shall be had in more than one county, the appeal shall be to the circuit court of the county in which the proceedings were first instituted, and the auditor of each county, on being notified of such appeal by the auditor of the county in which the appeal is taken, shall transmit to the clerk of the court to which the appeal is taken a transcript of all the proceedings in such county; and, upon the determination of such appeal, such clerk shall give notice thereof to the auditors of all the counties interested. Such appeal shall be tried de novo and may be had as to any issue tried or that might have been tried before the county board; but every report made to the board by viewers or reviewers or by any committee, body, or officer under the provisions of this chapter shall be considered in evidence on such appeal. The court may make final determination of the cause so appealed, or may refer the case back to the county board or boards, with directions how to proceed. This chapter shall not have the effect to release any penalty, forfeiture, liability incurred under any statute in effect before April 15, 1905, nor shall it affect and litigation or proceedings pending on April 15, 1905, but the same shall be concluded and be effective in all respects as if this chapter had not been enacted. [Acts 1905, ch. 187, § 123, p. 521; P.L. 66-1984, § 134.]

NOTES TO DECISIONS

Appeal to Supreme Court.

If a circuit court on an appeal from county board renders a final judgment, and remands the cause to such board with directions, an appeal lies from such judgment to the Supreme Court. Hall v. McDonald (1908), 171 Ind. 9, 85 N. E. 707.

Under the express terms of the statute (8-20-1-46), on appeal from the county commissioners to the circuit court in a proceeding to improve a highway by assessments against the lands benefited, the decision of the circuit court is final, and no appeal can be taken from its judgment. Stockton v. Yeoman (1912), 179 Ind. 61, 100 N. E. 2; Moody v. Irwin (1914), 181 Ind. 197, 104 N. E. 10.

A renovator in a county highway improvement proceeding, who appealed to the circuit court, and from the circuit court to the Supreme Court, and gave bond signed by himself and 19 others, without designating who was principal and who was surety, was not required to give notice to coparties. Kelly v. Herbst (1930), 202 Ind. 55, 170 N. E. 853.

Bond.

Where it appears that on appeal to the circuit court from an order of the board of county commissioners dismissing the petition in a highway proceeding, and within 30 days after the final order of dismissal, the petitioners filed with the county
auditor a bond conditioned for the due prosecution of the appeal and the payment of costs, and that such bond was approved by the auditor, a sufficient compliance with this section is shown. Bronnenberg v. Goins (1915), 183 Ind. 225, 108 N. E. 862.

Change of Venue.

The filing of the transcript with the clerk of the court, closed the issues for the purpose of determining the date within which an affidavit for change of venue might be filed. State ex rel. Botkin v. Delaware Circuit Court (1959), 240 Ind. 261, 162 N. E. (2d) 611.

Evidence on Appeal.

All reports made to county boards in pursuance of law are to be considered in evidence, and may be taken by the jury to the jury-room. McKaig v. Jordan (1909), 172 Ind. 84, 87 N. E. 974.

The report of reviewers, not appearing invalid on its face, was properly admitted on appeal to the circuit court, involving the establishment of a highway. Emmons v. Clark (1930), 203 Ind. 622, 174 N. E. 87.

Report of viewers certified by the auditor must be considered as correct and in evidence as against an unauthenticated exhibit purporting to be the original report of the first viewers. Emley v. Schimmell (1934), 207 Ind. 9, 191 N. E. 89.

Improper Statements of Attorneys.

The court may instruct the jury to disregard improper and erroneous statements by attorneys. Ferguson v. Bilsland (1925), 196 Ind. 291, 146 N. E. 326.

Issues and Pleadings.

Only such questions as were raised before the county board could be raised in the circuit court. Aetna Life Ins. Co. v. Jones (1909), 173 Ind. 149, 89 N. E. 871; George v. Amos (1910), 173 Ind. 599, 90 N. E. 606; Fisher v. Blumhardt (1915), 182 Ind. 603, 107 N. E. 466; Whitesell v. Meisker (1918), 188 Ind. 1, 119 N. E. 865; Scofield v. Miller (1925), 196 Ind. 635, 149 N. E. 345.

If the sufficiency of the petition for the establishment of a highway is not raised before the county board, the question cannot be raised on appeal. George v. Amos (1910), 173 Ind. 599, 90 N. E. 606.

On appeals to circuit court from boards of county commissioners in proceedings for the construction of improved highways, only such issues as are formed before the commissioners can be tried in the circuit court, and if no remonstrance or objections were made or filed before the commissioners, the circuit court has no jurisdiction of the appeal.

Fisher v. Blumhardt (1915), 182 Ind. 603, 107 N. E. 466.

In the circuit court the cause is to be tried de novo upon the papers filed with the county board and certified to the circuit court, and the only issues triable are those formed by the petition and remonstrance. Emley v. Schimmell (1934), 207 Ind. 9, 191 N. E. 89.

On appeal to the circuit court of a proceeding before the board of county commissioners to vacate a public highway, the case must be tried de novo in the circuit court, on a transcript filed by the county auditor, and the only issues triable are those formed by the petition and the remonstrance. Emley v. Schimmell (1934), 207 Ind. 9, 191 N. E. 89.

An appeal from a decision of the county commissioners in a highway proceeding should not be dismissed because no exception was taken to the action of the board and no appeal was then prayed. Layne v. Hoover (1926), 85 App. 399, 151 N. E. 352.

Jurisdiction.

The circuit court was not deprived of jurisdiction to consider a highway improvement appeal, where a change by the highway commissioner's engineer, made after appeal taken, did not affect its essential character. Kelly v. Herbst (1930), 202 Ind. 55, 170 N. E. 853.

A circuit court, where the question of jurisdiction of a proceeding for the establishment of a highway was not raised before the commissioners, and lack of jurisdiction did not appear from the petition, had jurisdiction of the subject-matter. Emmons v. Clark (1930), 203 Ind. 622, 174 N. E. 87.

Orders Appealable.

If proceedings to establish a highway are dismissed on an adverse report by viewers, the petitioners may appeal to the circuit court. Kelley v. Augsperger (1908), 171 Ind. 155, 85 N. E. 1004; Gangloff v. Lawler (1909), 171 Ind. 726, 87 N. E. 131.

If a board of county commissioners, over a remonstrance, orders an increase in the rate of interest on gravel road bonds, the remonstrator may appeal from the order. Chanley v. Zimmer (1913), 179 Ind. 350, 101 N. E. 81.

Appeals may be taken from the decision of county commissioners on the issues raised by a remonstrance in proceedings for the construction of improved highway on county lines. Myers v. White (1914), 182 Ind. 108, 105 N. E. 775.

An appeal may be taken from the decision of a board of county commissioners made in a hearing
on the question as to whether the work of constructing an improved highway has been completed. Board of County Comrs. v. Chastain (1916), 184 Ind. 441, 111 N. E. 630.

The circuit court has jurisdiction of an appeal from the board's refusal to grant petition for establishment of a highway. Cooprider v. Fritz (1934), 206 Ind. 130, 188 N. E. 579.

Voters and freeholders remonstrating against a petition to make a described portion of a highway a part of the free gravel roads of the county, have the right to appeal from an order of the board of county commissioners sustaining such petition, under this section. Hamilton v. McMahon (1923), 80 App. 473, 141 N. E. 469.

Public Utility.

On appeal from the board's refusal to grant petition for establishment of highway, the circuit court can make final determination only as to public utility of the proposed highway, and on finding public utility, the court should direct the board to appoint viewers. Cooprider v. Fritz (1934), 206 Ind. 130, 188 N. E. 579.

8-20-8. TEMPORARY CLOSING OF COUNTY ROADS

8-20-8-2. Action by board - By own volition or in response to petition. - The board of county commissioners acting to close a road under this chapter may act on its own volition or may act in response to a petition from one or more persons or entities who control the use of land contiguous to the road or portion of road proposed to be temporarily closed. [IC 8-20-8-2, as added by Acts 1979, P.L. 97, § 1.]

8-20-8-3. Petition - Contents. - A petition to temporarily close a road or portion of a road must include the following:

1) The name and address of each petitioner;
2) The name of the county and township in which the road or portion of the road is located;
3) An exact description of that portion of the road proposed to be temporarily closed;
4) The length of time the road or portion of road is proposed to be temporarily closed; and
5) Any proposed detours or alternate routes that may be needed to avoid an unreasonable interference with the flow of traffic on the county road system. [IC 8-20-8-3, as added by Acts 1979, P.L. 97, § 1.]

8-20-8-4. Petition - Condition for closing. - The board of county commissioners may temporarily close the road or portion of a road in response to the petition if:

1) The board finds that closing the road or portion of the road is in the public interest and economic interest of the county;
2) The board finds that closing the road or portion of the road will not unreasonably interfere with the flow of traffic on the county road system;
3) The petitioner has filed with each board of county commissioners to which the petition is addressed, surety bond, in an amount to be fixed by and subject to the approval of each board, payable to the county conditioned either upon the payment of damages which the county may sustain or the restoration of the closed road or portion of road.
4) The plans for the restoration and reconstruction of the road, if the board elects to have the closed road or portion of road restored, are approved by the board; and
5) The board and the petitioner or petitioners sign a written document stating the terms of the agreement for temporarily closing the road or portion of road. [IC 8-20-8-4, as added by Acts 1979, P.L. 97, § 1.]

8-20-8-5. Authority of board - Supplemental. - The authority granted the board of commissioners under this chapter supplements and does not replace the authority the board may have under law to permanently vacate a road or street or to close a road or street for routine maintenance and repair. [IC 8-20-8-5, as added by Acts 1979, P.L. 97, § 1.]

8-20-8-6. Action subject to IC 5-14-1.5 - Copy of petition to contiguous property owners. - (a) Any action the board may take under this chapter is subject to the Indiana Open Door Law (IC 5-14-1.5) [5-14-1.5-1--5-14-1.5-7].

(b) The petitioner or petitioners who submit a petition under this chapter shall send a copy of the petition requesting that the road or portion of road be temporarily closed by certified United States mail to each owner of the property contiguous to the portion of the road proposed to be closed. [IC 8-20-8-6, as added by Acts 1979, P.L. 97, § 1.]

8-20-8-7. Applicability of chapter. - This chapter does not apply to any temporary obstruction or closing of any county road by any board of commissioners before September 1, 1979. [IC 8-20-8-7, as added by Acts 1979, P.L. 97, § 1.]

32-5-10. ABANDONMENT OF HIGHWAYS ON STATE LANDS

32-5-10-1. [60-813]. Vacation of public highways. - So much of all public highways, streets, and alleys, or parts thereof, except state highways, as are located on and inside the boundaries of the several state parks, state forests, state game preserves, and scenic or historic places now owned.
by the state of Indiana are hereby vacated as such highways: Provided, That in case where any privately owned lands would be such vacation become inaccessible by a public highway, in such case so much of any such highway as shall provide the only public access to and outlet from such lands, shall not be deemed to be vacated so long as such condition exists. [Acts 1937, ch. 78, § 1, p. 414.]

32-5-10-2. [60-814]. Certain public highways may be vacated. -- So much of all public highways or parts thereof, except state highways, as are located on land acquired by the state of Indiana after June 7, 1937, and used for state parks, state forests, state game preserves, scenic or historic places, or other conservation purposes may be vacated as in this chapter provided. [Acts 13, ch. 78, § 2, p. 414; 1982, P.L. 187, § 46.]

32-5-10-3 [60-815]. Highways for conservation purposes -- Director department of conservation -- Powers and duties. -- Whenever the chief administrative officer of the department of conservation [department of natural resources] shall determine that the proper operation or administration of any state park, state forest, state game preserve, scenic or historic place, necessitates the abandonment of so much of any public highway or part thereof located as is thereon, except state highways, he is hereby authorized to issue an order vacating so much of any such public highway, except state highways, as is located on and within the boundaries of any such state park, state forest, state game preserve, scenic or historic place. The chief administrative officer shall cause a copy of such order to be posted in five [5] conspicuous places in the township where such public highway is located. [Acts 32-5-10-3, 1915, 1937, 1982, P.L. 187, § 46.]

32-5-10-4 [60-816]. Power and authority to bring any action or suit for vacation. -- The state of Indiana through its proper department shall have the power and authority to bring any action or suit for vacation of so much of any public highway as is located in any state park, state forest, state game preserve, scenic or historic place in the same manner as provided by law as of June 7, 1937, for vacation of public highways by any person or group of persons, the provisions of this chapter notwithstanding. [Acts 193, ch. 78, § 4, p. 414; 1982, P.L. 187, § 47.]

36-7. PLANNING AND DEVELOPMENT

36-7-3. PLATTING AND VACATION OF REAL PROPERTY

36-7-3-1. Application of chapter. - (a) Section 2 [36-7-3-2] of this chapter applies only to areas subject to the jurisdiction of no plan commission under this article.

(b) Sections 3 through 9 [36-7-3-3 - 36-7-3-9] of this chapter apply only to:

(1) Areas subject to the jurisdiction of an advisory plan commission under this article; and

(2) Areas subject to the jurisdiction of no plan commission under this article.

(c) Sections 10, 11, 14, and 16 [36-7-3-10, 36-7-3-11, 3-7-3-14 and 36-7-3-16] of this chapter apply to all areas of the state, except that section 11 of this chapter applies only to areas subject to the jurisdiction of a plan commission under this article.

(d) Sections 12, 13, and 15 [36-7-3-12, 36-7-3-13 and 36-7-3-15] of this chapter apply to all areas of the state, except in a county having a consolidated city. [IC 36-7-3-1, as added by Acts 1981, P.L. 309, § 25; 1981, P.L. 4, § 5; P.L. 220-1986, § 3.]

Amendments. The 1986 amendment, effective September 1, 1986, rewrote this section to the extent that a detailed comparison would be impracticable.

36-7-3-2. Subdivision of lots and lands outside corporate boundaries of municipality - Recording of plat - Certificates required. - (a) A person who lays out a subdivision of lots or lands outside the corporate boundaries of any municipality shall record a correct plat of the subdivision in the office of the recorder of the county before selling any lots in the subdivision. The plat must show public places, public ways, and the length, width, and size of each lot. Lots shown on the plat must be regularly numbered.

(b) The certificate of a licensed land surveyor certifying the correctness of the plat must be attached to the plat. This certificate must include a description, by metes and bounds, of the location of the plat.

(c) Before offering a plat for record under this section, a person must acknowledge it before an officer authorized by law to take and certify acknowledgments of deeds. The officer shall then attach to the plat a certificate of the acknowledgment, which must be recorded with the plat.

(d) Before offering a plat for recording under this section, a person must file a copy of the plat in the county auditor's office and must submit the plat for the approval of the county executive. The county recorder may record the plat only if a certificate showing the approval of the advisory plan commission or county executive is attached to it. If the record of a plat is not executed and approved as required by this subsection, it is void.
Amendments. The 1986 amendment, effective September 1, 1986, in subsection (a), second sentence, substituted "places" for "grounds"; and rewrote subsection (d) so as to delete reference to approval by an advisory plan commission.

36-7-3-3. Town, municipal addition, or subdivision within corporate boundaries of municipality - Recording of plat - Acknowledgment - Approval. - (a) A person who lays out:

1. A town;
2. An addition to a municipality; or
3. A subdivision of lots or lands within the corporate boundaries of a municipality;

shall record a correct plat of the town, addition, or subdivision in the office of the recorder of the county before selling any lots in the town, addition, or subdivision. The plat must show public grounds, public ways, and the length, width, and size of each lot. Lots shown on the plat must be regularly numbered.

(b) Every donation or grant to the public, or to any person, that is noted as such on the plat, is considered a general warranty to the donee or grantee named on the plat, for the purposes intended by the donor or grantor.

(c) Before offering a plat for record under this section, a person must acknowledge it before an officer authorized by law to take and certify acknowledgments of deeds. The plat may be recorded only if it is made and acknowledged in the manner prescribed by this section.

(d) Before a person offers a plat for recording under this section, he must submit it for the approval of:

1. The advisory plan commission that has jurisdiction over the platted area under IC 38-7-4-100-38-7-4-190; or
2. The municipal works board, if no advisory plan commission has jurisdiction over the platted area under IC 36-7-4.

The advisory plan commission or works board shall approve or disapprove the plat, and may require the public ways shown in the plat to be as wide as, and coextensive with, the public ways in contiguous parts of the municipality. The county recorder may record the plat only if a certificate showing the approval of the plan commission or works board is attached to it. If the record of a plat is not executed and approved as required by this subsection, it is void. [IC 36-7-3-3, as added by Acts 1981, P.L. 309, § 22.]

NOTES TO DECISIONS

Grants of Easement for Street.

Where the owner of land platted a street and had it approved and recorded, it was a grant to the city in trust for the public of an easement for a street, and did not require further assent or acceptance by the public. Interstate Iron & Steel Co. v. City of E. Chicago, 187 Ind. 506, 118 N. E. 958 (1918).

Plat.

A paper presented by the owner of land to the common council of a city, duly acknowledged, and representing a strip of ground in the city, named as a street, was a plat. Interstate Iron & Steel Co. v. City of E. Chicago, 187 Ind. 506, 118 N. E. 958 (1918).

--Approval.

A municipal council could not, by the enactment of an emergency ordinance, give retroactive effect to an ordinance thus depriving a property owner of his right to approval of a plat in accordance with the law in effect at the time of the application for such approval. Knutson v. State ex rel. Seberger, 239 Ind. 656, 157 N. E. 2d 469, 160 N. E. 2d 200 (1959).

Where plat clearly complied with the requirements of the statute and there was no ordinance prescribing further conditions precedent, town board was properly mandated to approve plat. Knutson v. State ex rel. Seberger, 239 Ind. 656, 157 N. E. 2d 469, 160 N. E. 200 (1959).

--Construction.

A note on a plat which was inconsistent with the plat as to courses and distances would not control the plat. Hunter v. Eichel, 100 Ind. 463 (1885).

A plat had to be construed like a written instrument and no part of it could be regarded as superfluous or meaningless if such a result could be avoided, but if the meaning of the person who executed the plat was doubtful, the practical construction put upon it by the acts of the parties concerned would be accepted and followed by the courts. City of Noblesville v. Lake Erie & W. Ry., 130 Ind. 1, 29 N. E. 484 (1891).

--Recordation.

A plat not signed and acknowledged was not entitled to be recorded. Taylor v. City of Fort Wayne, 47 Ind. 274 (1874).

A plat of lands not being a plat of a town or city, nor of an addition thereto, was not entitled to recording. Taylor v. City of Fort Wayne, 47 Ind. 274 (1874).

If partition commissioners laid off lands into town lots, a plat thereof could be recorded. Miller
v. City of Indianapolis, 123 Ind. 196, 24 N. E. 228 (1890).

Plat Books as Evidence.

Plat books kept in the county recorder's office were legal public records, and courts would take judicial notice thereof, and certified copies of such records were competent evidence. Miller v. City of Indianapolis, 123 Ind. 196, 24 N. E. 228 (1890).

A loose paper, purporting to be a town plat, found among the records of a city, where there was no proof that it was a duly authorized, executed and recorded plat, properly placed with the records, would be excluded from evidence as having no probative value. City of Huntingburg v. Fisher, 68 Ind. App. 665, 119 N. E. 837 (1918).

Dedication of Lands.

The designation of parcels of ground upon recorded plats for the use of the city or town, or for public use, operated as a dedication of such parcels. Conner v. President & Trustees, 1 Blackf. 43 (1819); Doe ex rel. Stump v. President & Treasurer, 7 Ind. 641 (1856); City of Logansport v. Dunn, 8 Ind. 378 (1856); Rhodes v. Town of Brightwood, 145 Ind. 21, 43 N. E. 942 (1896); Bennett v. Seibert, 10 Ind. App. 369, 35 N. E. 35, 37 N. E. 1071 (1893).

The making of plats of towns upon which streets were designated, and the recording of such plats and sale of lots as designated, operated as a dedication to the public of all streets and alleys marked on such plats. City of Logansport v. Dunn, 8 Ind. 378 (1856); Cox v. Louisville, N. A. & C. R. R., 48 Ind. 178 (1874); Shanklin v. City of Evansville, 55 Ind. 240 (1876); City of Indianapolis v. Kingsbury, 101 Ind. 200, 51 Am. R. 749 (1884); Miller v. City of Indianapolis, 123 Ind. 196, 24 N. E. 228 (1890); Wolfe v. Town of Sullivan, 133 Ind. 331, 23 N. E. 1017 (1893); Town of Fowler v. Linquist, 138 Ind. 566, 37 N. E. 133 (1894); Bennett v. Seibert, 10 Ind. App. 369, 35 N. E. 35, 37 N. E. 1071 (1894); Rhodes v. Town of Brightwood, 145 Ind. 21, 43 N. E. 942 (1896); Town of Woodruff Place v. Raschig, 147 Ind. 517, 46 N. E. 990 (1897); Hall v. Breyfogle, 162 Ind. 494, 70 N. E. 883 (1904).

Where lands were laid off as an addition to a town or city by a married man, and streets were dedicated to the public, the inchoate interest of the wife of such man in such lands was also conveyed. Duncan v. City of Terre Haute, 85 Ind. 104 (1882).

In an action against a town for personal injuries sustained by reason of an obstruction in one of its public streets, the plat of the addition containing such part of the street, which was filed and recorded in the recorder's office more than 16 years prior to the accident, was prima facie evidence of ownership by the dedication, and of his intention to so dedicate it. Town of Fowler v. Linquist, 138 Ind. 566, 37 N. E. 133 (1894).

Revocation could be made of dedication of lands for public use before the dedication was accepted. Steinauer v. City of Tell City, 146 Ind. 490, 45 N. E. 1056 (1897).

Plats recorded without authority could be considered in determining the question of dedication of streets. Town of Woodruff Place v. Raschig, 147 Ind. 517, 46 N. E. 990 (1897).

An offer to dedicate or a tender of conveyance upon the part of the owner continued until withdrawn by him, or until it was rejected by the municipality. Smith v. State, 217 Ind. 643, 29 N.E. 2d 786 (1940).

--Acceptance.

If a parcel of land was donated by a plat for a particular use, and it was not accepted for such use, the title would remain in the donor. Westfall v. Hunt, 8 Ind. 174 (1856); City of Hammond v. Standard Oil Co., 79 Ind. App. 356, 138 N. E. 769 (1925).

Where a street was dedicated by plat as a street, use of the street as such for a period of 16 years constituted acceptance by the town. Town of Fowler v. Linquist, 138 Ind. 566, 37 N. E. 133 (1894).

The action of a municipality in extending its corporate limits to include an addition, which was platted in due form, the exercise of jurisdiction over the territory and its highways for ten years, constructing street crossings at its own expense, and repairing the streets, amounted to an acceptance of the streets in such addition. Hall v. Breyfogle, 132 Ind. 494, 70 N. E. 883 (1904).

Statutes in this state authorized the state, counties, townships, towns and cities to receive donations and dedications of lands for public use and there was no distinction in reference to the law of dedication to one or other of these divisions. Smith v. State, 217 Ind. 643, 29 N. E. 2d 786 (1940).

Restrictions.

While building restrictions contained in plat were binding, plaintiff was unable to enforce them because of laches. Wischmeyer v. Finch, 231 Ind. 282, 107 N. E. 2d 661 (1952).

The sale of said lots to the first purchaser served as a dedication of the streets and utility strips, and the purchaser could not accept benefits of the survey without accepting whatever burden the restrictions might impose. Wischmeyer v. Finch, 231 Ind. 282, 107 N. E. 2d 661 (1952).

Where lots were conveyed according to official plat, restrictive agreement contained therein thereby became a part of the deed the same as though it had been included in the deed.
Validity of Subdivision.

A subdivision of land did not become a legal subdivision in Indiana until the plat thereof had been recorded in compliance with this section and on determining the value of land in eminent domain proceeding, it must be determined on an acreage basis and not on the basis of loss in a proposed but unrecorded plat. Northern Ind. Pub. Serv. Co. v. McCoy, 239 Ind. 301, 157 N. E. 2d 181 (1959).

36-7-3-4. Survey and plat of municipal territory - Adoption by legislative body. - (a) A municipality that does not have a sufficient survey and plat of its corporate territory may, by a resolution of its legislative body passed by a two-thirds [2/3] vote, order a survey and plat of the municipality. When the survey and plat have been made, the legislative body may adopt them by a resolution passed by three-fourths [3/4] vote. If a survey and plat of the municipality have already been made, without the order of the legislative body, it may adopt them by a resolution passed by a three-fourths [3/4] vote.

(b) The survey and plat are considered adopted by the municipality for all purposes if a certified copy of the resolution adopting the survey and plat is:

1. Signed by the municipal executive and clerk;
2. Attested by the seal of the municipality; and
3. Recorded with the survey and plat in the office of the recorder of the county in which the municipality is located.

The copy of the resolution must include a statement of the names of the persons voting for and against it. [IC 36-7-3-4, as added by Acts 1981, P.L. 309, § 22.]

36-7-3-5. Survey and platting of certain municipal tracts. - (a) If there are five [5] or more specific tracts of land in a municipality that:

1. Are not platted or numbered; and
2. Are near or contiguous to each other;

the municipal legislative body may cause the tracts to be surveyed, platted, and given a specific number on the plat. If the survey and plat are approved by the legislative body and recorded in the platbook records of the county in which the municipality is located, they have the same legal effect as if they had been made by the owners of the tracts under section 3 [36-7-3-3] of this chapter.

(b) Tracts surveyed under this section may be described and conveyed by the numbers assigned to them, in the same manner as other platted lots. However, a new public way may be laid out or opened only with the written consent of the owner of the real property to be affected. [IC 36-7-3-5, as added by Acts 1981, P.L. 309, § 22.]

36-7-3-6. Survey - Declaration of necessity - Notice - Authorization. - (a) Before a survey of a municipality is made under this chapter, the municipal legislative body must declare, by resolution, the necessity for making the survey or plat. The resolution must describe and embrace all tracts to be included in the plat, with the description being by streets, alleys, corporate lines, other platted additions' lines, or any boundary line that can be definitely located. Notice of the adoption of the resolution must be given in accordance with IC 5-3-1 [5-3-1-1 - 5-3-1-9]. The notice must fix a time and a place where the persons owning the tracts may appear before the legislative body and object to any further steps being taken in the proceedings.

(b) If, after hearing any objections, the legislative body considers it necessary to proceed with the survey and plat, it shall direct the municipal civil engineer, if he is a land surveyor, or, if he is not, some suitable and competent land surveyor, to immediately make the survey and plant and report them to the legislative body. [IC 36-7-3-6, as added by Acts 1981, P.L. 309, § 22; 1981, P.L. 45, § 17.]

36-7-3-7. Survey - Boundary lines - Appeal - Execution - Filing. - (a) In making a survey of a municipality under this chapter, a land surveyor shall adhere as nearly as possible to boundary lines between tracts. If the owners of adjacent tracts do not agree on the location of the boundary line between them, the land surveyor shall give all interested parties ten [10] days' notice that, at a specified time, he will establish the boundary line. The line established is the correct boundary line, but an aggrieved party may appeal from the survey in the same manner as is provided by IC 36-2-12-14 for an appeal from a survey made by a county surveyor. However, an appeal does not delay the completion of the survey and plat.

(b) All public ways shall be preserved and properly designated on the plat.

(c) Each specific description shall be platted as one [1] lot and given a distinct number on the plat, except that where a part of the specific description is cut off by a street or alley, the tract may be given two [2] or more distinct numbers, as required by the situation.

(d) If any part of the entire tract to be platted is cut up into blocks by streets or alleys, the tract shall be platted in lots extending from the street or alley in the front to the alley in the rear.
(e) If a lot embraces more than one specific description, the memoranda attached to the plat must designate how much of the lot belongs to each of the part owners.

(f) A person owning a tract that is within the boundaries of the territory to be platted and is larger than an ordinary lot may have that tract subdivided into lots of convenient size in the making of the plat.

(g) The land surveyor shall show on the plat the exact size and shape, the number, and the name of the owner (as determined from the records of the county), of each lot platted, and shall attach to the plat, as a part of it, a brief memorandum of the tract description of each lot platted.

(h) The land surveyor shall sign the plat and acknowledge its execution before an officer authorized to take the acknowledgment of deeds. When the survey and plat are completed, the land surveyor shall file them with the municipal clerk. The land surveyor shall also file with his report of the survey and plat an itemized statement of all costs and expenses incident to the proceedings, and an apportionment of the expenses to the lots platted, as required by section 9 [36-7-3-9] of this chapter. [IC 36-7-3-7, as added by Acts 1981, P.L. 309, § 22.]

36-7-3-8. Meeting of legislative body to consider plat - Notice - Correction of errors - Resolution of approval - Name - Recording. - (a) When a plat is filed under section 7 [36-7-3-7] of this chapter, the municipal clerk shall immediately give notice, in accordance with IC 5-3-1 [5-3-1-1-5-3-1-9], that on a specified day, at an hour and place named in the notice, the municipal legislative body will meet to consider the land surveyor’s report and plat, and to hear any objections to the report and plat by interested parties.

(b) If any errors or omissions are discovered, the legislative body shall require the surveyor to correct them. When the legislative body has approved the report of the survey and plat, it shall give the plat an appropriate name and have it, together with the resolution of approval, recorded in the proper records in the county recorder’s office. When recorded, the plat has the same legal effect as if it had been done by the owners of the tracts platted. [IC 36-7-3-8, as added by Acts 1981, P.L. 309, § 22.]

36-7-3-9. Expenses - Assessment - Lien - Payment or collection - Disbursement. - (a) The expenses arising from a survey and plat in a municipality under this chapter shall be charged to the property platted, in the proportion the municipal legislative body considers just and equitable. When approving the land surveyor’s report of the survey and plat, the legislative body shall, at the same time, assess an equitable part of the cost and expense against each tract platted.

(b) The assessment is a lien on the property from the time the assessment is made, and is due and payable as soon as the plat is recorded. If an assessment is not paid before the second day of January after it is made, a certified copy of the assessment shall be filed in the office of the auditor of the county in which the property is located, and the auditor shall place the amount claimed on the tax duplicate against the lands of the landowner. The amount shall be collected as taxes are collected, and, when collected, shall be disbursed to the general fund of the municipality. [IC 36-7-3-9, as added by Acts 1981, P.L. 309, § 22.]

36-7-3-10. Vacation of land outside corporate boundaries of municipality - Recording and effect of instrument. - (a) The owners of land in a plat may vacate all or part of that plat. All the owners of land in the plat must declare the plat or part of the plat to be vacated in a written instrument, and that instrument must be executed, acknowledged, and recorded in the same manner as a deed to land.

(b) Before offering the instrument for recording under this section, an owner must file a copy of the instrument in the county auditor’s office and must submit the instrument vacating the plat for the approval of the plan commission that has jurisdiction over the plat area under IC 36-7-4. If no plan commission has jurisdiction over the plat area under IC 36-7-4, the instrument must be submitted for the approval of:

(1) The county executive, in the case of land located in an unincorporated area; or

(2) The municipal works board, in the case of land located inside the corporate boundaries of a municipality.

(c) The county recorder may record the instrument only if a certificate showing the approval of the vacation by the plan commission, county executive, or municipal works board is attached to it. If the instrument is not executed and approved as required by this section, it is void.

(d) The owners of land in a plat that is located outside the corporate boundaries of any municipality may vacate all of the plat without the approval required by subsections (b) and (c) if no lots have been sold and no roads constructed in the plat, and all of the owners of land in the plat declare the plat to be vacated in a written instrument. The instrument must be executed, acknowledged, and recorded in the same manner as a deed to land.

(e) An instrument recorded under this section terminates the effect of the plat or part of the plat declared to be vacated, and it also terminates all public rights in the public ways and public places described in the plat or part of the plat. However,
a public way that has been improved, or that is part of an improved plat, may be vacated only in accordance with section 12 (36-7-3-12) of this chapter or with IC 36-7-4-712, whichever is applicable. [IC 36-7-3-10, as added by Acts 1981, P.L. 309, § 22; P.L. 220-1986, § 5.]

Amendments. The 1986 amendment, effective September 1, 1986, in subsection (a), first sentence, deleted "located outside the corporate boundaries of any municipality" preceding "may vacate"; inserted present subsections (b), (c), and (d), and redesignated former subsection (b) as present subsection (e); and in present subsection (e), in the first sentence inserted "it also" and substituted "places" for "grounds", and added the second sentence.

36-7-3-11. Vacation of land upon petition to plan commission. - (a) The owner of land in a plat may file with the plan commission that has jurisdiction over the platted area under IC 36-7-4 a petition to vacate all or part of the plat pertaining to the land owned by the petitioner.

(b) The petition must:

(1) State the reasons for and circumstances prompting the request;

(2) Specifically describe the property in the plat proposed to be vacated; and

(3) Give the name and address of each owner of land in the plat. The petition may include a request to vacate any recorded covenants or commitments filed as part of the plat. The covenants or commitments are then also subject to vacation.

(c) Within thirty (30) days after receipt of a petition for vacation of a plat, the plan commission shall announce the date for a hearing before the plan commission. The plan commission shall, by rule, prescribe procedures for setting hearing dates, mailing written notice to each owner of land in the plat, and providing such other notice as may be required in accordance with IC 36-7-4-706. The petitioner shall pay all expenses of providing the notice required by this subsection.

(d) The plan commission shall, by rule, prescribe procedures for the conduct of the hearing, which must include a provision giving each owner of land in the plat an opportunity to comment on the petition.

(e) The plan commission shall approve or deny the petition for vacation. The plan commission shall approve the petition for vacation of all or part of a plat only upon a determination that:

(1) Conditions in the platted area have changed so as to defeat the original purpose of the plat;

(2) It is in the public interest to vacate all or part of the plat; and

(3) The value of that part of the land in the plat not owned by the petitioner will not be diminished by vacation.

(f) If, after the hearing, the plan commission determines that the plat or part of the plat should be vacated, it shall make written findings and a decision approving the petition. The plan commission may impose reasonable conditions as part of its approval. The decision must be assigned by an officer designated in the subdivision control ordinance. The plan commission shall furnish a copy of its decision to the county recorder for recording.

(g) If, after the hearing, the plan commission disapproves the petition for vacation, it shall make written findings that set forth its reasons in a decision denying the petition and shall provide the petitioner with a copy. The decision must be signed by the officer designated in the subdivision control ordinance.

(h) The approval, disapproval, or imposition of a condition on the approval of the vacation of all or part of the plat is a final decision of the plan commission. The petitioner or an aggrieved party may seek review of the decision of the plan commission as provided by IC 36-7-4-1016. [IC 36-7-3-11, as added by Acts 1981, P.L. 309, § 22; P.L. 220-1986, § 6.]

NOTES TO DECISIONS

Notice.


Objections to Vacation.

Objections to the vacation of plats or lots could be made only upon the grounds and within the time specified by statute. City of Peru v. Cox, 173 Ind. 241, 90 N. E. 7 (1909).

Vacation of Restrictive Covenants.

The vacating of restrictive covenants for the benefit of some lot owners and over the objection of other lot owners was an unconstitutional violation of due process requirements in that it constituted a taking of private property, since a restrictive covenant was a property right, for private use. Pulos v. James, 261 Ind. 279, 39 Ind. Dec. 312, 302 N. E. 2d 768 (1973).

Where a statute provided for the vacating of restrictive covenants without providing for compensation to the owners of the covenants, it was an unconstitutional taking of property without just compensation. Pulos v. James, 261 Ind. 279, 39 Ind. Dec. 312, 302 N. E. 2d 768 (1973).
36-7-3-12. Vacation of public way or place - Petition - Notice - Hearing - Ordinance - Appeal - Damages. - (a) Persons who:

(1) Own or are interested in any lots or parts of lots; and

(2) Want to vacate all or part of a public way or public place in or contiguous to those lots or parts of lots;

may file a petition for vacation with the legislative body of:

(A) A municipality, if all or any part of the public way or public place to be vacated is located within the corporate boundaries of that municipality; or

(B) The county, if all or the only part of the public way or public place to be vacated is located outside the corporate boundaries of a municipality.

(b) Notice of the petition must be given in the manner prescribed by subsection (c). The petition must:

(1) State the circumstances of the case;

(2) Specifically describe the property proposed to be vacated; and

(3) Give the names and addresses of all owners of land that abuts the property proposed to be vacated.

(c) The legislative body shall hold a hearing on the petition within thirty [30] days after it is received. The clerk of the legislative body shall give notice of the petition and of the time and place of the hearing:

(1) In the manner prescribed in IC 5-3-1 [5-3-1-1-5-3-1-9]; and

(2) By certified mail to each owner of land that abuts the property proposed to be vacated.

The petitioner shall pay the expense of providing this notice.

(d) The hearing on the petition is subject to IC 5-14-1.5 [5-14-1.5-1-5-14-1.5-7]. At the hearing, any person aggrieved by the proposed vacation may object to it as provided by section 13 [36-7-3-13] of this chapter.

(e) After the hearing on the petition, the legislative body may, by ordinance, vacate the public way or public place. The clerk of the legislative body shall furnish a copy of each vacation ordinance to the county recorder for recording and to the county auditor.

(f) Within thirty [30] days after the adoption of a vacation ordinance, any aggrieved person may appeal the ordinance to the circuit court of the county. The court shall try the matter de novo and may award damages. [IC 36-7-3-12, as added by Acts 1981, P.L. 309, § 22; 1981, P.L. 46, § 6; 1982, P.L. 211, § 2.]

NOTES TO DECISIONS

Application.

The former statute was not limited to cities and towns not in active operation, but also applied to those which were functioning actively. City of Richmond v. Miller, 58 Ind. App. 20, 107 N. E. 550 (1915).


Assessment Roll.

Mandamus would not lie to compel the board of trustees of a town to file an assessment roll in the matter of the vacation of streets where the defects complained of did not affect the jurisdiction of the board, but the attack was made upon one of the procedural steps taken by the board. Hankins v. State ex rel. Miller, 217 Ind. 22, 27 N. E. 2d 385 (1940).

Authority to Vacate.

The authorities of a town had no authority to vacate a public highway in the town that existed prior to the incorporation of the town. Debolt v. Carter, 31 Ind. 355 (1869).

Burden of Proof.

When city filed answer in denial of petition to vacate alley although no remonstrance was filed, issues were joined and burden of proof was upon the petitioner and failure to present evidence in support thereof justified denial of the petition. Gaston v. City of Shelbyville, 234 Ind. 512, 129 N. E. 2d 793 (1955).

The burden was upon the parties seeking vacation to show by a preponderance of the evidence that justice required the vacation of the portion of the street sought to be vacated. Booth v. Town of Newburgh, 237 Ind. 661, 147 N. E. 2d 538 (1958).

Constitutionality.

The subject of vacation of streets, alleys, and public grounds in unincorporated villages was within the title of a predecessor statute which read: "An act concerning the vacation of plats of lands or any part thereof and for the disannexation of territory from the corporate limits of cities and towns."

A statute prescribing a procedure for vacation of streets, which did not provide for either notice or compensation to an owner of property which did not abut the portion of the street to be vacated, but whose private right of ingress and egress thereto was affected by the vacation, was not unconstitutional as a taking of property without due process or without compensation, because such an affected property owner had a right of action against the party actually interfering with this private right of ingress and egress and the vacation of the street would not serve as a defense to such action. Oler v. Pittsburgh, C., C. & St. L. Ry., 184 Ind. 431, 111 N. E. 619 (1916).

Evidence.

In a proceeding to vacate a portion of a certain street, it was not reversible error for the court to admit in evidence the testimony of the petitioner as to the particular use he intended to make of the portion of the street sought to be vacated, and the testimony of another witness as to the acreage of a certain other tract of land in the vicinity, since such testimony was merely collateral to the issue raised by the petition and the remonstrances. City of E. Chicago v. E.B. Lanman Co., 212 Ind. 524, 8 N. E. 2d 242, 10 N. E. 2d 288 (1937).

In an action to vacate a portion of a street, where evidence showed that the part of the street sought to be vacated was used by pedestrians as a means of access to the river for the purpose of fishing and boating and that the proposed vacation would cut off the public’s access to the public landing ground at the south end of the street, and that part which appellants sought to vacate was necessary for the drainage of certain storm sewers and as an available access to the river for use of certain fire equipment, it was sufficient to sustain the finding against such vacation. Booth v. Town of Newburgh, 237 Ind. 661, 147 N. E. 2d 538 (1958).

Extension of Abutting Lots.

Upon vacation of street, the adjoining lots were extended by operation of law to include the proportionate part of the street vacated. Jacqua v. Heston, 81 Ind. App. 142, 142 N. E. 874 (1924).

Grounds.

The circuit court was not authorized to entertain a petition by an abutting owner to vacate a portion of a street on the ground that an improvement of the entire street would necessitate a removal of his buildings. City of Princeton v. Hanna, 187 Ind. 582, 113 N. E. 999, 120 N. E. 598 (1918).

Jurisdiction.


Where there was a denial of a petition to vacate and block a portion of a street, it was a decision against the one with the burden of proof or a negative decision and could not be attacked on appeal on the grounds of insufficient evidence, for a negative judgment was reversible only where the evidence was without conflict and led to but one conclusion. Borden Cabinet Corp. v. Town of Borden, 160 Ind. App. 399, 42 Ind. Dec. 334, 312 N. E. 2d 138 (1974).

Nature of Proceedings.

A proceeding for the vacation of an alley was a special statutory proceeding. City of Jasper v. Taichert, 103 Ind. App. 302, 7 N. E. 2d 534 (1937); State ex rel. Mayhew v. Reeves, 237 Ind. 240, 140 N. E. 2d 707 (1957).

Notice.

Where the petitioners for vacation owned all of the land abutting the area to be vacated, the requirement of notice to abutting landowners was superfluous. McClurg v. Carte, Ind., 255 Ind. 110, 23 Ind. Dec. 179, 262 N. E. 2d 854 (1970).

The petition for vacation was not required to include the names of all nonabutting property owners who may have a potential interest in the proceedings, but only those landowners whose property abuts on the portion of the street which is sought to be vacated are entitled to receive actual notice. Citizens of Unincorporated Town of Heron Bay v. Gore, - Ind. App. --, 78 Ind. Dec. 328, 409 N. E. 2d 1228 (1980).

Opportunity to Vacate.

The former statute providing for vacation of streets and alleys on petition of city lot owners, referred to formally platted lots and gave owners of lots in such formally platted areas an opportunity to unplat, including vacation of dedicated streets. City of Peru v. Wabash Ry. Co., 232 Ind. 361, 112 N. E. 2d 217 (1953).

Persons Required to Be Named in Petition.

While the former statutes providing for the vacation of streets did not limit the right to object to the vacation to those persons who owned property abutting on that part of the street to be vacated, persons who had sufficient or “specially suited” means of ingress or egress had no more than a general interest common to all the citizens, and were not required to be named in the petition. Southern Ry. v. Town of French Lick, 52 Ind. App. 447, 100 N. E. 762 (1913). See now subdivision
(b)(3) of this section, which specifically states that the petition give the names and addresses of abutting landowners.

Questions of Fact.

In a proceeding to vacate a street, where the trial court found and adjudged that the remonстрator was not the owner of property immediately adjoining such street and there was much evidence to support such finding, the supreme court could not weigh the facts and determine such question of fact contrary to the finding of the trial court. City of E. Chicago v. E.B. Lanman Co., 212 Ind. 524, 8 N. E. 2d 242, 10 N. E. 2d 288 (1937).

A general finding and judgment against the remonstrator in a proceeding to vacate a portion of a certain street amounted to a finding against the remonstrator on all questions of fact involved in the case. City of E. Chicago v. E.B. Lanman Co., 212 Ind. 524, 8 N. E. 2d 242, 10 N. E. 2d 288 (1937).

Whether a party was entitled to have an alley vacated was for determination of the trial court [nonlegislative body], where the evidence bearing on the question was conflicting. City of Jasper v. Taichert, 103 Ind. App. 302, 7 N. E. 2d 534 (1937).

Special Damages.

Property owners who had only a general interest in common with other citizens were not entitled to special damages for the closing of a street. Correll v. Dearmin, 86 Ind. App. 349, 156 N. E. 407 (1927).

Street or Highway Located on Boundary.

If a highway was located on the boundary line of a town, the town could not vacate the portion of the highway within the town. City of Gary v. Much, 180 Ind. 26, 101 N. E. 4 (1913).

If a street was located upon the boundary line of a city, the city could not vacate that portion of the street within the corporate limits of the city. City of Gary v. Much, 180 Ind. 26, 101 N. E. 4 (1913).

The power to vacate existing highways located wholly within a city was, with certain exceptions, vested exclusively in such municipality; but a city had no authority to vacate the municipal half of the highway whose center formed the boundary line of the city, at least, without joint action with the county. City of Gary v. Much, 180 Ind. 26, 101 N. E. 4 (1913); City of Richmond v. Miller, 58 Ind. App. 20, 107 N. E. 550 (1913).

Time for Remonstrance.

When the petition and notice for the vacation of a street stated when the application would be heard, a remonstrance filed on such day was in time. Southern Ry. v. Town of French Lick, 52 Ind. App. 447, 100 N. E. 762 (1913).

Where objections and remonstrances against the closing of streets were required to be filed within ten days, objections to the closing of a street came too late where the petition was filed February 25, 1926, and the objections were not made until May 10, 1926. Correll v. Dearmin, 86 Ind. App. 349, 156 N. E. 407 (1927).

Vacation Not Presumed.

Streets could only be vacated as provided by law, and vacation of a street could not be presumed from nonuser. City of Lawrenceburgh v. Wesler, 10 Ind. App. 153, 37 N. E. 956 (1894).

Vacation of Restrictive Covenants.

The vacating of restrictive covenants for the benefit of some lot owners and over the objection of other lot owners was an unconstitutional violation of due process requirements in that it constituted a taking of private property, since a restrictive covenant was a property right, for private use. Pulos v. James, 261 Ind. 279, 39 Ind. Dec. 312, 302 N. E. 2d 768 (1973).

Where the statute provided for the vacating of restrictive covenants without providing for compensation to the owners of the covenants, it was an unconstitutional taking of property without just compensation. Pulos v. James, 261 Ind. 279, 39 Ind. Dec. 312, 302 N. E. 2d 768 (1973).

36-7-3-13. Grounds for filing of remonstrances. - A remonstrance or objection permitted by section 11 or 12 [36-7-3-11 or 36-7-3-12] of this chapter may be filed or raised by any person aggrieved by the proposed vacation, but only on one or more of the following grounds:

(1) The vacation would hinder the growth or orderly development of the unit or neighborhood in which it is located or to which it is contiguous.

(2) The vacation would make access to the lands of the aggrieved person by means of public way difficult or inconvenient.

(3) The vacation would hinder the public's access to a church, school, or other public building or place.

(4) The vacation would hinder the use of a public way by the neighborhood in which it is located or to which it is contiguous. [IC 36-7-3-13, as added by Acts 1981, P.L. 309, § 22; 1981, P.L. 46, § 7; 1982, P.L. 211, § 3; P.L. 353-1983, § 1.]

NOTES TO DECISIONS

Burden of Proof.

When city filed answer in denial of petition to vacate alley, although no remonstrance was filed,
issues were joined and burden of proof was upon the petitioner, and failure to present evidence in support thereof justified denial of the petition. Gaston v. City of Shelbyville, 234 Ind. 512, 129 N. E. 2d 793 (1955).

Where there was a denial of a petition to vacate and block a portion of a street, it was a decision against the one with the burden of proof or a negative decision and could not be attached on appeal on the grounds of insufficient evidence, for a negative judgment could be reversed only where the evidence was without conflict and led to but one conclusion. Borden Cabinet Corp. v. Town of Borden, 160 Ind. App. 399, 42 Ind. Dec. 334, 312 N. E. 2d 138 (1974).

--Not Met.

Where town did not use alley and the alley would not leave the real estate of the town remonstrant without ingress or egress or cut off the public's access to some church, school, or other public building or grounds, and the property owners adjacent to it would like it closed, court was correct in its conclusion that justice required the granting of the petition to vacate. Town of Kewanna v. Hollis, - Ind. App. --, 420 N. E. 2d 1292 (1981).

--Met.

In a proceeding to vacate a portion of a public street, where the city did not offer any proof as to the public necessity of maintaining such portion of the street and did not file a remonstrance within the time provided by statute, judgment was properly rendered for the petitioner. City of E. Chicago v. E.B. Lanman Co., 212 Ind. 524, 8 N. E. 2d 242, 10 N. E. 2d 288 (1937).

When a remonstrance has been successfully resisted, the petitioners have shown the justice of their petition. McCurg v. Carle, Inc., 255 Ind. 110, 23 Ind. Dec. 179, 262 N. E. 2d 854 (1970).

Grounds.

Objections to the vacation of streets, alleys, or public grounds could be made only upon the grounds and within the time specified by statute. City of Peru v. Cox, 173 Ind. 241, 90 N. E. 7 (1909); City of Richmond v. Miller, 58 Ind. App. 20, 107 N. E. 550 (1915).

In a proceeding to vacate an alley, the only grounds of remonstrance were those specified by statute. City of Jasper v. Taichert, 103 Ind. App. 302, 7 N. E. 2d 534 (1937).

Remonstrance against the vacation of a street could be filed only for the causes specified in the statute. City of Richmond v. Miller, 58 Ind. App. 20, 107 N. E. 550 (1915).

36-7-3-14. Preservation of descriptions of vacated parcels - Description of certain tracts by metes and bounds allowed. - (a) If any platted land is vacated, the descriptions of the lots and parcels of that land shall be preserved as set forth in the plat, with the proportionate parts of vacated streets and alleys added as provided by law, unless all the owners of land in the vacated area consent in writing to the description of the area by:

(1) The method used before the plat was made;
(2) Metes and bounds; or
(3) Other appropriate description.

(b) Notwithstanding subsection (a), a vacated tract of five [5] acres or more that is owned by one [1] person, or jointly by two [2] or more persons, need not be described by lot number and may be described by metes and bounds or some other method. [IC 36-7-3-14, as added by Acts 1981, P.L. 309, § 22.]

36-7-3-15. Limitation on subsequent vacation proceeding affecting same property. - After the termination of a vacation proceeding under this chapter, a subsequent vacation proceeding affecting the same property and asking for the same relief may not be initiated for two [2] years. [IC 36-7-3-15, as added by Acts 1981, P.L. 309, § 22.]

36-7-3-16. Vacation of easements - Effect of vacation proceedings on public utilities. - (a) Platted easements may be vacated in the same manner as public ways and public places, in accordance with section 12 [36-7-3-12] of this chapter or with IC 36-7-4-712, whichever is applicable.

(b) Notwithstanding this article, vacation proceedings do not deprive a public utility of the use of all or part of a public way or public place to be vacated, if, at the time the proceedings are instituted, the utility is occupying and using all or part of that public way or public place for the location and operation of its facilities. However, the utility may waive its rights under this subsection by filing its written consent in the vacation proceedings. [IC 36-7-3-16, as added by Acts 1981, P.L. 309, § 22; P.L. 1886, § 7.]

Amendments. The 1986 amendment, effective September 1, 1986, added subsection (a) and designated the existing language as subsection (b); and in present subsection (b), in the first sentence substituted "article" for "chapter", deleted "in a municipality" preceding "do not deprive"; and substituted "place" for ground in two places, and in the second sentence substituted "subsection" for "section".
CHAPTER 7
JURISDICTIONAL AND FUNCTIONAL CLASSIFICATION

8-11-1. LIMITED ACCESS ROADS

8-11-1-2 [38-3102]. "Limited access facility" defined. - For the purposes of this chapter, a "limited access facility" is defined as a highway or street especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have no right or easement or only a limited right or easement of direct access, light, air, or view by reason of the fact that their property abuts upon such limited access facility or for any other reason. Such highways or streets may be parkways, from which trucks, buses, and other commercial vehicles shall be excluded, or they may be freeways open to use by all customary forms of street and highway traffic. [Acts 1945, ch. 245, § 2, p. 1113; P.L. 66-1984, § 28.]

8-11-1-7 [38-3107]. Limited access highways - How designated - Access. - The highway authorities of the state, county, city, or town, may designate and establish limited access highways as new and additional facilities or may designate and establish an existing street or highway as included within a limited access facility. The state or any of its subdivisions or municipalities shall have authority to provide for the limitation of intersections at grade of limited access facilities with existing state and county roads, and city and town streets, by grade separation or service road, or by closing off such roads and streets at the right-of-way boundary line of such limited access facility; and after the establishment of any limited access facility, no highway or street which is not part of said facility shall intersect the same at grade. No city or town street, county or state highway, or other public way shall be opened into or connected with any such limited access facility without the consent and previous approval of the proper authorities of the state, county, city, or town, having jurisdiction over such limited access facility. Such consent and approval shall be given only if the public interest shall be served thereby. Whenever the state highway commission constructs a by-pass highway around any city or town, the commission shall be required to designate and establish such by-pass highways as limited access highways. [Acts 1945, ch. 245, § 7, 1113; 1955, ch. 197, § 1, p. 516.]

8-11-1-9 [38-3109]. Local service roads. - In the carrying out of the purposes of this chapter and in the development of any limited access facility the department of highways and the several counties, cities and towns of the state are authorized to plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets or to designate as local service roads and streets any existing road or street, and to exercise jurisdiction over service roads in the same manner as is authorized over limited access facilities under the terms of this chapter, if in their opinion, such local service roads and streets are necessary or desirable. Such local service roads or streets shall be of appropriate design, and shall be separated from the limited access facility proper by means of all devices designated as necessary or desirable by the proper authority. [Acts 1945, ch. 245, § 9, p. 1113; 1980, P.L. 74, § 107.]

NOTES TO DECISIONS

Service Roads as Public Use.

In planning and providing for condemnation of service roads, the legislature properly intended such service roads would constitute a public use whether such roads served one property owner or many. Andrews v. State (1967), 248 Ind. 525, 11 Ind. Dec. 376, 229 N. E. (2d) 806.

8-11-2. FUNCTIONAL CLASSIFICATION

8-11-2-1 [38-3601]. Legislative intent. - Systems of roads and streets which are adequate and integrated facilitate the free flow of traffic, promote economy in the cost of motor vehicle operation, protect the health and safety of the citizens of this state, stabilize the value of real property, and generally serve the economic and social welfare of this state. The legislature therefore determines and declares that its intention in this chapter is to:

(1) Integrate all public highways, roads, and streets into complete systems, and these systems into a comprehensive network to serve the highway transportation needs of the state;

(2) Bring together in such system those highways which should be under the same jurisdiction because of the character of the highway transportation service the system offers, and the type and extent of demand for such service;

(3) Group together those highways requiring a
similar level of technical competence for design, construction, and operation;

(4) Provide for integrated and systematic planning and orderly development of the public highway systems in accordance with actual needs; and

(5) Group highways basically according to the functions they serve in order that they may be readily subclassified to accommodate minor needs. [Acts 1989, ch. 353, § 1; P.L. 66-1984, § 32.]

8-11-2-2 [36-3602]. Definitions. - The following words and phrases when used in this chapter shall, for the purposes of this chapter have the meanings respectively ascribed to them as follows:

(a) "Abandonment." Cessation of use of right-of-way activity upon a site with no intention to reclaim or use it again for highway purposes.

(b) "Arterial highway or arterial street." A highway or street primarily for through traffic, usually on a continuous route.

(c) "Board." The governing body of a county acting directly or through its authorized agents.

(d) "County arterial highway system." A system of highway designated by the county highway authorities having the greatest general importance to the county and for which responsibility is assigned to the county highway authorities.

(e) "County local highway system." Those roads and streets used primarily for access to residence, business, farm, or other abutting property and for which responsibility is assigned to the county highway authorities.

(f) "Department." Refers to the state department of highways.

(g) "Executive director." The chief administrative officer of the department, acting directly or through his authorized agents.

(h) "Highway, street, or road." A public way for purposes of vehicular travel, including the entire area within the right-of-way.

(i) "Municipal arterial street system." A system of arterial streets and highways designated by the municipal street authorities as having the greatest importance to the municipality, and for which responsibility is assigned to principal street authorities.

(j) "Municipality." A city, town, or other municipal corporation organized under the laws of this state.

(k) "Municipal local street system." Those roads and streets used primarily for access to residence, business, or other abutting property and for which responsibility is assigned to the municipal street authorities.

(l) "State-aid director." The chief administrative officer of that office of the department that administers programs of state and federal aid to local units of government, acting directly or through his agents.

(m) "State highway system." A system of highways and streets which are of general economic importance to the state as a whole, and for which responsibility is assigned to the department. [Acts 1969, ch. 353, § 2, 1980, P.L. 74, § 109; 1981, P.L. 41, § 26.]

8-11-2-4 [36-3604]. State highway system - Designation - Administrative classification. - (a) How selected. The state highway system shall be designated by the department and its total extent shall not exceed twelve thousand [12,000] miles. The state highway system shall be made up of the principal arterial highways in the state, and shall include a highway to the seat of government in each county and connecting arteries and extensions through municipalities.

In determining which highways or sections thereof shall be a part of the state highway system, the department shall consider the relative importance of each highway to county or municipal government, existing business and land use, and the development of natural resources, industry and agriculture, and the economic welfare of the state. The department shall also consider the safety and convenience of highway users, and the financial capacity of the state to reconstruct, construct and maintain the highways selected to desirable standards.

(b) Administrative classification. The state highway system shall be further classified for purposes of management, establishment of standards and priority for use of funds and resources. Classification of the system may conform to the department's designation of the state's federal-aid system. [Acts 1969, ch. 353, § 4; 1980, P.L. 74, § 110; 1981, P.L. 41, § 27.]

8-11-2-5 [36-3805]. County arterial highway system. - (a) How selected. A system of county arterial highways shall be selected by the board of county commissioners in each county. Such system shall be selected on the basis of greatest general importance to the county, after an evaluation for each road in the county including municipal connecting links and the state highway system. In selecting such system, the board shall consider the kind and amount of traffic, the length and condition of each particular highway, the mileage which can be effectively improved to specified standards with funds available, together with any other data considered applicable in this connection.
(b) So much of the system of county arterial highways of any county as is approved by the board shall constitute the county arterial highway system of that county for all purposes and shall be officially known as the county arterial highway system of that county.

(c) Additions, relocations, deletions. Roads may from time to time be included in, relocated, or deleted from the county arterial highway system of any county by the board in the same manner and by the same procedure as provided hereinbefore for the adoption of the county arterial highway system in the first instance.

(d) Disposition of deleted highway. If a highway or segment thereof is deleted from the county system of arterial highways either because of a relocation or because it is no longer considered of sufficient importance to be continued as a part of such system, it may become a part of the county local highway system, or if located in a municipality, it may become a part of the system of major streets or the local street system of such municipality, subject to agreement between the board of county commissioners and the highway authorities of the municipality. If the highway is no longer considered necessary to any highway system of the state, it may be abandoned and discontinued in accordance with the state law.

(e) County local highway system. All roads under the [jurisdiction] of the county highway authorities in each of the several counties of the state not included in the county arterial highway system as finally approved shall be a part of and constitute the county local highway system of that county. [Acts 1969, ch. 353, § 5; 1980, P.L. 74, § 111; 1981, P.L. 41, § 28.]

8-11-2-6 [38-3606]. Municipal arterial street system. - (a) How selected. A system of arterial streets shall be selected by the agency responsible for highways in each city or town with a population, according to the most recent United States census, of five thousand [5,000] persons or over. Such system shall be selected on the basis of greatest general importance to the municipality, after an evaluation of each highway in the municipality, and shall not include highways which are a part of the state highway system. Such system of arterial streets shall consist of transportation arteries connecting focal points of traffic interest, providing communication with other communities an outlying areas and shall provide for the continuity of the county arterial highway system into or through the municipalities. In selecting such system the agency responsible for highways in the municipality covered in this chapter shall be guided by engineering standards. In each city or town of less than five thousand [5,000] persons the arterial street system may be limited to the extensions of the county arterial highway system or the municipal arterial street system of adjoining cities into or through the municipality.

(b) The system of arterial streets of any municipality shall constitute the municipal arterial street system of that municipality for all purposes, and shall be known officially as the municipal arterial street system of that municipality.

(c) Additions, relocations, deletions. Streets may from time to time be included in, relocated or deleted from the municipal arterial street system of any municipality upon recommendation from the agency responsible for streets in such municipality in the same manner and by the same procedure as provided hereinbefore for the adoption of the municipal arterial street system in the first instance.

(d) Disposition of deleted highways. If a street or segment thereof is deleted from the municipal arterial street system of a municipality either because of a relocation or because it is no longer considered of sufficient importance to be continued as a part of such system, it may become a part of the municipal local street system of the municipality. If the highway is no longer considered necessary as a public street, it may be abandoned and discontinued in accordance with state law.

(e) Municipal local street system. All highways under the jurisdiction of the agency responsible for streets in the municipality in each of the several municipalities of the state and not included in the highway systems of the state or county or the municipal arterial street system as finally approved shall be a part of and constitute the municipal local street system of the municipality. [Acts 1969, ch. 353, § 6; 1980, P.L. 74, § 112.]

8-11-2-7 [38-3607]. Periodic review of state and local systems. - The highway systems provided for in this chapter, shall remain stationary for two [2] years. The systems shall be reviewed at five-year intervals, or more frequently if considered desirable, and any adjustments found desirable or necessary as a result of any change in conditions may be made. Such changes may include transfers from one [1] system to another. [Acts 1969, ch. 353, § 7; 1980, P.L. 74, § 113.]

8-11-2-8 [38-3608]. Maps of state, county and municipal systems - Cooperation with boards and municipalities. - (a) The executive director shall at all times maintain maps of the state, which shall show all the highways which have been designated as and constitute a part of the state highways of each county, and the systems of arterial and local streets of each municipality. (b) The state-aid director shall cooperate with the various boards and municipalities to the extent possible to ensure coordination and continuity between all systems. [Acts
8-11-2-10. Transfer of roads between systems - Memorandum. - The transfer of roads or streets between systems requires a memorandum of agreement signed by both the transferring agency or unit of government and by the agency or unit of government assuming jurisdiction over the road or street. The memorandum shall state:

(1) The purpose of the transfer;
(2) The effective date of the transfer; and
(3) Any conditions agreed to by the signers. [IC 8-11-2-10, as added by Acts 1976, P.L. 29, § 3; 1980, P.L. 74, § 115.]

8-12-9. STATE HIGHWAY SYSTEM TO INCLUDE EXTENSIONS TO STATE PARKS

8-12-9-1. Highways to connect state parks and projects with state highways --Roadside parks -- Cooperation with county commissioners and Indiana department of natural resources. -- The department of highways is hereby authorized and empowered to lay out, construct and maintain, as part of the state highway system, roadside parks, and highways, where said highways will connect any state highway, now existing or hereafter constructed, with any state park, state forest reserve, state game reserve, the grounds of any state institution, Provided however, That the board of trustees of each of said state institutions shall be required to adopt a resolution giving their consent for the construction of such roadside parks within the boundary of their respective institutions or any recreational, scenic or historic place owned or operated by or under the exclusive control of the state. Such connecting highways shall be laid out, constructed and maintained in the same manner as is now or hereafter may be provided by law for the laying out, construction and maintenance of state highways.

Construction and maintenance connecting a state highway with any state park, state forest reserve, state game reserve or state recreation area may also be done by the department of highways in cooperation with the board of county commissioners having primary responsibility for such county highway. The department of highways shall undertake such construction and maintenance responsibilities upon the request of the Indiana department of natural resources, approved by the governor. [Acts 1929, ch. 145, § 1, p. 145, § 1, p. 455; 1951, ch. 177, § 1; 1967, ch. 106, § 1; 1973, P.L. 67, § 1; 1980, P.L. 74, § 155.]

8-13-4. GENERAL PROVISIONS FOR INDIANA STATE HIGHWAYS COMMISSION 1987

8-13-4-2 [36-2902]. Town and city routes -

Selection - Streets - Construction and reconstruction - Improvements and maintenance. - (a) The department shall select the route of highways in the system of highways under its control through the incorporated cities and towns in the state, and may from time to time change such routes as the department may determine most convenient for public travel. From and after the 1st day of January, 1938, the department, to the extent of the funds available for the purpose, shall maintain and, as it determines necessary and as the funds required are available, may construct and improve the roadway of the streets, or any part thereof to such width as may be determined by the department in all incorporated cities and towns in the state over which highways in such system are routed.

(b) As part of the construction work, the department shall construct within the limits of any such street, the curbs and gutters, manholes, catch basins and the necessary drainage structures and facilities.

(c) If the construction of any such street necessitates the construction of adequate connecting facilities outside the limits of such streets to provide for drainage of such street, the necessary mains, laterals and connections shall be provided for in the plans, and included as part of the construction cost, and paid out of the department’s appropriation. However, if the drainage facilities outside of such street are to be used for a purpose or purposes in addition to that of draining such street, a proportionate share of the cost of such construction shall be borne by the beneficiaries of the drainage, other than the department, in a ratio of the amount of wastewater attributable to such other users as compared with the total capacity of such drainage facilities, said ratio to be determined by the department of highways. The department need not proceed with construction until such time as an agreement with the municipality has been [effected] concerning the payment of costs for drainage use other than that which is required for state highway drainage. If the construction of any street in the state highway system within the boundaries of an incorporated city or town necessitates the construction of a bridge, overhead or subway structure, and sidewalks are required as a part of any such structure, the sidewalks shall be provided for in the plans, included as part of the construction cost, and paid out of the department’s fund.

(d) Whenever a street on the state highway system is located within the boundaries of an incorporated city or town and is occupied by the track or tracks of any street railway, interurban railway or steam railroad the department of highways is not required to maintain, construct or improve the portion of said street between said track or tracks and for eighteen inches [18"] on the outside of the outer
rails thereof. The department of highways shall include as part of the construction cost and pay out of department of highway funds any expenditures necessitated by the acquisition of sufficient rights-of-way to construct such street. If there are any tracks, pipes or conduits in such street, the department is given the authority after determining to construct or improve such street to require and compel the owner or owners thereof to restore to good condition or renew such tracks, pipes, or conduits, and it shall be the duty of said owner or owners within ninety [90] days after being notified to do so, to restore or renew such tracks, pipes or conduits, and in case of tracks it shall be the duty of such owner or owners to pave the portion of such street between the rails of said tracks, and eighteen inches [18"] on the outside thereof, in conformity with plans to be approved by the department. If the construction work on such tracks, pipes or conduits involves work of such nature as to be impractical or impossible of performance as a separate unit, the department may by agreement with the owner or owners affected perform such work in which case such owner or owners affected shall reimburse the department for the cost thereof. Upon the completion of any such street, it shall be the duty of the department to maintain the roadway of said street, including the curbs and gutters, catch basins and inlets, within the limits of such street or highway, that form integral parts of such street or highway, and it shall be the duty of such city or town to maintain the sidewalks and grass plats thereof and the connecting drainage facilities therefor. Whenever the department has responsibility for maintenance of a street within a city or town, the department shall regulate traffic in accordance with IC 9-4-1 on such street and may remove any hazard to traffic.

(e) Whenever the department designates a business route or a special route as an alternate to a state highway and that route is laid out through an incorporated city or town, and no other state highway is routed over the business or alternate route, that city or town is responsible for any improvements to or maintenance of the street. Nothing in this section annuls, limits or abridges the right of any such city or town, either at its own expense or at the expense of property-owners subject to assessment therefor, to improve the sidewalks and curbs along any such street forming the route of any such highway or to construct sewers and drains therein or to construct or maintain any portion of the roadway of such street not improved or maintained by the department. Such city or town shall provide adequate drainage for any such street except as otherwise provided herein. Excepting as herein expressly provided and subject to IC 9-4-1, nothing in this section contained shall in any way limit the right of any such city or town, to regulate traffic over any street therein over which such highway is routed or to relieve such city or town of any liability, in reference thereto, now imposed upon it by law. The cost of such improvement, except as otherwise provided herein, shall be paid for out of the funds appropriated to the department of highways. Whenever any person, firm or corporation, other than such municipal corporation, is required or obligated by any law, ordinance or contract to keep in repair or to maintain or to construct any such street, or any portion thereof, or any railroad, interurban railroad or street railroad crossing, or any structure or bridge thereon, nothing in this section contained shall relieve such person, firm or corporation or the receiver thereof from any such duty, obligation or contract. [Acts 1937, ch. 256, § 2, p. 1199; 1945, ch. 278, § 1, p. 1245; 1969, ch. 480, § 1 (1971, p. 5); 1980, P.L. 74, § 173; 1981, P.L. 41, § 39.]

Cross References. Sidewalks surrounding Soldiers and Sailors Monument Circle maintained by war memorials commission. 10-7-2-12.

Grade crossings, separation, division of cost, 8-12-6-1--8-12-6-5, 8-12-7-1--7-12-7-3.

Opinions of Attorney General. Maintenance of sidewalks along the state highway commission's [now state department of highways] right-of-way within incorporated cities and towns rests upon the local community. 1977, No. 18, p. 45.

The state highway commission does not have authority to purchase rights-of-way in cities of more than thirty-five hundred population. 1938, p. 13.

The cost of operating signals on state highway routes through cities and towns is an obligation of the state highway commission. 1938, p. 81.

Where the state has taken over a street as a part of its highway system, the municipality has no further duty to maintain the same except in cities of first class. 1938, p. 91.

A street railway company is not required to pay for paving of street between double rail tracks. 1939, p. 155.

City-owned street light poles and fire hydrants installed within limits of highway right-of-way must be moved at expense of city when removal is necessary for contemplated state highway construction. 1947, No. 68, p. 339.

The state highway department has no authority to enter into an agreement with a city, wherein the construction of storm sewers are involved, to advance the cost of such construction directly to the city. 1959, No. 30, p. 150.

Contractors working for the state highway commission on state highway within corporate limits of cities or towns are not subject to ordinances which require construction permits to be acquired before work is done. 1961, No. 26, p. 139.
Since state highway commission has not adopted any rules or regulations requiring the use of duly licensed electricians or plumbers engaged in highway construction within the corporate limits of cities and towns, and the state has not legislated in this area, the power delegated and exercised by the counties, cities and towns was intended to be given full force and effect, therefore, such plumbers and electricians would be controlled by valid city ordinances applicable thereto. 1961, No. 28, p. 130.

NOTES TO DECISIONS

Liability of Town for Injuries.

A town could not avoid liability for injury due to a defect in a sidewalk, on ground that it had relinquished control thereof to the state. Argoa v. Harley (1943), 114 App. 290, 49 N. E. (2d) 552.

Nothing in this section contained shall in any way relieve such city of any liability in reference thereto, now imposed upon it by law. Evansville v. Lehmann (1965), 138 App. 587, 8 Ind. Dec. 518, 210 N. E. (2d) 672, 211 N.E. 2d 796.

8-13-14.5. LOCAL ROAD AND STREET INVENTORY

8-13-14.5-1 [36-3709]. Local road and street inventory to be prepared. - The department shall periodically inventory, as to mileage and use, the local road systems under the jurisdiction of the counties and the street systems under the jurisdiction of the cities and towns.

In the undertaking of the inventory, the department shall give adequate notice to applicable local units of government that an inventory is underway and confer with such local officials to confirm the accuracy of such inventory. [IC 8-13-14.5-1, as added by Acts 1972, P.L. 71, § 1; 1980, P.L. 74, § 204.]

8-18-20. PUBLIC LANDS FOR HIGHWAY RIGHT-OF-WAY AND PROPERTY TAX ON ACQUIRED PARCELS.

8-18-20-2 [36-2959]. Political subdivisions of state authorized to convey lands to department. - All cities, towns, townships, counties, school corporations an other political subdivisions of the state, public corporations, instrumentalities or agencies supported in whole or part by taxation, are authorized and empowered to convey and grant to the state of Indiana for use and benefit of the department, by voluntary conveyance or grant, with or without consideration, any lands or rights in or to lands needed or reasonably necessary for the location, relocation, construction, reconstruction, repair or maintenance of any state highway, including such as may be reasonably necessary for the clearing and removing of obstructions to vision at highway crossings and curves or for other highway purpose or purposes reasonably incident thereto. [Acts 1959, ch. 180, § 2; 1980, P.L. 74, § 209.]

8-13-20-4. Validity of grants and conveyances made prior to act. - All grants and conveyances made before March 11, 1959, by any municipality or subdivision of government, public corporation, instrumentality, or agency supported in whole or in part by taxation, are hereby declared to be valid and of full force and effect. [Acts 1959, ch. 180, § 4; P.L. 66-1984, § 54.]

8-16-9. COUNTY LINE BRIDGES

8-16-9-5 [36-2006]. Ownership of bridge. - Each county shall be regarded as the owner of an interest in any bridge erected, repaired, or purchased in pursuance of this chapter, and each shall have a voice in regulating the use thereof. [Acts 1903, ch. 11, § 5, p. 10; P.L. 68-1984, § 69.]

8-17-1. COUNTY UNIT LAW

8-17-1-9 [36-310]. Report and profile - Damages. - The report and profile which the board shall make and adopt shall remain in the office of such auditor, open to the inspection of every person interested therein and of his attorneys for at least ten [10] days, and, during such time, the board shall assess such damages as shall be justly due to any person under eighteen [18] years of age, idiot or person of unsound mind, and to any other person or corporation making written claim therefor, on account of the appropriation of or injury to his property by the laying out of any such new highway or any improvement of any highway prescribed in such report. At the expiration of said ten [10] days, said board shall make a supplemental report in writing, setting forth the sums allowed as damages to each person under eighteen [18] years of age, idiot or person of unsound mind, and the sum allowed as damages to each other person or corporation making written claim therefor, as herein prescribed, together with a description of the property in each case on account of which such damages have been allowed. No damages shall be allowed to or recovered by any person other than a person under eighteen [18] years of age, idiot or person of unsound mind, unless written claim therefor shall have been made him to the board before the filing of such supplemental report. Every person or corporation who has made written claim for damages and every person under eighteen [18] years of age, idiot or person of unsound mind, or his guardian, who shall be dissatisfied in respect to the action of the board in respect to his claim or in respect to the damages allowed to him, may except to such supplemental report, in writing, on that account, at any time within ten [10] days thereafter, whereupon such board of commissioners shall appoint three [3] viewers, who are resident freeholders of the county, to reconsider the same, which viewers shall take
and subscribe an oath faithfully to discharge their duties, and shall examine the lands and property to be affected, and assess such damages in each case as they deem to be just and reasonable, and make report of their doings, in writing, to said board. The board shall cause said supplemental report and the report of such additional viewers to be spread of record and, in event that the highway or highways or improvement on account of which said damages are allowed shall be finally established and ordered to be constructed, such damages shall be paid out of the proceeds of the sale of the bonds hereinafter authorized: Provided, That if the amount of damages awarded by the viewers is not ten percent [10%] greater than the amount assessed by the board, the claimant shall pay the costs made by said viewers. If the party excepting to the supplemental report of the viewers is not satisfied with the award made to him, he may appeal to the circuit court of the county and the cause shall be tried de novo, upon the exception to the supplemental report, but, in no event, shall such appeal stay the proceedings for the improvement. When the board shall have finally determined that said highway or improvement thereof is of public utility and convenience, and when the board may have determined all questions of damages to property owners, then the board may enter an order establishing the highway or proposed improvement of highway, and said improvement shall have precedence over all other highway improvements contemplated under the provisions of this chapter. [Acts 1919, ch. 112, § 10, p. 531; 1973, P.L. 23, § 4, p. 90.]

NOTES TO DECISIONS

In General.

In the construction of a county highway, it is presumed that the board of county commissioners filed a report and profile and gave the adjoining landowner an opportunity to file a written claim for damages. Board of County Comrs. v. Marray (1936), 210 Ind. 186, 1 N.E. (2d) 932.

The owner of land adjoining a county highway must follow the statutory method of recovering damages for injuries to his property resulting from the improvement. Board of County Comrs. v. Marray (1936), 120 Ind. 186, 1 N.E. (2d) 932.

8-17-1-20 [36-501]. County line highways. - The board of commissioners of any two [2] or more counties of this state shall have power to establish, lay out, widen, change, construct, or improve any highway or part of highway along the boundary line between any two [2] or more counties and shall have the power to improve said highway with gravel, stone, brick, concrete, bitumen, or other road paving material, and may issue and sell bonds for the same as provided in this chapter to raise the money with which to lay out, construct, and improve such highways; and in laying out and

improving such county line highways, the same may be made to vary from the county line whenever necessary in order to avoid bluffs, hills, ravines, or other obstacles, not to exceed one-half [1/2] mile, and such road, when so laid out, widened, changed, or improved under the provisions of this chapter, shall be considered, paid for and kept in repair and in the same proportions as if said roads were established and improved upon and along such county line or lines. [Acts 1919, ch. 112, § 21, p. 531; P.L. 66-1984, § 82.]

8-17-1-24 [36-505]. Location and viewing by joint boards - Engineer - Report. - After said notice has been duly served on the members of said board or boards concerning the improvement of a county line highway, said boards of commissioners shall, at such time and place, meet in joint session, and they shall call the surveyor of the county in which such petition is filed, if he be a civil engineer, and, if not, then they shall call a competent civil engineer and such other persons or assistants as are necessary and the board with such assistance shall proceed to view and locate such proposed road and determine the public utility thereof, and they shall cause the surveyor or engineer to make all needful surveys of the highway or proposed highways, together with all culverts, bridges and approaches, as the said joint board of commissioners shall, by a majority vote determine:

(a) Whether the proposed highway or highways or any part thereof or changes or improvements thereof as described in the petition will be of public utility.

(b) They shall further determine whether it is necessary to construct any bridges, culverts or approaches, and shall determine the necessary drainage for the protection of the highway.

(c) They shall determine the beginning course, termination and length of the proposed highway or improvement.

(d) They shall determine the width of said highway and also the width of the part of said highway which is to be improved, and the art of said highway to be improved shall not be more than twenty-four [24] feet in width, exclusive of berms.

(e) The board shall determine the paving material best suited for the need of the traffic of said highway or highways, and all paving materials entering into the construction of such highway shall meet all tests and standards that may be adopted by the department, and the character of the improvement, including the grading, draining and paving, and they shall require of the surveyor or engineer complete plans and specifications of such proposed improvement, together with all bridges, culverts, waterways and approaches required thereto.
The board shall determine from the report of the surveyor or engineer the estimated cost of the highway or improvement thereof and the board shall file in the office of the auditor of the county, for the benefit of the public, their report in writing, signed by a majority of them, setting forth their determination in said matter in respect to said highway or proposed highway or improvement thereof mentioned in the petition, including an accurate description of each new highway to be laid out, established, graded, drained and paved, and of each public highway to be graded, drained and paved, together with their recommendation in respect to the paving material to be used in each instance, and complete plans and specifications for each improvement to be made, including the specifications for bridges, culverts and approaches and the estimated cost of such improvement, and such report shall be accompanied by an accurate profile of each highway or part of highway to be improved, together with proper drawings of bridges, culverts and approaches, showing by proper lines any increase of elevation thereof at each one hundred (100) feet of its length and the changes to be adopted by the board and made a part of their report. If it is necessary for the board of commissioners to employ a competent civil engineer to make the survey and prepare the plans and specifications of said highway or improvement, the board may pay to such engineer, for his services, a reasonable compensation. [Acts 1919, ch. 112, § 25, p. 531; 1980, P.L. 74, § 300.]

8-17-1-26 [36-507]. Notice - Remonstrance - Appeal. - (a) Upon the filing of such report by the joint boards of commissioners relating to the improvement of a county line highway, the county auditor of each county shall, after a majority of such auditors having first agreed between or among themselves, on a date to be fixed, view notice of the pendency of such petition to the taxpayers of the township in each of the counties to be affected by such improvements, by the publication of notice in a newspaper of general circulation in each of such counties, for two [2] weeks prior to the date fixed, stating in said notice that a joint meeting of the boards of commissioners of each of such counties shall be held on the day fixed in such notice, at the auditor's office of the commissioners' room of the county in which such petition is filed, with a brief description of the road and improvement prayed for, and that all resident taxpayers affected by such improvement and opposed thereto shall file their remonstrance against said improvement. and said board of commissioners, when in joint session, shall hear any and all remonstrances filed.

(b) Any resident taxpayer affected by the improvement proposed may file his remonstrance against said improvement with the auditor of the county where said petition is pending, at any time within ten [10] days after the date fixed in said notice for such board of commissioners to meet as aforesaid and not thereafter, and the only ground for a remonstrance shall be that said proposed improvement will not be of public utility or convenience. If more than one party remonstrates, the same shall be consolidated and tried together. Said board of commissioners, when in joint session, at such time, shall then reconsider their original determinations and shall try the issues, thus formed, under the same rules and regulations as other cases are tried before boards of commissioners, and render their decision, and if said boards, by a majority vote of all the members present, find for the remonstrators that said improvement would not be of public utility or convenience, the petition shall be dismissed at the costs of the petitioners. If they find against the remonstrators, then the costs made by reason of such remonstrance shall be adjudged against the remonstrators. Either party may appeal to the circuit court of the county in which the petition is filed, in the same manner as in any case of persons aggrieved by any decision of the board of commissioners. When the joint boards shall have finally determined that said highway or improvement thereof is of public utility and convenience, and when the joint boards have determined all questions of damages to property owners, then the joint board shall enter an order establishing the highway or proposed improvement of highway, and said improvement shall have precedence over all other highway improvements contemplated under the provisions of this chapter. [Acts 1919, ch. 112, § 27, p. 531; P.L. 86-1984, § 84.]

8-17-1-27 [36-508]. Reports and plans of joint board of commissioners. - The report, profile, plans, and specifications which the joint board of commissioners shall make and adopt shall remain in the office of the auditor in the county in which the petition is filed, open to the inspection of every person interested therein and of his attorneys for at least ten [10] days, and during such time, the joint boards shall assess such damages as shall be justly due to any infant, idiot or person of unsound mind and to any other person or corporation making written claim therefor, on account of the appropriation of or injury to his property by the laying out of any such new highway or any improvement of any highway prescribed in such report, and said joint board shall be further guided with reference to its supplemental report concerning damages by the provisions of section 9 [8-17-1-9] of this chapter. [Acts 1919, ch. 112, § 28, p. 531; P.L. 66-1984, § 85.]

8-17-1-45 [36-334]. County line roads. - Each county shall have as its full responsibility the construction, reconstruction, maintenance, and operation of the roads making up its southern and eastern boundaries. The arterial road and street board, provided for in IC 1971, 8-11-3 [8-11-3-1 - 8-11-3-8], shall consider the provisions of this chapter [8-17-1-1 - 8-17-1-45] in its certification of road
mileage used as a factor in the allocation of highway use tax revenues. [IC 1971, 8-17-1-45, as added by Acts 1971, P.L. 102, § 1, p. 478.]


Cross-Reference. Improvement of county line roads, 8-17-1-20 - 8-17-1-34, 8-17-11-1 - 8-17-11-13.

Opinions of Attorney General. The word "roads" in this section does not include bridges since the legislature had created two procedures, one for county line roads and another for county line bridges. 1973, No. 29, p. 91.

8-17-3. RESPONSIBILITY FOR COUNTY ROADS OF COMMISSIONERS, SURVEYOR, AND HIGHWAY SUPERVISOR

8-17-8-9 [36-1109]. Maps - Designating roads - Patrol system. - The county surveyor of each county in this state shall, upon March 1, 1933, make a map of all the highways in such county, as provided for in this chapter, if such map has not been made before March 1, 1933, setting forth the length and character of each road, and, so far as practicable, the kind and volume of traffic over such road. In dividing the roads into districts, the surveyor shall give each road a distinct and separate name or number, and no two [2] roads in the same district shall have the same name or number, and as roads built after March 1, 1933, become a part of the county highway system, he shall give to each a name or number, as provided in this section. In naming or numbering such roads, if it shall be found by him practical and not conflicting, he shall give to the road the name or number by which it is commonly known. The intention of this chapter is to maintain as nearly as possible a patrol system over the county highways, to the end that repairs may be made at all times of the year so that the highways may be kept in good condition. [Acts 1933, ch. 27, § 9, p. 139; P.L. 66-1984, § 98.]


8-17-8. COUNTY ROAD NUMBERING SYSTEM

8-17-8-1 [36-721]. County roads - Designation on maps - Signs authorized. - The county planning commission of any county, or in the event the county does not have a county planning commission, the board of commissioners of any county, may authorize the preparation of charts or maps on which the county roads shall be designated either by name or number and the board of county commissioners may authorize the purchase and the installation of signs showing the number or name of said county road as designated on the maps or charts so prepared; Provided, however, That in counties with a population of four hundred thousand (400,000) or more the planning commission shall, in addition to naming or numbering the roads, provide for the numbering of residences on such roads in such manner as to conform with streets in cities located in such counties. [Acts 1953, ch. 28, § 1, p. 96.]

8-17-8-2 [36-722]. Preparation of charts and maps - County engineer or surveyor compensation. - The county planning commission, or board of county commissioners, in the preparation of such charts or maps shall solicit the services of the county engineer and/or county surveyor who shall prepare such charts or maps. For such services the county engineer and/or county surveyor may be allowed a compensation in addition to the compensation he now receives as fixed by law, in an amount to be determined by the county planning commission or by the board of county commissioners subject to the approval of the county council. All expenses incidental to the preparation of such charts or maps, including the compensation of the county engineer and/or county surveyor, shall be out of the general fund of the county. [Acts 1953, ch. 28, § 2, p. 96.]

8-17-8-3 [36-728]. Sale of charts and maps. - Such charts or maps shall be available to all units of government free of charge. Such maps or charts shall be available to the general public at a charge to be determined by the county planning commission or board of county commissioners. Any money received from the sale of such charts or maps shall be deposited p. 455; 1951, ch. 177, § 1; 1967, ch. 108, § 1; 1973, P.L. 67, § 1; 1980, P.L. 74, § 155.]

8-17-9. DESIGNATING PREFERENTIAL COUNTY ROADS

8-17-9-1 [36-1817]. Preferential highways - Designation of by county commissioners. - Boards of commissioners of the counties of the state shall establish and designate as preferential highways those public highways in their counties which, as the most frequently traveled, constitute thoroughfares to and from cities and towns: Provided, That the provisions of this section shall not apply to county highways whereby they intersect state or federal highways. [Acts 1961, ch. 54, § 1, p. 105.]

8-17-11. COUNTY LINE ROADS

8-17-11-5 [36-405]. Viewers - Appointment and duties. - After said notice has been duly served on the members of said board or boards, said boards of commissioners shall, at such time and place, meet in joint session, and by concurrent order appoint two [2] disinterested freeholders, each of whom shall reside in different counties, and not be residents of, or owners of taxable property of any township interested in or affected by such improve-
ment, and a competent surveyor or engineer as viewers, who shall, after being duly notified by the auditor of the county where said petition is pending, and, after taking an oath for the lawful and faithful performance of their duty, take such persons as assistants as are necessary to view and locate such proposed road and determine the public utility thereof, the width of the same, make a profile of the grade, determine the quality and depth of the gravel, stone, or other material to be used, and make an estimate of the cost of the construction of said road, including bridges such as townships are authorized by law to build, culverts, drainage, and all other things necessary for its completion; Provided, That such viewers shall not be required to assess damages to any person or persons except as provided by IC 8-20-1-60, which provisions shall apply to this chapter. Said viewers and engineer shall make a report in duplicate and file one [1] report with the auditor of each county immediately upon the completion of their work. Such report shall state and specify the public utility, length, plans, plats, and profiles, together with an estimate of the cost of said road, including all damages assessed. And said commissioners, while in joint session, shall fix the time when such viewers and engineer shall file their report; Provided, if necessary, the time for filing said report may be extended by the board before which the petition is filed not to exceed thirty [30] days. It shall be the duty of the county auditor of the county where said petition is filed to attend all joint sessions provided for in this chapter, and he shall enter at length all proceedings of such joint session on the commissioners’ records of his county without delay, and shall at once make out true and certified copies of such records and transmit a copy thereof to the auditor of each county interested, who shall at once copy the same on the commissioners’ records of his county. [Acts 1907, ch. 209, § 5, p. 383; P.L. 66-1984, § 104.]

NOTES TO DECISIONS

Bridges.

This section was not limited by Acts 1920, p. 124 (repealed by Acts 1933, Spec. Sess., ch. 16, § 6), relating to construction of bridges by townships, since the latter section also applied only to bridge projects disconnected from highway improvement schemes. Wells v. Davis (1918), 185 Ind. 152, 113 N. E. 237.

This section is not limited by 8-20-1-35, relating to the construction of bridges by a county, since it applies only to bridge projects disconnected from highway improvement schemes. Wells v. Davis (1918), 185 Ind. 152, 113 N. E. 237.

Whether this section is restricted by 8-16-12-1 was held immaterial where the cost would not exceed two percent. Wells v. Davis (1918), 185 Ind.

152, 113 N. E. 237.

Duty of County Auditor.

The mere failure of the county auditor, at the proper time, to perform the clerical act of copying into the commissioner’s record of his county the certified record made by him, when acting as clerk ex officio of a joint session of three county boards held to lay out a highway for improvement, did not relieve him from performing such statutory duty at some time. Board of County Comrs. v. State ex rel. Chenoweth (1921), 191 Ind. 335, 132 N.E. 680.

8-20-1. COUNTY ROADS - LOCATION, VACATION AND EMINENT DOMAIN

8-20-1-34 [36-1906]. Bridges in cities and towns. - The board of commissioners of any county may build or repair any bridge within the corporate limits of any city or town in such county; and any such bridge, if built or repaired by order of such board, shall be built or repaired in the same manner and paid for out of the same funds that other bridges without such corporate limits are by law built or repaired and paid for. Nothing in this section, however, shall be so construed as to take away from any such city or town the right to build or repair any bridge within its corporate limits, nor to take away the jurisdiction of such city or town over all bridges within such limits, whether built or repaired by such city or town or by the county board. [Acts 1905, ch. 167, § 44, p. 521.]

8-20-7. LOCATION OF COUNTY HIGHWAYS OVER ROUTES OF ABANDONED STATE HIGHWAYS

8-20-7-1 [36-712]. County highways over route of abandoned state highways - Authority to establish - Removal of obstructions - Maintenance. - When any county highway or any part thereof shall have been taken over by the state department of highways and incorporated in the state highway system and when, subsequently, such highway or part thereof is or shall have been abandoned by the state department of highways as a state highway, but is or shall not have been taken into the county highway system by action of the board of county commissioners, as provided by law, then and in that event, the board of commissioners of the county in which such highway or part thereof is located is hereby authorized to locate and establish a highway over the route of such abandoned highway, the right of way of which shall have the same boundaries as the boundaries of the right of way of such highway at the time when it was abandoned as a state highway by the state department of highways. For the purpose of establishing such highway and securing the right of way therefor, and of acquiring control of any bridge or bridges located on or constituting a part of such highway, or of removing any obstructions on the right of way of

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such proposed highway, the board of commissioners is hereby authorized to acquire the land necessary for the right of way of such highway either by donation by the owners of the land through which such highway passes or by agreement between such owner or owners and the board of commissioners of such county, or through the exercise by such board of commissioners of the power of eminent domain with which power the board of commissioners is hereby endowed, and the board shall, in like manner, have the power to order and require the removal of any obstructions which have been placed on such highway by any person, firm or corporation since its abandonment by the state department of highways. When such highway shall have been established as herein provided, it shall be and constitute a part of the county highway system of such county and shall be maintained in the same manner as other county highways are maintained. [Acts 1935, ch. 238, § 1, p. 1237; 1980, P.L. 74, § 307.]

36-1-3. HOME RULE

36-1-3-9. Jurisdiction of a municipality - Settlement of jurisdictional disputes. - (a) The area inside the boundaries of a county comprises its territorial jurisdiction. However, a municipality has exclusive jurisdiction over bridges (subject to IC 8-16-3-1), streets, alleys, sidewalks, watercourses, sewers, drains, and public grounds inside its corporate boundaries, unless a statute provides otherwise.

(b) The area inside the corporate boundaries of a municipality comprises its territorial jurisdiction, except to the extent that a statute expressly authorizes the municipality to exercise a power in areas outside its corporate boundaries.

(c) Whenever a statute authorizes a municipality to exercise a power in areas outside its corporate boundaries, the power may be exercised:

(1) Inside the corporate boundaries of another municipality, only if both municipalities, by ordinance, enter into an agreement under IC 36-1-7 [36-1-7-1-36-1-7-12]; or

(2) In a county other than the county in which the municipal hall is located, but not inside the corporate boundaries of another municipality, only if both the municipality and the other county, by ordinance, enter into an agreement under IC 36-1-7.

(d) If the two [2] units involved under subsection (c) cannot reach an agreement, either unit may petition the circuit or superior court of the county to hear and determine the matters at issue. The clerk of the court shall issue notice to the other unit as in other civil actions, and the court shall hold the hearing without a jury. There may be a change of venue from the judge but not from the county. The petitioning unit shall pay the costs of the

action. [IC 17-2-2.5-4, 18-1-1.5-1, 18-1-1.5-21, 18-5-10-4, recodified as IC 36-1-3-9 by Acts 1980, P.L. 211, § 1.]

NOTES TO DECISIONS

In General.

Taxpayers of a town could enjoin the enforcement of invalid ordinances. Meyer v. Town of Boonville, 162 Ind. 165, 70 N. E. 146 (1904).


Drains.

County surveyors had no authority over drains within cities or towns, and lots within a city or town could not be assessed to pay for repairs to drains outside of the city or town. Quick v. Templin, 42 Ind. App. 151, 85 N. E. 121 (1908).

Street on Boundary.

If a street was located upon the boundary line of a city, the city could not vacate that portion of the street within the corporate limits of the city. City of Gary v. Much, 180 Ind. 26, 101 N. E. 4 (1913).
CHAPTER 8
ROAD REVENUES

0-3.5-4. COUNTY MOTOR VEHICLE EXCISE SURTAX

6-3.5-4-1. Definitions. - As used in this chapter:

"Branch office" means a branch office of the bureau of motor vehicles.

"County council" includes the city-county council of a county that contains a consolidated city of the first class.

"Motor vehicle" means a vehicle which is subject to the annual license excise tax imposed under IC 6-6-5.

"Net annual license excise tax" means the tax due under IC 6-6-5 after the application of the adjustments and credits provided by that chapter.

"Surtax" means the annual license excise surtax imposed by a county council under this chapter. [IC 6-3.5-4-1, as added by Acts 1980, P.L. 10, § 4.]

6-3.5-4-2. Adoption - Application - Tax rate - Limitation. - (a) The county council of any county may, subject to the limitation imposed by subsection (c), adopt an ordinance to impose an annual license excise surtax at the same rate on each motor vehicle listed in subsection (b) that is registered in the county. The county council may impose the surtax at a rate of not less than two percent [2%] nor more than ten percent [10%]. However, the surtax on a vehicle may not be less than seven dollars and fifty cents [$7.50]. The county council shall state the surtax rate in the ordinance which imposes the tax.

(b) The license excise surtax applies to the following vehicles:

(1) Passenger vehicles

(2) Motorcycles.

(3) Trucks with a declared gross weight that does not exceed eleven thousand [11,000] pounds.

(c) The county council may not adopt an ordinance to impose the surtax unless it concurrently adopts an ordinance under IC 6-3.5-5 to impose the wheel tax.

(d) Notwithstanding any other provision of this chapter or IC 6-3.5-5, ordinances adopted by a county council before June 1, 1983, to impose or change the annual license excise surtax and the annual wheel tax in the county remain in effect until the ordinances are amended or repealed under this chapter or IC 6-3.5-5. [IC 6-3.5-4-2, as added by Acts 1980, P.L. 10, § 4; P.L. 85-1983, § 1.]

6-3.5-4-3. Motor vehicles subject to tax. - If a county adopts an ordinance imposing the surtax after December 31 but before July 1 of the following year, a motor vehicle is subject to the tax if it is registered in the county after December 31 of the year in which the ordinance is adopted. If a county council adopts an ordinance imposing the surtax after June 30 but before the following January 1, a motor vehicle is subject to the tax if it is registered in the county after December 31 of the year following the year in which the ordinance is adopted. [IC 6-3.5-4-3, as added by Acts 1980, P.L. 10, § 4, P.L. 85-1983, § 2.]

6-3.5-4-4. Recision of surtax. - (a) After January 1 but before July 1 of any year, the county council may, subject to the limitations imposed by subsection (b), adopt an ordinance to rescind the surtax. If the county council adopts such an ordinance, the surtax does not apply to a motor vehicle registered after December 31 of the year the ordinance is adopted.

(b) The county council may not adopt an ordinance to rescind the surtax unless it concurrently adopts an ordinance under IC 6-3.5-5 to rescind the wheel tax. In addition, the county council may not adopt an ordinance to rescind the surtax if any portion of a loan obtained by the county under IC 8-14-8 is unpaid, or if any bonds issued by the county under IC 8-14-9 are outstanding. [IC 6-3.5-4-4, as added by Acts 1980, P.L. 10, § 4; 1981, P.L. 88, § 1.]

6-3.5-4-5. Change of rate. - (a) The county council may, subject to the limitations imposed by subsection (b), adopt an ordinance to increase or decrease the surtax rate. The new surtax rate must be within the range of rates prescribed by section 2 [6-3.5-4-2] of this chapter. A new rate that is established by an ordinance that is adopted after December 31 but before July 1 of the following year applies to motor vehicles registered after December 31 of the year in which the ordinance to change the
rate is adopted. A new rate that is established by an ordinance that is adopted after June 30 but before January 1 of the following year applies to motor vehicles registered after December 31 of the year following the year in which the ordinance is adopted.

(b) The county council may not adopt an ordinance to decrease the surtax rate under this section if any portion of a loan obtained by the county under IC 8-14-8 is unpaid, or if any bonds issued by the county under IC 8-14-9 are outstanding. [IC 6-3.5-4-5, as added by Acts 1980, P.L. 10, § 4; 1981, P.L. 88, § 2; P.L. 85-1983, § 3.]

6-3.5-4-6. Copy of ordinances to commissioner of bureau of motor vehicles.
- If a county council adopts an ordinance to impose, rescind, or change the rate of the surtax, the county council shall send a copy of the ordinance to the commissioner of the bureau of motor vehicles. [IC 6-3.5-4-6, as added by Acts 1980, P.L. 10, § 4.]

6-3.5-4-7. Payment of surtax required for registration of motor vehicle - Amount - Collection. - A person may not register a motor vehicle in a county that has adopted the surtax unless he pays the surtax due, if any, to the bureau of motor vehicles. The amount of the surtax due equals the greater of seven dollars and fifty cents ($7.50) or the product of (i) the net annual license excise tax imposed with respect to the registration of that vehicle, multiplied by (ii) the surtax rate in effect at the time of registration. The bureau of motor vehicles shall collect the surtax due, if any, at the time a motor vehicle is registered. However, the bureau may utilize its branch offices to collect the surtax. [IC 6-3.5-4-7, as added by Acts 1980, P.L. 10, § 4; P.L. 85-1983, § 4.]

6-3.5-4-12. Marion County - Appropriation. - In the case of a county that contains a consolidated city, the city-county council may appropriate money derived from the surtax to the department of transportation established by IC 36-3-5-4 for use by the department under law. The city-county council may not appropriate money derived from the surtax for any other purpose. [IC 6-3.5-4-12, as added by Acts 1980, P.L. 10, § 4; 1982, P.L. 33, § 7.]

6-3.5-4-13. Counties other than Marion County - Fund - Allocation - Distribution - Purposes. - (a) In the case of a county that does not contain a consolidated city of the first class, the county treasurer shall deposit the surtax revenues in a fund to be known as the "County Surtax Fund."

(b) Before the twentieth day of each month, the county auditor shall allocate the money deposited in the county surtax fund during that month among the county and the cities and the towns in the county. The county auditor shall allocate the money to counties, cities, and towns under IC 8-14-2-4(c)(1) through IC 8-14-2-4(c)(3).

(c) Before the twenty-fifth day of each month, the county treasurer shall distribute to the county and the cities and towns in the county the money deposited in the county surtax fund during that month. The county treasurer shall base the distribution on allocations made by the county auditor for that month under subsection (b).

(d) A county, city, or town may only use the surtax revenues it receives under this section to construct, reconstruct, repair, or maintain streets and roads under its jurisdiction. [IC 6-3.5-4-14, as added by Acts 1980, P.L. 1, § 5; 1982, P.L. 33, § 8.]

6-3.5-4-14. Marion County - Appropriations. - In the case of a county that contains a consolidated city, the city-county council may appropriate money derived from the wheel tax to the department of transportation established by IC 36-3-5-4 for the use by the department under law. The city-county council may not appropriate money derived from the wheel tax for any other purpose. [IC 6-3.5-4-14, as added by Acts 1980, P.L. 10, § 5; 1982, P.L. 33, § 8.]

6-3.5-4-15. Collection of service charge [effective July 1, 1988]. - Each license branch shall collect the service charge prescribed under IC 9-1.5 for the surtax collected with respect to each vehicle registered by that branch. [IC 6-3.5-4-15, as added by Acts 1980, P.L. 10, § 4; P.L. 42-1986, § 3.]

6-3.5-4-16. Violations - Penalty. - (a) The owner of a motor vehicle who knowingly registers the vehicle without paying surtax imposed under this chapter with respect to that registration commits a class B misdemeanor.

(b) An employee of the bureau of motor vehicles, an employee of a branch office, or the manager of a branch office who recklessly issues a registration on any motor vehicle without collecting surtax imposed under this chapter with respect to that registration commits a class B misdemeanor. [IC 6-3.5-4-16, as added by Acts 1980, P.L. 10, § 4.]

6-3.5-5. COUNTY WHEEL TAX

6-3.5-5-1. Definitions - As used in this chapter:

"Branch office" means a branch office of the bureau of motor vehicles.

"Bus" has the same meaning as the definition contained in IC 9-1-1-2(1).

"County council" includes the city-county council of a county that contains a consolidated city of the first class.

"Political subdivision" has the same meaning as the definition contained in IC 34-4-16.5-2(5).
"Recreational vehicle" has the same meaning as the definition contained in IC 9-1-1-2(t).

"Semitrailer" has the same meaning as the definition contained in IC 9-1-1-2(f).

"State agency" has the same meaning as the definition contained in IC 34-4-16.5-2(77)m.

"Tractor" has the same meaning as the definition contained in IC 9-1-1-2(g).

"Trailer" has the same meaning as the definition contained in IC 9-1-1-2(e).

"Truck" has the same meaning as the definition contained in IC 9-1-1-2(d).

'Wheel tax" means the tax imposed under this chapter. [IC 6-3.5-5-1, as added by Acts 1980, P.L. 10, § 5.]

6-3.5-5-2. Adoption - Limitation - Tax rate. - (a) The county council of any county may, subject to the limitation imposed by subsection (b), adopt an ordinance to impose an annual wheel tax on each vehicle which:

[1] Is included in one (1) of the classes of vehicles listed in section [6-3.5-5-3] of this chapter;

[2] Is not exempt from the wheel tax under section 4 [6-3.5-5-4] of this chapter; and


(b) The county council of a county may not adopt an ordinance to impose the wheel tax unless it concurrently adopts an ordinance under IC 6-3.5-4 to impose the annual license excise surtax.

(c) The county council may impose the wheel tax at a different rate for each of the classes of vehicles listed in section 3 of this chapter. In addition, the county council may establish different rates within the classes of buses, semitrailers, trailers, tractors, and trucks based on weight classifications of those vehicles that are established by the bureau of motor vehicles for use throughout Indiana. However, the wheel tax rate for a particular class or weight classification of vehicles may not be less than five dollars ($5.00) and may not exceed forty dollars ($40.00). The county council shall state the initial wheel tax rates in the ordinance that imposes the tax. [IC 6-3.5-5-2, as added by Acts 180, P.L. 10, § 6.]

6-3.5-5-3. Applicability of tax - Classes of vehicles. - The wheel tax applies to the following classes of vehicles:

1. Buses;
2. Recreational vehicles;
3. Semitrailers;
4. Tractors;
5. Trailers; and
6. Trucks.

[IC 6-3.5-5-3, as added by Acts 1980, P.L. 10, § 5.]

6-3.5-5-4. Exemptions. - A vehicle is exempt from the wheel tax imposed under this chapter if the vehicle is:

1. Owned by this state;
2. Owned by a state agency of this state;
3. Owned by a political subdivision of this state;
4. Subject to the annual license excise surtax imposed under IC 6-3.5-4; or
5. A bus owned and operated by a religious or nonprofit youth organization and used to haul persons to religious services or for the benefit of their members. [IC 6-3.5-5-4, as added by Acts 1980, P.L. 10, § 5.]

6-3.5-5-5. Vehicles subject to tax. - If a county council adopts an ordinance imposing the wheel tax after December 31 but before July 1 of the following year, a vehicle described in section 2(a) [6-3.5-5-2(a)] of this chapter is subject to the tax if it is registered in the county after December 31 of the year in which the ordinance is adopted. If a county council adopts an ordinance imposing the wheel tax after June 30 but before the following January 1, a vehicle described in section 2(a) of this chapter is subject to the tax if it is registered in the county after December 31 of the year following the year in which the ordinance is adopted. [IC 6-3.5-5-5, as added by Acts 1980, P.L. 10, § 5; P.L. 85-1983, § 7.]

6-3.5-5-6. Recission of tax. - (a) After January 1 but before July 1 of any year, the county council may, subject to the limitations imposed by subsection (b), adopt an ordinance to rescind the wheel tax. If the county council adopts such an ordinance, the wheel tax does not apply to a vehicle registered after December 31 of the year the ordinance is adopted.

(b) The county council may not adopt an ordinance to rescind the wheel tax unless it concurrently adopts an ordinance under IC 6-3.5-4 to rescind the annual license excise surtax. In addition, the county council may not adopt an ordinance to rescind the wheel tax if any portion of a loan obtained by the county under IC 8-14-9 is unpaid, or if any bonds issued by the county under IC 8-14-9 are outstanding. [IC 6-3.5-5-6, as added by Acts 1980, P.L. 10, § 5; 1981, P.L. 88, § 3.]

6-3.5-5-7. Change of rates. - (a) The county council may, subject to the limitations imposed by
subsection (b), adopt an ordinance to increase or decrease the wheel tax rates. The new wheel tax rates must be within the range of rates prescribed by section 2 [6-3.5-5-2] of this chapter. New rates that are established by an ordinance that is adopted after December 31 but before July 1 of the following year apply to vehicles registered after December 31 of the year in which the ordinance to change the rates is adopted. New rates that are established by an ordinance that is adopted after June 30 but before July 1 of the following year apply to motor vehicles registered after December 31 of the year following in which the ordinance is adopted.

(b) The county council may not adopt an ordinance to decrease the wheel tax rate under this section if any portion of a loan made by the county under IC 8-14-8 is unpaid, or if any bonds issued by the county under IC 8-14-9 are outstanding. [IC 6-3.5-5-7, as added by Acts 1980, P.L. 10, § 5; 1981, P.L. 88, § 4; P.L. 85-1983, § 8.]

6-3.5-5-8. Copy of ordinances to commissioner of bureau of motor vehicles. - If a county council adopts an ordinance to impose, rescind, or change the rates of the wheel tax, the county council shall send a copy of the ordinance to the commissioner of the bureau of motor vehicles. [IC 6-3.5-5-8, as added by Acts 1980, P.L. 10, § 5.]

6-3.5-5-8.5. Tax credit for vehicle sold during registration year. - (a) Every owner of a vehicle for which the wheel tax has been paid for the owner's registration year is entitled to a credit if during that registration year the owner sells the vehicle. The amount of the credit equals the wheel tax paid by the owner for the vehicle that was sold. The credit may only be applied by the owner against the wheel tax owed for a vehicle that is purchased during the same registration year.

(b) An owner of a vehicle is not entitled to a refund of any part of a credit that is not used under this section. [IC 6-3.5-5-8.5, as added by P.L. 86-1983, § 1.]

6-3.5-5-9. Payment required for registration of vehicle - Amount - Collection. - A person may not register a vehicle in a county which has adopted the wheel tax unless he pays the wheel tax due, if any, to the bureau of motor vehicles. The amount of the wheel tax due is based on the wheel tax rate, for that class of vehicle, in effect at the time of registration. The bureau of motor vehicles shall collect the wheel tax due, if any, at the time a motor vehicle is registered. However, the bureau may utilize its branch offices to collect the wheel tax. [IC 6-3.5-5-9, as added by Acts 1980, P.L. 10, § 5.]

6-3.5-5-10. Collection by branch office - Deposit. - The wheel tax collected by a branch office shall be deposited daily by the branch manager in a separate account in a depository designated by the state board of finance. [IC 6-3.5-5-10, as added by Acts 1980, P.L. 10, § 5.]

6-3.5-5-11. Collection by branch office - Remission and report. - On or before the tenth day of the month following the month in which wheel tax is collected at a branch office, the branch office manager shall remit the wheel tax to the county treasurer of the county that imposed the wheel tax. Concurrently with the remittance, the branch office manager shall file a wheel tax collections report with the county treasurer and the county auditor. The branch manager shall prepare the report on forms prescribed by the state board of accounts. [IC 6-3.5-5-11, as added by Acts 1980, P.L. 10, § 5.]

6-3.5-5-12. Report by branch office manager to bureau of motor vehicles. - Each branch office manager shall report wheel tax collections, if any, to the bureau of motor vehicles at the same time that registration fees are reported. [IC 6-3.5-5-12, as added by Acts 1980, P.L. 10, § 5.]

6-3.5-5-13. Collection by bureau of motor vehicles - Remission and report. - If the wheel tax is collected directly by the bureau of motor vehicles, instead of at a branch office, the commissioner of the bureau shall:

1. Remit the wheel tax to, and file a wheel tax collections report with, the appropriate county treasurer; and

2. File a wheel tax collections report with the county auditor; in the same manner and at the same time that a branch office manager is required to remit and report under section 11 [6-3.5-5-11] of this chapter. [IC 6-3.5-5-13, as added by Acts 1980, P.L. 10, § 5.]

6-3.5-5-14. Marion County - Appropriation. - In the case of a county that contains a consolidated city of the first class, the county council may appropriate money derived from the wheel tax to the department of transportation established by IC 18-4-10 [repealed] for use by the department under that chapter. The county council may not appropriate money derived from the wheel tax for any other purpose. [IC 6-3.5-5-14, as added by Acts 1980, P.L. 10, § 5.]

6-3.5-5-15. - Counties other than Marion County - Fund - Allocation - Distribution - Purposes. - (a) In the case of a county that does not contain a consolidated city of the first class, the county treasurer shall deposit the wheel tax revenues in a fund to be known as the "County Wheel Tax Fund."

(b) Before the twentieth day of each month, the county auditor shall allocate the money deposited in the county wheel tax fund during that month
among the county and the cities and the towns in the county. The county auditor shall allocate the money to counties, cities, and towns under IC 8-14-2-4(c)(1) through IC 8-14-2-4(c)(3).

(c) Before the twenty-fifth day of each month, the county treasurer shall distribute to the county and the cities and towns in the county the money deposited in the county wheel tax fund during that month. The county treasurer shall base the distribution on allocations made by the county auditor for that month under subsection (b).

(d) A county, city, or town may only use the wheel tax revenues it receives under this section to construct, reconstruct, repair, or maintain streets and roads under its jurisdiction. [IC 6-3.5-5-15, as added by Acts 1980, P.L. 10, § 5; P.L. 85-1983, § 9.]

6-3.5-6. COUNTY OPTION INCOME TAX

6-3.5-6.1. Definitions. - As used in this chapter.

"Adjusted gross income" has the same definition that the term is given in IC 6-3-1-3.5. However, in the case of a county taxpayer who is not treated as a resident county taxpayer of a county, the term includes only adjusted gross income derived from his principal place of business or employment within that county.

"Civil taxing unit" means any entity, except a school corporation, that has the power to impose ad valorem property taxes. However, in the case of a county in which a consolidated city is located, the consolidated city, the county, all special taxing districts, special service districts, included towns (as defined in IC 36-3-1-7) and all other political subdivisions except townships, excluded cities (as defined in IC 36-3-1-7), and school corporations shall be deemed to comprise one [1] civil taxing unit whose fiscal body is the fiscal body of the consolidated city.

"County income tax council" means a council established by section 2 [6-3.5-6.2] of this chapter.

"County taxpayer" as it relates to a particular county means any individual:

1) Who resides in that county on the date specified in section 20 [6-3.5-8-20] of this chapter; or

2) Who maintains his principal place of business or employment in that county on the date specified in section 20 of this chapter and who does not reside on that same date in another county in which the county option income tax or the county adjusted income tax is in effect.

"Department" refers to the Indiana department of state revenue.

"Fiscal body" has the same definition that the term is given in IC 3-1-2-8.

"Resident county taxpayer," as it relates to a particular county, means any county taxpayer who resides in that county on the date specified in section 20 of this chapter.

"School corporation" has the same definition that the term is given in IC 6-1.1-1-16. [P.L. 44-1984, § 14; P.L. 23-1986, § 9.]

Effective Dates.


Compiler's Notes. Section 23(b) of P.L. 23-1986 provides that this section applies to taxable years that begin after December 31, 1986.
Amendments. The 1986 amendment, effective January 1, 1987, deleted "within that county" at the end of definition of "adjusted gross income."

6-3.5-6.2. County income tax council established - Membership - Ordinance powers. - (a) A county income tax council is established for each county in Indiana. The membership of each county’s county income tax council consists of the fiscal body of the county and the fiscal body of each city or town that lies either partially or entirely within that county.

(b) Using procedures described in this chapter, a county income tax council may adopt ordinances to:

(1) Impose the county option income tax in its county;

(2) Rescind the county option income tax in its county;

(3) Increase the county option income tax rate for the county;

(4) Freeze the county option income tax rate for its county; or

(5) Increase the homestead credit in its county.

(c) An ordinance adopted in a particular year under this chapter to impose or rescind the county option income tax or to increase its tax rate is effective July 1 of that year. [P.L. 44-1984, § 14.]

6-3.5-6.3. Council voting - Population percentage allocations - Annual vote certification. - (a) In the case of a city or town that lies within more than one (1) county, the county auditor of each county shall base the allocations required by subsection (b) on the population of that part of the city or town that lies within the county for which the allocations are being made.

(b) Every county income tax council has a total of one hundred [100] votes. Every member of the county income tax council is allocated a percentage of the total one hundred [100] votes that may be cast. The percentage that a city or town is allocated for a year equals the same percentage that the population of the city or town bears to the population of the county. The percentage that the county is allocated for a year equals the same percentage that the population of all areas in the county not located in a city or town bears to the population of the county. On or before January 1 of each year, the county auditor shall certify to each member of the county income tax council the number of votes, rounded to the nearest one hundredth [0.01], it has for that year. [P.L. 44-1984, § 14.]

6-3.5-6.4. Voting by resolution - Form - Transmission to county auditor. - (a) A member of the county income tax council may exercise its votes by passing a resolution and transmitting the resolution to the auditor of the county. However, in the case of an ordinance to impose, rescind, increase, or freeze the county rate of the county option income tax, the member must transmit the resolution to the county auditor by the appropriate time described in section 8, 9, 10 or 11 [6-3.5-6-8, 6-3.5-6-9, 6-3.5-6-10, or 6-3.5-6-11] of this chapter. The form of a resolution is as follows:

"The (name of civil tazing unit’s fiscal body) casts its (number) votes (for or against) the proposed ordinance of the (county name) County Income Tax Council, which reads as follows:"

(b) A resolution passed by a member of the county income tax council exercises all votes of the member on the proposed ordinance, and those votes may not be changed during the year. [P.L. 44-1984, § 14.]

6-3.5-6.5. Proposal of ordinances. - Any member of a county income tax council may present an ordinance for passage. To do so, the member must pass a resolution to propose the ordinance to the county income tax council and distribute a copy of the proposed ordinance to the auditor of the county. The auditor of the county shall treat any proposed ordinance presented to him under this section as a casting of all that member’s votes in favor of that proposed ordinance. Subject to the limitations of section 6 [6-3.5-6-6] of this chapter, the auditor of the county shall deliver copies of a proposed ordinance he receives to all members of the county income tax council within ten [10] days after receipt. Once a member receives a proposed ordinance from the auditor of the county, the member shall vote on it within thirty [30] days after receipt. If a member does not vote within thirty [30] days, the county auditor shall treat the member as having voted no on the proposed ordinance. [P.L. 44-1984, § 14.]

6-3.5-6.6. Passage of ordinances - Auditor’s duties - Limitations. - (a) A county income tax council may pass only one (1) ordinance described in section 2(b)(1), 2(b)(2), 2(b)(3), or 2(b)(4) [6-3.5-6-2(b)(1), (b)(2), (b)(3), or (b)(4)] of this chapter in one [1] year. Once an ordinance described in section 2(b)(1), 2(b)(2), 2(b)(3), or 2(b)(4) of this chapter has been passed, the auditor of the county shall:

(1) Cease distributing proposed ordinances of those types for the rest of the year; and

(2) Withdraw from the membership any other of those types of proposed ordinances.

Any votes subsequently received by the auditor of the county on proposed ordinances of those types during that same year are void.

(b) The county income tax council may not vote on, nor may the auditor of the county distribute to
the members of the county income tax council, any proposed ordinance during a year, if previously during that same year the auditor of the county received and distributed to the members of the county income tax council a proposed ordinance whose passage would have substantially the same effect. [P.L. 44-1984, § 14.]

6-3.5-6-7. Public hearings on proposed ordinances - Notice. - (a) Before a member of the county income tax council may propose an ordinance or vote on a proposed ordinance, the member must hold a public hearing on the proposed ordinance and provide the public with notice of the time and place where the public hearing will be held.

(b) The notice required by subsection (a) must be give in accordance with IC 5-3-1.

(c) The form of the notice required by this section must be in substantially the following form:

"NOTICE OF COUNTY OPTION INCOME TAX ORDINANCE VOTE.

The fiscal body of the (insert name of civil taxing unit) hereby declares that on (insert date) at (insert the time of day a public hearing will be held at (insert location) concerning the following resolution to propose an ordinance (or proposed ordinance) that is before the members of the county income tax council. Members of the public are cordially invited to attend the hearing for the purpose of expressing their views.

(insert a copy of the proposed ordinance or resolution to propose an ordinance.)" [P.L. 44-1984, § 14.]

6-3.5-6-8. Imposition of tax - Tax rate. - (a) The county income tax council of any county in which the county adjusted gross income tax will not be in effect on July 1 of a year under an ordinance adopted during a previous calendar year may impose the county option income tax on the adjusted gross income of county taxpayers of its county effective July 1 of that same year.

(b) The county option income tax may initially be imposed at a rate of two tenths of one percent [0.2%] on the resident county taxpayers of the county and at a rate of five-hundredths of one percent [0.05%] for all other county taxpayers.

(c) To impose the county option income tax, a county income tax council must, after January 1 but before April 1 of the year, pass an ordinance. The ordinance must substantially state the following:

"The (county name) County Income Tax Council imposes the county option income tax on the county taxpayers of (county name) County.

The county option income tax is imposed at a rate of two tenths of one percent [0.2%] on the resident county taxpayers of the county and at a rate of five-hundredths of one percent [0.05%] on all other county taxpayers. This tax takes effect July 1 of this year."

(d) If the county option income tax is imposed on the county taxpayers of a county, then the county option income tax rate that is in effect for resident county taxpayers of that county increases by one tenth of one percent [0.1%] on each succeeding July 1 until the rate equals six tenths of one percent [0.6%].

(e) The county option income tax rate in effect for the county taxpayers of a county who are not resident county taxpayers of that county is at all times one fourth [1/4] of the tax rate imposed upon resident county taxpayers. [P.L. 44-1984, § 14.]

Compiler's Notes. Section 18 of P.L. 44-1984 provides: "(a) Notwithstanding IC 6-3.5-6-8, a county income tax council may adopt an ordinance to impose the county option income tax at any time before June 15, 1984. If a county income tax council adopts the county option income tax during the 1984 calendar year, it takes effect July 1, 1984."

"(b) This SECTION expires January 1, 1985."

6-3.5-6-9. Increase in tax rate for resident county taxpayers. - (a) If on January 1 of a calendar year the county option income tax rate in effect for resident county taxpayers equals six tenths of one percent [0.6%], then the county income tax council of that county may after January 1 and before April 1 of that year pass an ordinance to increase its tax rate for ordinance under this section, its county option income tax rate for resident county taxpayers increases by one tenth of one percent [0.1%] each succeeding July 1 until its rate reaches a maximum of one percent [1%].

(b) The auditor of the county shall record any vote taken on an ordinance proposed under the authority of this section and immediately certify the result to the department. [P.L. 44-1984, § 14.]

6-3.5-6-10. Precedence of county option income tax. - If during a particular calendar year the county council of a county adopts an ordinance to impose the county adjusted gross income tax in its county on July 1 of that year and the county option income tax council of the county adopts an ordinance to impose the county option income tax in the county on July 1 of that year, the county option income tax takes effect in that county and the county adjusted gross income tax shall not take effect in that county. [P.L. 44-1984, § 14.]

6-3.5-6-11. Freezing of tax rates - Effect of recision. - (a) The county income tax council of any county may adopt an ordinance to permanently
freeze the county option income tax rates at the rate in effect for its county on January 1 of a year.

(b) To freeze the county option income tax rates a county income tax council must, after January 1 but before April 1 of a year, adopt an ordinance. The ordinance must substantially state the following:

"The (county name) County Income Tax Council permanently freezes the county option tax rates at the rate in effect on January 1 of the current year."

(c) An ordinance adopted under the authority of this section remains in effect until rescinded. The county income tax council may rescind such an ordinance after January 1 but before April 1 of any calendar year. Such an ordinance shall take effect July 1 of that same calendar year.

(d) If a county income tax council rescinds an ordinance as adopted under this section the county option income tax rate shall automatically increase by one-tenth of one percent [0.01%] until:

(1) The tax rate is again frozen under another ordinance adopted under this section; or

(2) The tax rate equals six tenths of one percent [0.6%] (if the frozen tax rate equaled an amount less than six tenths of one percent [0.6%] or one percent [1%] (if the frozen tax rate equaled an amount in excess of six tenths of one percent [0.6%]).

(e) The county auditor shall record any vote taken on an ordinance proposed under the authority of this section and immediately certify the result to the department. [P.L. 44-1984, § 14.]

6-3.5-6-12. Tax in effect until rescinded - Procedure for rescission. - (a) The county option income tax imposed by a county income tax council under this chapter remains in effect until rescinded.

(b) The county income tax council of a county may rescind the county option income tax by passing an ordinance to rescind the tax after January 1 but before June 1 of a year.

(c) The auditor of a county shall record all votes taken on a proposed ordinance presented for a vote under the authority of this section and immediately certify the results to the department. [P.L. 44-1984, § 14.]

6-3.5-6-13. Increase of homestead credit percentage. - (a) A county income tax council of a county in which the county option income tax is in effect may adopt an ordinance to increase the percentage credit allowed for homesteads in its county under IC 6-1.1-20.9-2.

(b) A county income tax council may not increase the percentage credit allowed for homestead by an amount that exceeds eight percent [8%].

(c) The increase of the homestead credit percentage must be uniform for all homesteads in a county.

(d) In the ordinance that increases the homestead credit percentage, a county income tax council may provide for a series of increases or decreases to take place for each of a group of succeeding calendar years.

(e) An ordinance may be adopted under this section after January 1 but before June 1 of a calendar year.

(f) An ordinance adopted under this section takes effect on January 1 of the next succeeding calendar year.

(g) Any ordinance adopted under this section for a county is repealed for a year if on January 1 of that year the county option income tax is not in effect. [P.L. 44-1984, § 14.]

Compiler's Notes. The bracketed reference to IC 6-1.1-20.9-2 was substituted by the compiler for a reference to IC 6-1.1-20.9-9, which does not exist.

6-3.5-6-14. Determination of tax rate. - If for any taxable year a county taxpayer is subject to different tax rates for the county option income tax imposed by a particular county, the taxpayer's county option income tax rate for that county and that taxable year is the rate determined on the last step of the following steps:

STEP ONE: Multiple the number of months in the taxpayer's taxable year that precede July 1 by the rate in effect before the rate change.

STEP TWO: Multiple the number of months in the taxpayer's taxable year that follow June 30 by the rate in effect after the rate change.

STEP THREE: Divide the sum of the amounts determined under steps one and two by twelve [12]. [P.L. 44-1984, § 4.]

6-3.5-6-15. Amount of tax - Proration. - If the county option income tax is not in effect during a county taxpayer's entire taxable year, the amount of county option income tax that the county taxpayer owes for that taxable year equals the product of:

(1) The amount of county option income tax the county taxpayer would owe if the tax had been imposed during the county taxpayer's entire taxable year; multiplied by

(2) A fraction. The numerator of the fraction equals the number of days in the county taxpayer's
taxable year during which the county option income tax was in effect. The denominator of the fraction equals the total number of days in the county taxpayer's taxable year.

However, if the taxpayer files state income tax returns on a calendar year basis, the fraction to be applied under this section is one-half \( \frac{1}{2} \). [P.L. 44-1984, § 14.]

6-3.5-6-16. State general fund special accounts - Established - Revenue deposited. - (a) A special account within the state general fund shall be established for each county that adopts the county option income tax. Any revenue derived from the imposition of the county option income tax by a county shall be deposited in that county's account in the state general fund.

(b) Any income earned on money held in an account under subsection (a) becomes a part of that account.

(c) Any revenue remaining in an account established under subsection (a) at the end of a fiscal year does not revert to the state general fund. [P.L. 44-1984, § 14.]

6-3.5-6-17. Distribution of revenue - Certification of amounts. - (a) Revenue derived from the imposition of the county option income tax shall, in the manner prescribed by this section, be distributed to the county that imposed it. The amount that is to be distributed to a county during an ensuing calendar year equals the amount of county option income tax revenue that the department, after reviewing the recommendation of the state budget agency, estimates will be received from that county during the twelve-month period beginning July 1 of the immediately preceding calendar year and ending June 30 of the ensuing calendar year.

(b) Before June 16 of each calendar year, the department, after reviewing the recommendation of the state budget agency, shall estimate and certify to the county auditor of each adopting county the amount of county option income tax revenue that will be collected from that county during the twelve-month period beginning July 1 of that calendar year and ending June 30 of the immediately succeeding calendar year. The amount certified is the county's "certified distribution" for the immediately succeeding calendar year. The amount certified may be adjusted under subsection (c) or (d).

(c) The department may certify to an adopting county an amount that is greater than the estimated twelve-month revenue collection if the department, after reviewing the recommendation of the state budget agency, determines that there will be a greater amount of revenue available for distribution from the county's account established under section 16 [6-3.5-6-16] of this chapter.

(d) The department may certify an amount less than the estimated twelve-month revenue collection if the department, after reviewing the recommendation of the state budget agency, determines that a part of those collections needs to be distributed during the current calendar year so that the county will receive its full certified distribution for the current calendar year.

(e) One-twelfth \( \frac{1}{12} \) of each adopting county's certified distribution for a calendar year shall be distributed from its account established under section 16 of this chapter to the appropriate county treasurer on the first day of each month of that calendar year.

(f) Upon receipt, each monthly payment of a county's certified distribution shall be allocated among, distributed to, and used by the civil taxing units of the county as provided in sections 18 and 19 [6-3.5-6-18 and 6-3.5-6-19] of this chapter.

(g) All distributions from an account established under section 16 of this chapter shall be made by warrants issued by the auditor of state to the treasurer of the state ordering the appropriate payments. [P.L. 44-1984, § 14.]

Amendments. The 1986 amendment, effective May 1, 1986, inserted "after reviewing the recommendation of the state budget agency" in subsections (a) through (d) and in subsection (g) deleted "the" preceding "state."

6-3.5-6-18. Revenue distribution by county auditor - Distributive shares. - (a) The revenue a county auditor receives under this chapter shall be used to:

(1) replace the amount, if any, of property tax revenue lost due to the allowance of an increased homestead credit within the county;

(2) Fund the operation of a public communications systems and computer facilities district as provided in an election, if any, made by the county fiscal body under IC 38-5-15-19(b); and

(3) Make distributions of distributive shares to the civil taxing units of a county.

(b) The county auditor shall retain from the payments of a county's certified distribution, an amount equal to the revenue lost, if any, due to the increase of the homestead credit within the county. This money shall be distributed to the civil taxing units and school corporations of the county as though they were property tax collections and in such a manner that no civil taxing unit or school corporation shall suffer a net revenue loss due to the allowance of an increased homestead credit.

(c) The county auditor shall retain the amount,
if any, specified by the county fiscal body for a particular calendar year under IC 36-8-15-19(b) from the county's certified distribution for that same calendar year. The county auditor shall distribute amounts retained under this subsection to the county.

(d) All certified distribution revenues that are not retained and distributed under subsection (b) shall be distributed to the civil taxing units of the county as distributive shares.

(e) The amount of distributive share that each civil taxing unit in a county is entitled to receive during a month equals the product of:

(1) The amount of revenue that is to be distributed as distributive shares during that month; multiplied by

(2) A fraction. The numerator of the fraction equals the total property taxes that are first due and payable to the civil taxing unit during the calendar year in which the month falls. The denominator of the fraction equals the total property taxes that are first due and payable to all civil taxing units of the county during the calendar year in which the month falls.

(f) The state board of tax commissioners shall provide each county auditor with the fractional amount of distributive shares that each civil taxing unit in the auditor's county is entitled to receive monthly under this section.

(g) Notwithstanding subsection (e), if a civil taxing unit of an adopting county does not impose a property tax levy that is first due and payable in a calendar year in which distributive shares are being distributed under this section, that civil taxing unit is entitled to receive a part of the revenue to be distributed as distributive shares under this section within the county. The fractional amount such a civil taxing unit is entitled to receive each month during that calendar year equals the product of:

(1) The amount to be distributed as distributive shares during that month; multiplied by

(2) A fraction. The numerator of the fraction equals the budget of that civil taxing unit for that calendar year. The denominator of the fraction equals the aggregate budgets of all civil taxing units of that county for that calendar year.

(h) If for a calendar year a civil taxing unit is allocated a part of a county's distributive shares by subsection (g), then the formula used in subsection (e) to determine all other civil taxing units' distributive shares shall be changed each month for that same year by reducing the amount to be distributed as distributive shares under subsection (e) by the amount of distributive shares allocated under subsection (g) for that same month. The state board of tax commissioners shall make any adjustments required by this subsection and provide them to the appropriate county auditors. [P.L. 44-1984, § 14; P.L. 32-1986, § 2; P.L. 225-1986, § 10.]

Compiler's Notes. The word "to" following the item (2) designation in subsection (a) was enclosed in brackets to indicate apparent surplusage.

Amendments. The 1986 amendment by P.L. 225-1986, effective March 6, 1986, in subsection (a), inserted present subdivision (2) and redesignated former subdivision (2) as present subdivision (3); inserted present subdivision (c); redesignated former subsections (c) through (g) as present subsections (d) through (h); and made a series of minor changes in style and internal references throughout the section.

The 1986 amendment by P.L. 32-1986, effective March 12, 1986, gave effect to the amendment by P.L. 225-1986, and substituted "36-8-15-19(b)" for "36-8-15-19(a)" in subsections (a)(2) and (c).

6-3.5-6-19. Determination of distributive shares by state board of tax commissioners - Treatment of shares as revenue - Distribution.

(a) In determining the fractional share of distributive shares the civil taxing units of a county are entitled to receive under section 18 (6-3.5-6-18) of this chapter during a calendar year, the state board of tax commissioners shall consider only property taxes imposed on tangible property subject to assessment in that county.

(b) In determining the amount of distributive shares a civil taxing unit is entitled to receive under section 18(g) (6-3.5-6-18(g)) of this chapter, the state board of tax commissioners shall consider only the percentage of the civil taxing unit's budget that equals the ratio that the total assessed valuation that lies within the civil taxing unit and the county that has adopted the county option tax bears to the total assessed valuation that lies within the civil taxing unit.

(c) The distributive shares to be allocated and distributed under this chapter shall be treated by each civil taxing unit as additional revenue for the purpose of fixing its budget for the budget for the budget year during which the distributive shares is [are] to be distributed to the civil taxing unit.

(d) In the case of a civil taxing unit that includes a consolidated city its fiscal body may distribute any revenue it receives under this chapter to any governmental entity located in its county except an excluded city, a township, or a school corporation. [P.L. 44-1984, § 14.]

Compiler's Notes. The bracketed word "are" was substituted for "is" in subsection (c) for grammatical purposes by the compiler.
Amendments. The 1986 amendment, effective March 6, 1986, substituted "section 18(6)" for "section 18(7)" in subsection (b).

6-3.5-6-20. Determination of county residency. - (a) For purposes of this chapter, an individual shall be treated as a resident of the county in which he:

(1) Maintains a home, if the individual maintains only one [1] in Indiana;

(2) If subdivision (1) does not apply, is registered to vote;

(3) If subdivision (1) or (2) does not apply, registers his personal automobile; or

(4) If subdivision (1), (2), or (3) does not apply, spends the majority of his time spent in Indiana during the taxable year in question.

(b) The residence or principal place of business or employment of an individual is to be determined on January 1 of the calendar year in which the individual's taxable year commences. If an individual changes the location of his residence or principal place of employment or business to another county in Indiana during a calendar year, his liability for county option income tax is not affected. [P.L. 44-1984, § 14.]

6-3.5-6-21. Reciprocity agreements. - (a) Using procedures provided under this chapter, the county income tax council of any adopting county may pass an ordinance to enter into reciprocity agreements with the taxing authority of any city, town, municipality, county, or other similar local governmental entity of any state. The reciprocity agreements must provide that the income of resident county taxpayers is exempt from income taxation by the other local governmental entity to the extent income of the residents of the other local governmental entity is exempt from the county option income tax in the adopting county.

(b) A reciprocity agreement adopted under this section may not become effective until it is also made effective in the other local governmental entity that is a party to the agreement.

(c) The form and effective date of any reciprocity agreement described in this section must be approved by the department. [P.L. 44-1984, § 14.]

6-3.5-6-22. Applicability of IC 6-3. - (a) Except as otherwise provided in subsection (b) and the other provisions of this chapter, all provisions of the adjusted gross income tax law (IC 6-3) concerning:

(1) Definitions;

(2) Declarations of estimated tax;

(3) Filing of returns;

(4) Deductions or exemptions from adjusted gross income;

(5) Remittances;

(6) Incorporation of the provisions of the Internal Revenue Code;

(7) Penalties an interest; and

(8) Exclusion of military pay credits for withholding; apply to the imposition, collection, and administration of the tax imposed by this chapter.

(b) The provisions of IC 6-3-1-3.5(a)(5), IC 6-3-3-3, IC 6-3-3-5, and IC 6-3-5-1 do not apply to the tax imposed by this chapter.

(c) Notwithstanding subsections (a) and (b), each employer shall report to the department the amount withholdings attributable to each county. This report shall be submitted along with the employer's other withholding report. [P.L. 44-1984, § 14; P.L. 23-1986, § 11.]

Compiler's Notes. Section 23(b) of P.L. 23-1986 provides that this section applies to taxable years that begin after December 31, 1986.

Amendments. The 1986 amendment, effective January 1, 1986, added subsection (c).

6-7.1. CIGARETTE TAX

6-7.1-31.1. - Cumulative capital improvement fund for cities and towns. (a) The common council of each city and the board of trustees of each town shall, by ordinance or resolution, establish a cumulative capital improvement fund for the city or town. Except as otherwise provided in subsection (b), the city or town may only use money in its cumulative capital improvement fund to:

(1) Purchase land, easements, or rights-of-way;

(2) Purchase buildings;

(3) Construct or improve city owned property; or

(4) Retire general obligation bonds issued by the city or town for one [1] of the purposes state in clause (1), (2), or (3) of this subsection. The money in the city's or town's cumulative capital improvement fund does not revert to its general fund.

(b) Any city or town may at any time, by ordinance or resolution, transfer to its general fund any moneys derived under this chapter, which have been deposited in the city's or town's cumulative capital improvement fund. [IC 6-7-1-31.1, as added by Acts 1977, P.L. 89, § 4.]

Opinions of Attorney General. - The term "capital improvement" as used in 6-7-1-30 (since repealed) and 6-7-1-32 (since repealed), and defined
in 6-7-1-34 (since repealed) did not contemplate the
purchase of major movable equipment or any other
personal property and the use of such cumulative
capital improvement fund for such purposes would
have been contrary to the express restrictive
authority of this act. 1965, No. 32, p. 159.

8-13-1. INDIANA DEPARTMENT OF HIGHWAYS

8-13-1-5.1 Program of assistance to local road and street departments - Contents. - In addition to other powers, responsibilities and duties assigned to the department of highways, the department shall develop a program of technical assistance to units of local government with road and street responsibilities. As a minimum program, the department shall:

(1) Certify annually, on or before April 1, to the state auditor those factors applied in any distribution used to allocate state-collected highway funds among the eligible local units of government;

(2) Develop and maintain maps of functionally classified road systems for the local units of government;

(3) Provide assistance, as requested, to local units of government in the areas of management, programming, personnel, and financing;

(4) Administer federal highway grant programs which allocate funds to local units of government;

(5) Maintain and continuously update the road and street inventory required under IC 8-13-14.5 [8-13-14.5-1];

(6) Furnish engineering and consultation services, as required by IC 8-13-14-1; and

(7) Provide testing laboratory facilities as required by IC 8-13-14.1. [IC 8-13-1-5.1, as added by Acts 1980, P.L. 74, § 163.]

8-13-1-5.2. Program of research and extension required under IC 8-17-7-4 - Administration. The department shall develop, undertake and administer the program of research and extension required under IC 8-17-7-4. [IC 8-13-1-5.2, as added by Acts 1980, P.L. 74, § 164.]

8-13-1-5.3. Program of assistance to local road and street departments - Appropriations. - (a) Funding for the department's program of assistance to local road and street departments shall be included in the department of highways' budget. The appropriation shall be from the allocation of the revenues set aside for distribution to units of local government under IC 8-14-1 [8-14-1-1--8-14-1-7].

(b) Programs to be funded under this section include:

(1) The program of technical assistance under section 5.1 [8-13-1-5.1] of this chapter;

(2) The program of research and extension conducted for local government under IC 8-17-7-4.

(c) Funds unobligated at the end of any fiscal years shall be returned to the local government shares of the motor vehicle highway account (IC 8-14-1) [8-14-1-1--8-14-1-7]. [IC 8-13-1-5.3, as added by Acts 1980, P.L. 74, § 165.]

8-13-1-5.5. Federal funds - Compliance with federal requirements to obtain. In any program or undertaking relating to highways or related highway activities and pursuant to the department of highways' statutory powers, the department of highways is hereby authorized to make such contracts and expenditures and do such acts and make such rules, orders and findings as may be necessary to comply with any and all laws, rules, orders, findings, interpretations and regulations as promulgated by any federal agency or agencies as said compliance may be deemed necessary in order to qualify or otherwise authorize the department of highways to receive federal governmental approval and funds on a full or participating payment basis pursuant to any state and federal reimbursement agreements or other such joint undertakings to the extent consistent with IC 8-9.5-6-1. [IC 8-13-1-5.5, as added by Acts 1975, P.L. 88, § 1; 1980, P.L. 74, § 166.]

Cross References. Written agreements between department and city, town, or counties under this section, 8-14-1-9.

8-13-5. CONTRACTS - MISCELLANEOUS PROVISIONS

8-13-5-9.2. Claims for labor, material or services performed in construction of highways or bridges or construction or repair of buildings or structures for department - Filing - Actions against contractor or surety on bond. - Any person, firm or corporation to whom any money shall be due on account of having performed any labor or furnished material or other service in the construction of any highway or bridge in the state highway system or in the construction or repair of any building or other structure for the department, whether the same was performed for a contractor or subcontractor, may at any time within sixty [60] days of the performance of the last of such labor or the furnishing of the last of such material or other service, and at all events within thirty [30] days after the final acceptance of such improvement, file with the department a duly verified itemized statement of the amount due such person, firm or corporation, stating therein whether the same was performed for or furnished to a contractor or subcontractor, giving the name thereof and the dates the same was performed or furnished, the rate therefor
or cost thereof and the character of such labor, material or service and the post-office address of such claimant. Said claim shall be filed in triplicate, and a copy thereof shall be sent by registered mail by the department to said contractor, and to the surety on the bond of said contractor: Provided, That the failure to mail such copies to such contractor and surety shall in no way affect the validity of said claim. Upon the receipt of said claim the department shall retain out of the amount due said contractor the amount of said claim. Within twenty [20] days of the receipt of such copy said contractor shall either allow or reject said claim, of which action said contractor shall notify the department in writing. If said claim is rejected in whole or in part, the department shall immediately notify by registered mail said claimant of such action. Within ninety [90] days after receiving notice of such rejection such claimant shall commence an action against said contractor or the surety on his bond in some court of competent jurisdiction to recover the amount of said claim, and upon the filing of said action, said claimant shall procure a certificate from the clerk of said court, under his hand and seal of office that said action has been filed with the date of filing the same, and the parties thereto, which certificate shall be forthwith forwarded by such person to the department. If said action is so filed and the department so notified, the department shall continue to hold said amount, until the final determination of said action, and if it be adjudged therein that the same or any part thereof is due to such claimant, the department shall pay so much of said amount so adjudged due to such claimant, to the clerk of the court rendering such judgment. If within ninety [90] days after the date of such notice of rejection, said claimant shall fail to file with the department said certificate of said clerk, the department shall pay the amount so held by it on said claim to said contractor if he is otherwise entitled to receive the same. In addition to the remedy herein given to such persons, firms or corporations, said person, firm or corporation may proceed against said contractor and the surety on his bond as provided by section 6 [8-13-5-8] of this chapter. [IC 8-13-5-9.2, as added by Acts 1980, P.L. 74, § 182; 1981, P.L. 41, § 40].

8-13-5-9.3. Claim filed under IC 8-13-5-9.2 - Notice - Action against contractor and surety on bond - Certificate - Retention of money or security for protection of claim. - Whenever any claim has been filed under this chapter with the department or its predecessors in office by any person, firm or corporation who has performed labor or furnished materials or other service in the construction, repair or maintenance of any highway or bridge in the state highway system, or in the construction, repair or renovation of any building or structure used by the department, and against any contractor therefor with the department or its predecessors it shall be the duty of the department to notify the person, firm or corporation filing such claim, that within ninety [90] days after the date of such notice, such person, firm or corporation must proceed by an action at law in some court of competent jurisdiction against said contractor or the surety on the contract bond of said contractor for the collection of the amount of said claim. Said notice shall be mailed to such person, firm or corporation by registered mail to his or its last known address. If the address of said person, firm or corporation is unknown such notice shall be given by publication once each week for two [2] consecutive weeks in two [2] newspapers of general circulation published in the county or counties where such contract with the department or its predecessors was performed. In any such notice so given by publication, the names of all such persons, firms or corporations who so have filed claims against such contractor and who have not been notified by mail may be included. Such notice shall state that such action must be filed on said claim within ninety [90] days of the date of said notice. Upon the filing of such action the person, firm or corporation filing the same shall procure from the clerk of the court where filed a certificate under his hand and seal of said court that such action has been so filed with the date of filing the same, and the names of the parties thereto, which certificate shall be within five [5] days after the date of filing said action forwarded by such person, firm or corporation to the department. Upon the filing of such action and the receipt of such certificate it shall be the duty of the department to hold the money, security or other thing held by the department for the protection of said claim, until the final determination of said action, and if it be adjudged therein that any part of such claim is due to such person, firm or corporation, the department of highways shall pay to the clerk of the court rendering such judgment out of the cash retained for such claimant, the amount thereof or so much thereof as was retained by the department for such purpose. If the department retained for the protection of said claimant a check, bond or security other than cash, the department shall notify said claimant of such fact, and the payment upon such claimant shall be subrogated to the rights of the department in such check, bond or security other than cash, to the amount of said judgment, which rights the claimant may enforce in an appropriate action. If such claimant shall not file said action within the time so specified in said notice, or shall fail to file with the department said certificate of said clerk as herein provided, the department shall pay the amount so held by it on said claim to said contractor; or if said claim shall have been protected by check, bond or security, then such check, bond or security shall have been deposited for the protection of two [2] or more claimants then said check, bond or other security shall be held by the department for the protection of said claimants until all the same are either
released, waived or satisfied as in this section. However, nothing contained in this section shall in any way limit or abridge the right of any such person, firm or corporation to proceed against said contractor and the surety on his bond as provided by section 6 [8-13-5-6] of this chapter. [IC 8-13-5-9.3, as added by Acts 1980, P.L. 74, § 183; 1981, P.L. 41, § 41.]

8-14-1. HIGHWAY FINANCES

8-14-1-4 [36-2818]. Funds allocated to counties - Budgeting - Use - Surplus to county highway fund. - The funds allocated to the respective counties of the state from the motor vehicle highway account shall annually be budgeted as provided by law, and, when distributed shall be used for construction, reconstruction and maintenance of the highways of the respective counties, including highways which traverse the streets of incorporated towns, the cost of the repair and maintenance of which prior to the tenth day of September, 1932, was paid from the county gravel road repair fund excepting where the department is charged by law with the maintenance or construction of any such highway so traversing such streets. Any surplus existing in the funds at the end of the year shall thereafter continue as a part of the highway funds of the said counties and shall be rebudgeted and used as already provided in this chapter. The purchase, rental and repair of highway equipment, painting of bridges and acquisition of grounds for erection and construction of storage buildings, acquisition of rights-of-way and the purchase of fuel oil, and supplies necessary to the performance of construction, reconstruction and maintenance of highways, shall be paid out of the highway account of the various counties. [Acts 1941, ch. 168, § 4, p. 517; 1980, P.L. 74, § 218.]

Cross References. Prior allocation and distribution of funds from motor vehicle highway account to highway commission for connecting roads to state parks, 8-12-9-2.

Opinions of Attorney-General. This section leaves no discretion to the county but charges such county with the maintenance of the highways set forth therein. 1942, p. 18.

8-14-1-5 [36-2819]. Funds allocated to cities and towns—Use—Budgeting. - (a) All funds allocated to cities and towns from the motor vehicle highway account shall be used by the cities and towns for the construction, reconstruction, repair, maintenance, oiling, sprinkling, snow removal, weed and tree cutting and cleaning of their highways as herein defined, and including also any curbs, and the city's or town's share of the cost of the separation of the grades of crossing of public highways and railroads, the purchase or lease of highway construction and maintenance equipment, the purchase, erection, operation and maintenance of traffic signs and signals, and safety zones and devices; and the painting of structures, objects, surfaces in highways for purposes of safety and traffic regulation. All of such funds shall be budgeted as provided by law.

(b) In addition to purposes for which funds may be expended under subsection (a) of this section, monies allocated to cities and towns under this chapter may be expended for law enforcement purposes, subject to the following limitations:

(1) For cities and towns with a population of less than five thousand [5,000], no more than fifteen percent [15%] may be spent for law enforcement purposes.

(2) For cities and towns other than those specified in subdivision (1) of this subsection, no more than ten percent [10%] may be spent for law enforcement purposes. [Acts 1941, ch. 168, § 4, p. 517; 1945, ch. 164, § 1, p. 386; 1959, ch. 278, § 1; 1965, ch. 121, § 1; 1981, P.L. 111, § 3.]

8-14-2. SPECIAL HIGHWAY USER TAX ACCOUNTS

8-14-2-1 [36-2825]. Primary highway system special account - Definitions. - As used in this chapter:

(a) Primary highway system special account means the account of the state known as the "primary highway system special account" to which is credited monthly fifty-five percent [55%] of the money deposited in the highway, road and street fund;

(b) Local road and street account means the account of the state known as the "local road and street account" to which is credited monthly forty-five percent [45%] of the money deposited in the highway, road and street fund;

(c) The term "department" refers to the state department of highways created under IC 8-9.5-4-1 [8-9.5-4-1-8-9.5-4-16];

(d) The term "primary highways" shall mean that portion of the federal-aid highway system designated by the department and approved by the United States department of transportation as being the state "primary highway system";

(e) The term "construction" shall mean both construction and reconstruction to a degree that new, supplementary, or substantially improved traffic service is provided, and significant geometric or structural improvements are [effected];

(f) "Arterial road system" shall mean the system of roads including bridges in each county of Indiana, under the jurisdiction of the board of county commissioners, or successor body, including a department of transportation of a consolidated city,
designated as such by the board under IC 8-11-2-5, but not including local county roads;

(g) "Local county roads" shall mean all county roads and bridges which are not designated as being in the arterial road system;

(h) "Arterial street system" means the system of streets including bridges in each city or town in Indiana, under the jurisdiction of municipal street authorities or successor [bodies], including a department of transportation of a consolidated city, designated as such by the board under IC 8-11-2-6, but not including local streets;

(i) "Local streets" shall mean all city and town streets and bridges which are not designated as being in the arterial street system in each city or town;

(j) "Resurfacing" means the placement of additional pavement layers (including protective systems for bridge decks) over the existing (or restored or rehabilitated) roadway or bridge deck surface to provide additional strength or to improve serviceability for a substantial time period; and

(k) "Restoration and rehabilitation" means work required to return the existing structure (roadway pavement or bridge deck) to a suitable condition for an additional stage of construction (bridge deck protective system or resurfacing) or to a suitable condition to perform satisfactorily for a substantial time period. [Acts 1969, ch. 392, § 1; 1971, P.L. 98, § 1; 1973, P.L. 71, § 1; 1978, P.L. 58, § 1; 1980, P.L. 74, § 217; 1981, P.L. 41, § 50.]

Cross References. Deposit of revenue from additional motor fuel tax, 8-6-4-21.

8-14-2-2 [36-2826]. Use of primary highway system special account and local road and street account. - It is hereby declared to be the intent of the general assembly that the moneys deposited in the primary highway system special account and the local road and street account shall be used exclusively for engineering, land acquisition, construction, resurfacing, restoration, and rehabilitation of highway facilities. [Acts 1969, ch. 392, § 2, p. 1604; 1971, P.L. 98, § 2, p. 459; 1973, P.L. 71, § 2, p. 484; 1975, P.L. 90, § 1, p. 606; 1978, P.L. 58, § 2, p. 920.]

8-14-2-2.1 [36-2826a]. Creation of highway, road and street fund. - The auditor shall create a special fund to be known as the "Highway, Road and Street Fund" for the deposit of the revenues from (1) the gasoline and special fuel taxes dedicated to the fund under IC 6-6-1-102 and IC 6-6-2.1-703 and (2) the increases in fees levied under IC 9-1-4 [9-1-4.1-9-1-4-60], which increases are attributable to Acts 1969, Chapter 321, Section 1[9-1-41]. [IC 8-14-2-2.1, as added by Acts 1971, P.L. 98, § 3; 1978, P.L. 58, § 3; 1980, P.L. 51, § 62.]

8-14-2-4 [36-2828]. Local road and street account—Allocation basis. (a) The auditor of state shall establish a special account to be called the "local road and street account" and credit this account monthly with forty-five percent [45%] of the monies deposited in the highway road and street fund.

(b) The auditor shall distribute to units of local government monies from this account each month.

(c) The auditor of state shall allocate to each county the monies in this account on the basis of the ratio of each county's passenger car registrations to the total passenger car registrations of the state. The auditor shall further determine the suballocation between the county and the cities within the county as follows:

(1) In counties having a population of more than 50,000, 60% of the monies shall be distributed on the basis of population according to the last preceding United States decennial census and 40% distributed on the basis of the ratio of city and town street mileage to county road mileage.

(2) In counties having a population of 50,000 or less, 20% of the monies shall be distributed on the basis of population according to the last preceding United States decennial census and 80% distributed on the basis of the ratio of city and town street mileage to county road mileage.

(3) For the purposes of allocating funds as provided in this section, cities and towns which become incorporated as a city or town between decennial censuses shall be eligible for allocations upon certification by the U.S. bureau of the census of their population.

(4) Monies allocated under the provisions of this section to counties containing a consolidated city shall be credited or allocated to the department of transportation of the consolidated city.


Opinions of Attorney-General. The amounts to be collected and deposited under the increased rates in this section and 8-14-2-3 refer to gross amounts. 1969, No. 14, p. 47.

Distribution should be made to those cities and towns, incorporated after the 1980 census, on the basis of the 1980 decennial census, as the legislature used the word "decennial." 1969, No. 14, p. 47.

8-14-2-5 [36-2829]. Use of funds from local road and street account. Monies from the local
road and street account shall be used exclusively by
the cities, towns and counties for:

(1) Engineering, land acquisition, construction,
resurfacing, maintenance, restoration, or rehabilita-
tion of both local and arterial road and street sys-
tems;

(2) The payment of principal and interest on
bonds sold primarily to finance road, street, or
thoroughfare projects; or

(3) Any local costs required to undertake a
recreational or reservoir road project under IC
8-12-9 [8-12-9-1, 8-12-9-2]. [Acts 1969, ch. 392, § 5;
41, § 51.]

Opinions of Attorney-General. Where there is
an apparent contradiction as to subsections (b)
and (c), the intent of the legislature should control,
thus subsection (c) which specifies only the three
year period, should be used as if it stated that
moneys allocated to local governmental units that
are not requested for specific projects within the
time limits set out in subsection (b) are to be made
available to local units throughout the state. 1969,
No. 14, p. 47.

8-14-2-7. Transfer of surplus allocated monies. - An included town under IC 36-3-1-7 may
transfer surplus allocated monies to the town gen-
eral fund from the local road and street account if
those monies have not been allocated or expended
within the previous twenty-four [24] months. [P.L.
67-1984, § 3.]

8-14-6. APPROPRIATION AND USE OF
GAS TAX FUNDS FOR CITY STREETS

8-14-6-1 [47-1530]. Cities and towns - Repair
of streets - Gasoline fund. Where, by virtue of
the provisions of any law of this state, any design-
nated portion of the gasoline tax collected by the
state shall have been distributed to the several
cities of the state to be used for the maintenance
and repair of the streets of such cities, such funds
shall be under the exclusive control of the common
council, and shall be used and expended by the
board of public works of any such city, or the com-
mon council thereof, acting as the board of public
works. The maintenance and repair of streets, for
which any such funds may be used and expended,
shall be deemed to include any part of the cost of
resurfacing, widening or reconstructing any street or
any part thereof which any such city may be liable
to pay pursuant to any law authorizing the
improvement of streets; Provided That any such
funds so distributed hereafter shall be estimated
and included in the published budgets of such munici-
palities in the year preceding such distribution.
[Acts 1932 (Spec. Sess.), ch. 35, § 1, p. 154.]

8-14-8. DISTRESSED ROADS

8-14-8-1. Legislative intent. - The intent of this chapter is to create a method of providing financial
assistance to counties, cities, and towns (referred to
as "units" in this chapter) which have serious road
and street deficiencies. This chapter has the pur-
pose of enhancing public safety and ensuring the
free flow of commerce. [IC 8-14-8-1, as added by

8-14-8-2. Distressed road fund - Establishment. - There is established a distressed road fund
which is to be administered by the state department
of highways. The distressed road fund is a
nonbudgetary, nonreverting fund. [IC 8-14-8-2, as

8-14-8-3. "Qualified county" defined. - For pur-
poses of this chapter, "qualified county" means a
county with a population of:

(1) More than forty-one thousand [41,000], but
less than forty-one thousand eight hundred [41,800];

(2) More than thirty-three thousand seven
hundred [33,700], but less than thirty-four thousand two
hundred fifty [34,250];

(3) More than thirty-two thousand [32,000], but
less than thirty-three thousand five hundred
[33,500];

(4) More than twenty-seven thousand five
hundred [27,500], but less than twenty-eight thousand
[28,000];

(5) More than twenty-six thousand three
hundred [26,300], but less than twenty-seven thousand
[27,000];

(6) More than nineteen thousand three hundred
forty [19,340], but less than nineteen thousand six
hundred [19,600];

(7) More than thirteen thousand three hundred
[13,300], but less than fourteen thousand eight
hundred [14,800];

(8) More than ten thousand five hundred
[10,500], but: less than twelve thousand [12,000]; or

(9) More than nine thousand [9,000], but less
than ten thousand [10,000]. [IC 8-14-8-3, as added

8-14-8-4. Application for loan. (a) A qualified
county which:

(1) Has adopted the county motor vehicle excise
surtax [6-3.5-4-1-6-3.5-4-18] and the county wheel
tax [6-3.5-5-1-6-3.5-5-18];

(2) Is imposing the county motor vehicle excise
surtax at the maximum allowable rate; and
(3) Has not issued bonds under IC 8-14-9 [8-14-9-1–8-14-9-17];

may apply to the state department of highways for a loan from the distressed road fund. At the time of the application, the county shall notify the state board of tax commissioners that it has made the application.

(b) The application must include, at a minimum:

(1) A map depicting all roads and streets in the system of the applicant; and

(2) A copy of that county's proposed program of work covering the current and the immediately following calendar year. [IC 8-14-8-4, as added by Acts 1981, P.L. 88, § 12.]

8-14-8-5. Criteria for evaluation of application. - (a) In evaluating each applicant's needs for a loan from the distressed road fund, the state department of highways shall use criteria that are consistent with good engineering practices. The criteria used must include, at a minimum:

(1) Traffic counts and projected traffic;

(2) Areas served;

(3) Surface material and conditions;

(4) Base material and depth;

(5) Drainage, including culverts;

(6) Width of roadway and right-of-way;

(7) Soils upon which the road is placed;

(8) Topography; and

(9) Seasonal weather conditions and the effect on road repair and maintenance.

(b) In addition to the criteria listed in subsection (a), the department shall consider the minimum transportation needs of all areas regardless of population or vehicle registration, and the report filed with the department by the state board of tax commissioners under section 6 [8-14-8-6] of this chapter. [IC 8-14-8-5, as added by Acts 1981, P.L. 88, § 12.]

8-14-8-6. Application for loan by qualified counties—Financial report. - Within thirty [30] days of the date of application for a loan by a qualified county, the state board of tax commissioners shall submit to the state department of highways a financial report which shall include the following:

(1) The amount of money available to the county for road construction and maintenance.

(2) An analysis of the use, during the five (5) years immediately preceding the date of the loan application, of all highway money the county has received.

(3) Any other information required by the state department of highways for the processing of loan applications. [IC 8-14-8-6, as added by Acts 1981, P.L. 88, § 12; P.L. 114-1983, § 2.]

8-14-8-7. Time period for notification of determination of loan application—Decision final.—Loan agreement—Term of repayment—Interest on unpaid balance. - (a) The department of highways shall notify a qualified county that makes a loan application of the department's approval or disapproval of the application within sixty [60] days of the date of application. The decision made by the department of highways to approve or disapprove a loan application is final.

(b) The department of highways and each qualified county for which a loan has been approved under this chapter shall enter into a loan agreement which shall specify, as a minimum, the purposes for which the loan is to be used and the terms of repayment of the loan. The terms must be consistent with subsection (c) of this section.

(c) The maximum term of repayment of a loan made under this section is ten [10] years. A loan that is repaid within the term of repayment specified in the loan agreement is not subject to interest. If a loan is not fully repaid within the term of repayment, the balance that remains unpaid at the end of the term of repayment is subject to interest at the rate of twelve percent [12%] per year. [IC 8-14-8-7, as added by Acts 1981, P.L. 88, § 12; P.L. 114-1983, § 3.]

8-14-8-8. Loan payments deposited in distressed road fund. - All amounts received by the department of highways from a county as repayment of a loan made under this chapter, or as payment of interest on a loan made under this chapter, shall be deposited in the distressed road fund. [IC 8-14-8-8, as added by Acts 1981, P.L. 88, § 12.]


8-14-8-10. Eligible parties for loans. The department of highways shall make loans from the distressed road fund:

(1) To any qualified county under the terms of this chapter; or

(2) To any unit eligible to receive a distribution from the motor vehicle highway account (IC 8-14-1) under terms of section 11 [8-14-8-11] of this chapter.
8-14-8-11. Application for loan by units. - (a) A unit must make application for the loan to the department of highways. The application must include, as a minimum:

(1) A map depicting all roads and streets in the system of the applicant; and

(2) A copy of that unit’s proposed program of work covering the current and the immediately following calendar year.

(b) The department shall notify a unit that makes a loan application of the department’s approval or disapproval of the application within sixty [60] days of the date of the application. The decision made by the department of highways to approve or disapprove is final.

(c) The loan is not subject to the payment of interest or penalty if repaid within two [2] years.

(d) The unit and the department shall enter into a written agreement stating the terms of the loan. The agreement must include a provision that the unit directs the auditor of state to withhold distributions from its allocations from the motor vehicle highway account if the loan is not repaid within two [2] years.

(e) Money from a loan made under this section may be used only for the purpose of matching federal aid highway funds. [IC 8-14-8-11, as added by P.L. 114-1983, § 5.]

8-14-8-12. Appropriation to department of highways. - Funds in the distressed road fund may be appropriated to the department of highways to maintain a working balance in accounts established primarily to facilitate the matching of federal and local money for highway projects. [IC 8-14-8-12, as added by P.L. 113-1983, § 3.]

8-14-9. LOCAL COUNTY ROAD AND BRIDGE BOARD

8-14-9-1. Definitions. - As used in this chapter:

(a) "Bridge" means any structure designed to carry vehicular traffic over or under an obstacle to the normal flow of traffic, including any grade separation, culvert, or approach to a bridge.

(b) "Construction" means the building of a road or bridge to the extent that:

(1) New, supplementary, or substantially improved traffic service is provided; and

(2) Significant geometric or structural improvements are [effected].

(c) "Operation" includes the control and engineering of:

(1) Traffic;

(2) Traffic safety;

(3) Road and bridge lighting;

(4) Road and bridge access;

(5) Utility locations; and

(6) Uses of rights-of-way for roads and bridges.

d) "Qualified county" means a county with a population of:

(1) More than forty-one thousand [41,000], but less than forty-one thousand eight hundred [41,800];

(2) More than thirty-three thousand seven hundred [33,700], but less than thirty-four thousand two hundred fifty [34,250];

(3) More than thirty-two thousand [32,000], but less than thirty-three thousand five hundred [33,500];

(4) More than twenty-seven thousand five hundred [27,500], but less than twenty-eight thousand [28,000];

(5) More than twenty-six thousand three hundred [26,300], but less than twenty-seven thousand [27,000];

(6) More than nineteen thousand three hundred forty [19,340], but less than nineteen thousand six hundred [19,600];

(7) More than thirteen thousand three hundred [13,300], but less than fourteen thousand eight hundred [14,800];

(8) More than ten thousand five hundred [10,500], but less than twelve thousand [12,000]; or

(9) More than nine thousand [9,000], but less than ten thousand [10,000].

e) "Reconstruction" includes the resurfacing and rebuilding of roads and bridges.

(f) "Road" means:

(1) The entire right-of-way for public use of any road, street, alley, highway, parkway, boulevard, or thoroughfare; and

(2) All surface and subsurface improvements, including sidewalks, curbs, shoulders, and utility lines and mains, on any item described in clause (1). [IC 8-14-9-1, as added by 1981, P.L. 88, § 13; 1982, P.L. 1, § 27.]

8-14-9-3. Local county road and bridge board - Special taxing district - Authorization to establish. - The county council of a qualified county may establish a local county road and bridge board to be known as the Local County
Road and Bridge Board of ............... (insert the name of the qualified county) and a special taxing district to be known as the Local County Road and Bridge District of ............... (insert the name of the qualified county). The territory which is within the boundaries of a qualified county constitutes the territory of a special taxing district established by the county council of that qualified county under this chapter. [IC 8-14-9-3, as added by Acts 1981, P.L. 88, § 13.]

8-14-9-4. Local county road and bridge board - Membership - Terms - Removal - Compensation. - (a) The local county road and bridge board consists of three [3] members appointed by the president of the county council of the county.

(b) All terms of office begin on January 1 and end on December 31. Members of the board serve two-year terms. If a vacancy occurs, a qualified person shall be appointed by the president of the county council of the county to serve for the remainder of the term.

(c) A member of the board may be removed for cause by the president of the county council of the county.

(d) Members of the board may not receive a salary. However, board members shall receive reimbursement for necessary expenses, but only if the expenses are incurred in the performance of their duties. [IC 8-14-9-4, as added by Acts 1981, P.L. 88, § 13.]

8-14-9-5. Construction projects - Adoption of resolution. - (a) Whenever the local county road and bridge board determines that it is necessary for the general welfare of the persons residing within the local county road and bridge district and that it will be of public utility and benefit to the property in the district to carry out a project of construction, reconstruction, or operation of roads or bridges, or both, within the district, the board shall adopt a resolution stating the necessity of the project and the intent of the district to proceed with the project.

(b) As a part of the resolution, the local county road and bridge board shall:

(1) Adopt preliminary or final plans and specifications for the entire project; and

(2) Determine the estimated cost of all work and all acquisitions necessary to carry out the project. [IC 8-14-9-5, as added by Acts 1981, P.L. 88, § 13.]

8-14-9-6. Resolution - Public Inspection - Notice. - (a) A resolution adopted under section 5 [8-14-9-5] of this chapter shall be made available for public inspection. The board shall publish notice of the adoption. The notice must contain a general description of the resolution, and it must indicate that the resolution and included materials may be inspected at a specified location.

(b) The notice shall be published in one [1] newspaper of general circulation within the local county road and bridge district once each week for two [2] consecutive weeks.

(c) The notice shall specify a date, not less than ten [10] days after the date of last publication, on which the board will conduct a hearing at which interested or affected parties may object to the resolution. [IC 8-14-9-6, as added by Acts 1981, P.L. 88, § 13.]

8-14-9-7. Remonstrances - Hearing - Records kept. - (a) At or before the time fixed under section 6 [8-14-9-6] of this chapter for a hearing, any interested or affected party may file with the board a written remonstrance against the proposed project, in whole or in part. At the hearing, which may be adjourned from time to time, the board shall hear all interested persons, and shall finally determine if the project, in whole or in part, is necessary for the general welfare of the persons residing in the district and will be of public utility and benefit to the property in the district. The board may confirm, modify, or rescind the resolution.

(b) The board shall keep a record of its decision on each proposed project, and submit the decision as a resolution to the county council of the qualified county. [IC 8-14-9-7, as added by Acts 1981, P.L. 88, § 13.]

8-14-9-8. Approval of resolution by county council - Action by local county road and bridge board. - If the county council of a qualified county approves a resolution submitted to it under section 7 [8-14-9-7(b)] of this chapter, the local county road and bridge board shall, for purposes of carrying out the project:

(1) Let contracts, in accordance with IC 5-17-1 [5-17-1-1-5-17-1-8.1];

(2) Acquire real estate; and

(3) Employ persons by special contract to render professional or consulting services. [IC 8-14-9-8, as added by Acts 1981, P.L. 88, § 13.]

8-14-9-9. Modification of project. - (a) The local county road and bridge board may modify a project approved under section 8 [8-14-9-8] of this chapter if:

(1) The modification is necessary to carry out the purpose and intent of the resolution; and

(2) The modifications do not increase the estimated cost determined under section 5(b) [8-14-9-5(b)] of this chapter.

(b) Any modification which does not meet the
requirements prescribed by subsection (a) must be made by a new resolution that is adopted and approved in the manner provided by sections 5 through 8 [8-14-9-5--8-14-9-8] of this chapter. [IC 8-14-9-9, as added by Acts 1981, P.L. 88, § 13.]

8-14-9-10. Issuance of bonds - Purpose - Limitation on amount - Prerequisites for issuance - Deadline for issuance. - (a) Subject to the limitations imposed by this section and notwithstanding IC 8-18-14-1, the local county road and bridge board may issue bonds in the name of the qualified county for the benefit of the local county road and bridge district. The bonds shall be issued for the purpose of raising money to acquire lands or rights-of-way, and to pay for any capital improvement, necessary for the construction, reconstruction, or operation of roads or bridges, or both, within the [district]. The local county road and bridge board may appropriate the proceeds of the bonds.

(b) The amount of bonds to be issued may not exceed the estimated cost of:

(1) All lands and rights-of-way to be acquired;

(2) Capital improvements; 

(3) Supervision and inspection fees during the period of construction or reconstruction;

(4) Programming, planning, and designing the capital improvements; and

(5) All necessary expenses, including publication of notices, engineering fees, architectural fees, and legal fees, incurred in acquiring property, letting contracts, and selling bonds for the project.

The amount of bonds issued for the project may not exceed the estimated cost determined under section 5(b) [8-14-9-5(b)] of this chapter. In addition, the amount of outstanding bonds issued by a county under this chapter may not exceed two percent [2%] of the assessed value of taxable property located within the local county road and bridge district.

(c) The local county road and bridge board may issue bonds under this chapter only if the issuance of those bonds has been approved by:

(1) The county council of the qualified county; and

(2) The state board of tax commissioners as required by IC 6-1.1-18.5-8.

(d) A local county road and bridge board may issue bonds under this chapter only if:

(1) The county motor vehicle excise surtax (IC 6-3.5-4) and the county wheel tax (IC 6-3.5-5) are in effect in the county in which the local county road and bridge district is located;

(2) The county motor vehicle excise surtax is being imposed at the maximum allowable rate; and

(3) The county in which the local county road and bridge district is located has not obtained a loan under IC 8-14-8.

(e) No bonds may be issued under this section after June 30, 1984. [IC 8-14-9-10, as added by Acts 1981, P.L. 88, § 13; P.L. 73-1983, § 17.]

8-14-9-11. Statement required on face of bond. - The face of each bond shall include a statement that the bond does not constitute a corporate obligation or indebtedness of the qualified county and that the bond principal and interest are payable only out of the revenues of the local county road and bridge district. [IC 8-14-9-11, as added by Acts 1981, P.L. 88, § 13.]

8-14-9-12. Bonds and interest - Exemption from taxation - Applicability of other laws. - All bonds and interest on bonds issued under this chapter are exempt from taxation as provided under IC 8-8-5-1. All general laws relating to:

(1) The filing of a petition requesting the issuance of bonds;

(2) The right of taxpayers to remonstrate against the issuance of bonds;

(3) The appropriation of the proceeds of the bonds and the approval of the appropriation by the state board of tax commissioners; and

(4) The sale of bonds at public sale for not less than par value; are applicable to proceedings under this chapter. [IC 8-14-9-12, as added by Acts 1981, P.L. 88, § 13.]

8-14-9-13. Imposition of special tax to pay bonds. - For the purpose of raising money to pay bonds issued under section 10 [8-14-9-10] of this chapter as the bonds severally mature, and to pay all interest accruing on the bonds, the county council of a qualified county may, notwithstanding IC 8-18-8-5, impose a special tax on all real and personal property located within the local county road and bridge district. However, the county council may only impose a tax under this section for a particular budget year to the extent that the estimated revenues that the county will receive from the county motor vehicle excise surtax and the county wheel tax during the budget year will be insufficient to pay the principal and interest coming due on those bonds during that budget year. The special tax constitutes the amount of benefits to the property which result from carrying out a project under this chapter. [IC 8-14-9-13, as added by Acts 1981, P.L. 88, § 13.]

8-14-9-14. Local county road and bridge district bond fund - Crenated - Deposits - Authorised sources - Use of monies in fund designated - Manner of Deposit. (a) A separate
fund known as the local county road and bridge district bond fund is created for deposit of the following monies:

(1) Revenues collected from the tax imposed under this chapter;

(2) Any appropriation made under section 16 [8-14-9-16] of this chapter; and

(3) Any proceeds remaining from the sale of bonds after payment of all costs and expenses described in section 10(b) [8-14-9-10(b)] of this chapter. In addition, if there are any outstanding bonds issued under this chapter, then revenues received by the county from the county motor vehicle excise surtax and the county wheel tax shall, notwithstanding IC 6-3.5-4-13 and IC 6-3.5-5-15, be deposited in the local county road and bridge district bond fund. However, this subsection does not apply to county motor vehicle excise surtax and county wheel tax revenues which are to be distributed under IC 6-3.5-4-13 and IC 6-3.5-5-15 to cities and towns located in the county.

(b) Monies in the fund shall be used only for payment of local county road and bridge district bonds as they severally mature, and the interest on those bonds.

(c) Monies in the fund shall be deposited with one [1] depository of other funds of the qualified county. Interest accruing on monies in the fund belongs to the fund. [IC 8-14-9-14, as added by Acts 1981, P.L. 88, § 13.]

8-14-9-15. Local county road and bridge district construction fund. - (a) All proceeds from the sale of bonds issued under this chapter shall be deposited in a separate fund known as the local county road and bridge district construction fund. Monies in the fund shall be used to pay for:

(1) Any lands or rights-of-way to be acquired for roads or bridges, or both, within the local county road and bridge district;

(2) Any capital improvement necessary for the construction, reconstruction, or operation of roads and bridges, or both, within the local county road and bridge district; and

(3) Any other necessary expenses incurred in carrying out the project. Monies in the fund may not be used to pay the salaries of employees of the qualified county.

(b) Monies in the fund shall be deposited with any depository of public funds of the qualified county. Interest accruing on monies in the fund belongs to the fund. [IC 8-14-9-15, as added by Acts 1981, P.L. 88, § 13.]

8-14-9-16. Annual appropriations to pay bonds and interest. - The county council may annually appropriate other monies to the local county road and bridge district bond fund to pay bonds as they severally mature, and to pay interest on the bonds in the year following the appropriation. [IC 8-14-9-16, as added by Acts 1981, P.L. 88, § 13.]

8-14-9-17. Exemption from Geometric Design Guide for Local Roads and Streets. - Notwithstanding any other law, expenditure made from the local county road and bridge district construction fund are not subject to the provisions of the Geometric Design Guide for Local Roads and Streets. [IC 8-14-9-17, as added by Acts 1982, P.L. 79, § 3.]

8-16-2. INTERSTATE BRIDGES BY DEPARTMENT

8-16-2-25. [36-2462]. Assumption of county debt - Inhibition. Nothing contained in this chapter shall be so construed as to authorize the state or the department to assume any debt or obligation of any county which may aid or assist in the construction of any bridge contemplated under this chapter. [Acts 1927, ch. 10, § 25, p. 23; 1980, P.L. 74, § 293.]

8-16-3. CUMULATIVE BRIDGE FUND

8-16-3-1 [36-1910]. Cumulative bridge fund - Approval by state board of tax commissioners. - Notwithstanding the provisions of IC 8-18-8-5, all municipal corporations and board of county commissioners are authorized to provide a cumulative bridge fund to provide funds for the cost of construction, maintenance and repair of bridges, approaches and grade separations; Provided, That in those counties in which a cumulative bridge fund has been established, the board of county commissioners shall be responsible for providing funds for all bridges, including those in cities and towns, within the counties except those bridges on the state highway system. County commissioners are further authorized to use this fund for making countywide bridge inspection and safety ratings of all bridges in a county not on the state highway system. Such inspection and safety ratings shall meet all the criteria of the national bridge inspection standards promulgated by the federal highway administration, U.S. department of transportation and shall be supervised and approved by a competent, qualified engineer, registered in the state of Indiana. Before this fund can be established, the proposed action of any municipal corporation or board of county commissioners to establish such a fund shall first be approved by the state board of tax commissioners. [Acts 1951, ch. 299, § 1, p. 989; 1957, ch. 76, § 1, p. 135; 1971, P.L. 101, § 1, p. 478; 1973, P.L. 72, § 1, p. 490; 1977, P.L. 113, § 1, p. 521.]

Opinions of Attorney-General. Until the

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ordinance is repealed, the residents of the city of Elkhart are not relieved from the payment of taxes levied for the cumulative bridge fund of Elkhart county, merely because they are also subject to the payment of taxes levied for the cumulative bridge fund for the city of Elkhart. 1969, No. 37, p. 116.

8-16-3-1.5. Definitions. - As used in this chapter [8-16-3-1-8-16-3-3]:

(1) "Bridge" means any structure designed to carry vehicular traffic over or under an obstacle to the normal flow of traffic and including any grade separation, culvert, or approach to a bridge;

(2) "Approach" means any part of a road or street which is required to make a bridge a viable part of a county road or city street system but which does not extend more than five hundred [500] feet from the bridge;

(3) "Construction" means both construction and reconstruction to a degree that new, supplementary, substantially improved traffic service is provided and significant geometric or structural improvements are affected;

(4) "Cost" means all expenditures required to construct, maintain, or repair a bridge including engineering, land acquisition, materials, contracts, and bond interest; and

(5) "Municipal corporation" means a city council or a town board. [IC 8-16-3-1.5, as added by Acts 1977, P.L. 113, § 2, p. 521.]

8-16-3.1. MAJOR BRIDGE FUND

8-16-3.1-1. Definitions. - As used in this chapter:

"Major bridge" means a structure that is two hundred [200] or more feet in length and that is erected over a depression or an obstruction for the purpose of carrying motor vehicular traffic or other moving loads. However, in any second class city located in a county with a population of not less than one hundred thousand [100,000] nor more than one hundred twenty-five thousand [125,000] such structure shall be one hundred [100] or more feet in length.

"Major obstruction" means a physical barrier to the passage of motor vehicle traffic which inhibits the use of the customary highway construction techniques to bridge the barrier without the use of a grade separation structure. [8-16-3.1-1, as added by Acts 1979, P.L. 96, § 1; 1982, P.L. 1, § 28.]

8-16-3.1-2. Purpose of chapter. - It is the purpose of this chapter to provide the counties with a supplemental means of financing the construction of county bridges which span major obstructions and which are larger than bridges ordinarily required to make a county highway system functional. [IC 8-16-3.1-2, as added by Acts 1979, P.L. 96, § 1.]

8-16-3.1-3. Eligible counties. - (a) An eligible county is any county which has within its boundaries:

(1) A population of not less than one hundred thousand [100,000] nor more than seven hundred thousand [700,000] according to the last preceding United States decennial census; and

(2) A major obstruction between commercial or population centers which is capable of causing an economic hardship because of excess travel required to conduct a normal level of commerce between the two [2] centers.

(b) A major obstruction which is a part of a county boundary or a state boundary does not qualify for the purpose of this chapter. [IC 8-16-3.1-3, as added by Acts 1979, P.L. 96, § 1.]

8-16-3.1-4. Fund - Tax levy - Procedures - Reduction or rescission. - (a) The board of county commissioners of any eligible county may provide a major bridge fund to make available funding for the construction of major bridges.

(b) The board of county commissioners of any eligible county may levy a tax of not to exceed ten cents [10c] on each one hundred dollars [$100] assessed valuation of all taxable personal and real property within the county to provide for the major bridge fund. Such tax rate may be levied annually and shall be advertised as other tax levies.

(c) Expenditure may be made from the major bridge fund only after an appropriation has been made from in the manner provided by law for making other appropriations.

(d) The procedures and conditions imposed for the levy of the tax and the approvals of the state board of tax commissioners which apply to the cumulative bridge fund under IC 8-16-3 [8-16-3-1-8-16-3-3], apply to the levy of the tax which is imposed under this chapter.

(e) The county commissioners may reduce or rescind the annual major bridge fund levy.

(f) Ten [10] or more taxpayers owning property in the county who will be affected by the major bridge fund tax levy may file, with the county auditor but not later than August 1 of any year, a petition for the reduction or revision of the levy. The petition must set forth their objections to imposing the levy. The petition must be certified to the state board of tax commissioners and the same procedures for notice and hearing provided in IC 8-16-3-2 must be followed. After such hearing the state board of tax commissioners may confirm the tax levy, reduce the levy, or rescind the levy and the action of the board shall be final and conclusive. [IC 8-16-3.1-4, as added by Acts 1979, P.L. 96, § 1.]
8-16-3.5. LEASING OF BRIDGES BY COUNTIES

8-16-3.5-1. Rental contracts - Restrictions - Time - Filing petition - Amount. - Any county shall have the power to lease a bridge or bridges and pay the lease rental from the cumulative bridge fund and levy under IC 1971, 8-16-3 [8-16-3-1-8-16-3-3].

However, no contract of lease shall be entered into for a period of more than fifteen [15] years, nor unless there shall first be filed with the county commissioners a petition therefor signed by fifty [50] or more tax paying citizens of such county, and the county commissioners shall have, after investigation, determined that a need exists for such bridge or bridges. The total annual dollar obligation under all contracts of lease for bridges made by a county may not exceed the county's estimated annual revenue from a cumulative bridge fund levy of twenty cents [20c] on each one hundred dollars [$100] on all taxable personal and real property within the county. [IC 1971, 8-16-3.5-1, as added by Acts 1975, P.L. 92, § 2, p. 608.]

8-16-3.5-2. Lease by two or more counties jointly. - If two [2] or more counties propose to enter into such a lease contract jointly, then joint meetings of the county commissioners may be held but no action taken shall be binding on any county unless approved by a majority of the county commissioners representing such county. Any lease contract executed by two [2] or more counties as joint lessees shall set out the amount of the aggregate lease rental to be paid by each, which may be as agreed upon. [IC 1971, 8-16-3.5-2, as added by Acts 1975, P.L. 92, § 2, p. 608.]

8-16-3.5-3. Contract of lease with corporations. - Any county may enter into a contract of lease under the provisions of this chapter [8-16-3.5-1-8-16-3.5-10] with any (profit or not-for-profit) corporation organized under the laws of the state of Indiana or duly admitted to do business in the state of Indiana. [IC 1971, 8-16-3.5-3, as added by Acts 1975, P.L. 92, § 2, p. 608.]

8-16-3.5-4. Option to purchase bridge - Failure to exercise option. - All contracts of lease may provide that such county shall have an option to purchase the bridge before the expiration of the lease contract, the terms and conditions of said purchase to be specified in said lease, subject to the approval of the state board of tax commissioners. In the event the county has not exercised an option to purchase the property covered by the lease contract at the expiration of the lease contract, and upon the full discharge and performance by the county of its obligations under the lease contract, the bridge covered by the lease contract shall thereupon become the absolute property of the county and the lessor corporation shall execute proper instruments conveying to the county title thereto. [IC 1971, 8-16-3.5-4, as added by Acts 1975, P.L. 92, § 2, p. 608.]

8-16-3.5-5. Plans and specifications - Selection - Not-for-profit corporations assistance - Approval. - Not-for-profit corporations proposing to build such bridge or bridges, may assist the lessee or lessees, prior to the execution of a contract of lease, in the preparation and acquisition of plans, specifications and estimates for such bridge or bridges or the lessee may prepare or otherwise acquire plans and specifications for the bridge or bridges. All plans and specifications shall be submitted to such agencies as may be designated by law to pass on plans and specifications for bridges, and such plans and specifications shall be approved by such agencies and the lessee or lessees in writing prior to the execution of such contract of lease. [IC 1971, 8-16-3.5-5, as added by Acts 1975, P.L. 92, § 2, p. 608.]

8-16-3.5-5.5. Contract of lease with profit corporation - Competitive bid - Procedure. - Notwithstanding any other provisions of this chapter [8-16-3.5-1-8-16-3.5-10], a contract of lease with any profit corporation shall be subject to competitive bid and may only be entered into after compliance with the following procedures:

(a) The lessee or lessees shall prepare and place on file in their offices a proposed lease and complete drawings and specifications for the bridge or bridges described in section 1 [8-16-3.5-1] to include necessary equipment and appurtenances thereto. The lease so proposed shall be complete in its terms except for total rental or other consideration which shall be subject to bid provided for herein.

(b) Thereupon, the lessee or lessees shall cause to be published for two [2] weeks, once each week, in at least one [1] newspaper of general circulation in the political subdivision seeking the lease, a notice informing the public and potential lessors of the general nature of the lease and of the fact that the proposed lease, drawings and specifications are on file in such office or offices, and calling for sealed proposals for such contract of lease on a specific date not earlier than ten [10] days after the first day of such publications.

(c) The lessee or lessees shall require each bidder to file with such lessee or lessees an affidavit that such bidder has not, directly or indirectly, entered into any combination, collusion, undertaking or agreement with any other bidder to maintain the price of his bid, or to prevent any other bidder from bidding, or to induce any bidder to refrain from bidding, and that such bid is made without regard or reference to any other bid, and without agreement, understanding or combination, either directly or indirectly, with any other person with reference to such bidding, in any way or manner.
whatever. If, after any contract of lease has been let by the lessee, it shall appear that the successful bidder has been guilty of any collusion, combination, undertaking or agreement, as defined in such affidavit, such bidder shall forfeit such contract of lease and such contract of lease shall be realted by the lessee.

(d) The lessee or lessees, may, in their discretion, fix a later day for receiving such bids, provided such date shall be mentioned in each of such notices.

(e) The lessee or lessees shall, if a satisfactory bid is received, let such control of lease to the lowest and best bidder, subject to subsection (g) of this section.

(f) The lessee or lessees may, by order, impose further conditions upon bidders with regard to bond and surety, guaranteeing the good faith and responsibility of the word provided for in the proposed contract of lease, or insuring the faithful completion of the terms of the proposed contract of lease, or for any other purpose.

(g) All other provisions of this chapter [8-16-3.5-1 to 8-16-3.5-10], not inconsistent with the procedures set forth herein for bidding by profit corporations, shall otherwise apply, including approval, execution, challenge or judicial review of the contract of lease. [IC 1971, 8-16-3.5-5.5, as added by Acts 1975, P.L. 92, § 2, p. 608.]

8-16-3.5-6. Contracts to pay taxes and assessments levied on bridge - Insurance - County duty to repair. - Such contract of lease may provide that as a part of the lease rental for such bridge or bridges the lessee or lessees shall agree to pay all taxes and assessments levied against or on account of the leased bridge, and to maintain insurance thereon for the benefit of the lessor corporation. However, the county shall assume all responsibilities for repair and alterations thereon or thereto during the term of such lease. [IC 1971, 8-16-3.5-6, as added by Acts 1975, P.L. 92, § 2, p. 608.]

8-16-3.5-7. Contract of lease prior to construction or site selection of bridge - Approval - Bond. - Such county may, in anticipation of the construction and erection of such a bridge or bridges, make and enter into a contract of lease with such lessor corporation subject to the approval of the state board of tax commissioners prior to the actual acquisition of such site and the construction and erection of such bridge or bridges, but such contract of lease so entered into shall not provide for the payment of any lease rental by the lessee or lessees until the completion of such bridge or bridges ready for use, at which time the stipulated lease rental may begin.

As a condition of entering into a lease, a county may require a lessor corporation to furnish a bond in such amount as may be specified conditioned upon the completion of such bridge or bridges within such period of time as may be specified. [IC 1971, 8-16-3.5-7, as added by Acts 1975, P.L. 92, § 2, p. 608.]

8-16-3.5-8. Notice of proposed lease - Contents - Public inspection - Hearing - Notice of approval - Appeal. - When the lessor corporation and the county have agreed upon the terms and conditions of any lease proposed to be entered into pursuant to the terms and conditions of this chapter [8-16-3.5-1 to 8-16-3.5-10] and before the final execution of such lease a notice shall be given by publication to all persons interested in a hearing to be held before the county commissioners, which hearing shall be on a day not earlier than ten [10] days after the publication of such notice. The notice of such hearing shall be published one [1] time in a newspaper of general circulation printed in the English language in the county. Such notice shall name the day, place and hour of such hearing and shall set forth a brief summary of the principal terms of the lease agreed upon, including the location, name of the proposed lessor corporation, and character of the bridge or bridges to be leased, the rental to be paid and the number of years the contract is to be in effect. The proposed lease, drawings, plans, specifications and estimates for such bridge or bridges shall be available for inspection by the public during said ten [10] day period and at said meeting. All persons interested shall have a right to be heard at the time fixed, upon the necessity for the execution of such lease and whether the rental provided for therein be paid to the lessor corporation is a fair and reasonable rental for the proposed bridge. Such hearing may be adjourned to a later date or dates, and following such hearing the county commissioners may either authorize the execution of such lease as originally agreed upon or may make such modifications therein as may be agreed upon with such lessor corporation, but in no event shall the lease rentals as set out in the published notice be increased. The cost of the publication of the notice shall be borne by lessor corporations.

In the event the execution of the lease as originally agreed upon, or as modified by agreement, is authorized by such county commissioners, they shall give notice of the execution of said contract by publication one [1] time in a newspaper of general circulation printed in the English language in the county. Ten [10] or more taxpayers in the lessee county who will be affected by the proposed lease and who may be of the opinion that no necessity exists for the execution of such lease, or that the proposed rental provided for therein is not a fair and reasonable rental, may file a petition in the office of the county auditor of the lessee county, within thirty [30] days after publication of notice of
the execution of such lease, setting forth their objections thereto and facts showing that the execution of the lease is unnecessary or unwise, or that the lease rental is not fair and reasonable as the case may be. Upon the filing of any such petition the county auditor shall immediately certify a copy thereof, together with such other data as may be necessary in order to present the questions involved to the state board of tax commissioners, and upon the receipt of such certified petition and information, the state board of tax commissioners shall fix a time and place for the hearing of such matter which shall not be less than five [5] nor more than thirty [30] days thereafter, and said hearing shall be in such county. Notice of the hearing shall be given by the state board of tax commissioners to the county commissioners of the lessee county, and to the first ten [10] taxpayer-petitioners upon such petition by a letter signed by one [1] member of the state board of tax commissioners, and enclosed with full prepaid postage addressed to such persons at their usual place of residence, at least five [5] days before the date of such hearing. The decision of the state board of tax commissioners of such appeal, upon the necessity for the execution of said lease and as to whether the rental is fair and reasonable, shall be final.

No action to contest the validity of the lease or to enjoin the performance of any of the terms and conditions of the lease shall be instituted at any time later than thirty [30] days after publication of notice of the execution of the lease by the county commissioners; or if an appeal has been taken to the state board of tax commissioners, then within thirty [30] days after the decision of said board. [IC 1971, 8-16-3.5-8, as added by Acts 1975, P.L. 92, § 2, p. 608.]

8-16-3.5-9. Tax exemption. - All bridges leased by a lessor corporation so contracting with such county under the provisions of this chapter [8-16-3.5-1--8-16-3.5-10] shall be exempt from all state, county and other taxes. However, the rental paid to a lessor corporation under the terms of such a contract of lease shall be subject to all applicable taxes under the laws of this state. [IC 1971, 8-16-3.5-9, as added by Acts 1975, P.L. 92, § 2, p. 608.]

8-16-3.5-10. Supplemental law. This chapter [8-16-3.5-1--8-16-3.5-10] is intended to be and shall be construed as being supplemental to all existing laws covering the acquisition, use and maintenance of bridges by counties. However, as to bridges constructed or leased pursuant to the provisions of this chapter, it shall not be necessary to comply with the provisions of other laws concerning the acquisition, use and maintenance of bridges by counties except as herein specifically required. [IC 1971, 8-16-3.5-10, as added by Acts 1975, P.L. 92, § 2, p. 608.]

8-16-4. BRIDGES APPROACHES BUILT WITH PROPERTY TAX MONEYS

8-16-4-1 [36-1708]. County bonds for grade separation structures and approaches - Issuance - Terms and conditions. - The board of commissioners and county council of any county shall have power to authorize and issue the bonds of the county for the purpose of procuring funds to pay all or part of the cost of a grade separation structure or structures and approaches thereto and to apply the proceeds of said bonds for such purpose. Said bonds shall be payable in such amounts and at such times as the county council shall determine not exceeding twenty [20] years from date of issuance, and shall be issued in accordance with the general statutes applicable to the issuance of county bonds. The provisions of all general laws relating to the filing of a petition requesting the issuance of bonds and giving notice thereof, the giving of notice of a hearing on the appropriation of the proceeds of the bonds and the right of taxpayers to appear and be heard upon the proposed appropriation, the approval of the appropriation by the state board of tax commissioners, the right of taxpayers to remonstrate against the issuance of bonds, and the sale of bonds at public sale for not less than the par value thereof, shall be applicable to proceedings hereunder. [Acts 1957, ch. 203, § 1, p. 423.]

8-16-4-2 [36-1707]. Construction of chapter - Chapter supplemental. - This chapter shall not be deemed to amend or repeal any other laws regarding grade separations or track elevations and the payment of the cost thereof, but shall be construed and considered as supplemental thereto and as providing an alternative and additional method for the financing of the cost of construction of grade separation structures. The power granted in this chapter shall be in addition to and not in derogation of any power existing under the provisions of any other laws. [Acts 1957, ch. 203, § 2; P.L. 66-1984, § 66.]

8-16-5. INTERSTATE BRIDGES

8-16-5-1 [36-2401]. State line bridges. - Any county or municipality of the state of Indiana bordering on a river or other stream which forms the boundary-line between the state of Indiana and any adjoining state, through its board of county commissioners, is authorized and empowered to build and maintain a bridge or bridges across such river or stream, in conjunction and in cooperation with any contiguous county, municipality or other subordinate division of such adjoining state which shall join in building and maintaining such bridge or bridges, and to pay the cost and expense of such bridge or bridges, in a sum equal to one-half the expense thereof; and such county of this state is hereby authorized and empowered to pledge and bind itself, through its said board of county commis-
sioners, to the payment of one-half of the expense of such bridge or bridges; and such board of county commissioners is hereby given full power and authority to enter into any contract with the proper authorities of such contiguous county of the adjoining state to do such work and perform such acts as are herein authorized in the building of such bridge or bridges as may be necessary to the construction and maintenance of the same. [Acts 1920 (Spec. Sess.), ch. 25, § 1, p. 81.]

8-16-5-2 [36-2402]. Petition - Tax levy - Bonds. - Such county, on the petition of a majority of the resident property holders of such county, shall levy a tax on the property of the county and the property owners of such county to raise the necessary money to build and maintain such bridge or bridges, in cooperation with the proper authorities of such contiguous county entering into the construction and maintenance thereof, and the county may issue bonds or other appropriate obligations based on such tax levy, on such terms as may be deemed proper, at any rate of interest, after the manner in which bonds are issued in the construction of gravel roads in this state, in raising such necessary money, and pay for the same out of the money raised by such tax. [Acts 1920 (Spec. Sess.), ch. 25, § 2, p. 81; 1981, P.L. 11, § 57.]

8-16-5-3 [36-2403]. Appropriation by county council. - Upon the action of the board of county commissioners of such county thereunto, duly certified to the county council of such county, the said county council shall appropriate, out of the money thus raised by taxation or realized from the sale of any bonds or obligations based thereon, the necessary money to build and maintain such bridge or bridges, in the proportion in the first section [8-16-5-1] hereof set forth. [Acts 1920 (Spec. Sess.), ch. 25, § 3, p. 81.]

8-16-5-4 [36-2402]. Duty of board of commissioners. - The board of commissioners of such county is hereby authorized and empowered to plan all details and to do all things necessary to be done in carrying out, and to carry out, the work of constructing and maintaining such bridge or bridges, and in all respects to cooperate with such contiguous county, municipality or other subordinate division of such adjoining state in building and maintaining same. [Acts 1920 (Spec. Sess.), ch. 25, § 4, p. 81.]

8-17-1. COUNTY UNIT LAW

8-17-1-14 [36-319]. Bonds sold to highest bidder. - All bonds authorized by the order of the board of commissioners for the purpose of providing money for the opening, widening, changing, constructing, or improving of any highway under and pursuant to the provisions of this chapter shall be sold by the county treasurer to the highest bidder therefor, but, in no event, at less than par, after giving notice of the sale of such bonds by publication in a newspaper of general circulation, printed and published in the county where said bonds are sold, and a like paper, printed and published in the city of Indianapolis, Indiana, which publications shall be made one [1] time in the county and one [1] time in the capital and not less than ten [10] days prior to the date fixed for the sale of such bonds. [Acts 1919, ch. 112, § 15, p. 531; P.L. 66-1984, § 80.]

Cross References. Sale of bonds, procedure, 19-8-5-1-19-8-5-7 (Burns' §§ 61-431-61-419.)

8-17-1-30 [36-511]. Assessments to counties - Notice. - The said joint boards of commissioners shall fix, in the order making and establishing said county line improvement, the ratio or part of road or roads belonging to and assessable against each of the several counties sought to be taxed for such improvement, by giving and assessing to each county such proportion of such road or roads to be improved, counting one-half [1/2] of the road to the county on either side thereof, and the boards of commissioners of the several counties interested and so notified, shall, upon notice from the auditor of the county where said proceedings are pending that the contract has been let, stating the amount of the contract price and the amount of all other costs, damages allowed, and expenses of every kind necessary to complete such improvement, including all cost of engineer, viewers, publication of notice, superintendent of construction, attorney's fees and the fees and charges of the auditor of the county so constructing the improvement, which fees and charges shall be the same as in other like work in his office and shall belong to him individually, except that portion chargeable to his own county, which shall belong to it, but each county shall pay for the cost of printing its own bonds and the selling of the same; and each county shall issue the bonds of its county for the sum equal to the share or portion so assessed and apportioned to such county, and such bonds shall be sold by the respective counties in the same manner as is provided in section 12 [8-17-1-12, repealed] of this chapter, and the proceeds from the sale of such bonds in each of the counties shall be remitted to the auditor of the county where the petition is filed, and by him charged upon his books, and then it shall be his duty to pay the same to the treasurer of his county, to be held by him as a special fund for the making of such improvement, and paid out upon warrants drawn by such auditor, as ordered by the board of commissioners of the county before whom the petition is so filed, except the final payment, which shall be made upon the joint order of said boards. It is hereby made the duty of the several county treasurers of this state to sell all such bonds so issued and to remit the proceeds to the auditor of the county where said petition is filed. [Acts 1919, ch. 112, § 31, p. 531; P.L. 66-1984, § 88.]
8-17-1-31 [36-512]. Special tax. - For the purpose of raising the money to meet said bonds and interest for the improvement of a county line highway, the boards of commissioners of the several counties issuing the same shall annually thereafter, at the time of the general tax levy, levy a special tax upon all the property of the county affected, including towns and cities therein, in such manner as to meet the principal and interest of such bonds as they become due, and such taxes will be collected as other taxes are collected in the county, and such bonds shall be in such denominations and for such length of time and shall bear such interest and in other respects shall be issued in conformity with the provisions of sections 12 and 13 [8-17-1-12, repealed, and 8-17-1-13] of this chapter. [Acts 1919, ch. 112, § 32, p. 531; P.L. 66-1984, § 89.]

8-17-1-36 [36-702]. Bonds exempt from taxation. - All bonds authorized by any county for the purpose of establishing, laying out, opening, changing, widening, building, constructing, or improving a highway wholly within a county or upon a county line shall be exempt from taxation. [Acts 1919, ch. 112, § 36, p. 531; 1981, P.L. 11, § 80.]

Cross References. Removal of interest limitation, 5-1-14-1.

8-17-1-43 [38-709]. Taxation - Assessed valuation. - It shall be unlawful for any board of commissioners in the state of Indiana to issue bonds or any other evidence of indebtedness payable by taxation for the construction or improvement of highways as contemplated in this chapter when the total issue for that purpose, including bonds already issued and to be issued, is in excess of two percent [2%] of the total assessed taxable valuation (after deducting all mortgage exemptions) of the property of the county, and all bonds or obligations issued in violation of this chapter shall be void: Provided, further, That in determining that total issue of bonds as herein referred to, as to the amount of tax collectible during the current year for the payment of road bonds then issued and outstanding and for which the tax levy has already been made, shall be deducted from the aggregate total of such bonds, and the amount remaining shall be and constitute the total issue of such bonds defined in this chapter. [Acts 1919, ch. 112, § 43, p. 531; P.L. 66-1984, § 96.]

8-17-4.1. ACCOUNTING SYSTEM FOR LOCAL ROADS AND STREETS

8-17-4.1-8 [36-3808]. Withholding funds. - (a) On March 1 following the operational report year, the state board of accounts shall prepare a certified list of municipalities which have complied with the terms of this chapter [8-17-4.1-1-8-17-4.1-9].

(b) The auditor is directed to withhold the distribution of motor vehicle highway account funds from any municipality not appearing on the state board of accounts, certified list until its annual operational report is certified. [IC 1971, 8-17-4.1-8, as added by Acts 1971, P.L. 103, § 1, p. 479.]

8-17-5-8 [36-1129]. County highway engineer fund. - There is hereby appropriated each year from the counties share of the April distribution of the motor vehicle highway account, the sum of nine hundred twenty thousand dollars [$920,000] to be held by the state auditor in a special account known as the county highway engineer fund, which shall be used exclusively in assisting the counties in the employment of a full-time county highway engineer. [Act 1963, ch 131, § 8; 1980, P.L. 77, § 1.]

Opinions of Attorney-General. A county highway engineer may be employed at any time subsequent to August 12, 1963, but the state will not contribute towards the payment of any of his salary until after January 1, 1964. The payments made by way of a grant-in-aid subsidy are to be made available for use by the county in paying his annual salary during the same year in which the services are performed. There is no provision requiring the county to employ and pay an engineer a full year before distribution could be made to that county. 1963, No. 61, p. 328.

8-17-5-10 [36-1131]. Subsidy for county. - Upon receipt of said annual certification from the county auditor, the state auditor shall distribute from the county highway engineer fund to said county units a grant-in-aid subsidy in the amount of fifteen thousand dollars [$15,000] which total sum is to be applied exclusively toward the engineers' annual salary. If the county highway engineer is employed by two [2] counties, acting jointly, the amount to be distributed to each such county unit shall be seven thousand five hundred dollars [$7,500]. [Acts 1963, ch. 131, § 10; 1971, P.L. 104, § 2; 1980, P.L. 77, § 2.]

Opinions of Attorney General. A county may claim a subsidy from the state for the employment of county highway engineer under this section even when the county highway engineer also serves as the county highway supervisor as authorized by 8-17-5-12. 1977, No. 13, p. 33.

8-17-5-11.1. Unused funds. - Any balance in the county highway engineers' fund at the end of each calendar year shall be returned to the counties' share of the motor vehicle highway account to be distributed in January of the following year. [IC 8-17-5-11.1, as added by Acts 1981, P.L. 41, § 58.]

8-17-11. COUNTY LINE ROADS

8-17-11-10 [36-410]. Special tax. - For the purpose of raising the money to meet said bonds and interest thereon, the boards of the several counties issuing the same shall annually thereafter, at the time of the general tax levy, levy a special tax upon
all the property of the township or townships affected, including towns and cities therein of less than thirty thousand [30,000] inhabitants, in such manner as to meet the principal and interest of such bonds as they become due, and such tax will be collected as other taxes are collected in the county: Provided, That the levy on the property of each township shall be in the same ratio and proportion as its portion of the road bears to the portion of the others, as the same adjongs each township in the respective counties. [Acts 1907, ch. 209, § 10, p. 363.]

8-20-1. LOCATION OR RELOCATION OF COUNTY ROADS

8-20-1-66 [38-1217]. Issuance of county bonds - Serial maturities and payments - Sale. - For the purpose of raising money to pay for the construction, the board of commissioners shall issue the bonds of the county not to exceed in amount the contract price and all expenses incurred and damages allowed prior to the letting of the contract and a sum sufficient to pay the per diem of the engineer and the superintendent provided for in this chapter during the construction of the work in denominations not less than fifty dollars [50.00] each in forty [40] equal series, the first series payable in six [6] months, the second series in one [1] year, the third series in [1] year and six [6] months, the fourth series in two [2] years, the fifth series in two [2] years and six [6] months, the sixth series in three [3] years, the seventh series in three [3] years and six [6] months, the eighth series in four [4] years, the ninth series in four [4] years and six [6] months, the tenth series in five [5] years, the eleventh series in five [5] years and six [6] months, the twelfth series in six [6] years, the thirteenth series in six [6] years and six [6] months, the fourteenth series in seven [7] years, the fifteenth series in seven [7] years and six [6] months, the sixteenth series in eight [8] years, the seventeenth series in eight [8] years and six [6] months, the eighteenth series in nine [9] years, the nineteenth series in nine [9] years and six [6] months, the twentieth series in ten [10] years, the twenty-first: series in ten [10] years and six [6] months, the twenty-second series in eleven [11] years, the twenty-third series in eleven [11] years and six [6] months, the twenty-fourth series in twelve [12] years, the twenty-fifth series in twelve [12] years and six [6] months, the twenty-sixth series in thirteen [13] years, the twenty-seventh series in thirteen [13] years and six [6] months, the twenty-eighth series in fourteen [14] years, the twenty-ninth series in fourteen [14] years and six [6] months, the thirtieth series in fifteen [15] years, the thirty-first series in fifteen [15] years and six [6] months, the thirty-second series in sixteen [16] years, the thirty-third series in sixteen [16] years and six [6] months, the thirty-fourth series in seventeen [17] years, the thirty-fifth series in seventeen [17] years and six [6] months, the thirty-sixth series in eighteen [18] years, the thirty-seventh series in eighteen [18] years and six [6] months, the thirty-eighth series in nineteen [19] years, the thirty-ninth series in nineteen [19] years and six [6] months, the fortieth series in twenty [20] years from July 15 or January 15, as the case may be, after the date of their issue; Provided, that if the date of issue shall be prior to the date of the annual tax levy, then the first bond and the interest coupons on all of the bonds shall mature on July 15 of the next succeeding year, and the balance of the bonds shall mature July 15 in the intervals provided herein; and Provided, further, That if said bond issue shall be made in any year after the date of the general tax levy, then the first bond and all of the first interest coupons shall mature on July 15 of the second succeeding year thereafter and the balance of the bonds and coupons at the regular intervals as provided herein after said July 15 of said second succeeding year; Provided, That the petitioners for any road or roads, as in this chapter provided, may in their petition ask that the issue of bonds to be issued and sold to raise moneys to pay for such improvement to be issued in series, payable in not less than ten [10] years and not to exceed twenty [20] years, in the denominations named in this chapter, as petitioners may designate in their petition, and the board of county commissioners shall issue the bonds for such improvement in compliance with the request of such petitioners; Provided, further, That if the petitioners in any such petition fail to ask for any certain term of years in which such bonds shall be payable, then in case of such failure the board of county commissioners shall designate and determine the term of years of which such bonds shall issue and be payable, such term to be not less than ten [10] nor more than twenty [20] years. The county treasurer shall sell bonds at not less than their face value, and the proceeds shall be kept as a separate and specific fund to pay for construction of the particular road or roads for which they were issued and to pay the cost incurred in the construction of the road, and the contractor for the construction of the same, to be paid by the said treasurer upon the warrant of the auditor, as directed by the board of commissioners. The commissioners shall order the same to be paid in such amount and at such times as they may agree, but no payment shall be made by the commissioners for more than eighty percent [80%] of the engineer's estimate of work done by the contractor, nor shall the whole amount of the contract be paid until the road shall have been received as completed by the board of commissioners. [Acts 1905, ch. 167, § 75, p. 521; 1907, ch. 265, § 1, p. 572; 1929, ch. 185, § 1, p. 598; P.L. 66-1984, § 130.]

NOTES TO DECISION

Appeal.

If the rate of interest on bonds is increased over
the objections of a remonstrator, he may appeal from the order. Chanley v. Zimmer (1915), 163 Ind. 222, 108 N. E. 789.

Under this section, making county boards of commissioners disbursing agents of funds derived from the sale of highway bonds, such board of commissioners is unaffected by an appeal concerning the distribution of said funds when not made parties thereto. Tipton Realty & Abstract Co. v. Kokomo Stone Co. (1920), 72 App. 121, 125 N. E. 577.

Attorneys' Fees.

Fees of attorneys employed by petitioners cannot be paid out of the funds raised by the issue of bonds. Overmeyer v. Board of County Comrs. (1908), 43 App. 403, 86 N. E. 77.

Funds from Which Bonds Payable.

Bonds issued under the highway improvement laws are not debts either of the county or township, but such bonds are payable only out of the special funds raised for such purpose. Board of County Comrs. v. Branaman (1907), 169 Ind. 80, 82 N. E. 85.

Bonds issued by county commissioners to raise means to pay for constructing gravel roads do not constitute debts against the county, but against the taxpayers in the taxing district liable to assessment. Deitrick v. Board of County Comrs. (1901), 28 App. 83, 62 N. E. 97; King v. Board of County Comrs. (1904), 34 App. 231, 72 N. E. 616.

Retained Percentages

On abandonment by a contractor of a highway contract, the county has the right to retain reserved percentages. Southern Surety Co. v. Merchants & Farmers Bank (1931), 203 Ind. 173, 178 N. E. 846, 179 N. E. 327.

On abandonment by contractor of a contract for road construction, the surety on the contractor's bond is entitled, under assignment of highway funds, to retain their percentages in the county's possession, in preference to the claim of a bank under assignment from the contractor. Southern Surety Co. v. Merchants & Farmers Bank (1931), 203 Ind. 173, 178 N. E. 846, 179 N. E. 327.

Persons taking assignments from a highway contractor are chargeable with notice of the terms of the contract and the surety bonds, and of the fact that the reserved fund is for the indemnity of the surety. Southern Surety Co. v. Merchants & Farmers Bank (1931), 203 Ind. 173, 178 N. E. 846, 179 N. E. 327.

In an action to determine priority of rights to certain unexpended funds, the court should direct payment into court of the percentages retained by the county under highway construction contract, and direct application of the fund, pro rata, on laborers' and materialmen's judgments. Southern Surety Co. v. Merchants & Farmers Bank (1931), 203 Ind. 173, 178 N. E. 846, 179 N. E. 327.

The surety of a highway contractor is not entitled to present subrogation to laborers and materialmen from percentages retained by the county, where the record fails to show payment of laborers' and materialmen's judgments. Southern Surety Co. v. Merchants & Farmers Bank (1931), 203 Ind. 173, 178 N. E. 846, 179 N. E. 327.

36-3-1. CONSOLIDATION AND TRANSFER OF POWERS

36-3-1-11. Effect on political subdivisions - Distribution of state revenues to excluded city or included town. - Political subdivisions in the county are not affected when a first-class city becomes a consolidated city, except to the extent that this title limits their functions or transfers them to the consolidated city. Such a political subdivision continues to have:

(1) The power to levy and collect property taxes in furtherance of functions not transferred to the consolidated city; and

(2) If applicable, the power to adopt and enforce ordinances prescribing a penalty for violation.

In addition, an excluded city or included town continues to have the right to receive distributions of revenues collected by the state, in the manner prescribed by statute, including distributions from the motor vehicle highway account, the cigarette tax fund, alcoholic beverage fees, and other tax revenues. [IC 18-4-3-14, 18-4-14-1, 8-4-14-3, 18-4-14-4, recodified as IC 36-3-1-11 by Acts 1980, P.L. 212, § 2.]

Cross References. Population of consolidated city for purposes of revenue distribution, 36-3-7-3.

36-3-7. ADMINISTRATION

36-3-7-2. Source of revenue for operation of consolidated city. - The consolidated city is entitled to receive the following monies, as they become available, to use in carrying out the powers, duties, and obligations of the consolidated city and its special service districts and special taxing districts:

(1) Revenues from the levies of taxes or special taxes on property or otherwise as prescribed by law.

(2) The aggregate of allocated amounts of money collected and available for distribution to the consolidated city and the county in the motor vehicle highway account as prescribed by IC 8-14-1 [8-14-1-1-8-14-1-8].

(3) All public money, whether held in general
accounts, special accounts, trusts, or otherwise, or receivable by the county or the consolidated city, or its departments, special taxing districts, or special service districts, that is budgeted or made available for functions conferred on the consolidated city or its departments or districts.

(4) All money that becomes available from the federal government or any federal agency organized for the disbursement or allocation of federal monies in furtherance of powers conferred on the consolidated city or its departments or districts.

(5) All money appropriated in furtherance of the powers conferred on the consolidated city.

(6) All money received as proceeds from the sale of bonds by the consolidated city or its special taxing districts.

(7) All parking fees and mass transportation revenues collected by the department of transportation under IC 36-9 [36-9-1-1-36-9-30-35].

(8) All money received by the consolidated city from the exercise of its powers or control and use of its property.

(9) All money in the cigarette tax fund available for distribution to the consolidated city or the department of transportation as prescribed by IC 6-7-1-30.1.

(10) The aggregate of allocated amounts of money collected and available for distribution to the consolidated city and the county as prescribed by IC 7.1-4-7 [7.1-4-7-1-7.1-4-7-9] pertaining to alcoholic beverage fees and taxes.

(11) Any other money available for distribution by the state under any statute, according to that statute. [IC 18-4-14-1, recodified as IC 36-3-7-2 by Acts 1980, P.L. 212, § 2]

NOTES TO DECISIONS

Cigarette Tax Fund.

The moneys from the cigarette tax fund that would otherwise be distributed to the mass transportation authority were to be distributed to the department of transportation. City of Lawrence v. City of Indianapolis, 167 Ind. App. 279, 50 Ind. Dec. 248, 338 N. E. 2d 683 (1975), appeal dismissed, 429 U.S. 972, S. Ct. 474, 50 L. Ed. 2d 578 (1976).

36-9-16. CUMULATIVE BUILDING FUND AND CUMULATIVE CAPITAL IMPROVEMENT FUND FOR MUNICIPALITY

36-9-16-1. Application of chapter. - This chapter applies to all municipalities. [IC 36-9-16-1, as added by Acts 1981, P.L. 309, § 89.]

36-9-16-3. Additional permitted purposes for cumulative capital improvement funds. - A municipality may also establish cumulative capital improvement funds to provide money for one or more of the following purposes:

1. To acquire land or rights-of-way to be used for public ways or sidewalks.

2. To construct and maintain public ways or sidewalks.

3. To acquire land or rights-of-way for the construction of sanitary or storm sewers, or both.

4. To construct and maintain sanitary or storm sewers, or both.

5. To acquire, by purchase or lease, or to pay all or part of the purchase price of a utility.

6. To purchase or lease land, buildings, or rights-of-way for the use of any utility that is acquired or operated by the municipality.

7. To purchase or acquire land, with or without buildings, for park or recreation purposes.

8. To purchase, lease, or pay all or part of the purchase price of motor vehicles for the use of the police or fire department, or both, including ambulances and firefighting vehicles with the necessary equipment, ladders, and hoses.

9. To retire in whole or in part any general obligation bonds of the municipality that were issued for the purpose of acquiring or constructing improvements or properties that would qualify for the use of cumulative capital improvement funds.

10. To purchase or lease equipment and other nonconsumable personal property needed by the municipality for any public transportation use. [IC 36-9-16-3, as added by Acts 1981, P.L. 309, § 89.]

Opinions of Attorney General. Following the rule that words and phrases are to be taken in the plain, ordinary, and usual sense; only one "cumulative capital improvement fund" was intended for each city, and the fact that the work "funds" appears in the plural form is only correct grammatical syntax. 1970, No. 1, p. 1.

36-9-16.5. CUMULATIVE STREET FUND FOR MUNICIPALITY

36-9-16.5-1. Applicability of chapter. - This chapter applies to all municipalities. [IC 36-9-16.5-1, as added by Acts 1981, P.L. 307, § 2.]

36-9-16.5-2. Fund - Establishment - Purposes. - (a) A municipality may establish a cumulative street fund to provide money for:

1. The acquisition of rights-of-way for public ways or sidewalks; or

2. The construction or reconstruction of public ways or sidewalks.
(b) A cumulative street fund may be established by a municipal legislative body through the adoption of a resolution. [IC 36-9-16.5-2, as added by Acts 1981, P.L. 307, § 2.]

Opinions of Attorney General. Interest coupons on bonds issued by a civil city may be paid from sinking fund of such city. 1937, p. 430.

36-9-16.5-3. Revenues - Appropriations - Moneys nonreverting. - (a) Revenues which may be deposited to the cumulative street fund include:

(1) All or part of the revenues from any property tax levy dedicated for road and street purposes;

(2) All or part of the municipality's federal revenue sharing funds; or

(3) Other sources by resolution of the municipal legislative body.

(b) Appropriations may be made from the cumulative street fund for the purpose authorized under section 2 [36-9-16.5-2].

(c) Monies in the cumulative street fund do not revert to the general fund at the end of any fiscal year. [IC 36-9-16.5-3, as added by Acts 1981, P.L. 307, § 2.]

36-9-17. GENERAL IMPROVEMENT FUND FOR MUNICIPALITY

36-9-17.1. Application of chapter. - This chapter applies to all municipalities. [IC 36-9-17-1, as added by Acts 1981, P.L. 309, § 90.]

36-9-17.2. Preliminary resolution. - Whenever the works board of a municipality wants to improve a public way or public place, or to construct, repair, or reconstruct a sidewalk, curb, gutter, sewer, or drain in the municipality, it shall adopt a preliminary resolution designating whether the proposed improvement is to be financed and paid for in the manner prescribed by this chapter. [IC 36-9-17-2, as added by Acts 1981, P.L. 309, § 90.]

36-9-17.3. Establishment of fund - Sources. - A municipality may, by ordinance, establish a general improvement fund, which shall be used to construct, repair, or improve streets, alleys, sidewalks, curbs, gutters, and sewers. This fund consists of:

(1) The special assessments collected under this chapter for benefits to property from constructing, repairing, or improving streets, alleys, sidewalks, curbs, gutters, and sewers; and

(2) Any appropriation made from the general fund of the municipality or from taxes levied by the municipal legislative body for these purposes. However, special assessments collected by a municipality under any statute other than this chapter may not be deposited in the fund. [IC 36-9-17-3, as added by Acts 1981, P.L. 309, § 90.]

36-9-17.4. Notice and hearing on proposed fund - Approval by state board of tax commissioners. - (a) Whenever a municipal legislative body proposes to establish a general improvement fund, it shall:

(1) Give notice of the proposal to the affected taxpayers; and

(2) Provide for a public hearing on the proposal; before presenting the proposal to the state board of tax commissioners for approval.

(b) Notice of the proposal and of the public hearing shall be given by publication in accordance with IC 5-3-1 [5-3-1-1-5-3-1-9].

(c) If, after the public hearing, the proposed action is submitted for approval to the state board of tax commissioners, the board shall require notice of that submission to be given to the taxpayers of the municipality in the manner prescribed by subsection (b).

(d) Fifty [50] or more taxpayers in the taxing district who will be affected by the proposed tax rate may, not later than ten [10] days after the publication under subsection (c), file with the municipal clerk a petition setting forth their objections to the proposed levy. The municipal clerk shall immediately certify the petition to the state board of tax commissioners, which, within a reasonable time, shall fix a date for a hearing on the petition. The hearing shall be held in the municipality. Notice of the hearing shall be given to the municipal clerk and to the first ten [10] taxpayers whose names appear upon the petition, by a letter signed by the secretary or any member of the board and mailed to the municipal clerk and to the taxpayers at their usual place of residence at least five [5] days before the date fixed for the hearing.

(e) After a hearing upon the proposal, the state board of tax commissioners shall certify its approval, disapproval, or modification of proposal to the municipal clerk. The action of the board with respect to the establishment of the proposed general improvement fund is final and conclusive. [IC 36-9-17-4, as added by Acts 1981, P.L. 309, § 90; 1981, P.L. 317, § 15.]

36-9-17.5. Appropriations from general fund of municipality - Tax levies - Limitation on amounts. - (a) Subject to tax limitations and to the review of appropriations and tax levies, the legislative body of a municipality that establishes a general improvement fund may appropriate money from the general fund of the municipality and transfer that money to the general improvement fund, levy a tax for the benefit and use of the gen-
eral improvement fund, or both.

(b) During the year in which a municipality establishes a general improvement fund, the municipal legislative body may make an emergency appropriation from the general fund of the municipality and transfer that appropriation to the general improvement fund in the manner prescribed by statute for the making of emergency appropriations.

(c) Any sum may be appropriated or levied under this section in any one [1] year, but the aggregate sum that may be appropriated and levied under this section, including emergency appropriations under subsection (b), may not exceed the equivalent of fifty cents [50c] on each one hundred dollars [$100] net taxable valuation of property in the municipality. [IC 36-9-17-5, as added by Acts 1981, P.L. 309, § 90.]

36-9-17-6. Disbursements from general improvement fund. - Disbursements may be made from the general improvement fund for any purpose only if benefits are to be:

(1) Assessed against the properties benefited in the manner provided by the street and sewer improvement statutes; and

(2) Collected in the manner provided by law for the collection of Barrett Law assessments, with all interest and penalties paid into the general fund of the municipality. [IC 36-9-17-6, as added by Acts 1981, P.L. 309, § 90.]

36-9-19. BARRETT LAW FUNDING FOR MUNICIPALITY


36-9-19-2. Municipal fiscal officer. - In a city subject to IC 36-4-10-8, the treasurer of the county in which the city is located shall perform the duties of the municipal fiscal officer under this chapter. [IC 36-9-19-2, as added by Acts 1981, P.L. 309, § 92.]

36-9-19-3. Collection and enforcement of assessments - Payment of bonds - Assumption of primary responsibility by municipality. - (a) When a municipality levies special assessments against specific parcels of property under the Barrett Law, the municipal fiscal officer shall collect and enforce the assessments and pay the bonds issued in anticipation of the collections, if:

(1) The municipal legislative body, by ordinance, declared the projected improvement to be of:

(A) General benefit to the municipality and its citizens; and

(B) Special benefit to the property owners in the area where the improvement is to be located;

(2) The dual benefit and its proportions are established by the ordinance; and

(3) The provisions of the Barrett Law have been followed.

(b) The municipality may assume primary responsibility for the full payment of principal and interest of all bonds issued for the improvement. If the municipality assumes that responsibility, all payments of principal and interest shall be made by the municipal fiscal officer out of appropriations for the project, and the municipality shall be reimbursed by the collections of special assessments under the Barrett Law. If a property owner elects to pay his assessments in installments, the assessment shall be entered for collection on the improvement duplicate and shall be collected in the same manner as other taxes. [IC 36-9-19-3, as added by Acts 1981, P.L. 309, § 92.]

NOTES TO DECISIONS

Action to Set Aside Order of Works Board.

In an action by property owners, assessed for a street improvement, to set aside the order of a board of public works accepting the work, fraud in the entering of such order had to be shown and necessary deviations from work specified in the contract did not void it. Crawshaw v. Mead-Balch Contr. Co., 100 Ind. App. 35, 191 N. E. 81 (1934).

Assessment of Marketplaces.

Property adjacent to marketplaces could not be assessed for the expense of improving such places. City of Ft. Wayne v. Shoaff, 106 Ind. 68, 5 N. E. 403 (1888).

Levy as Tax.

The levy of assessments by a city in a proceeding under the Barrett Law was an exercise of the power of taxation, and the assessments levied were a tax upon the property in the improvement district. Read v. Beczkiewicz, 215 Ind. 365, 18 N. E. 2d 789, 19 N. E. 2d 465 (1939).

Limitation of Actions.


Statute of limitations, as against city, did not begin to run against owner of Barrett law bonds until after city received payments on assessments from property owners and refused bondholder's demand for payment of the amount received. Keilman v. City of Hammond, 124 Ind. App. 392, 114 N.

Where city treasurer had received payments for Barrett Law bonds prior to date on which he stamped them as not paid for want of funds, he thereby concealed the truth and was guilty of at least constructive fraud, which stayed the statute of limitations. Keilman v. City of Hammond, 124 Ind. App. 392, 114 N. E. 2d 813, 116 N. E. 2d 515 (1953).

Prepaid Assessments.

See note under heading "Prepaid Assessments," 36-9-19-8, Notes to Decisions.

Although the fund arising from prepaid assessments was referred to in the statute as a trust fund to be held by the city, the relationship between the city and the bondholder was not that of trustee and cestui que trust, but the city became liable as principal for the payment of the amount of the prepaid assessments with interest, and not merely for the proceeds of the bonds in which the prepaid assessments were invested. Read v. Beczkiewicz, 215 Ind. 365, 18 N. E. 2d 789, 19 N. E. 2d 465 (1939).

--Investment.

The jurisdiction to determine the manner and method of investment of prepaid improvements assessments rested with the legislature, and the courts had no power to substitute another method. Read v. Beczkiewicz, 215 Ind. 365, 18 N. E. 2d 789, 19 N. E. 2d 465 (1939).

The city, in making investment of prepaid assessments in other similar bonds at par, was vested with a sound discretion as to what bonds were worth par. Read v. Beczkiewicz, 215 Ind. 365, 18 N. E. 2d 789, 19 N. E. 2d 465 (1939).

If the investing officer, in the exercise of a sound discretion, determined that there were no bonds to be had at par, which would constitute a safe investment, he could not buy bonds with prepaid improvement assessments, since city could not purchase bonds at less than par or more than par. Read v. Beczkiewicz, 215 Ind. 365, 18 N. E. 2d 789, 19 N. E. 2d 465 (1939).

36-9-19-4. Municipal fiscal officer - Bond - Liability. - (a) A municipal fiscal officer acting under this chapter shall, in the manner prescribed by IC 5-4-1 [5-4-1-1-5-4-1-19], obtain, execute, and file a bond conditioned upon the faithful compliance of the fiscal officer with this chapter and upon the faithful accounting for all money coming into the officer's hands under the Barrett Law.

(b) A municipal fiscal officer who:

(1) Fails to collect the interest or penalties provided for in this chapter on delinquent assessments and installments of assessments;

(2) Fails to enforce the collection of the assess-
ments by the sale of the property; or

(3) Otherwise fails to comply with this chapter; is personally liable to any person suffering loss on account of that failure. The surety on the bond is also liable to the extent of the bond, and the officer may be removed from office by proper action filed under IC 5-8-1-35. [IC 36-9-19-4, as added by Acts 1981, P.L. 309, § 92; 1981, P.L. 47, § 25; 1982, P.L. 6, § 28.]

36-9-19-5. Payment of necessary expenses of fiscal officer. - Each year the municipal legislative body shall include in its annual budget and tax levy the necessary expense of employing additional clerks, furnishing suitable quarters, and obtaining necessary records, books, forms, and other supplies so as to enable the municipal fiscal officer to perform the duties prescribed by this chapter. If money for these purposes is needed before the collection of the tax levy, the money shall be supplied by appropriation from the general fund of the municipality or obtained from temporary loans in anticipation of the taxes levied. [IC 36-9-19-5, as added by Acts 1981, P.L. 309, § 92.]

NOTES TO DECISIONS

In General.

The provision that all "special assessment, delinquency and deficit funds" be used for the payment of bonds, was treated as written into and a part of the bonds issued when the statute was in force, and a subsequent statute which sought to divert part of the funds to another purpose, for payment of expenses, impaired the obligation of the contract. Read v. Beczkiewicz, 215 Ind. 365, 18 N. E. 2d 789, 19 N. E. 2d 465 (1939).

36-9-19-6. Certification of assessment roll - Collection of special assessments - Assessment liens. - (a) When the assessment roll for an improvement ordered by the works board of a municipality is finally approved, it shall be certified to the municipal fiscal officer. The fiscal officer shall then proceed to collect the special assessments listed on the roll.

(b) Each special assessment constitutes a lien against the property on which the assessment is levied.

(c) All political subdivisions have the same powers and are subject to the same duties and liability in respect to municipal assessments for the cost of public improvements affecting their real property as private owners of real property. The real property of all political subdivisions is subject to liens for the assessments if the property would have been subject if owned by a private owner at the time the lien attached. However, a penalty or attorney's fee arising from such an assessment may
not be collected from a political subdivision. [IC 36-9-19-6, as added by Acts 1981, P.L. 309, § 92.]

NOTES TO DECISIONS

Foreclosure of Lien.
See notes under heading "Lien," 36-9-19-10, Notes to Decisions.

Prepaid Assessments.

Where, after the expiration of the first year, a property owner elected to pay the remaining installment in full and discharge the lien against his property therefor, the lien was discharged as to such prepayments to the city, and the city became the principal obligor upon the bond to the extent of the payment of assessments received by it. Read v. Beczkiewicz, 215 Ind. 385, 18 N. E. 2d 789, 19 N. E. 2d 465 (1939).

Public Property.
Prior to the enactment of predecessor statute, there was no statutory provision for acquiring liens against public property. Fry v. P. Bannon Sewer Pipe Co., 179 Ind. 309, 101 N. E. 10 (1913).

Statute concerning assessments against public property did not repeal prior statutes as to the assessment of the property of school corporations for such purposes. School Town v. Somerville, 181 Ind. 463, 104 N. E. 859, 1916D Ann. Cas. 661 (1914).

Role of City in Collection.
In collecting assessments paid by owners of property subject to lien, the city did not act as the agent of the holders of bonds issued by the city for the improvement. Read v. Beczkiewicz, 215 Ind. 385, 18 N. E. 2d 789, 19 N. E. 2d 465 (1939).

36-9-19-7. Option to pay assessments in installments - Time of payment - Collection of interest in advance. - (a) If the works board of a municipality orders an improvement described by subdivision (4), (5), or (7) of IC 36-9-1-2, each owner of property assessed for that improvement may elect to pay his assessment in ten [10] equal annual installments with interest. However, an assessment of less than one hundred dollars [$100] may not be paid in installments.

(b) If the property owner is not an individual, the election must be made in the following manner:

(1) For a partnership, at least one of the partners must sign the waiver and other instruments required for the election.

(2) For a corporation, the president or vice president must sign the waiver and other instru-

ments required for the election, and must file a certified copy of the resolution of the board of directors or trustees authorizing him to execute those instruments on behalf of the corporation.

(3) For a church, lodge, charitable institution, or other organization, the person or persons acting on behalf of the organization must sign the waiver and other instruments required for the election, but only after being instructed to do so by a resolution adopted at a meeting of the organization called for that purpose.

(c) If a property owner has elected to pay his assessment in installments, and the assessment roll for the cost of the improvement was finally approved before July 1 of any year, the first installment of the principal of the assessment, together with accrued interest, is payable on November 10 of that year.

(d) If a property owner has elected to pay his assessment in installments, and the assessment roll for the cost of the improvement was finally approved after June 30 of any year, the first installment of the principal of the assessment, together with accrued interest, is payable on May 10 of the next year.

(e) Subsequent installments of principal and interest are payable at one-year intervals after the date of payment of the first installment under subsection (c) or (d).

(f) With the first installment of principal, and interest to the first bond maturity date, an amount sufficient to cover six [6] months interest in advance on the assessment shall also be collected. With each succeeding installment of principal, except the last installment, six [6] months interest shall be collected in advance, so that only one [1] annual payment is made by the property owner on the assessment. [IC 36-9-19-7, as added by Acts 1981, P.L. 309, § 92.]

36-9-19-8. Prepayment of installments - Establishment and use of special fund - Disbursement warrants - Effect of failure to reinvest. - (a) A property owner who has secured the right to pay his assessments in deferred installments by the filing of a waiver may, at any time after the expiration of the first year after that filing, pay the entire balance of his assessment and be relieved of the lien on his property, if, at the same time, he pays all interest due at the next interest paying period. If a person who exercises his right to prepay his assessment fully pays the assessment and interest, all interest and liability as to the assessed property ceases.

(b) The prepaid assessments constitute a special fund to be held in trust by the municipality for the owner or owners of the bonds upon which the
prepayments have been made. The municipal fiscal officer shall promptly invest and reinvest the special fund in securities of the federal government so that the principal will be available to pay the bonds upon which prepayments were collected as they become due. The interest collected on these securities shall be applied to the payment of the interest lost on account of the prepayment of the assessments. The difference between the interest lost on account of the prepayment of assessments and the amount of interest earned by the investment in federal securities shall be paid by the municipal corporation that issued the improvement bonds. However, if the bonds are issued on each parcel of real property, covering the assessment against that real property, then the municipality shall pay the prepayment to the holder of the bond and cancel the same.

(c) Warrants for disbursements from the special fund established by subsection (b) shall be drawn and issued in the manner provided by statute for disbursements from municipal funds, and the officer having custody of the special fund shall honor and pay those warrants.

(d) If a municipality negligently fails to invest or reinvest the special fund in the manner prescribed by this section, it is liable to the special fund for interest on the fund, calculated at the rate borne by the bonds issued on account of the assessments. A holder of bonds upon which prepayments have been made may compel compliance with this section by mandamus or other appropriate remedy, but the failure of a bondholder to compel compliance does not relieve the municipality or any of its officers from any liability under this chapter. [IC 36-9-19-8, as added by Acts 1981, P.L. 309, § 92.]

36-9-19-9. Notice of default - Failure to send notice. - (a) If a person defaults in the payment of any waived installment of principal or interest of any assessment, the municipal fiscal officer shall mail notice of the default to that person. The notice must:

(1) Be mailed within sixty [60] days after the default;

(2) Show the amount of the default, plus interest on that amount for six [6] months at one half [1/2] the rate prescribed by IC 6-1.1-37-10; and

(3) State that the amount of the default, plus interest, is due by the following May 10 or November 10.

(b) A notice mailed to the person in whose name the property is assessed, addressed to that person within the municipality, is sufficient notice, but the fiscal officer shall also attempt to ascertain the name and address of the current owner of the property and send a similar notice to that owner. Failure to send the notice does not preclude or otherwise affect the sale of the property for delinquency by the municipality or the foreclosure of the assessment lien by the bondholder. [IC 36-9-19-9, as added by Acts 1981, P.L. 309, § 92; 1981, P.L. 317, § 19.]

NOTES TO DECISIONS

Notice.

Notice of default was no longer a condition precedent to the right of a bondholder to enforce payment of the assessments. Ingram's Estate v. Gilmore, 110 Ind. App. 298, 38 N. E. 2d 860 (1942).

36-9-19-10. Enforcement of payment - Interest penalties - Surplus Barrett Law account - Disposition of collections. - (a) If any principal and interest or any installment for principal and interest is not paid in full when due, the municipal fiscal officer shall enforce payment of the unpaid amount, plus interest at the rate prescribed by subsection (b).

(b) If payment is made after a default, the municipal fiscal officer shall also collect a penalty of interest on the delinquent amount at one half [1/2] the rate prescribed by IC 6-1.1-37-10 for each six-month period, or fraction of a six-month period, from the date when payment should have been made.

(c) Interest penalties collected under subsection (b) shall be credited to an account to be known as the "surplus Barrett Law account," as a part of the waived municipal improvement funds. The money in the surplus Barrett Law account may be used as follows:

(1) It may be used to pay the interest on improvement assessments that is lost or forgiven due to the prepayment of installments of assessments.

(2) Whenever the amount of money in the account exceeds five [5] times the average annual amount of lost or forgiven interest paid under subdivision (1) during the preceding three [3] years, that excess may be used to purchase equipment for or pay expenses incurred by the municipal fiscal officer in performing his duties under the Barrett Law.

(d) All payments of delinquent principal, delinquent interest, and interest penalties that are collected during any six-month period ending on May 10 or November 10 shall be applied to the payment of bonds and coupons after the next February 1 or August 1, if the collections are sufficient to pay one percent [1%] of the face value of the bonds and coupons. Otherwise, payments on the bonds need not be made until the collections are sufficient to pay one percent [1%]. However, if there are no more delinquent collections to be made, payment
shall be made in full. It is not necessary under this subsection to mark the bonds and coupons "not paid for want of funds." [IC 36-9-19-10, as added by Acts 1981, P.L. 309, § 92; 1981, P.L. 317, § 20.]

NOTES TO DECISIONS

Actions by Bondholder.

Bondholders could institute an action to enforce Barrett Law assessments for the benefit of themselves and other bondholders. Engelhart's Estate v. Larimer, 211 Ind. 218, 5 N. E. 2d 304 (1936).

The holder of all the outstanding bonds issued for any public improvement, on which payment has been made by property owners to distributing officer, has a right to sue out a writ of mandamus to compel such distributing officer to pay to the holder of such bonds all payments made by property owners on demand and refusal of such officer so to do. Coner v. Lincoln Nat'l Life Ins. Co., 212 Ind. 125, 8 N. E. 2d 232 (1937).

In the absence of statutory authority, one bondholder could bring suit to foreclose a lien or to recover against the property owner who has signed a waiver, for the benefit of himself and other bondholders without their express consent and authority. Read v. Beczkiewicz, 215 Ind. 365, 18 N. E. 2d 789, 19 N. E. 2d 465 (1939).

Complaint which alleged that improvement bonds issued by city were issued in anticipation of assessment collections, that when they became due a substantial amount of money had gone into city treasury for purpose of payment, and that city treasurer refused to make payment because there were no funds, was sufficient to allege constructive fraud and thus constitute an exception to the statute of limitations. Keilman v. City of Hammond, 124 Ind. App. 392, 114 N. E. 2d 813, 116 N. E. 2d 515 (1953).

Constitutionality.

So much of the statute as permitted a holder of street improvement bonds to present them to the county treasurer in payment of the installments assessed against his property as they became due, and have the amount of the assessment endorsed on the bond as payment thereof, without regard to the rights of other bondholders, was unconstitutional as impairing the obligation of contract. Coner v. State ex rel. Berezner, 211 Ind. 659, 8 N. E. 2d 75 (1937); Read v. Beczkiewicz, 215 Ind. 365, 18 N. E. 2d 789, 19 N. E. 2d 465 (1939).

The provision for payment of improvement assessment with bonds issued for the same improvement, did not impair the obligation of the contract with the bondholder where one person was the sole owner of all unpaid bonds and coupons, and also the owner of real estate subject to assessment for payment of such bonds; and the county treasurer was required to accept such bonds in such cases in satisfaction of delinquent assessment without the payment of the statutory delinquency penalty. Read v. Beczkiewicz, 215 Ind. 365, 18 N. E. 2d 789, 19 N. E. 2d 465 (1939).

A reduction of delinquency penalties on assessment rolls for which bonds had been theretofore issued, from 10 to 6 percent, was unconstitutional as impairing the obligation of contract. Read v. Beczkiewicz, 215 Ind. 365, 18 N. E. 2d 789, 19 N. E. 2d 465 (1939).

Due.

The word "due" as used in the former statute meant "matured." Coner v. State ex rel. Berezner, 211 Ind. 659, 8 N. E. 2d 75 (1937).

Interest.

Provision that interest accumulated on delinquent payments for special improvement assessments "shall become a part of the particular fund for the payment of the bonds issued on account of such assessments" required the application of after-maturity interest to the payment of the bonds. Coner v. Lincoln Nat'l Life Ins. Co., 212 Ind. 125, 8 N. E. 2d 232 (1937).

Lien.

Barrett Law bondholders acquired their lien by virtue of the statutes existing at the time the obligations were created; the provisions of such statutes became a part of the bonds when issued and delivered; and the lien became a part of the contract and a vested right which could not be impaired. Zilky v. Carter, 226 Ind. 396, 81 N. E. 2d 597 (1948).

A judgment foreclosing the lien of Barrett Law assessments and determining definite amounts due and owing plaintiff as principal, interest and attorney's fees, which together with the costs were ordered paid out of the proceeds of the sale of the real estate, was not a "judgment for recovery of money or costs" which should be docketed and indexed pursuant to statute, in order to acquire a lien upon the real estate. Zilky v. Carter, 226 Ind. 396, 81 N. E. 2d 597 (1948).

--Foreclosure.

Construction company had a right of action to foreclose sidewalk improvement lien, even though no bonds had been issued for the improvement. Franklinstein v. Coil Constr. Co., 127 Ind. App. 642, 143 N. E. 2d 468, 145 N. E. 2d 19 (1957).

Each lot or parcel of land was separately liable for its proportion of the cost of the improvement and the liability of each was independent of any other, and constituted a separate demand upon

Management of Funds.

The courts had no authority to assume management of funds collected for improvement assessments, since the statute vested such management in certain specific officers. Read v. Beczkiewicz, 215 Ind. 365, 18 N. E. 2d 789, 19 N. E. 2d 465 (1939).

Order in Which Bonds Paid.

The provision that special assessment improvement bonds should be paid in the order of their maturity was rendered immaterial and did not apply, where all the outstanding bonds issued for such improvement were owned and held by one person. Conter v. Lincoln Nat'l Life Ins. Co., 212 Ind. 125, 8 N. E. 2d 232 (1937).

Where delinquent improvement assessments were paid after becoming delinquent, the statute did not require that such proceeds be used in payment of bonds in the order in which they were presented for payment, stamped as "not paid for want of funds," and recorded as required by statute, instead of in the order of their serial number. Read v. Beczkiewicz, 215 Ind. 365, 18 N. E. 2d 789, 19 N. E. 2d 465 (1939).

Penalties.

Statutory penalties for delinquency in payment of principal or interest on improvement bonds did not, in the absence of special statutory authorization, belong to the bondholders. Conter v. Lincoln Nat'l Life Ins. Co., 212 Ind. 125, 8 N. E. 2d 232 (1937).

38-9-19-11. Effect of default on unpaid installments. - If any one [1] installment of an assessment is in default, the total amount of the assessment that remains unpaid is considered to be in default, and the assessed property is subject to sale under section 12 [36-9-19-12] of this chapter in order to pay that amount. [IC 36-9-19-11, as added by Acts 1981, P.L. 309, § 92.]

38-9-19-12. Certified list of delinquencies - Sale of properties - Rights and remedies of owners and purchasers - Right of action upon failure of officer to perform duties. - (a) Before June 1 of each year, the municipal fiscal officer shall certify to the county auditor a list of all delinquent waivered and nonwaivered assessments. The list must include:

(1) The name or names of the owner or owners of each piece of real property on which the assessments for principal and interest are in default;

(2) The description of each of those pieces of property, as shown by the records of the county auditor; and

(3) The total amount of principal, interest, and penalty due on each of those pieces of property.

The county auditor shall immediately enter the list in a special duplicate and transmit it to the county treasurer for collection. After the county treasurer receives the list, payments on the delinquent assessments shall be made only to the county treasurer and may not be accepted by the municipal fiscal officer, except from the county as provided by subsection (c).

(b) After the county auditor receives the list of delinquencies from the municipal fiscal officer under subsection (a), the real property on the list is subject to sale at the next tax sale held by the county. The property shall be sold in the manner that property is sold for taxes, and the owners and purchasers have the same rights and remedies as they would have at a tax sale. However, if the full payment is not made by November 10, an additional four percent [4%] of the principal and interest as certified shall be added to the amount to be collected.

(c) Upon collection of the principal, interest, and penalty, and settlement for them by the county treasurer, the county auditor shall issue a county warrant for them to the municipal fiscal officer originally charged with their collection.

(d) This section does not require a county or any of its officers to include the amount of delinquent principal, interest, or penalty in a certificate of sale to the county.

(e) If a county or municipal officer fails to perform his duties under this section or section 10(a) [36-9-19-10(a)] of this chapter, any person aggrieved by that failure may bring an action against the officer to compel performance. [IC 36-9-19-12, as added by Acts 1981, P.L. 309, § 92.]

38-9-19-13. Voluntary conveyances in satisfaction of assessment - Acceptance by municipality. - (a) In order to avoid a foreclosure action on a special assessment, a municipality may accept a conveyance in satisfaction of the assessment from the owner of the assessed property. If there are bondholders other than the municipality holding bonds on the improvement for which the assessment was made, the municipality may:

(1) Join with the other bondholders in accepting a conveyance of an undivided interest in the property; or

(2) Cause a conveyance of the property to be made to a bank or trust company in the municipality and held under a trust agreement by the bank or trust company for the use and benefit of the municipality and the other bondholders.

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(b) A conveyance under subsection (a) may be accepted by the municipality only if the head of the municipal legal department makes a written recommendation to the city executive or town legislative body that the conveyance be accepted. [IC 36-9-19-13, as added by Acts 1981, P.L. 309, § 92.]

36-9-19-14. Disposal of land acquired - Appraisal - Use of sale proceeds. - (a) If a municipality acquires an undivided interest in any real property, by foreclosure of a special assessment or by a voluntary conveyance under section 13(a) [36-9-19-13(a)] of this chapter, it may dispose of its interest in the manner prescribed by this section.

(b) The municipality must have its interest in the property appraised by two [2] disinterested appraisers residing in the municipality. After appraisement, the city executive or town legislative body may sell the property interest for not less than its full appraised value, after giving notice of the proposed sale by publication in accordance with IC 5-3-1 [5-3-1-1-5-3-1-9].

(c) A conveyance under this section must be executed by the municipal executive and attested by the municipal clerk.

(d) The municipality shall return all money received from sales under this section to the fund for the use and benefit of which the property interest is held. Any money in excess of the sum necessary to provide full compensation to the fund for the obligations of the person liable for the assessment shall be returned to that person. [IC 36-9-19-14, as added by Acts 1981, P.L. 309, § 92; 1981, P.L. 45, § 54.]

36-9-19-15. Sale or conveyance of property held by bank or trust company. - If property is held by a bank or trust company under section 13(a)(2) [36-9-19-13(a)(2)] of this chapter, the trust agreement between the municipality and the bank or trust company may provide for the sale or conveyance of the property by the bank or trust company, but the sale may not be made for less than the full appraised value of the property. If it is considered advisable, the municipality may, in case of a sale, join in the conveyance of the property. [IC 36-9-19-15, as added by Acts 1981, P.L. 309, § 92.]

36-9-19-16. Issuance of bonds in anticipation of collection of special assessments - Denominations - Maturity dates - Coupons. - (a) When property owners have elected to pay special assessments for a public improvement in installments, the bonds issued in anticipation of the collection of those assessments must bear the date of the final acceptance of the improvement by the municipal works board. The bonds begin to bear interest on this date.

(b) Except as provided in subsection (d), the bonds shall be issued in denominations of a multiple of one hundred dollars [$100], up to a maximum denomination of five thousand dollars [$5,000].

(c) The city fiscal officer shall choose the denomination he finds appropriate to the circumstances of the particular improvement project, the efficient administration of his office, or both.

(d) Notwithstanding subsections (b) and (c), the last bond in a series need not be issued in a denomination of a multiple of one hundred dollars [$100] if the total cost of the particular improvement project for which the series is issued is not an exact multiple of one hundred dollars [$100].

(e) The bonds shall be issued in ten [10] series with one [1] series payable each year, beginning as provided in subsection (f) or (g). The ten [10] series shall, to the extent possible, be issued in equal amounts.

(f) If the assessment roll for the cost of an improvement was finally approved before July 1 of any year, the first of the series of bonds issued for the payment of the improvement is payable on February 1 of the next year, and the interest on them shall be computed accordingly.

(g) If the assessment roll for the cost of an improvement was finally approved after June 30 of any year, the first of the series of bonds issued for the payment of the improvement is payable on August 1 of the next year, and the interest on them shall be computed accordingly.

(h) Coupons evidencing the semiannual interest on the bonds shall be attached to each bond. The coupons are payable semiannually, beginning on the date prescribed by subsection (f) or (g). [IC 36-9-19-16, as added by Acts 1981, P.L. 309, § 92; 1981, P.L. 317, § 21.]

36-9-19-17. Payment of bonds and coupons after maturity. - (a) Bonds issued in anticipation of the collection of special assessments bear interest until their date of maturity, if sufficient money is available to pay the bonds and coupons at that date.

(b) If sufficient money is not available to pay the bonds and coupons at their date of maturity, any available money that was assessed to pay them shall be paid to their holders on a pro rata basis. The unpaid balances of the bonds and coupons bear interest until the delinquent assessments have been collected, with the rate of interest to be the same as the rate borne by the bonds before their maturity.

(c) If the bonds and coupons are not paid in full at their maturity, each of them must be marked with the date of payment, the amount paid, and the balance unpaid. At every six [6] months period after the maturity of the bonds, the delinquent col-
lections for the payment of the bonds, coupons, and interest on their unpaid balances shall be paid on a pro rata basis, and each bond and coupon shall be marked with the amount paid, the balance unpaid, and the amount of interest paid on their unpaid balances. [IC 36-9-19-17, as added by Acts 1981, P.L. 309, § 92.]

NOTES TO DECISIONS

Liability of City.

In levying improvement assessments, the city exercised the sovereign power of taxation; and bonds issued therefor were the city's bonds, and not the bonds of the property owners. Read v. Beczkiewicz, 215 Ind. 365, 18 N. E. 2d 789, 19 N. E. 2d 465 (1939).

Barrett Law bonds were not a general obligation of a city, but, when the property owner paid all or any part of the assessment of the city, the lien upon the property as to that extent discharged and the city became the principal obligor upon the bond to the extent of the payment received by it. Read v. Beczkiewicz, 215 Ind. 365, 18 N. E. 2d 789, 19 N. E. 2d 465 (1939); Keilman v. City of Hammond, 124 Ind. App. 392, 114 N. E. 2d 813, 116 N. E. 2d 515 (1953).

Where property owner, after statute of limitations had run against Barrett Law bonds on assessments against property, determined not to take advantage of his personal privilege, and paid the assessment to the proper city official, city could not thereafter retain his money and refuse to pay the Barrett Law bondholders the money so paid in. Keilman v. City of Hammond, 124 Ind. App. 392, 114 N. E. 2d 813, 116 N. E. 2d 515 (1953).

Withholding Payment of Bond.

Where a city withheld payment of a bond when it was due, it assumed the full obligation of the bond. Read v. Beczkiewicz, 215 Ind. 365, 18 N. E. 2d 789, 19 N. E. 2d 465 (1939).

36-9-19-18. Presentment of bonds and coupons for payment - Procedure. - (a) A person who holds bonds issued in anticipation of the collection of special assessments shall present his bonds and coupons for payment with sufficient time before the maturity date or due date of the delinquencies so that the municipal fiscal officer has time to process the payment. The bondholder shall file with his bonds and coupons a list setting forth their roll numbers, series numbers, face values or unpaid balances, and the total presented for payment.

(b) The municipal fiscal officer shall give a receipt to a bondholder presenting bonds and coupons for payment. The receipt holds the municipality responsible to the bondholders for the unpaid bonds and coupons that were presented for pay-

36-9-19-19. Issuance of schedule of bonds to bondholder. - Whenever payment is made on bonds and coupons issued in anticipation of the collection of special assessments, the municipal fiscal officer shall make a schedule showing:

(1) All bonds and coupons on which payment is made, with the amount paid on each, and, if payment is not made in full, the balance unpaid on each bond and coupon;

(2) The total of all bonds and coupons on which no payment is made;

(3) Any interest paid on delinquency;

(4) The total amount of bonds and coupons for which a receipt was issued;

(5) The total amount paid on bonds and coupons;

(6) The total amount of interest on delinquency paid; and

(7) The total balance of bonds and coupons unpaid.

The fiscal officer shall give a copy of the schedule to the bondholder on surrender of his receipt. [IC 36-9-19-19, as added by Acts 1981, P.L. 309, § 92.]

36-9-19-20. Notification of holders of matured bonds or coupons. - Upon request of the holder of any matured bond or coupon, the municipal fiscal officer shall make a record of the maturity of the bond or coupon, together with the name and address of the holder, and notify the holder by mail immediately when money is available to pay them. [IC 36-9-19-20, as added by Acts 1981, P.L. 309, § 92.]


36-9-19-22. Authorisation and issuance of certificates of indebtedness for deficiencies - Limitation on amounts of certificate - Payment by municipality. - (a) When bonds and coupons issued in anticipation of the collection of special assessments are presented to the municipal fiscal officer for payment, the fiscal officer shall issue certificates of indebtedness to the owner of the bonds and coupons, if:

(1) There is not enough money in the municipal improvement fund to pay the bonds or coupons in full; and
(2) One or more of the conditions listed in subsection (b) is met.

(b) The municipal fiscal officer shall issue certificates of indebtedness for the amounts unpaid if the bonds and coupons cannot be paid because of:

(1) The stoppage of interest due to the prepayment of assessments;

(2) The failure to collect interest to the due date of the prepaid installments;

(3) The failure to reinvest prepaid assessments in the manner prescribed by this chapter;

(4) The diversion of money paid on one [1] assessment roll and account to the payment of bonds or coupons chargeable to another roll and account;

(5) The loss of improvement money due to the closing and insolvency of any bank or trust company in which the money was on deposit; or

(6) Any other diversion or misapplication of money collected for payment of the bonds or coupons for which the municipality is liable.

c) The amounts of certificates of indebtedness issued under this section shall be computed in the following manner:

(1) If the certificates are issued for a deficiency resulting from prepayment of assessments, the amount is limited to the amount of interest that would have been payable at the respective due dates of the installments of assessments if they had not been prepaid, and does not include any interest between the time of the due dates and the issuance of the certificates.

(2) If the certificates are issued for a deficiency resulting from a diversion of money, the amount is limited to the amount that would have been due if the diversion had not occurred, and does not include any interest after the maturity dates of any of the bonds and coupons.

(3) If the certificates are issued for a deficiency resulting from the loss of improvement money due to the closing and insolvency of any bank or trust company in which the money was on deposit, the amount is limited to the actual amount deposited, plus interest at the depository rate up to the time of the closing of the bank or trust company, less any amounts that are recovered from any source by reason of the deposits and loss.

(d) No part of any delinquent assessments or installments, or of any interest on them after their due date, may be included in any certificates of indebtedness.

e) The deficiency and diversion remedial provisions of this section do not make a municipality liable in any manner for any assessments or installments of assessments not paid by the owner of the property assessed, or for any interest on any unpaid assessment or installment.

(f) Upon the delivery of certificates of indebtedness in payment of part of any bonds or coupons because of a deficiency, the municipality shall:

(1) Reduce the face value of the coupons or bonds by a corresponding amount; or

(2) Cancel the bonds or coupons if they are paid in full;

by proper endorsement on the bonds of coupons.

g) The certificates of indebtedness shall be authorized, issued, and paid in the same manner as certificates of indebtedness issued under IC 36-9-18-41 and IC 36-9-18-42, except that the certificates draw interest only from their date of issue and that their rate of interest shall be fixed by the resolution authorizing their issuance.

(h) A municipality is not required to provide for or pay upon the certificates of indebtedness issued under this section a total sum in any one [1] year in excess of:

(1) Fifty thousand dollars [\$50,000] in the case of a municipality having a population of thirty-five thousand [35,000] or more;

(2) Twenty-five thousand dollars [\$25,000] in the case of a municipality having a population of at least ten thousand [10,000] but less than thirty-five thousand [35,000]; or

(3) Ten thousand dollars [\$10,000] in the case of a municipality having a population of less than ten thousand [10,000].

(i) A municipality shall make payments on the certificates of indebtedness issued under this section in the order of the tender and demand for payment of outstanding certificates in each year. The municipality is not required to prorate its payments among all the outstanding certificates. The municipal fiscal officer is the sole judge of the order of tender and priorities of the certificates of indebtedness. Before issuing payment on a certificate, the fiscal officer shall, by audit and other investigation of the facts, determine the right to payment and the proper amount of the payment. The fiscal officer's determination is final and conclusive upon all the parties involved. [IC 36-9-19-22, as added by Acts 1981, P.L. 309, § 92.]

86-9-19-23. Issuance of refunding bonds - Limitation on use. - (a) In lieu of issuing certificates of indebtedness under section 22 [36-9-19-22] of this chapter, the legislative body of a municipality may, by ordinance, issue refunding bonds to meet a deficiency arising in the municipal improvement
fund, if:

(1) One or more of the conditions listed in section 22(b) [36-9-19-22(b)] of this chapter is met;

(2) The amount of the deficiency is clearly established; and

(3) The liability of the municipality for the deficiency is established.

Subdivision [3] does not require the liability of the municipality to be established by a judgment against the municipality.

(b) Refunding bonds issued under this section shall be issued in the manner prescribed by IC 5-1-9 [5-1-9-1]. The proceeds of the bonds may be used only to discharge the liability of the municipality for the deficiency. [IC 36-9-19-23, as added by Acts 1981, P.L. 309, § 92.]

36-9-19-24. Overpayments - Refunds - Notice. - If excess payments have been made and collected on special assessments for public improvements, the municipal fiscal officer shall, within thirty [30] days after the discovery of the overpayment, give notice of the amount of the overpayment by mail to the owner of record of the property on which the payment was made. When the fiscal officer determines the amount of the overpayment and the person or persons to whom the reimbursement should be made, he shall issue a refund of the overpayment to the proper person or persons. [IC 36-9-19-24, as added by Acts 1981, P.L. 309, § 92.]

36-9-19-25. Statement of overpayments - Publication - Transfer of unclaimed amounts to general fund. - (a) During January of each year, the municipal fiscal officer shall determine all amounts of overpayments on the special assessment rolls for public improvements that have been unclaimed for a period of five [5] years. The fiscal officer shall prepare a detailed statement showing for each overpayment:

(1) The date;

(2) The number of receipt;

(3) The amount overpaid;

(4) The book and page where the overpayment is recorded; and

(5) The owner of record of the property on which the overpayment was made.

(b) After preparing the statement, the municipal fiscal officer shall give notice by publication in accordance with IC 5-3-1 [5-3-1-1-5-3-1-9]. The notice must:

(1) Contain the names of the owners of record of the property affected by the assessment;

(2) State the amounts of the respective overpayments; and

(3) State that unless the owners or their legal successors or assigns appear and make proof of their claim to the overpayments within thirty [30] days after the date of the first publication of the notice, the overpayments will be transferred to the general fund of the municipality.

(c) At the expiration of the thirty-day redemption period, the municipal fiscal officer shall transfer and pay the unclaimed overpayments into the general fund of the municipality, to be used and expended in the same manner as other money in the general fund. [IC 36-9-19-25, as added by Acts 1981, P.L. 309, § 92.]

36-9-19-26. Unclaimed collections - Publication of list - Transfer to general fund. - (a) If all or part of any money collected as nonwaivered special assessments for public improvements has been in the hands of the municipal fiscal officer for a period of five [5] years or more, and a demand for that money has not been made by a party entitled to it within one [1] year preceding the end of the five-year period, the municipal fiscal officer shall prepare a detailed list of all such money. The fiscal officer shall then give notice of the list by publication in the manner prescribed by section 25 [36-9-19-25] of this chapter.

(b) At the expiration of the thirty-day redemption period provided by section 25 of this chapter, the municipal fiscal officer shall transfer and pay all of the unclaimed money into the general fund of the municipality, to be used and expended in the same manner as other money in the general fund. [IC 36-9-19-26, as added by Acts 1981, P.L. 309, § 92.]

36-9-19-27. Claims against general fund - Proof - Payment. - (a) A person who is legally entitled to any money paid into the municipal general fund under section 25 and 26 [36-9-19-25 and 36-9-19-26] of this chapter may, within five [5] years after the date on which the money is paid into the general fund, file a claim for the money with the municipal fiscal officer. The claim must be filed in the same manner as other claims are filed against the municipality.

(b) If, upon investigation and proper proof of the claim, the municipal officials charged with the duty of making payments from Barrett Law funds determine that the claimant is legally entitled to the money and approve the refund of the money, the municipal fiscal officer shall pay the claim out of the general fund of the municipality, without any appropriation being made for the payment. [IC 36-9-19-27, as added by Acts 1981, P.L. 309, § 92.]

36-9-19-28. Unclaimed balances - Transferred to surplus Barrett Law account. - All balances of money:
(1) That have been in hand for a period of ten [10] years;

(2) That were collected as waived assessments for the payment of bonds and coupons; and

(3) For which:

(A) No bonds or coupons have been presented for payment; or

(B) Bonds or coupons have been presented for payment, withdrawn, and not presented for payment again for a period of ten [10] years;

may be transferred to the surplus Barrett Law account established under section 10(c) [36-9-19-10(c)] of this chapter. [IC 36-9-19-28, as added by Acts 1981, P.L. 309, § 92.]

36-9-19-29. Cancellation of uncashed checks or warrants - Crediting of proceeds. - (a) Any warrants or checks for:

(1) The payment of bonds, coupons, or both;

(2) The payment of nonwaived funds to contractors for public improvements; or

(3) Damages sustained by a property owner on account of the operation of the public improvement assessment law;

that have been written and not cashed for a period of two [2] years or more on December 31 of each year shall be cancelled.

(b) The proceeds of the cancelled warrants or checks shall be credited to the funds on which the warrants or checks were originally drawn, but if the funds cannot be determined, then the proceeds shall be credited to:

(1) The surplus Barrett Law account, if the warrants or checks were drawn on waived accounts; or

(2) The nonwaived account, if the proceeds were drawn on the nonwaived account. [IC 36-9-19-29, as added by Acts 1981, P.L. 309, § 92.]

36-9-19-30. Reimbursement of interest prepaid under threat of condemnation. - If:

(1) A municipality purchased under threat of condemnation any real property upon which there were any unpaid Barrett Law assessments; and

(2) Because of the purchase the vendor paid, under protest, the interest on the Barrett Law assessment for a period of ten [10] years in advance;

the vendor is entitled to a reimbursement for the interest paid in advance, less the interest for one [1] year. The vendor must present and prove a claim for the interest to the municipal fiscal officer, and the reimbursement shall be paid out of the surplus Barrett Law account of the municipality. [IC 36-9-19-30, as added by Acts 1981, P.L. 309, § 92.]

36-9-19-31. Transfer of surplus Barrett Law account to general improvement fund. - Notwithstanding any other statute, a municipality that has established a general improvement fund under IC 36-9-17 [36-9-17-1–36-9-17-7] or a similar statute, no longer uses the Barrett Law for public improvements, and finds that it has money in the surplus Barrett Law account, may, by ordinance, transfer the surplus Barrett Law account money to the general fund or general improvement fund of the municipality if:

(1) There are no obligations or potential obligations arising out of the operation of the Barrett Law for which the surplus Barrett Law account money was accumulated or may be used; and

(2) Notice of intention to transfer the surplus Barrett Law account money to the general fund or general improvement fund has been published in accordance with IC 5-3-1-5-3-1.1-5-3-1-9. [IC 36-9-19-31, as added by Acts 1981, P.L. 309, § 92; 1981, P.L. 45, § 55.]

36-9-19-32. Establishment and funding of Barrett Law revolving improvement fund - Special assessments - Advances from fund - Investments. - (a) There may be established under the municipal fiscal officer a Barrett Law revolving improvement fund. This fund shall be initially funded by transferring to it from the surplus Barrett Law account any amount approved by the municipal legislative body.

(b) When the legislative body decides that payment from the Barrett Law revolving improvement fund will increase the probability that competent contractors will bid on the project, the fiscal officer may pay all or part of the cost of the project from the Barrett Law revolving improvement fund to the contractor who is to do or has done the work.

(c) The municipality shall levy a special assessment against any property that benefits from the improvement project. The provisions of this chapter concerning special assessments to repay bonds also apply to special assessments for projects paid for from the Barrett Law revolving improvement fund.

(d) When the cost of an improvement is paid from the Barrett Law revolving improvement fund, collections from the special assessment for that improvement shall be deposited in the surplus Barrett Law account.

(e) Whenever the municipal works board determines that to do so will facilitate the initiation, progress, or completion of a public improvement project, the board may ask the municipal legislative body to approve the amount of money it will
advance from the Barrett Law revolving improvement fund for the project and to decide upon what terms, if any, it will make the advancement.


36-9-20. BARRETT LAW FUNDING FOR MUNICIPAL IMPROVEMENT DISTRICT

36-9-20-1. Application of chapter. - This chapter applies to all municipalities. [IC 36-9-20-1, as added by Acts 1981, P.L. 309, § 93.]

36-9-20-2. Limitation on improvements - Improvements that may be made under this chapter are limited to those described by subdivisions (2), (4), (6), (8), (9), (10), and (11) of IC 36-9-1-2. [IC 36-9-20-2, as added by Acts 1981, P.L. 309, § 93.]

36-9-20-3. Petition for establishment of improvement district. - (a) A petition for the establishment of an improvement district may be filed with the works board of a municipality by:

(1) An association established under section 4 [36-9-20-4] of this chapter; or

(2) The owners of twenty-five percent [25%] of the parcels of real property in the proposed improvement district, if an association has not been formed under section 4 of this chapter.

A petition filed by an association must be signed by a majority of its directors.

(b) A petition filed under this section must be set forth:

(1) The boundaries of the proposed improvement district, including all the real property that the petitioner believe will be specially benefited or damaged by the proposed improvement;

(2) The location and a general description of the proposed improvement;

(3) The estimated cost of the proposed improvement; and

(4) As part of the petition or as an accompanying exhibit, the names and addresses of all the owners of real property within the boundaries of the proposed improvement district, as they are listed on the tax duplicate in the records of the county auditor.

(c) For purposes of this chapter, the following persons have the same rights and powers as the owner of the fee simple title to a parcel of real property:

(1) The legal or authorized representative of that owner.

(2) A person obligated under a written instrument to pay any assessment against that property under this chapter. [IC 36-9-20-3, as added by Acts 1981, P.L. 309, § 93.]

36-9-20-4. Establishment of associations - Filing of articles - Powers - Election of directors - Membership - Bylaws - Amendment of articles. - (a) Fifteen [15] or more persons who are the owners of at least fifteen [15] separate parcels of real property and who are the owners of at least twenty percent [20%] of the surface area of the real property affected by any proposed improvement under this chapter may establish an association. The persons establishing the association must sign and acknowledge written articles of association specifying:

(1) The name of the association;

(2) The purposes of the association, which must be limited to the purposes of this chapter;

(3) The names and addresses of the initial members;

(4) The principal office of the association and the name of the agent for purpose of communications and service of process;

(5) The term of existence, which may be perpetual;

(6) The number of directors, which may not be less than three [3] nor more than eleven [11];

(7) The amount of membership fee, if any, and annual dues, if any;

(8) The area affected by any proposed improvements included within the purposes of the association;

(9) The square footage of the area affected by the proposed improvement included within the purposes of the association;

(10) The square footage of the area affected by the proposed improvement included within the association; and

(11) Any other provisions that the initial members consider desirable and that are not inconsistent with this chapter.

A copy of the articles of association, signed and acknowledged by all of the initial members, shall be filed with the works board of the municipality in which the affected area is located, and another copy shall be recorded in the office of the recorder of the county within which the area is located.

(b) Such an association is a not-for-profit corporate body and may:

(1) Enter into contracts;
(2) Hold, convey, and transfer property; and

(3) Sue and be sued.

(c) Within ninety [90] days after the filing and recording of the articles of association, the association shall hold a meeting of all owners of real property in the area described in the articles for the purpose of electing directors of the association. At least twenty [20] days before the meeting, notice of the meeting shall be mailed, first-class postage prepaid, to all owners of real property in the area described in the articles. The notice must set forth the time and place of the meeting, the purpose of the meeting, a general description of the nature and object of the association, the amount of the membership fee, if any, and the annual dues, if any. The notice must also state that any owner of real property may become a member and be eligible to vote in the meeting, either in person or by authorized agent or attorney, by signing a copy of the articles of association at any time before the commencement of the meeting and by paying the membership fee, if any, and the dues for the first year, if any. The notice may be mailed to the owners of real property at their addresses appearing on the tax duplicates in the records of the county auditor.

(d) The directors of the association must be members of the association and owners of real property in the affected area. The directors elected under subsection (c) shall serve until the next annual meeting and until their successors are elected and qualified. The directors shall approve bylaws, which may:

(1) Be amended;

(2) Provide for officers of the association to be elected annually by the directors; and

(3) Make any other provisions that are desirable for the conduct of the affairs of the association.

(e) The articles of association may be amended upon the recommendation of the directors and the approval of two-thirds [2/3] of all members of the association at a meeting called for that purpose. Any amended articles must be signed and acknowledged by a majority of the directors. A copy of all amendments shall be filed with the works board and recorded in the office of the county recorder.

(f) A copy of the articles of association, with any amendments, shall be kept available at the office of the agent of the association during regular business hours for signature by any owner of real property who wants to become a member of the association by signing the copy and by paying the membership fee, if any, and the annual dues, if any. [IC 36-9-20-4, as added by Acts 1981, P.L. 309, § 93; P.L. 368-1983, § 1.]

38-9-20.5. Notice of hearing on proposed district. - (a) Upon the filing of a petition under section 3 [36-9-20-3] of this chapter, the municipal works board shall fix a date for a hearing on the establishment of the proposed improvement district. At least twenty-one [21] days before the date fixed for the hearing, the petitioners shall have a notice mailed to all owners of real property within the proposed improvement district. The notice may be mailed to the owners of real property at their addresses appearing upon the tax duplicates in the records of the county auditor.

(b) The petitioners shall publish a notice of the hearing and the date, place, and hour of the hearing in accordance with IC 5-3-1 [5-3-1-1--5-3-1-9].

(c) The notice to be published and mailed must:

(1) Contain a general description of the contents of the petition, specifically setting forth the boundaries of the proposed district;

(2) State that all of the property in the proposed district will be assessed benefits or damages under this chapter for the proposed improvement; and

(3) State that at the hearing all owners of real property within the proposed improvement district, or their representatives, may be heard upon the question of the establishment of the district.

(d) Proof of service shall be made by affidavit of the person or persons causing service to be made. [IC 36-9-20-5, as added by Acts 1981, P.L. 309, § 93; 1981, P.L. 45, § 56.]

36-9-20.6. Remonstrances to establishment of district - Effect on establishment proceedings - The owners of real property located in a proposed improvement district may remonstrate against the establishment of that district by a petition filed with the municipal works board. The county auditor shall verify the signatures on the petition, and, if the number of valid signatures equals or exceeds fifty-one percent [51%] of the owners of real property in the proposed district, the works board shall cease its proceedings to establish the district. [IC 36-9-20-6, as added by Acts 1981, P.L. 309, § 93.]

36-9-20.7. Hearing on proposed district - Action by works board - Resolution - Appeals. - (a) On the date fixed under section 5 [36-9-20-5] of this chapter, the municipal works board shall hear all owners of real property in the proposed improvement district who appear and request to be heard upon the question of:

(1) The sufficiency of the petition and notice;

(2) Whether the proposed improvement is of public utility and benefit;
(3) Whether all of the probable benefits of the proposed improvement, including those to the municipality generally, will equal or exceed the estimated cost of the improvement; and

(4) Whether the improvement district contains all, or more or less than all, of the property specially benefited or damaged by the proposed improvement.

(b) After the hearing, which may be adjourned from time to time without further notice, the works board shall adopt a resolution determining whether:

(1) The petition is sufficient;

(2) The required notice was given;

(3) The proposed improvements are of public utility and benefit;

(4) All of the probable benefits of the proposed improvement will equal or exceed the estimated cost thereof; and

(5) The proposed improvement district contains all, or more or less than all, of the property specially benefited or damaged by the proposed improvement.

If the works board answers the first four [4] questions affirmatively and determines that the proposed improvement district contains all of the property specially benefited or damaged, then it shall establish the district with the boundaries described in the petition. If the works board answers any of the first four [4] questions negatively, it may allow amendments and the issuance of additional notice and may hold further proceedings, or it may dismiss the petition without prejudice to the right to file a new petition.

(c) If the works board determines that property not specially benefited or damaged has been included within boundaries described in the petition, then it shall redefine the boundaries of the district and include in its resolution only the property that is specially benefited or damaged, and shall establish the district with the boundaries as redefined.

(d) If the works board determines that:

(1) Less than all of the property specially benefited or damaged has been included within the boundaries described in the petition; or

(2) Less than all of the property specially benefited or damaged has been included within the boundaries described in the petition, and some property that is not specially benefited or damaged has been included;

it shall fix a date for a further hearing. Notice of the further hearing, describing the proposed revised boundaries, shall be given in the manner prescribed by section 5 [36-9-20-5] of this chapter, except that notice by mail shall be given only to the owners of real property in any area that is proposed to be added to the district and was not included in the initial petition. At the further hearing all owners of real property within the proposed district boundaries, or their representatives, are entitled to be heard. The board shall then adopt its resolution on establishment of the district.

(e) A resolution establishing an improvement district must also recite that all real property within the district is subject to assessment of special benefits and damages by appraisers to be appointed by the works board, with the assessments subject to review in a hearing before the board.

(f) The works board's resolution is considered notice to all property owners who have appeared, or who have been notified of the proceedings, that their property is subject to an assessment of special benefits and damages under this chapter, and no further notice or hearing is required, except as provided by section 13 [36-9-20-13] of this chapter.

(g) The resolution of the works board is final and conclusive, and may not be challenged unless an appeal is taken under subsection (i).

(h) A copy of the resolution establishing an improvement district, certified by the municipal clerk, shall be recorded in the miscellaneous records in the office of the recorder of the county in which the municipality is located.

(i) A person aggrieved by the adoption of a resolution establishing an improvement district may appeal in the manner prescribed by IC 34-4-17.5 [34-4-17.5-1-34-4-7.5-8]. [IC 36-9-20-7, as added by Acts 1981, P.L. 309, § 93.]

36-9-20-8. Review and approval of plans, specifications and cost estimates - Inclusions in cost estimates. - (a) Upon adoption of a resolution establishing an improvement district, the petitioners for the district shall submit any plans, specifications, and estimates of the cost of the proposed improvement they have prepared to the municipal works board for review and approval.

(b) If the petitioners have not prepared plans and specifications, the works board shall have plans, specifications, and estimates of the cost of the proposed improvement prepared, and for this purpose may employ architects, engineers, and other necessary consultants without an appropriation. The petitioners may advance money for this employment, subject to reimbursement, or the municipality may advance money on the approval of the municipal legislative body from unappropriated funds without the necessity for an appropriation, also subject to reimbursement.
(c) Estimates of cost prepared under this section must include:

(1) Architectural, appraisal, consultant, engineering, legal, supervision, and other professional fees;

(2) The cost of plans and specifications, including amounts to be reimbursed under subsection (b);

(3) Construction costs, including the cost of land, material, and labor; and

(4) All other related and incidental expenses. [IC 36-9-20-8, as added by Acts 1981, P.L. 309, § 93.]

NOTES TO DECISIONS

Constitutionality.

Former law which provided for review and approval of plans for the proposed improvement or the preparation of such plans by the board of public works rendered the entire act unconstitutional as violative of the separation of powers provision of art. 3, 1. of the state Constitution. Progressive Imp. Ass'n v. Catch All Corp., 254 Ind. 121, 21 Ind. Dec. 319, 258 N. E. 2d 403 (1970).

36-9-20-9. Application of provisions relating to planning and zoning, building codes and restrictions on use of property. - The statutes relating to planning and zoning, building codes, and restrictions on the use of property apply to an improvement under this chapter. [IC 36-9-20-9, as added by Acts 1981, P.L. 309, § 93.]

36-9-20-11. Letting of contracts - Limitation on actions on contracts. - (a) All contracts for construction of an improvement under this chapter shall be let by the municipal works board after advertisement as required for other contracts, and all statutes applicable to the letting and performance of other contracts apply to contracts under this chapter.

(b) The validity of any contract entered into under this chapter may not be questioned except in an action to enjoin performance commenced within fifteen [15] days from the execution of the contract. If such an action is not brought within the fifteen-day period, the contract is valid, conclusive, and binding upon all persons. [IC 36-9-20-11, as added by Acts 1981, P.L. 309, § 93.]

36-9-20-12. Appointment of appraisers - Assessment of benefits and damages - Proceedings on finding of deficiency - Payments by municipality - Review of assessments. - (a) As soon as the municipal works board approves plans and specifications for an improvement under this chapter, it shall appoint three [3] disinterested persons as appraisers to make an examination of the plans, specifications, and estimates of the cost of the proposed improvement, and of the real property within the improvement district. Upon request from the appraisers or the petitioners, the works board may retain or employ qualified personnel to render any necessary technical or consulting assistance, and may supply the appraisers with any information that will assist in making the assessment.

(b) The appraisers shall make an assessment of:

(1) The special benefits and damages, if any, that will accrue to each parcel of real property; and

(2) The benefits, if any, that will accrue to the municipality generally; from the construction of the proposed improvement. A copy of the roll of all owners of real property and of the municipality generally, signed by all three [3] appraisers and showing the assessment of benefits and damages, shall be filed by the appraisers with the works board within thirty [30] days after their appointment, unless the board extends the time.

(c) If the total of the assessed benefits, after deducting assessed damages, does not equal or exceed the total estimated cost of the improvement, then no further action may be taken on the proposed improvement until:

(1) A second assessment of benefits and damages has been completed; or

(2) The petitioners, the municipality, or another source, separately or jointly, undertakes to provide the deficiency.

The works board may request the original appraisers to make the second assessment or may appoint three [3] other qualified, disinterested appraisers to make the second assessment, which shall be completed in the same manner as the first assessment. If a second assessment of benefits, after deducting the damages, does not equal or exceed the estimated cost of the improvement, then no further action may be taken on the proposed improvement, unless either the petitioners, the municipality, or another source, separately or jointly, undertakes to provide the deficiency. If the petitioners elect to provide the deficiency, then no further action may be taken upon the improvement until the petitioners file with the works board a bond with adequate surety that is conditioned on payment of the net balance of the actual cost of the improvement over the total of the assessments after deducting damages.

(d) The works board may, with approval of the municipal legislative body, determine whether the benefits assessed against the municipality are proper and should be paid, or whether the municipality should pay any part of the cost of the improvement regardless of benefits assessed. Any amount of benefits or costs to be paid by the municipality may be paid:
(1) Out of the money of the municipality appropriated to the use of the works board for such an improvement; or

(2) Through the issuance of bonds of the municipality.

(e) The notice of hearing required by section 13 [36-9-20-13] of this chapter shall be given after the cost of the improvement has been finally determined by the works board through firm bids or contracts, and firm estimates for other costs. If the finally determined cost of the improvement exceeds the total of:

(1) The benefits assessed, less damages assessed; and

(2) The contributions of the petitioners, the municipality, and other sources;

appraisers shall be directed to review the assessments and submit a revised assessment list. The notice of hearing shall be given only after the works board determines that the money available from all sources is adequate to cover the total cost of the improvement, including all costs that are to be reimbursed under section 8(c) [36-9-20-8(c)] of this chapter.

(f) A person appointed as an appraiser under this section must be a licensed real estate broker. [IC 36-9-20-12, as added by Acts 1981, P.L. 309, § 93.]

36-9-20-13. Notice of proposed assessment - Hearing on remonstrances - Assessment roll - Final determination of benefits or damages assessed - Appeals. - (a) Promptly after:

(1) The filing of an adequate assessment;

(2) The determination of the cost of the improvement; and

(3) The determination that adequate money will be available;

the municipal works board shall mail a notice, first-class postage prepaid, to each owner of real property to be assessed.

(b) The notices shall be mailed twenty-one [21] days before the hearing date and must:

(1) Set forth the amount of the proposed assessment;

(2) State that the proposed assessment on each parcel of real property in the district is on file and can be seen in the office of the works board; and

(3) Set forth the date when the works board will, at its office, receive written remonstrances against the assessments and hear all owners of assessed real property who have filed written remonstrances before the date fixed for the hearing.

The notices to the owners may be mailed to their names and addresses appearing on the tax duplicates in the records of the county auditor.

(c) At the time so fixed in the notice, the works board shall hear all owners of assessed real property who have filed written remonstrances before the date of the hearing. The hearing may be continued from time to time as long as is necessary to hear the owners.

(d) The works board shall render its decision increasing, decreasing, or confirming each assessment by setting opposite each name, parcel, and appraisers' assessment on the assessment roll the amount of the assessment as determined by the works board. If the total of the assessments exceeds the amount needed, the works board shall make a pro rata reduction in each assessment.

(e) The signing of the assessment roll by a majority of the members of the works board, and the delivery of the roll to the municipal fiscal officer constitute a final and conclusive determination of the benefits or damages assessed. However, any person:

(1) Who had previously filed a written remonstrance under this section; or

(2) Whose assessment was increased above the amount fixed by the appraisers;

may appeal. Such an appeal must be taken in the manner prescribed by IC 34-4-17.5 [34-4-17.5-1-34-4-17.5-8].

(f) If the final determination of the works board causes the total of the money available to be inadequate to cover the cost of the improvement, the deficiency may be supplied in the manner provided by section 12 [36-9-20-12] of this chapter. [IC 36-9-20-13, as added by Acts 1981, P.L. 309, § 93.]

36-9-20-14. Assessment lien - Priority. - Each assessment levied under this chapter is a lien on the real property assessed. This lien is second in priority only to taxes levied on the property. [IC 36-9-20-14, as added by Acts 1981, P.L. 309, § 93.]

36-9-20-15. Determination of manner of payments and interest - Certification. - At the time the municipal works board determines the amount of the assessments, it shall also determine:

(1) The manner in which the municipality shall pay its assessment, if any;

(2) Whether the other assessments may be paid in one [1], five [5], ten [10], fifteen [15], or twenty [20] equal annual installments; and

(3) The maximum rate of interest on the installments.

The works board shall certify this determination to
the municipal fiscal officer, and the certification must accompany the assessment roll. [IC 36-9-20-15, as added by Acts 1981, P.L. 309, § 93.]


36-9-20-17. Bonds - Issuance - Maturation - Interest rates - Denominations - Sales - Tax exemption - Payment. - (a) For the purposes of anticipating the collection of assessments under this chapter, the municipality shall issue bonds payable out of the assessments.

(b) The principal of the bonds matures in series corresponding to the number of installments of principal on the assessments as fixed by the municipal works board.

(c) The bonds bear interest at a rate or rates not higher than the maximum rate determined for the waived assessments, and shall be executed, sold, and delivered in denominations of not more than five thousand dollars [$5,000] as bonds of a municipality are executed, sold, and delivered. The advertisement of the sale shall be published in accordance with IC 5-3-1 [5-3-1.1-5-3-1-9.]

(d) The sale shall be made to the highest and best bidder, as provided in IC 36-9-18 [36-9-18-1--36-9-18-45] but not for less than the face value of the bonds, plus interest from the date of the bonds to the date of delivery.

(e) The bonds and interest on them are exempt from taxation to the extent provided by IC 6-8-5-1.

(f) The bonds are not a corporate obligation or indebtedness of the municipality, and are payable only out of money actually paid and collected under this chapter. The bonds must state this fact on their face. [IC 36-9-20-17, as added by Acts 1981, P.L. 309, § 93; 1981, P.L. 45, § 57.]

36-9-20-18. Fee schedule for use of improvement - Changes in established fees - Use of excess revenues. - (a) At or before the completion of the assessment roll, the municipal works board may adopt a schedule of fees for the use of an improvement, or may determine that the use will be free.

(b) Any fees established may be reduced, eliminated, increased, or added to by the works board without a hearing, but only to reflect increased or decreased costs of operation and maintenance. Any other changes in fees established shall be made only after a hearing for that purpose is petitioned for by the owners of property originally assessed for at least ten percent [10%] of the cost of the improvement. If such a petition is filed with the works board, notice of a hearing shall be given to all owners of property in the improvement district. The notice must state the date, time, place, and purpose of the hearing, and be addressed and mailed, at least ten [10] days before the date of the hearing. The notice may be mailed to the owners at their names and addresses appearing in the records of the official charged with the duty of collecting the assessments. The works board may not alter the fees at the hearing if the owners of property originally assessed for more than fifty percent [50%] of the total assessments object to the proposed change.

(c) If the fees produce net revenues in excess of reasonable costs of operation and maintenance, that excess shall be used to pay part of the principal and interest on the bonds issued as they mature. To the extent that principal and interest is so paid, the assessments shall be reduced and cancelled on a pro rata basis. After the bonds are retired, the fees may not be greater than is necessary to pay for the reasonable costs of operation and maintenance of the improvement. [IC 36-9-20-18, as added by Acts 1981, P.L. 309, § 93.]

36-9-20-19. Ownership, maintenance and operation of improvements. - An improvement constructed under this chapter shall be owned, maintained, and operated by the municipality under the direction of the municipal works board. [IC 36-9-20-19, as added by Acts 1981, P.L. 309, § 93.]
CHAPTER 9
ORGANIZING AND MANAGING THE LOCAL ROAD AND STREET EFFORT

8-6-2.1. RAILROAD CROSSING GRADE SEPARATIONS

8-6-2.1-2. Agreements between board and railroad companies. - The board may enter into an agreement or agreements with any railroad company for the removal of any track, roadbed, yard, station or other railroad facilities, and provide for the relocation and reconstruction of those facilities or any part of them if the board determines it necessary in connection with an improvement to provide for the abandonment for railroad purposes of any right-of-way, land or other property owned and used or occupied for railroad purposes by any railroad company. [IC 8-6-2.1-2, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-3. Participation by department of highways and county. - (a) The Indiana state highway commission [department of highways] shall participate in the proceedings and in the cost of any improvements made pursuant to the proceedings provided for by this chapter if any improvements involve a highway which is part of the state highway system or a street or highway selected by the Indiana state highway commission [department of highways] as a route of a highway in the state highway system.

(b) If the Indiana state highway commission [department of highways] participates in any proceedings as set out in this chapter and in the cost of improvements made pursuant to the proceedings, the county in which the city is located shall also participate in the proceedings and in the cost of any improvements that are made pursuant to the proceedings. [IC 8-6-2.1-3, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-4. Maps, plans and specifications - Abandonment of property - Cost adjustment. - (a) Whenever the board of any city determines that public necessity and convenience require the separation or alteration of the grade of any highway and any railroad at their intersection in the city, it shall order the preparation of general maps, and plans and specifications comprehending all work and changes necessary or incidental to the improvement, including the opening, widening, change, vacation, elevation, depression or reconstruction of any highway, and the elevation, depression, removal, relocation, construction or reconstruction of the track, roadbed, yards, station, or other facilities of any railroad, and also a description of all lands, rights-of-way and other property necessary to be acquired in connection with the improvement, and the manner in which they are to be acquired, whether by purchase or by appropriation, together with an estimate of the total cost to be incurred in connection with the improvement, as the total cost is defined by this chapter.

(b) If the maps, plans and specifications provide for the abandonment for railroad purposes of any right-of-way, land or other property owned or used or occupied for railroad purposes by any railroad company, and the removal of any track, roadbed, yard, station or other facilities, requires the relocation and reconstruction of the facilities, or any part of them, the board, prior to the adoption of the resolution for the improvement, shall enter into an agreement or agreements with the railroad company affected, for adjustment of the costs and losses occasioned by the removal, relocation and reconstruction, and the value of all the property abandoned for railroad purposes and reclaimed for other uses, the apportionment of the adjusted costs, losses and values between the railroads affected and the city, and other matters necessarily related.

(c) Cost adjustments required by this chapter are governed by IC 8-6-3 [8-6-3-1-8-6-3-3], the provisions of which are incorporated in this chapter by reference. [IC 8-6-2.1-4, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-5. Agreements with department of highways and county. - (a) If the Indiana state highway commission [department of highways] and the county in which the city is located participate in the proceedings, the Indiana state highway commission [department of highways] and the county shall become parties to the agreement, and the agreement or agreements shall be included in and be a part of the resolution for the improvement and shall be subject to the final confirmation, or modification and confirmation, or recision of the resolution, but no modification of the agreement or agreements shall be effective without the written consent of the railroad company affected; and the consent shall be filed with the board.

(b) The maps, plans and specifications shall be submitted by the engineer selected by the board to
the Indiana state highway commission [department of highways] and to the board of commissioners of the county in which the city is located, and if the maps, plans and specifications meet the approval of the Indiana state highway commission [department of highways] and the board of commissioners, the approval shall be endorsed in writing on the documents.

(c) No further proceedings may be had pursuant to this chapter until the general maps, plans and specifications have been approved by the Indiana state highway commission [department of highways] and the board of commissioners of the county [IC 8-6-2.1-5, as added by Acts 1980, P.L. 8, § 70].

8-6-2.1-6. Filing of maps, plans and specifications - Adoption of resolution - Public inspection. - (a) After the general maps, plans and specifications resolution - Public inspection. - (a) After the general maps, plans and specifications are approved by the Indiana state highway commission [department of highways] and the board of commissioners of the county, they shall be filed with the board by the engineer. The board shall then adopt a resolution ordering the separation or alteration of grades or relocation and reconstruction of the facilities, or any part of them, as provided for in the maps, plans, specifications and agreements and ordering the acquisition of the property described within, and adopting all maps, plans, specifications, agreements, descriptions and the estimate of cost, allocating the portions of work to be done by the various parties, prescribing the time within which the several portions of the work shall be done, and declaring that the improvement provided for will be of public necessity and convenience.

(b) The resolution, including all maps, plans, specifications, agreements, descriptions and estimates, shall be open to inspection at the office of the board by all persons interested in or affected by them. [IC 8-6-2.1-6, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-7. Acquisition of property - Cost of apportionment. - (a) For the purposes of this chapter, the board may acquire, or order to be acquired, lands, rights-of-way and other property within the city and within five [5] miles outside the corporate limits of the city. All lands, rights-of-way and other property necessary to be acquired in connection with the improvement may be acquired by the board in the name of the city, or the board may, in the resolution, order and require the railroad to acquire any portion of the same as will permanently be occupied or used by the railroad. In the latter event, the railroad shall acquire the lands, rights-of-way, or other property specified in the resolution, either by purchase or by appropriation in the manner prescribed by statute.

(b) If the work and changes provided for in the maps, plans and specifications adopted in the resolution affects [affect] the tracks or other facilities of more than one railroad company, the railroad companies affected may, prior to the final confirmation of the resolution, file with the board their written agreement allocating between the companies the cost to be borne by each of them respectively.

(c) If the railroad companies fail to enter into a cost agreement, the board shall incorporate in the resolution, before final confirmation, a provision fixing the relative amount of costs to be borne as between the railroad companies. [IC 8-6-2.1-7, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-9. Adoption of resolution - Notice to all parties. - (a) Upon the adoption of the resolution for separation or alteration of grades, the board shall cause notice of the adoption and intention, and of the fact that the maps, plans, specifications, agreements and estimates have been prepared and can be inspected, to be published in accordance with IC 5-3-1 [5-3-1-1-5-3-1-9]. The notice shall name a day not less than twenty [20] days after the date of the last publication on which the board will receive or hear remonstrances from persons interested in or affected by the proceedings, and when it will determine the public necessity and convenience of the project.

(b) A like notice shall be sent by mail to the owners of all lands to be appropriated under and by the resolution, and in case any landowner is a non-resident and his place of residence is known, a like notice shall be mailed to him, but in event the non-resident owner's residence is unknown by the board, then he is considered to have been notified of the pendency of the proceedings by the publication of notice. A like notice shall also be served on a resident agent or officer of any railroad company or street railway company whose tracks are affected by the proceeding, but failure to serve the notice shall not invalidate the jurisdiction of the board in the premises.

(c) If the Indiana state highway commission [department of highways] and the county in which the city is located participate in the proceedings, then a like notice shall be served upon the state highway commission [department of highways] and upon the board of commissioners of the county. [IC 8-6-2.1-9, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-10. Effect of notice by publication - Description of property. - All persons affected in any manner by the proceedings, including all owners of real or personal property in the city, are considered to be notified of the pendency of the proceedings, and of all subsequent acts, hearings, adjournments, resolutions and orders of the board,
by the original notice by publication. In the resolution and notice, separate descriptions of each piece or parcel of land are not required, but it is sufficient to describe the property to be purchased or appropriated by giving a description of the entire tract by metes and bounds, whether the tract is composed of one or more lots or parcels and whether owned by one or more persons. [IC 8-6-2.1-10, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-11. Land acquired by purchase - Options to purchase - Appraisal - Report. - (a) When the land or any part of it is to be acquired by purchase, the resolution shall also state the maximum proposed cost, and the board may at any time prior to the adoption of the resolution obtain from the owner or owners of the land an option for its purchase, or the board may enter into a contract for the purchase of it upon the terms and conditions it considers best. The option or contract is subject to final confirmation or recision of the resolution, and subject further to the condition that the land be paid for only out of the special fund resulting from the sale of grade separation district bonds and the collection of benefit assessments, or out of funds coming to the city from equitable settlements between the parties. If the board desires to acquire any lots or parcels of land by purchase, it shall appoint three [3] freeholders residing in the city, or in the county in which the city is located, who are not interested in any land to be acquired or in land which may incur local benefits under such resolution, to appraise the value of the land. The appraisers shall take an oath that they have no interest in the matter and that they will honestly and impartially make the valuation. The appraisers shall then proceed to view the land and consider and determine its true market value at that time.

(b) The appraisers shall submit a written report of their appraisement to the board and the report shall be filed with and become a part of the record of the proceeding. The board may not exercise any option on the land or enter into a contract to purchase the land at a higher price than the value named in the report. [IC 8-6-2.1-11, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-12. Vesting of title to property acquired. - The title to any lands, rights-of-way or other property acquired under and pursuant to the resolution, whether by purchase or by appropriation, shall not vest in the city until they are paid for out of the special fund created by the sale of bonds and from benefit assessments, or out of funds coming to the city from equitable settlements between the parties. No indebtedness or obligation of any kind may be incurred by the city in its corporate capacity on account of the acquiring of any lands, rights-of-way or other property. [IC 8-6-2.1-12, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-13. Objections to acquisition of property - Hearing - Appeal. - (a) At the time fixed for the hearing, or at any time prior to that, any owner of land, right-of-way or other property to be appropriated under the resolution, and any railroad company or companies, any street railroad company, and any person owning real or personal property situated within the city, may file a written remonstrance with the board.

(b) At the hearing, which may be adjourned from time to time, the board shall hear all persons interested in the proceedings and consider all remonstrances that have been filed, and after considering the, the board shall take final action and determine the public necessity and convenience of the proposed improvement, and confirm, or modify and confirm, or rescind the resolution. The final action shall be duly entered of record, and is conclusive upon all persons, except as provided in sections 4 through 8 [8-6-2.1-14 through 8-6-2.1-18] of this chapter. Any person who has remonstrated in writing and who is aggrieved by the decision of the board may take an appeal to the circuit court in the county in which the city is located. [IC 8-6-2.1-13, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-14. Appeal from final action of board - Bond - Consolidation of appeals. - Within twenty [20] days after the final action of the board, the remonstrator may file in the office of the clerk of the circuit court a copy of the order of the board, not including, unless he so desires, the maps, plans and specifications, and his remonstrance to them, together with his bond conditioned to pay the cost of the appeal if it is determined against him. All appeals shall be consolidated and heard as one [1] cause of action by the court, and the burden of proof is upon the remonstrators. The cause shall be tried and determined summarily by the court without the intervention of a jury, as other civil causes, and shall be given precedence over other matters pending in the court. Upon the trial of the cause, the court shall hear evidence upon the remonstrances and shall confirm the final action of the board on the resolution, or sustain the remonstrance or remonstrances to them, and the court may remand the resolution for further proceedings. If the resolution is confirmed the judgment of the court is conclusive upon all parties, and no appeal lies from the judgment. [IC 8-6-2.1-14, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-15. Agreement as to plan and method - Allocation of work - Settlement of costs. - The city, by its board of public works or board of public works and safety, the Indiana state highway commission [department of highways], the county in which the city is located, by its board of commissioners, and the railroad company or companies whose track or tracks the improvement authorized in this chapter concern, may enter into a written
agreement as to the plan of proceeding with the work, the allocation of the portions to be done by the respective parties, the division of cost between railroads, the amount of work to be done annually, the time within which the entire work is to be completed, the method and times of making equitable settlements of the cost between the parties, and any other matters tending to expedite the efficient and economical completion of the improvement. The agreement, however, may not have the effect of increasing the total cost of the improvement above the estimate. The agreement shall be filed with the board and considered a part of the resolution and constitutes the basis of all proceedings on the matters embraced in the agreement. [IC 8-6-2.1-15, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-16. Total cost of improvement. - (a) The total cost of the improvement to be borne by all the parties in interest includes the following:

(1) The cost of constructing the grade elimination structure and the cost of raising or lowering the grade, or other alteration of any public highway, the construction or reconstruction of the pavement, including sidewalks and curbs, and the alteration, relocation and construction of drains or sewers required by the improvement.

(2) The cost of elevation, depression, alteration, removal, relocation, construction and reconstruction of any railroad track or tracks and other facilities within or without the city.

(3) The cost of any land, right-of-way, or other property required for the improvement.

(4) The amount of damages, if any, recoverable under law by any person due to the improvement.

(5) The compensation for services of the special engineer and additional engineering force, and of special counsel, if any, employed by the board, all of whom the board may employ.

(6) The cost of supervision and inspection, the giving of notices, and all other expense necessarily incurred by the board in connection with the proceedings and improvement.

(b) The total cost to be borne by all the parties in interest does not include the expense of opening new or additional highways, or the expense of establishing additional lanes of traffic in any highways, or the expense of providing rights-of-way or other facilities which represent an enlargement of or betterments to the facilities of any railroad affected by the improvement. [IC 8-6-2.1-16, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-17. Allocation of total cost. - (a) The total cost of the improvement shall be borne by all of the parties in interest, in accordance with a written agreement or written agreements to be entered into by all the parties, fixing the portion of the total cost to be borne by each party subject, however, to the cost formula requirements set forth in section 4 [8-6-2.1-4] of this chapter. The total cost shall be divided among and paid by the parties in accordance with the agreement or agreements. The portion of the total cost to be borne by the city does not constitute an indebtedness or obligation of the city in its corporate capacity, but shall be payable only out of special taxes and benefit assessments as provided by this chapter.

(b) The Indiana state highway commission, any city affected by this chapter and the county in which the city is located, may each respectively enter into a written agreement or written agreements.

(c) The agreement or agreements shall be executed on behalf of the Indiana state highway commission [department of highways] by the members of it and shall be binding upon the Indiana state highway commission [department of highways]. The agreement or agreements shall be executed on behalf of the city by the board and shall be binding on the city. The agreement or agreements shall be executed on behalf of the county by the board of county commissioners and shall be binding on the county.

(d) To the extent that funds of any federal agency may be available to the Indiana state highway commission [department of highways] for use in paying any portion of the total cost which may be chargeable to or assumed by the Indiana state highway commission [department of highways], the Indiana state highway commission [department of highways] may use the federal funds, if permitted by applicable federal laws, for the payment of the cost or any portion of it, or for the payment of all or any portion of either the city's or county's share of the cost; or the Indiana state highway commission [department of highways] may use the federal funds for any combination of these purposes. The board may apply for, accept, and use grants, loans or other financial assistance from any municipal, county, state, or federal government agency. To the extent any funds of any federal agency may be available to the city or the county for use in paying the costs, the city and county may use the federal funds, if permitted by applicable federal laws, for the payment of any portion of the cost which is chargeable to or assumed by the city and county. [IC 8-6-2.1-17, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-18. Work allotted to city - Letting of contract. - Any portion or portions of the work of improvement under the resolution which is allotted to the city shall be done by contract or contracts, and all contracts shall be let under statutes governing the letting of contracts by the city. In event of the execution of a contract for the work, the vali-
dity of the contract may not subsequently be questioned by any person, except in a suit to enjoin the performance of the contract instituted within ten [10] days after its execution. All proceedings and orders of the board preliminary and prior to the contract, and the contract, are considered valid, conclusive and binding upon all persons and are not subject to attack for any cause after the ten [10] day period after its execution has expired. [IC 8-6-2.1-18, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-19. Payment by city prior to collection of benefit assessments or bond sales. - Any part of the city’s portion of the total cost of the improvement which is necessary for the city to pay prior to the collection of benefit assessments under this chapter and prior to the issue and sale of bonds under this chapter, shall be paid as follows: the board shall, from time to time, certify the items of expense to the controller or treasurer, directing him to pay those amounts, and the controller or clerk-treasurer shall draw his warrant or warrants, and the warrant or warrants shall be paid out of the general fund of the city without appropriation being made by the common council; or, in case there is no money in the general fund of the city not otherwise appropriated, the city controller or clerk-treasurer shall recommend to the common council the temporary transfer from other funds of the city a sufficient amount to meet the items of expense, or the making of a temporary loan for this purpose, and the common council shall at once make the transfer of funds, or authorize the temporary loan in the same manner that other temporary loans are made by the city. The fund or funds of the city from which the payments are made shall be fully reimbursed and repaid by the board out of the special fund created by the sale of bonds and from benefit assessments or out of funds coming to the city from equitable settlements between the parties. The board may cause the amount for the temporary advancements on work to be provided for in the budget and tax levy of the city for the year when the funds are anticipated to be needed. [IC 8-6-2.1-19, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-20. Accounting of total cost - Adjustments. - (a) The board through its engineer, shall keep an account of the total cost of the improvement, of all disbursements made during the course of the work, and of all equitable settlements between the parties contributing to the cost; but the total cost may not exceed the estimate adopted in the resolution.

(b) From time to time during the progress of the work, and upon completion of the improvement, the board shall make and adjust equitable settlements and payments between the parties contributing to the cost of the improvement so that the total cost of the improvement is apportioned between the parties as determined by the board consistent with this chapter.

(c) The equitable settlements and payments shall be made by the board, either on its own initiative or on petition of any railroad company charged with the work or any part of the work, or on petition of either the Indiana state highway commission [department of highways] or of the county in which the city is located, if the Indiana state highway commission [department of highways] and the county participate in the cost of the improvement.

(d) Any adjustment or adjustments are binding on all of the parties unless any aggrieved party, within sixty [80] days after the entry of an order of equitable settlement made by the board, files his complaint to review the adjustment in the circuit court of the county in which the city is located. The decree of the court is final. The railroad company or companies shall, upon the adjustment or decree, pay their portions of the cost as directed. The Indiana state highway commission [department of highways] shall, upon the adjustment or decree, pay its portion of the cost as directed, and the payment shall be made out of the funds of the commission or funds appropriated for the use of the commission. The county council of the county in which the city is located shall provide sufficient funds to pay the county’s share of the cost of the improvement, either by appropriating the necessary amount of money from available funds on hand, or by the sale of bond. Upon each adjustment or decree, the county in which the city is located shall pay the county’s portion of the cost as directed by the adjustment or decree out of the funds provided by the county council. Upon each adjustment or decree, the city controller or clerk-treasurer shall draw his warrant or warrants in payment of the city’s portion of the cost.

(e) All warrants may be drawn only against the special fund arising from the special tax and special assessments provided for in this chapter and from equitable settlements.

(f) The board may adopt supplemental resolutions and enter orders from time to time as necessary to carry out the purpose of the resolution. [IC 8-6-2.1-20, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-21. Special tax - Taxing district - Assessment. - (a) Upon final action of the board or circuit court, confirming the resolution, all territory lying within the corporate limits of the city shall become a special taxing district for grade separation and railroad relocation and reconstruction purposes, and all property, real and personal, located within the territorial limits of the district shall be subject to a special tax for the purpose of providing funds to pay the city’s portion of the total cost of the improvement.
(b) The special tax shall constitute the amount of benefits resulting to all of the property from the proceedings, and shall be levied in the manner provided for by this chapter. If the board determines that any lots or parcels of land, exclusive of improvements, lying within two thousand feet [2,000'] of any grade crossing eliminated or altered by the improvement, or within two thousand feet [2,000'] of any lands or rights-of-way abandoned for railroad use or from which railroad facilities are to be removed, will incur a particular benefit by reason of their proximity in addition to the benefits received by them in common with all other property located in the district, those lots and parcels of land which lie within the corporate limits of the city shall be subject to a special assessment for the benefits.

(c) The special assessment shall be determined in accordance with this chapter, but the total amount of the additional benefits assessed shall not in any case exceed forty percent [40%] of the city's share of the total cost of the improvement; and the total amount of the additional benefits assessed and finally confirmed or adjudged against lots and parcels of land exclusive of improvements lying within two thousand feet [2,000'] shall be deducted from the city's share of the total cost and the balance of the city's share of the total cost, is the amount of the benefits resulting to all property in the special taxing district, and the special tax shall be levied only for this balance. Any lot or parcel of land owned and used or occupied for railroad purposes at the time of the adoption of any resolution by any railroad company whose tracks are affected by the resolution, or any lot or parcel of land devoted to railroad purposes in connection with and because of the improvement, is not subject to any special assessment for the particular benefits. [IC 8-6-2.1-21, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-22. Assessment roll. - When the resolution is finally confirmed by the board, the board shall require the preparation of a roll of all the owners or holders of property sought to be taken, or who have incurred damages, and also of all of the owners or holders of lots or parcels of land lying within two thousand feet [2,000'] of any grade crossing eliminated or altered by the improvement or within two thousand feet [2,000'] of any lands or rights-of-way abandoned in whole or in part for railroad use or from which railroad facilities are to be removed, which will incur a particular benefit, as provided in section 21 [8-6-2.1-21] of this chapter, from the grade separation or alteration and railroad relocation as provided for in the resolution. In addition to the list of names, the roll should show with reasonable certainty a description of the property to be appropriated, or affected either injuriously or beneficially, belonging to that person, and no greater certainty in names and description is necessary to the validity of any award or assessment than is required in the assessment of taxes.

[IC 8-6-2.1-22, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-23. Determination and award of damages - Assessment of benefits - Notices. - (a) Upon the completion of the roll, the board shall consider, determine and award the amount of damages sustained by the owners of the several parcels of land required to be appropriated, if any, as provided for in the resolution, or which will incur damages, and, then the board shall consider, determine and assess the amount of particular benefits which will accrue to the several lots or parcels of land, exclusive of improvements, lying within two thousand feet [2,000'] of any grade crossing eliminated or altered by the improvement, or within two thousand feet [2,000'] of any lands or rights-of-way abandoned in whole or in part for railroad use or from which railroad facilities are to be removed, as provided for in the resolution, by reason of their proximity, in addition to the benefits received by the lots or parcels of land in common with all property, real and personal, located in the district. The total amount of the particular benefits assessed against the lots and parcels of land, exclusive of improvements, located within the two thousand feet [2,000'], may not in any case exceed forty percent [40%] of the city's share of the total cost of the grade separation improvement.

(b) When the roll is completed, the board shall publish, in accordance with IC 5-3-1 [5-3-1-1-5-3-1-9], a notice describing the location of the land appropriated and the general character of the improvement, and stating whether assessments have been made against lands within the two thousand [2,000] foot distance. The notice shall also state that the assessment roll, with the names of the owners in favor of whom damages have been awarded and against whom assessments have been made, and descriptions of property affected, with the amounts of preliminary awards or assessments as to each piece or parcel of property affected, is on file and can be seen in the office of the board. The board shall also send by United States mail a notice to the place of residence, if known, of persons owning lands to be taken, or incurring damages, or against which special assessments have been made, showing each item of the determination as to those persons. In case any person affected is a nonresident, or his residence is unknown, he is considered to have been notified by the publication. The notices shall name a day not earlier than ten [10] days after the last day of publication, or after the date of mailing, as above provided, on which the board will receive and hear remonstrances from persons with regard to the amount of their respective awards or assessments. Persons not included in the roll of awards or damages and claiming to be entitled to the same are considered to have been notified of the pendency of the proceedings by the original notice of the resolution of the board and by the publication required by this section.
(c) If there are defects or irregularities of any kind in the proceedings with respect to one or more interested persons, they do not affect the proceedings, except so far as they may affect the interest or property of the person or persons, and do not avail any other person. In case of any effect, supplementary proceedings of the same general character as those otherwise prescribed by this chapter may be instituted in order to correct the defect. [IC 8-6-2.1-23, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-24. Legal disability - Notice to attorney or guardian. - If any person having an interest in land affected by the proceedings is of unsound mind or under the age of eighteen [18] years, the board shall certify that fact to its attorney. The attorney shall apply to the proper court and secure the appointment of a guardian for the person under eighteen [18] years of age or person of unsound mind, and the board shall give notice to the guardian, who shall appear and protect the interest of his ward. If the person under eighteen [18] years of age or person of unsound mind already has a guardian, the notice may be served upon the guardian. The requisites of notice to the guardian shall be the same as for other notices. [IC 8-6-2.1-24, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-25. Objections to awards and assessments - Hearing - Appeal. - Any person notified or considered to be notified under this chapter may appear before the board on the day fixed for hearing the remonstrances with regard to awards and assessments, and remonstrate in writing against them. All persons appearing before the board having an interest in the proceedings shall be given a hearing. After the remonstrances have been received and the hearings had, the board shall either sustain or modify, by increasing or decreasing, the awards or assessments. Any person remonstrating in writing who is aggrieved by the decision of the board may, within remonstrating in writing who is aggrieved by the decision of the board may, within ten [10] days after the decision is made, take an appeal to the circuit court of the county in which the city is located. The appeal affects only the amount of the assessment or award of the person appealing. [IC 8-6-2.1-25, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-26. Proceedings and judgment on appeal - Remonstrances consolidated. - (a) The appeal shall be taken by filing an original complaint in the circuit court of the county in which the city is located against the board within the time named, setting forth the action of the board in respect to the assessment or award, and stating the facts relied upon as showing an error of the board. The court shall rehear the matter of the assessment or award de novo, and confirm, lower or increase the amount. The cause shall be summarily tried by the court without the intervention of a jury, as in other civil cases. A change of venue from the county may not be taken.

(b) All remonstrances upon which an appeal is taken may be consolidated and heard as one [1] cause of action, and all the appeals shall be heard and determined by the court within thirty [30] days after the time of filing of the appeal. If the court reduces the amount of benefit assessed against the land of the property owner by ten percent [10%] or more of the assessment by the board, or increases the amount of the damages awarded in his favor by ten percent [10%] or more of the amount awarded by the board, the plaintiff in the appeal shall recover costs, otherwise not.

(c) The amount of the judgment in the court shall be final, and no appeal may be taken. However, any party in interest may take an appeal from the judgment to the supreme court of Indiana, upon sole ground that the property in question has or has not incurred damages recoverable under law. [IC 8-6-2.1-26, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-27. Assessment liens - Foreclosure - Extension of time for payment - Assessment bonds. - (a) The assessment roll, upon final confirmation by the board, shall be delivered to the controller or clerk-treasurer, and from that time the respective amounts of benefits assessed shall severally be liens, superior to all other liens except taxes, against the respective lots or parcels of land upon which they are assessed. The duties of the controller or clerk-treasurer are those prescribed by statute in cities with regard to assessments for street improvements.

(b) The assessments of benefits are due and payable to the controller or clerk-treasurer from the time of the delivery of the assessment roll to him. If not paid within thirty [30] days, the board's attorneys shall proceed to foreclose the liens in a court as mortgages are foreclosed with similar rights of redemption, and have them sold to pay the assessments. The board shall recover costs with reasonable attorney's fees and interest at the rate of six percent [6%] per annum.

(c) In all cases where the party against whom the assessment is made is a resident of the city, a notice of the assessment and demand for payment shall be delivered to him personally or mailed to his last usual place of residence. All persons assessed for local benefits may, within thirty [30] days after the confirmation of the assessments, avail themselves of the right to pay the assessment installments in the same manner as provided for the payment of assessments for streets improvements in cities, except that the board may provide that the installments may be extended over a period of twenty [20] years, which privilege shall also be stated in the notice.
(d) Statutes relating to the payment of street improvement assessments by installments, the issuance of bonds and coupons to anticipate assessments, and the rights of bondholders and landowners, when not inconsistent with this chapter, shall apply and be extended to assessments made under this chapter. When assessment bonds are issued, the city controller or clerk-treasurer shall sell the bonds promptly in the same manner and upon the same notice conditions as grade separation district bonds are authorized to be sold as provided in section 29 [8-6-2.1-29] of this chapter, and the proceeds shall be kept in a separate fund as provided for in section 30 [8-6-2.1-30] of this chapter. The assessment bonds shall be exempt from taxation for all purposes. All interest and penalties on delinquencies shall go into the special fund. [IC 8-6-2.1-27, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-28. Payment of damages - Disputes among claimants - Injunction. - (a) The board, upon the completion of the award of damages, if any, or upon the determination of the appeals taken, shall make out certificates for the proper amounts and in favor of the proper persons. Presentation of the certificates to the city controller or clerk-treasurer of the city entitles those persons to a warrant drawn on the city treasury. The controller or clerk-treasurer shall pay the persons named the amounts due them respectively, as shown by the certificates, out of the separate and specific funds derived from the sale of bonds and from benefit assessments provided for in section 30 [8-6-2.1-30] of this chapter, or out of funds coming from equitable settlements between the parties, and these payments may not be made from any other source or funds.

(b) The certificates or vouchers shall, whenever practical, be tendered actually to the person entitled to them, but where this is impractical, they shall be kept for the persons in the office of the board, and the making and filing of the certificates, in all cases, is considered to be valid tender to the person entitled to them at the time or as soon as there are sufficient funds to pay them. They shall be delivered to the person on request. In case of dispute or doubt as to which of various persons the money shall be paid, the board shall make out the certificates in favor of the attorney appointed by the board for the use of the persons entitled to them, and the attorney shall draw the money and pay it into court, requiring the various claimants to interplead and have their respective rights determined.

(c) If an injunction is obtained because damages have not been paid or tendered, the board shall tender the amount of damages with interest from the time of the entry of the property, if any has been made, and all accrued costs. If there are sufficient funds to pay the certificate, the injunction shall be removed. The pendency of an appeal to the circuit court of a county does not affect the validity of a tender made under this section, but the board may proceed with its appropriation of the property in question. [IC 8-6-2.1-28, as added by Acts 1980, P.L. 8 § 70.]

8-6-2.1-29. Bonds - Issuance and sale. - (a) In order to raise money to pay the city's portion of the total cost of an improvement and in anticipation of the special benefit tax to be levied, the board shall issue, in the name of the city, at one [1] time, or from time to time as the proceeds are needed, the bonds of the grade separation or railroad relocation and reconstruction district not to exceed in aggregate amount the balance of the city's portion of the total cost after deducting from the city's portion the total amount of benefits, if any, which have been assessed by the board and finally confirmed or adjudged against lots and parcels of land exclusive of improvements lying within two thousand feet [2,000'] of any grade crossing eliminated or altered by the improvement, or within two thousand feet [2,000'] of any lands or rights-of-way abandoned in whole or in part for railroad use or from which railroad facilities are to be removed.

(b) The bonds may be issued in any denomination not exceeding one thousand dollars [$1,000] each in not less than forty [40] nor more than sixty [60] equal series, as the board determines, and shall be payable one [1] series each six [6] months beginning on the first day of July of the first year following the date of their issue. If the bond issue is ordered in any calendar year after the date of the annual tax levy, then the first series shall mature on the first day of July of the second year and the balance of the bonds at the designated regular intervals. The bonds shall be negotiable as inland bills of exchange and shall bear interest payable on the first days of January and July of each year, the first interest to be payable on the first maturity date of the bonds.

(c) Upon adoption of a resolution ordering bonds, the board shall certify a copy of the resolution to the controller or clerk-treasurer of the city in which the grade separation district is located; that officer shall prepare the bonds, and the mayor of the city shall execute the bonds and the city controller or clerk-treasurer shall attest the execution. The bonds shall be exempt from taxation for all purposes. All bonds issued by the board shall be sold by the city controller or clerk-treasurer to the highest bidder, but not at less than par and accrued interest to date of delivery, after giving notice of sale of the bonds by publication in accordance with IC 5-3-1 [5-3-1-1--5-3-1-9]. The publication shall be made not less than fifteen [15] days prior to the date fixed for the sale of the bonds.
(d) The bonds are not a corporate obligation or indebtedness of the city, but constitute an indebtedness of the district as a special taxing district, and the bonds and interest shall be payable only out of a special tax levied upon all property of the special taxing district, as in this chapter provided, and the bonds shall recite the terms upon their face, together with the purposes for which they are issued.

(e) No suit to question the validity of the bonds issued for the special taxing district, or to prevent their issue, may be maintained after the date set for the sale of the bonds, and all bonds after that date are incontestable for any cause. [IC 8-6-2.1-29, as added by Acts 1980, P.L. 8, § 70; 1980, P.L. 73, § 1.]

8-6-2.1-30. Bond proceeds and benefit collections. - All proceeds from the sale of bonds issued under section 29 [8-6-2.1-29] of this chapter, together with all money collected from benefit assessments, or from the sale of assessment bonds, shall be kept as a separate and specific fund, entitled grade separation or railroad relocation and reconstruction fund, to pay the city's portion of the total cost of the grade separation improvement, and no part of the fund may be used for any other purpose. The fund shall be deposited with the depository or depositories of other public funds of the city. Any surplus remaining in the fund, after all the city's portion of the total cost is fully paid, shall be paid into and become a part of the grade separation or railroad relocation and reconstruction bond fund as referred to in section 31 [8-2-2.1-3] of this chapter. [IC 8-6-2.1-30, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-31. Bonds - Tax levy for payment. - (a) In order to raise money to pay all bonds issued under section 29 [8-6-2.1-29] of this chapter, including interest, the common council of the city shall levy each year a special tax upon all of the taxable property, both real and personal, located within the territorial limits of the special taxing district, in such manner as to pay the principal of the bonds as they severally mature, together with all accruing interest.

(b) The tax levied shall be collected by the county treasurer in the same manner as other taxes are collected. As the tax is distributed to the controller or clerk-treasurer it shall be deposited in a separated fund, to be known as the grade separation or railroad relocation and reconstruction bond fund, and shall be applied to the payment of the special taxing district bonds and interest as they severally mature, and to no other purposes. All accumulation of the fund prior to its use for the payment of the bonds and interest shall be deposited in the depository or depositories of other public funds in the city. [IC 8-6-2.1-31, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-32. Lands acquired by contract and condemnation - Terms of payment - Vesting of title in city. - If the lands acquired for the improvement or any part of it are secured by purchase or contract, the payment shall be made according to the terms of the contract. If lands are taken by condemnation, the amount of damages assessed shall be paid or tendered within ninety [90] days after the final determination of the condemnation proceedings or as soon thereafter as the funds arising from the bonds and the assessment of benefits are available. The title to the lands, or that portion paid for or otherwise acquired for these purposes, then vests in the city. [IC 8-6-2.1-32, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-33. Filing of description of acquired land - Power to transfer. - Within sixty [60] days after any land or right in it is paid for and acquired under this chapter, the board shall file and have recorded in the recorder's office in the county in which the land is situated a description of it sufficiently accurate for its identification, with a statement of the purpose for which it is acquired or taken. The description shall be signed by a majority of the board. The board may transfer to any railroad company or companies any property acquired in connection with the improvement, but intended for the permanent occupation or use of the railroad or railroads, after proper adjustment in the equitable settlements between the parties. [IC 8-6-2.1-33, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-34. Warrants for expenditures - Appropriations. - No part of any of the funds raised by the city or received by the city under this chapter may be expended, except upon warrants drawn by the city controller or clerk-treasurer upon vouchers of the board. No appropriation in any form is necessary, but all funds arising under this chapter are appropriated to the respective purposes named in this chapter, and are under the control of the board, and the board may expend the funds for the purposes stated in this chapter. [IC 8-6-2.1-34, as added by Acts 1980, P.L. 8, § 70.]

8-6-2.1-35. Maintenance costs requirements. Maintenance costs requirements are governed, to the extent applicable, by IC 8-6-3 [8-6-3-1-- 8-6-3-3]. IC 8-6-2.1-35, as added by Acts 1980, P.L. 8, § 70.]

8-6-12. REPAIR OF RAILROAD GRADE CROSSINGS BY LOCAL GOVERNMENTS

8-6-12-1 [55-538]. Tracks in streets or alleys - Grading and paving - Cost. - (a) Each railroad company whose road or tracks lie in any public street, road, or alley in any city, town, or county shall properly grade, pluck, gravel, or asphalt the road and tracks in accordance with the grade and surfacing material of the public street, road, or alley in such a manner as to afford security for life and property of persons and vehicles using the pub-
lic streets, roads, or alleys.

(b) If a railroad company fails to comply with the provisions of this section, the city, town, or county is which the public street, road, or alley is located may, after thirty [30] days written notice to the superintendent or regional engineer of the railroad company, do the work and either:

(1) Recover the amount of the cost thereof from the railroad company by suit filed in any court of competent jurisdiction, in which case the city, town or county may collect reasonable attorney fees; or

(2) Certify the amount owed to the county auditor who shall prepare a special tax duplicate to be collected and settled for by the county treasurer in the same manner and at the same time as property taxes are collected;

Provided, That before the municipal corporation, city, town, or county shall undertake to do the work themselves they shall notify an agent of the railroad as to the time and place. [Acts 1989, ch. 174, § 1; P.L. 62-1984, § 103.]

8-12-6. STATE HIGHWAY GRADE CROSSINGS

8-12-6-1 [36-130a]. Construction of highway, road or street over existing railroad - Installation of warning devices - Cost. - Whenever a highway, road, or street is being constructed or reconstructed so that it crosses or intersects the existing tracks of any railroad at grade level and at a point or place where no crossing previously existed, the state of Indiana, the county, the city, or the town under whose jurisdiction the crossing lies shall bear and pay the entire cost of the construction of such new crossing and the approaches thereto. Thereafter, the owner or lessee of such railroad shall have the duty to maintain such crossing and keep such crossing in repair, at its cost and expense. Whenever at such new crossing protective or crossing warning signals or equipment are required by or under the law to be installed, the same shall be installed at the cost and expense of the state of Indiana, the county, the city, or the town, under whose jurisdiction the crossing lies, but thereafter such crossing warning signals and equipment shall be maintained, repaired, and replaced, when needed, by the owner or lessee of such railroad at its cost and expense. [Acts 1959, ch. 65, § 1, p. 131; 1975, P.L. 87, § 1, p. 599.]

Cross References. Separation of grade crossings, 8-13-6-2.

State highways over canals, 8-12-12-1—8-12-12-5.

Viaduct over railroad yards, 8-12-7-1.

8-12-6-2 [36-130b]. Construction of new railway over existing highway, road or street - Installation of warning devices - Cost. - Whenever the owner or lessee of a railroad is constructing or reconstructing any railroad tracks so that they cross or intersect a highway, road, or street at grade level and at a point or place where no railroad crossing previously existed, the owner or lessee of such railroad shall bear and pay the entire cost of such crossing and the approaches thereto, and thereafter shall have the duty to maintain such crossing and keep such crossing in repair, at its cost and expense. Whenever at such new crossing protective or crossing warning signals or equipment are required by or under the law to be installed, they shall be installed at the cost and expenses of the owner or lessee of said railroad and the owner or lessee of such railroad shall thereafter maintain and keep the same in repair at its cost and expense. [Acts 1959, ch. 65, § 2, p. 131; 1975, P.L. 87, § 2, p. 599.]

8-12-7. CONSTRUCTION OF VIADUCTS AND APPROACHES OVER RAILROAD YARDS AND ADJACENT TRACKS

8-12-7-1 [36-131]. Construction of viaduct by department of highways when through streets connecting with main trunk highway at city limits intersected by railroad tracks. - In cases where railroad yards and tracks adjacent to such yards, intersect the direct route of a through street in a city or town, which street, at the corporate boundary of such city or town, directly connects with a highway designated as a main trunk line state highway, and the company or companies owning and operating such railroad yards, tracks and properties shall, by contract entered into with the department of highways, agree to grant an easement or right-of-way over such railroad yards, tracks and properties for the purpose of constructing a viaduct and the necessary approaches thereto, without compensation or the allowance of any damages to such railroad company or companies, then in such cases the department of highways shall have the power to construct such viaduct in such manner as it shall deem best and in accordance with such plans and specifications as it shall adopt therefor. [Acts 1929, ch. 85, § 1, p. 281; 1932 (Spec. Sess.), ch. 62, § 1, p. 227; 1980, P.L. 74, § 150.]


8-12-7-2 [36-132]. Construction of viaduct - Profiles, plans, specifications and estimates. - When the department of highways determines to construct said improvement, it shall cause profiles, plans and specifications for the same, and estimates of the probable cost of said construction, to be prepared by the director of the department of highways, which profiles, plans, specifications and estimates shall be adopted by, and filed in the office of, the department. No viaduct or improvement shall
be constructed under this law except in accordance with said profiles, plans and specifications, and the total cost thereof shall not exceed said estimates. The work may be done by the department of highways, or by contract, in the manner provided for the construction of state highways. [Acts 1929, ch. 85, § 2, p. 281; 1932 (Spec. Sess.), ch. 62, § 2, p. 227; 1980, P.L. 74, § 151.]

8-12-7-3 [36-133]. Contract with railroad - Contents - Limitations. - The department of highways is hereby authorized and empowered to enter into a written agreement or agreements with any railroad or railroad companies owning or operating the yards, tracks or properties over which such viaduct and its approaches are to be constructed, providing for the method and plan of such improvement, and any stipulation or agreement for that purpose not inconsistent with the provisions of this chapter. The total cost of such improvement shall include the cost of constructing said viaduct, the structures supporting the same and the approaches thereto. It shall include the cost of all labor and material, engineering, superintendence, and all other costs and expenses incurred in the construction of said viaduct and the approaches thereto, except damages to property, if any, resulting from such improvement. Such viaduct shall be so constructed, and said agreement shall so provide, that the clearance from the top of the rail or rails of the railroad track to the bottom of the superstructure of said viaduct over said track or tracks shall be not less than twenty-one [21] feet. [Acts 1929, ch. 85, § 3, p. 281; 1932 (Spec. Sess.), ch. 62, § 3, p. 227; 1980, P.L. 74, § 152.]

8-12-10. IMPROVEMENT ALONG STATE OWNED LANDS

8-12-10-1. [36-134]. Improvement along state-owned lands. - Whenever, after March 6, 1923, the state department of highways has heretofore, or may hereafter lay out any state highway as defined by the statutes, and shall enter upon the improvement thereof, and said state highway as so laid out is intended to and shall be connected with any street or highway located and open within the corporate limits of any city in the state of Indiana, and within the corporate limits of which city there are lands or lots the title to which is, at the time, in the state of Indiana, then and in that event, said state department of highways, out of funds in its hand for state highway purposes, shall improve said extension of the highway so under improvement for the whole distance said highway runs through or abuts said state-owned lands, which improvement through or abutting state-owned lands shall, in all things of width, depth, material and construction, be as provided in the drawings, plans and specifications of the state highway of which the improvement herein provided for is a part. [Acts 1923, ch. 107, § 1, p. 294; 1980, P.L. 74, § 157; 1981, P.L. 41, § 33.]

8-13-5. GENERAL PROVISIONS, INDIANA STATE HIGHWAY COMMISSION

8-13-5-5 [36-110]. Drains, culverts, bridges. - All drains, culverts and bridges on any state highway shall be considered as part of such state highway. All bridges having a span over twenty [20] feet in length may be let as a separate contract, the procedure to be the same as in the letting of contracts for state highways. [Acts 1933, ch. 18, § 10, p. 67.]

NOTES TO DECISIONS

In General.

Where a drainage project necessitates the building of a bridge across a state highway, the cost of the bridge is to be paid by taxation upon all taxpayers of the governmental unit responsible for the bridge and not by assessment against the few landowners assessed for the drainage project. State v. Roberts (1948), 226 Ind. 106, 76 N. E. (2d) 832, 78 N. E. (2d) 440.

8-13-5-7. Partial payments to contractors - Withdrawal of retained percentage - Final payments - Penalty. - (a) The department may authorize partial payments to any contractor performing any work, under the provisions of this chapter, as the same progresses, under the general rules of the department.

(b) Until final completion and acceptance of the contract by the department, payment shall not be made to exceed ninety-five percent [95%] of the estimated cost of the completed work.

After complete inspection has been made and it is determined that the work has been done according to plans and specifications, the director of the department of highways may approve and accept completed work in sections of not less than one mile unless otherwise permitted by the contract documents and when any section of such work shall have been completed and accepted, the contractor shall thereupon be as fully relieved of all liability for the maintenance, reconstruction, or restoration of the section of work so completed and accepted, or any part thereof, as he would be if the entire contract were finally completed and accepted. If the contract consists of two [2] or more projects as defined by the department, the director may approve and accept the work of a completed project, and the contractor shall thereupon be relieved of all liability for maintenance, reconstruction, or restoration of the project, or any part thereof, as he would be if the entire contract were finally completed and accepted.
Amendments. The 1959 amendment substituted the word "department" for the word "commission" and the words "state highway commission" wherever appearing in the section and added last proviso and the last sentence.

The 1967 amendment substituted "ninety-five percent" for "ninety percent" following the word "exceed" in the second sentence.

The 1972 amendment substituted the word "chapter" for the word "act" preceding the words "as the same progresses" in the first sentence of the section, substituted the word "department" for the word "commission" preceding the words "provided he file" in the second proviso of the section and added the entire present last paragraph.


NOTES TO DECISIONS

Amounts Not in Dispute.

The 1982 amendment changed the mandatory "shall" to a permissive "may" concerning portions and amounts not in dispute, and added the definition of dispute in subsection (e). The legislative intent was to prohibit contractors from taking the position that the state owed them more money than the contract called for, and at the same time taking advantage of the interest provision which was intended to prompt the state to make timely payments where there were no disputes between the parties, or after any existing disputes were resolved. Indiana Dep’t of Hwys. v. Small, Inc., 495 N.E.2d 248 (Ind. App. 1986).

Prohibition Against Double Recovery.

An award of interest under this section, which provides for the payment of a penalty for late payment to a contractor, precludes a further award pursuant to 34-4-16-6, which deals with interest awarded on judgments against the state. Indiana State Hwy. Comm’n v. Bates & Rogers Constr., Inc., 448 N.E.2d 321 (Ind. App. 1983).

- Retainage.

Where a contractor claims it is entitled to additional compensation, under the present version of subsection (e), the state is not required to pay the retainage within 180 days after final acceptance of the contract and, therefore, the interest for late payment provision of subsection (f) is not triggered. Thus, the award of interest on the retainage commencing after the state's final acceptance is error. Indiana Dep’t of Hwys. v. Small, Inc., 495 N.E.2d 248 (Ind. App. 1986).
Grade separations - Maintenance of separations. - Whenever a state highway is being constructed or reconstructed and such highway crosses or intersects any steam railroad or electric railroad, the department may, if in its opinion it is practicable, separate grades at such crossings, and if unable to agree with such railroad or electric railroad as to such separation and the method of accomplishing the same, apply to the public service commission by verified petition asking that the grades be separated at such crossing. Upon the filing of such petition, the public service commission shall have and exercise all of the powers and authority conferred upon it by IC 8-6-1 [8-6-1-1-8-6-1-9] and any railroad, interurban street railroad, or suburban street railroad, whose tracks are involved in any such crossing shall have all the rights conferred by and be subject to all the duties imposed by IC 8-6-1. When any separation of grades is made either by agreement, or by order, the department shall pay one half [1/2] of the total expense of such separation and treat the same as a part of the cost of such highway, the other one half [1/2] to be paid by the railroad, interurban street railroad, or suburban street railroad whose tracks are involved in such separation. In cases where two [2] or more railroads, interurban street railroads or suburban street railroads are located in such proximity to each other as to be involved in any single separation of grades, then in such case the half of such cost not paid by the department shall be paid by the public service commission, apportioned between such railroads, interurban street railroads or suburban street railroads, as the case may be, in proportion as the cost of such separation has been enhanced by the presence of the respective railroads, interurban street railroads or suburban street railroads. After the construction of any such separation the department shall maintain the highway and the structures supporting it and the railroad or electric railroad shall maintain its roadway and track and the structures supporting the same. [Acts 1933, ch. 18, § 19, p. 67; 1980, P.L. 74, § 184; 1981, P.L. 41, § 42.]

Cross References. Elimination of hazards, cooperation with federal government, 8-14-4-4.

Separation of grades in cities or towns, 8-13-6-2.

Opinions of Attorney-General. The state highway commission is not authorized to expend its funds in conforming a railroad crossing to a new grade, which is included in obligation of railroad under 8-4-1-14, 1938, p. 34.

Railroads occupying highways - Manner of improvement - Penalty. - In all cases where the track or tracks of any steam, electric, interurban or street railroad company occupies any part of any highway which is ordered improved and maintained by the department under the provisions of this chapter, such railroad company shall improve and maintain, or pay for the cost of improving that portion of the highway occupied by its tracks, including the space between the rails, the space between the tracks, if there be more than one [1] track, and the space eighteen [18] inches in width on the outside of the rails, but in all cases where practicable, such improvement to the full width thereof shall be constructed outside the area occupied by such tracts, and, where not practicable to do so, then the department shall have the power to require such tracks to be removed to that part of such highway outside the area to be so improved. Whenever such highway improvement is made so as to embrace within its limits the tracks of any railroad, interurban, suburban or street railroad then such improvement shall be made of sufficient width to give as much room for general travel on the side or sides and outside of such tracks as is given in places where there are no such tracks within such improvement. Any such railroad may elect, by written notice thereof filed with the department, not less than twenty [20] days prior to the date on which the contract for the improvement of such highway shall be let, to improve the portion of such highway occupied by its tracks or to pay for the improvement thereof as done by the department. If the railroad company shall elect to improve the portion of the highway occupied by its tracks, it shall perform the work of improving such portion of such highway with such material and in such manner and according to such plans and specifications as the department may prescribe and shall commence, proceed with and complete the work within a time to be fixed by the department, and for failure so to do shall be subject to a fine of not to exceed fifty dollars [50.00] per day for each and every day that such improvement is not commenced or completed and after the date named by the department. If the railroad company shall elect to pay for the improvement as done by the department, any sums so assessed to cover the cost of such improvement, together with all the cost in collecting the same, including attorney's fees, to be fixed by the court and taxed as costs in the action brought to enforce payment, shall, from the date of filing a statement of such assessment, attested by the department, in the office of the county recorder of the county in which such improvement was made, constitute a lien, to which only the lien of the state for state, county, township and school taxes shall be paramount. [Acts 1933, ch. 18, § 20, p. 67; 1980, P.L. 74, § 185.]

8-13-5-15 [36-121]. Tearing up or disturbing highways - Signs, markers, devices - Advertising - Unlawful acts - Penalties. No state highway may be torn up or otherwise disturbed for any purpose without the written permit of the director of the department, and then only in accordance with the regulations prescribed by the director of the department; all such work shall be done under
his supervision, and all the cost of replacing the highway in as good condition as previous to its being disturbed shall be paid by the person to whom or in whose behalf the permit was given. The department shall mark with proper markers, showing the number of highway, all state highways, including the routes of the highways through cities and towns, together with such caution and direction signs as the department may deem advisable. It is a class C infraction for a person to put, place, or maintain within twenty [20] feet of the right-of-way limits of any state highway, outside the limits of any city or town, any sign or other device containing the words "stop," "caution," "slow," or any other word or device which also might be construed as a warning to persons using the highway. It is a class C infraction for a person to construct or maintain any sign or advertising device within one hundred [100] feet of the right-of-way of such a highway which obstructs the view of the highway of a person traveling such highway for a distance of five hundred [500] feet or less from such sign or device as he approaches the same. The department may remove unlawful signs, markers, and devices. [Acts 1933, ch. 18, § 21, p. 67; 1935, ch. 86, § 9, p. 249; 1978, P.L. 2, § 853; 1980, P.L. 74, § 186.]

Cross References. Infraction and ordinance violation enforcement proceedings, 34-4-32-1-34-4-32-5.

NOTES TO DECISIONS

In General.

Where statutes clearly give the court jurisdiction over the subject-matter of proceedings to alter and repair a drain, the state highway commission has no power to veto such project simply because it crosses a state highway. State v. Roberts (1948), 226 Ind. 106, 78 N.E. (2d) 832, 78 N.E. (2d) 440.

This section does not vest the chairman of the state highway commission with power to forbid or prevent a highway from being torn up or cut through by persons lawfully entitled to do so in construction of a drain under a judgment of a court of competent jurisdiction. State v. Roberts (1948), 226 Ind. 106, 78 N.E. (2d) 832, 78 N.E. (2d) 440.

8-13-5-18 [36-124]. Prison labor. - The department, with the approval of the governor, may enter into an agreement with the authorities of any of the penal institutions of the state, county or city for the use of prison labor in the preparation and manufacturing of road materials. [Acts 1933, ch. 18, § 24, p. 67; 1980, P.L. 74, § 187.]

Cross References. Entering into contractual agreements between department of correction and other state agencies, 11-10-8-2.

8-16-8. CITY BRIDGES BUILT THROUGH PUBLIC SUBSCRIPTION

8-16-8-1 [36-1906a]. County having three or more second class cities - Repair, reconstruction or replacement of damaged bridge in city of second class. - Any county of this state having three [3] or more second class cities located therein, may pay up to fifty percent [50%] of the cost for the repair, reconstruction or replacement of any damaged bridge in any such city of the second class over which passes an arterial highway serving as a main means of ingress and egress for such city: Provided, That there shall be first raised by popular subscription, at least fifty percent [50%] of the total cost of the repair, reconstruction or replacements of such bridge and in addition thereto, the county authorities of such county shall have appropriated up to fifty percent [50%] of such cost. [Acts 1957, ch. 97, § 1, p. 156.]

8-16-9. COUNTY LINE BRIDGES

8-16-9-1. [36-2002]. Proceedings - Act of 1903. - (a) Whenever public convenience shall require the erection, repair, or purchase of any bridge across any stream forming the boundary line between two [2] or more counties within this state, upon application therefor to the board of county commissioners of either of such counties, such board of county commissioners may, if they think it expedient, declare their willingness to aid in the erection, repair, or purchase of such bridge, by resolution or order, and shall cause notice thereof to be given to the boards of county commissioners of the other counties interested therein. And whenever it may be ascertained that the boards of county commissioners of all such counties have made such order or resolution, such boards of county commissioners shall, by concurrent resolution, cause a survey and estimate to be made, submitting plans and specifications therewith, by some competent person, to be presented to their respective boards of county commissioners, at some specified time and place, at or near the site of such contemplated bridge, when such boards of county commissioners shall meet in joint session to estimate and determine the kind of bridge which shall be erected, or repairs to be made, and the manner and time when payments shall be made for the erection or repair of such bridge; and shall cause the plans and specifications that may be agreed upon and adopted by them to be placed on file with the county auditor of the county which first declared its willingness to aid in the erection or repair of such bridge; Provided, That whenever a board of county commissioners of any county shall have notified the board or boards of county commissioners of any other county or counties interested in the erection, repair, or purchase of any bridge as specified in this section, and such board of county commissioners so notified shall fail or refuse, for the
period of thirty [30] days, to accept or act on the same by joining in the building, repair, or purchase of such bridge, then, in that event, the board of county Commissioners passing such order may proceed in accordance with the provisions of this section. Such board of commissioners passing such order may, if in their opinion, public convenience requires the same, build or repair such bridge under the same rules and regulations as are in force for the building and repair of bridges wholly within one [1] county, after first having obtained the consent and permit of the landowner in the adjoining county whose land will be occupied by such bridge to the building of the same.

(b) As an alternative to subsection (a), such board of commissioners passing such order may apply for the erection or construction of such bridge by the counties which will be affected thereby, by petition filed in the circuit or superior court of either of the counties in which such proposed bridge will be situated. The petition so filed shall describe the approximate location and cost of such proposed bridge, the stream which such bridge is designed to cross, the counties which will be affected by and will be liable for the payment of any part of the cost of such proposed bridge, and such other facts as the board of commissioners presenting such petition shall deem pertinent. Upon the filing of such petition, the clerk of the court shall fix or note thereon the day set for the docketing thereof, and shall give notice of the filing and pendency of such petition and the time fixed for the docketing thereof to the auditor of each county which will be affected by the construction of such bridge, other than the county whose board of commissioners shall have filed such petition. The notice so given shall include a full and complete transcript of the petition so filed and shall designate the time when and the place where the hearing will be held to determine whether such petition shall be granted. If it appears to the court having jurisdiction of such cause that notice has been given of the filing and pendency of such petition as provided in this subsection, the court shall order the same placed on the docket of such court as an action pending therein. On the day so designated, the court shall consider such petition, and if it finds such petition defective, shall dismiss the same unless such petition shall be amended within such time as may be fixed by the court. If the court deems such petition sufficient, such court shall make an order referring the same to a board of three [3] viewers who shall be competent and disinterested persons of intelligence and good judgment and none of whom shall be residents of any of the counties affected by the construction of such bridge. Each of such viewers shall take an oath that he will faithfully and honestly perform his duties before entering thereon. It shall be the duty of the clerk of the court to give notice to each of such persons of this appointment. All objections to any viewer so appointed not made within ten [10] days after such appointment shall be deemed waived. In the order referring such matter to such board of viewers, the court shall fix a time and place for the meeting of such board of viewers and a time when they shall report. The clerk shall deliver to them a duplicate copy of such petition and of such order, and they shall meet accordingly. The viewers so appointed shall make personal inspection of the location of the proposed bridge and shall ascertain the amount of the traffic likely to be accommodated thereby and any existing facilities for the transportation of traffic across such stream. The only matters which such board of viewers shall be required or authorized to determine shall be:

(1) First, whether such proposed bridge will be of public utility.

(2) Second, whether the public interest and convenience to be subserved thereby will be in excess of the probable expense, costs, and damages of constructing such bridge.

If they find either of these inquiries in the negative, they shall make report of such finding to the court, and thereupon the petition shall be dismissed at the costs of the petitioners, to be paid out of the general fund of the county treasury of the county whose board of commissioners presented such petition. But if they find otherwise, they shall make report of such finding to the court, and, upon the making of such report to the court, ten [10] days, exclusive of the day of filing such report and Sundays, shall be allowed to the board of commissioners or to any taxpayer of any county affected to remonstrate against such report, and the only grounds for remonstrance shall be that such proposed bridge will not be of public utility or that the public interest and convenience to be subserved thereby will not be in excess of the probable expense, costs, and damages of constructing such bridge. If more than one party or board of commissioners remonstrate, the same shall be consolidated and tried together. If the finding and judgment of the court be in support of the remonstrance or remonstrances, the proceedings, shall be dismissed at the costs of the petitioners, to be paid as provided in this subsection. But if there be no remonstrance, or if the finding and judgment of the court be against the remonstrance or remonstrances, the court shall make an order declaring the proposed bridge established, and directing the boards of commissioners of the respective counties affected to proceed jointly in the establishment of such bridge, as provided in subsection (a) of this section, and shall further direct that the cost of such bridge shall be borne by the respective counties affected in proportion to the assessed valuation of the taxable property located therein. If such bridge be ordered established, all costs incurred shall be added to and shall constitute a part of the cost of the construction of the bridge.
Each viewer provided for in this subsection shall receive the sum of five dollars [$5.00] per day for each and every day or fraction thereof during which he may be engaged in the discharge of his duties as such viewer and in addition thereto his necessary expenses incurred, to be allowed by the court.

(c) The provisions of section 3 [8-16-9-3] of this chapter shall not be construed to apply to bridges which are established in conformity with the procedure prescribed in subsection (b) of this section. [Acts 1903, ch. 11, § 1, p. 19; 1923, ch. 190, § 1, p. 554; P.L. 66-1984, § 67.]

Opinions of Attorney-General Bridges on county lines are to be maintained by the cooperation of both counties, and are not the sole responsibility of the county on whose eastern or southern boundary they lie, as with roads pursuant to 8-17-1-45, 1973, No. 29, p. 91.

8-16-9-2 [36-2003]. Appointment of superintendent - Bond. - It shall be the duty of said boards of county commissioners, while in joint session, to appoint one or more persons as superintendents, who shall have full control and supervision of the erection or repair of said bridge, subject, however, to such regulations as such boards of county commissioners may determine upon; and such superintendent shall give bond in such sum as may be required by said boards of commissioners, and to be approved by them. [Acts 1903, ch. 11, § 2, p. 19.]

8-16-9-3 [36-2004]. Appropriations by counties - Recovering cost. - It shall be the duty of such boards of county commissioners, in joint session, to make such appropriation for their respective counties as will make an equitable proportion to each county of the whole cost of construction, repair, or purchase of such bridge, and said boards of county commissioners shall, by concurrent order or resolution, declare what proportion of the whole cost of the construction, repair, or purchase of such bridge shall be paid by each county interested therein; and when the requirements of section I [8-16-9-1] of this chapter have been complied with, and the proportion of cost to each county has been agreed to, and one [1] of the counties which will be affected by the erection, repairing, or purchasing of said bridge refuses to join in the construction, repairing, or purchasing of such bridge, the county desiring such improvement may construct, repair, or purchase such bridge, as provided in section I of this chapter, and when the cost of such bridge or repairs does not exceed three thousand five hundred dollars [$3,500], the county making such improvement shall be entitled to recover from the adjoining county affected by such improvement the amount that said county should have paid had it joined in the said improvement, said claim to be enforced as other claims are enforced against counties in this state; and when such claim is litigated, the judgment shall include a reasonable attorney fee for the plaintiff's attorney. [Acts 1903, ch. 11, § 3, p. 19; P.L. 66-1984, § 68.]

8-16-9-4 [36-2005]. Contracts - Bids - Bonds of bidders and contractors. - All boards of county commissioners, proceeding under this chapter to erect, repair or purchase joint bridges, in advertising for bids, letting contracts and requiring affidavits and bonds of bidders and contractors, shall be governed by IC 36-1-12. [Acts 1903, ch. 11, § 4, p. 19; 1981, P.L. 57, § 21.]

8-16-11. COUNTY TUNNELS CONSTRUCTED UNDER BRIDGE LAW

8-16-11-1 [36-2007]. Tunnels in place of bridges. - Whenever, in the judgment of the boards of county commissioners of any county, it is necessary to bridge any highway or public street across any navigable water, such board of county commissioners may, if in its judgment it deem it best, construct a tunnel underneath such navigable water, on such public street or public highway in lieu of such bridge. [Acts 1911, ch. 256, § 1, 624.]

8-16-11-2 [36-2008]. Tunnels - Construction, law governing. - In the event such board of county commissioners shall determine in favor of the construction of any such tunnel in lieu of a bridge, then the construction of such tunnel shall be done under all provisions of the laws now in force for the construction of bridges on public highways and public streets by boards of county commissioners, and shall be governed not only by the laws now in force relating thereto, but by all subsequent legislation thereon. [Acts 1911, ch. 256, § 2, p. 624.]

8-16-11-3 [36-2009]. Tunnels - Chapter construed. - This chapter shall be construed as supplemental to all statutes on the subject of the construction of bridges across waterways on public streets and highways by boards of county commissioners, and shall not be construed as repealing any statute or statutes upon said subject. [Acts 1911, ch. 256, § 3, p. 624; P.L. 66-1984, § 78.]

8-17-1. COUNTY UNIT LAW

8-17-1-2.1. Construction of cattle guards in certain counties. - In all counties of the state having a population of less than fifty thousand [50,000] according to the last preceding United States [decennial] census, any person through whose land any county highway heretofore located and established, or hereafter located and established may petition the board of commissioners of the proper county for permission to construct a cattle guard or other such device for the purpose of keeping livestock on said property.

In determining whether such permission shall be given said board shall consider the traffic flow upon said highway and the cost of the erection of fences
versus the cost of the construction of a cattle guard.

The landowner shall bear the cost of said construction and the erection of cattle crossing warning signs upon said highway warning motorists that they are about to enter such an area. [IC 8-17-1-21, as added by Acts 1980, P.L. 76, § 1.]

8-17-1-10 [38-311]. Auditor to give notice - Separate bids for bridges. - When any highway or part of a highway shall have been ordered to be laid out, widened, changed, established, graded, drained and paved, the board of commissioners of the county shall make an order requiring the auditor to give notice, in accordance with IC 5-3-1-5-3-1-9, that, on a day to be named by the board in the order, sealed proposals will be received by the board for the making of the improvement in accordance with IC 36-1-12. However, if the proposed improvement includes any bridge having a total span of more than twenty feet [20], the board of commissioners shall receive separate bids for the bridge, and shall enter into a separate contract to build the bridge under the law now in force. If there should be more roads than one [1], the notice shall relate to all. [Acts 1919, ch. 112, 11, p. 531; 1981, P.L. 57, § 22.]

NOTES TO DECISIONS

In General.

Complaint of supplier of materials was subject to demurrer where there was no showing that material was purchased after due notice as required by law. Dickerson v. Board of County Comrs. (1938), 102 App. 277, 199 N. E. 881.

8-17-1-13 [38-314]. County road bonds - Interest - Partial payments. - (a) For the purpose of raising money to pay for the establishment, laying out, opening, widening, changing, improving or constructing of such highway or highways, the county shall issue the bonds of the county, not to exceed in amount the contract-price and all expenses incurred and damages allowed prior to the letting of the contract, and a sum sufficient to pay the per diem of the engineer and superintendent, hereinafter provided for during the construction of the work, and the issue of bonds shall also provide for a sufficient sum in addition to the above to pay for any extras or changes not contemplated in the original plans and specifications and contract which the board of commissioners shall deem necessary, and which might be omitted by the engineer who drew the plans or specifications or by oversight, but such amount shall not be in excess of three percent [3%] of the contract-price, and the bonds issued shall be in denominations of not less than fifty dollars [$50.00] each and shall be payable in equal series annually thereafter for a period of not exceeding twenty [20] years, and the date of pay-

mental of the principal shall be upon the fifteenth day of November or the fifteenth day of May, as the case may be, taking the nearest of these dates after the date of their issue.

(b) The interest upon the bonds shall be payable semiannually on the fifteenth day of November and the fifteenth day of May thereafter, in accordance with the date of the issuance of the bonds. If the date of issuance of the bonds shall be prior to the date of the annual tax levy, then the first bond and the first interest coupons on all of the bonds shall mature on the fifteenth day of May of the next succeeding year, and the balance of the bonds shall mature from the fifteenth day of May in the intervals provided herein, but if said bond issue shall be made in any year after the date of the general tax levy, then the first bond and all the interest coupons shall mature on the fifteenth day of May of the second succeeding year thereafter and the balance of the bonds and coupons at the regular intervals as provided herein after said fifteenth day of May of the said succeeding year.

(c) Said bonds shall bear interest at any rate, and the board of commissioners shall designate and determine the term of years for which such bonds shall issue and be payable, but, in no event, shall the term be less than ten [10] years nor more than twenty [20]. The county treasurer shall sell the bonds at not less than their face value, and the proceeds shall be kept as a separate and specific fund to pay for the improvement or construction of the particular road for which they were issued, and shall be paid by him to the contractor, upon warrant of the auditor, as directed by the board of commissioners; the commissioners shall order the same to be paid in such amounts and at such times as they may agree, but no payment shall be made by the commissioners for more than eighty percent [80%] of the engineer's estimate of the work done by the contractor, nor shall the whole amount of the contract be paid until the road shall have been received as complete by the board of commissioners. If there be a surplus left from the sale of the bonds after the road is complete, the same shall be transferred to a fund for the improvement or construction of any other highway in the county and shall not be used for any other purpose. All funds shall be kept in the public depositories of the county and the interest derived from the same shall be, from time to time, added to the fund. [Acts 1919, ch. 112, § 14, p. 531; 1981, P.L. 11, § 59.]

NOTES TO DECISIONS

County Bonds.

The term "county bonds," as used in the title of this act, includes bonds issued by the county officials to be paid for by a levy on a special taxing district. Forrey v. Board of County Comrs. (1920), 189 Ind. 257, 126 N. E. 673.
8-17-1-16 [36-323]. County highway system. - Any highway improved under the provisions of this chapter shall become a part of a highway system of the county and shall be kept in repair thereafter the same as other roads are kept in repair, and shall be subject to and governed by the same statutes governing the repair and keeping in repair of highways [Acts 1919, ch. 112, § 17, p. 531; P.L. 66-1984, § 81.]

Cross-Reference. Maintenance and repair of county highway, 8-17-3-1 to 8-17-3-10.

8-17-1-28 [36-509]. Bids, auditor to advertise. - If said boards of commissioners, by a majority vote of all the members present, find that said county line improvement petitioned for will be of public utility or convenience, and all claims for damages have been settled or fixed as provided in this chapter, said board shall direct the county auditor of the county where said petition is filed to advertise for bids as now provided for by section 10 [8-17-1-10] of this chapter, and said auditor shall fix the time when said bids shall be received at his office and opened, and shall see that the commissioners of his own county are summoned to appear at said time and at least ten [10] days notice be given to the commissioners of the other county or counties of the time and place of receiving and opening the bids, and it shall be the duty of the county commissioners of the said counties interested to meet in joint sessions, at the time and place fixed in said notice, and then and there award the contract as provided in section 10 of this chapter, and the board, while in joint session, shall appoint the auditor of the county in which the petition is filed as engineer, if he be a civil engineer, and if not, then they shall appoint some other competent civil engineer to act as engineer; and the board shall also appoint an inspector to inspect the construction or improvement of said road, as provided in section 16 [8-17-1-16] of this chapter; Provided, however, That the notice for bids as required in section 10 shall be published in one [1] newspaper in each county interested in such improvement for two [2] weeks successively, for at least ten [10] days before the date of letting, copies of which notice and the proof of publication thereof to be filed with the auditor of the county where the letting takes place by each paper publishing such notice, with the paper's charges taxed thereon, before the letting, and in case of failure to so file said proof, no fee shall be taxed or collected for such publication by such newspaper so failing. [Acts 1919, ch. 112, § 30, p. 531; P.L. 66-1984, § 87.]

8-17-1-33 [36-514]. Joint sessions of county commissioners. - For the purpose of carrying out the provisions of this chapter with reference to the building of highways upon county lines, the county commissioners of such counties may meet in joint sessions with the county surveyor or engineer as often as may be necessary, and at such times and places as the board before which the petition is filed may designate, due notice of the time and place having been served on the commissioners of the adjoining county or counties for no less than five [5] days; and such joint sessions may adjourn from day to day, or from one [1] period to another, as may be necessary. [Acts 1919, ch. 112, § 34, p. 531; P.L. 66-1984, § 90.]

8-17-1-38 [36-704]. Report of commissioners - Meeting of county council. - Whenever a petition is filed with the board of commissioners for the improvement of any highway or proposed highway under the provisions of this chapter, and if, after the board of commissioners of the county or the joint board of commissioners, if said proposed improvement be of a county line highway, shall have reported that such improvement of highway or proposed highway or any part thereof, or changes or improvement thereof is of public utility, the same shall be reported by such commissioners to the auditor of the county and he shall, within five [5] days, call a meeting of the county council, by giving them at least three [3] days written notice before the council is called together. And such notice shall designate the purpose of the call, and the beginning and course of the highway proposed to be improved. And such county council shall then view the premises and examine the petition filed and determine whether or not the improvement contemplated and recommended by the commissioners would be of public utility: and if the county council, by a majority vote, shall decide that it would be of public utility to improve the highway or proposed highway or any part thereof as prayed for in the petition, then the board of commissioners may proceed under the provisions of this chapter. But if the county council should decide that it would not be of public utility to improve said highway or proposed highway or any part thereof, as prayed for in the petition, then further proceedings under this chapter shall be at an end. [Acts 1919, ch. 112, § 38, p. 531; P.L. 66-1984, § 93.]

NOTES TO DECISIONS

Appeal to Circuit Court.

The circuit court was not deprived of jurisdiction to consider a highway improvement appeal, where a change by the highway commissioner's engineer, made after appeal taken, did not affect its essential character. Kelly v. Herbst (1930), 202 Ind. 55, 170 N. E. 853.
Notice to County Council.

Proper notice under this section, by publication, may be given council to view road and to make finding of public utility. Kelly v. Herbst (1930), 202 Ind. 55, 170 N. E. 853.

In a road improvement proceeding, where the county council appeared and voted on the road and its public utility, irregularity in the notice given the council did not invalidate the action. Kelly v. Herbst (1930), 202 Ind. 55, 170 N. E. 853.

8-17-1-39 [36-705]. Materials - Department of highways - Inspection. - No material shall be used in the construction of a highway, bridge or culvert in the state of Indiana unless such material shall be equal to the material required and shall meet all tests and standards as required by the department as suitable for the building of highways, bridges or culverts by the department, and it is hereby made the duty of the board of commissioners, or of the joint board of commissioners, if the highway is upon a county line, to inquire of the department, if one there be, before the perfection of plans and specifications, for their recommendation of the standards and tests of all kinds of materials which may be used in highways, bridges or culverts, and which recommendation shall be in writing, and the board or boards of commissioners may, if they so desire, submit all plans, specifications, profiles and forms of contract to the department for their approval, recommendation and assistance. When it is proposed to improve any highway the cost of which improvement is estimated to be more than two thousand dollars [$2,000] per mile, or to construct or repair any bridge the cost of which is estimated to be more than two thousand dollars [$2,000], if a petition is filed, signed by fifty [50] or more freehold electors of the county or counties, with the board of commissioners, asking that the plans and specifications therefor be submitted to the director of the department, then said board or boards shall submit said plans and specifications to the director and shall not award any contract for the construction of said improvement or bridge until said plans and specifications, or amended plans and specifications, have been approved by the director. Should the petitioners further ask, or should a petition be filed signed by fifty [50] or more freehold electors of the county or counties, asking that the board or boards of commissioners request the director to assign a representative of the department to inspect the work of construction as it progresses, then said board or joint board shall make such request, and it shall be illegal for said board or boards to approve or order paid any claim in payment for the construction of said improvement or bridge unless such representative shall have certified that the materials furnished or the work done for this payment is claimed is in accordance with the plans and specifications therefor. Upon the completion of the contract, the department shall submit a claim to said board or boards of commissioners in any amount equal to that incurred by the department for such inspection services, and said board or joint board shall allow said claim, and the amount so allowed shall be paid into the state highway fund, but in case the department sends their representative to inspect the work of construction as it progresses, then, in that event, the commissioners shall not appoint an inspector as herein provided for [in] this chapter. The director of the department shall pass promptly upon all plans and specifications, and provide inspectors when required under the provisions of this section, and the cost shall be considered as a necessary expense of such improvement and shall be taken into consideration in fixing the amount of bonds to be sold. [Acts 1919, ch. 112, § 39, p. 531; 1980, P.L. 74, § 301.]

NOTES TO DECISIONS

Transcript on Appeal to Circuit Court.

In a proceeding under the County Unit Road Law (8-17-1-1--8-17-1-44), the fact that the transcript on appeal to the circuit court from the board of county commissioners did not contain the plans for the road improvement did not constitute grounds for dismissal of the proceedings in the circuit court, where the plans and specifications were sent to the state highway commission. Kelly v. Herbst (1930), 202 Ind. 55, 170 N. E. 853.

8-17-41 [36-707]. Plans and specifications. - (a) The plans and specifications shall include all bridges, culverts, and approaches.

(b) The bonds sold shall be for enough to cover the expense of such bridges, culverts, and approaches, and the contract, when let, shall include the same, but bridges, culverts, and approaches built under the provisions of this chapter shall only be so done in connection with the improvement of the highway or highways of which they are a necessary part, and nothing in this chapter shall affect or change the law in force on March 13, 1919, with reference to the building of bridges, culverts, and approaches when not connected with the improvement of other parts of the highway. [Acts 1919, ch. 112, § 41, p. 531; P.L. 60-1984, § 94.]

8-17-1-42 [36-708]. Expenses - Engineer's per diem - Attorney's fees. - The following expenses incident to the establishment, laying out, opening, widening, changing, constructing, or improving of the highway, either when the same lies wholly within a county or upon a county line, may be allowed by the board of commissioners of the county and shall be considered a part of the necessary expenses incurred.

(1) Reasonable allowance to the members of the
board of commissioners covering expenses necessarily incurred in and about the construction of any highway under this chapter.

(2) The engineer’s per diem and expenses in viewing, advising the board of commissioners with reference to said proposed highway, or any changes or improvement thereof, and the per diem of necessary helpers for such engineer in connection therewith the per diem and expenses of such engineer in preparing the plans and specifications and the per diem of the inspector in charge of the work.

(3) The cost of giving of notice required by law to be given in connection with the estimate of changing, widening, constructing, or improving of such highway; petitioners’ reasonable attorney fees.

(4) The cost of printing and of selling bonds for the construction of the same.

(5) Such damage as may be allowed as in this chapter provided, and thirty-five dollars [$35.00] shall be allowed the auditor of the county for copying the petition and all the proceedings in a book provided for that purpose, which shall be in addition to his regular salary by reason of added duties.

When there is no litigation in connection with such improvement, the attorney fees shall not exceed one hundred dollars [$100], and if there be litigation, the court before whom the cause is tried shall make a reasonable allowance for attorney fees, which shall be paid from the funds derived from the sale of bonds. [Acts 1919, ch. 112, § 42, p. 531; P.L. 68-1984, § 95.]

NOTES TO DECISIONS

Collateral Attack.

Where taxpayer neglected to appeal from allowance of claims of county commissioners for expenses of building highway by commissioners, he could not enjoin payment of claims. Bentley v. Board of County Comrs. (1936), 102 App. 533, 200 N. E. 499.

8-17-3. RESPONSIBILITY FOR COUNTY ROADS OF COMMISSIONERS, SURVEYOR AND HIGHWAY SUPERVISOR

8-17-3-3 [36-1163]. Duties of county surveyor - Estimates - Budgets - Assistants. - The county surveyor shall investigate and determine the method of highway maintenance best adapted to the various highways of the county under his supervision and shall establish standards for the maintenance of bridges, culverts and highways, giving due regard to the topography, condition, character and volume of the traffic, the availability of road repair materials, drainage, and of the financial ability of the county to pay the cost of repairs. He shall, annually, on or before the first day of September of each year, make a complete itemized estimate of the cost of maintenance of his office and an itemized estimate, on forms prescribed by the state board of accounts, of the cost of repair and maintenance of highways, bridges and culverts within the county, under his supervision, during the next ensuing year, and shall file the same in the office of the auditor of the county for the use of the board of commissioners who shall approve, or amend and approve, such estimates and the estimate, as approved or as amended and approved, shall become the budget for the ensuing year; and shall be available to the board of county commissioners for the purposes herein provided without other or further appropriation. Upon request of the surveyor, the commissioners may at any time increase or decrease any item in the budget, provided the expenditure does not exceed the amount to be received, and such commissioners shall determine and designate such assistance as may be necessary, and fix the salaries thereof. [Acts 1933, ch. 27, § 3, p. 139.]

Compiler’s Note. The word "assistance" in next to the last line of this section apparently should read "assistants."

NOTES TO DECISIONS

In General.

The evident purpose of this section requiring the county surveyor to file annually in the office of the county auditor a complete itemized estimate of
the cost of repairs and maintenance of highways, bridges, and culverts, is to inform the board of county commissioners of what is necessary to be expended for different items, leaving such matters under the control of the board. Bateman v. State (1938), 214 Ind. 138, 14 N. E. (2d) 1007.

Status of Assistant.

An assistant to the county highway supervisor, appointed by county commissioners to inspect roads and repair or report defects, with power to institute proceedings for entry on lands to make drains or to procure repair materials, was a public officer and not an "employee" within the meaning of the Workmen’s Compensation Law; and the industrial board properly denied compensation for his death from injury received while he was discharging his official duty. Keene v. Board of County Comrs. (1938), 105 App. 641, 16 N. E. (2d) 967.

Cross-Reference. Purchase of supplies exceeding §350, 5-17-1-1 -- 5-17-1-9 (Burns § 53-501 -- 53-509).

8-17-3-6. Assistants - Reports - Bonds - Compensation - Payment - Road fund. - The assistants provided for in this chapter, shall, at all times, be under the direction and supervision of the county surveyor and shall make all reports required by such surveyor. Each assistant shall file with the county surveyor, on or before a day of the month to be designated by the county auditor, an itemized statement of all work done by him and under his supervision, during the preceding month, showing the names of the parties who performed the work, the dates upon which such work was done, the nature of the work done, upon what road or roads, and, if new material is used, either by putting on gravel, stone, or another road material, or repairing bridges or culverts, such report shall show the cost of such material, and such report shall be sworn to before some person qualified to administer oaths. Each assistant may, in the manner prescribed by IC 5-4-1 [5-4-1-1 -- 5-4-1-19], be required to give bond for the faithful performance of his duties. The report, when so made and approved by the county surveyor, and filed by him with the county auditor, shall be as a claim against the county and the board may hear proof and allow the same if found correct and when allowed, shall be paid monthly from the same if found correct and when allowed, shall be paid monthly from the special road fund of such county to such assistants, in the manner provided by law. [Acts 1933, ch 27, § 8, p. 139; 1981, P.L. 47, § 9.]

8-17-4.1. ACCOUNTING SYSTEM FOR LOCAL ROADS AND STREETS

8-17-4.1-1 [36-3801]. Definitions. - As used in this chapter unless otherwise provided:

(a) The term "municipality" means all municipal corporations and political subdivisions which have primary responsibility for roads and streets, except cities and towns having a population of less than twenty thousand [20,000] according to the most recent federal decennial census.

(b) The term "governing body" means in the case of a county, the board of county commissioners; in the case of a city, the mayor, who shall have the power to delegate the duty set forth in this chapter; and in the case of a town, the town board of trustees. [IC 8-17-4.1-1, as added by Acts 1971, P.L. 103, § 1; 1981, P.L. 44, § 8.]

8-17-4.1-2 [36-3802]. Requirement. - The governing body of every municipality shall be required to set up and maintain an adequate system of books and records as prescribed by the state board of accounts, for their departments having road and street and related responsibilities. [IC 1971, 8-17-4.1-2, as added by Acts 1971, P.L. 103, § 1, p. 479.]

8-17-4.1-3 [36-3803]. Development. - The state board of accounts shall develop systems of records for every municipality to maintain which shall be adequate in light of the anticipated number and type of transactions relating to roads and streets which the department having these responsibilities is likely to make in a fiscal year to show the sources and amount of receipts and expenditures of this department and the purpose or purposes for which the expenditures were made and to account for all funds. [IC 1971, 8-17-4.1-3, as added by Acts 1971, P.L. 103, § 1, p. 479.]

8-17-4.1-4 [36-3804]. Additional records. - The state board of accounts may require additional records to be kept by every municipality as may in its judgment be needed to adequately reflect the financial and material condition of this department. [IC 1971, 8-17-4.1-4, as added by Acts 1971, P.L. 103, § 1, p. 479.]

8-17-4.1-5 [36-3805]. Time for preparation of report. - The governing body of every municipality shall cause to be prepared as of December 31 of each year, an annual operational report of the department within the municipality which has road and street and related responsibilities. [IC 1971, 8-17-4.1-5, as added by Acts 1971, P.L. 103, § 1, p. 479.]

8-17-4.1-6 [36-3806]. Contents of report. - This report shall be prepared on forms prescribed by the state board of accounts and shall disclose the following:

(1) The receipts of the department for the calendar year and the sources of such receipts.
(2) The expenditures of the department during the calendar year in such detail as to properly reflect the purposes for which the expenditures were made and to account for all funds.

(3) Number of employees employed by the department each month during the calendar year and the work classifications of such employees.

(4) The proposed construction, reconstruction, and repair program for the calendar year next following the year of the annual report.

(5) Other such information as may be deemed necessary by the state board of accounts to properly reflect the financial condition and operations of the department. [IC 1971, 8-17-4.1-8, as added by Acts 1971, P.L. 103, § 1, p. 479.]

8-17-4.1-7 [36-3807]. Filing report. - The annual operational report shall be completed and a copy filed with the state board of accounts, the governing body of the municipality and with the department by February 15 next following the operational report year. The report shall also be made available to the public and the press. [IC 8-17-4.1-7, as added by Acts 1971, P.L. 103, § 1; 1980, P.L. 74, § 302.]

8-17-4.1-9 [36-3809]. Distribution, explanation and initial use of system. - The record system provided herein shall be distributed with an explanation by the state board of accounts to the municipalities in adequate time for the municipalities to use the system to keep a record beginning with the 1972 calendar year. [IC 1971, 8-17-4.1-9, as added by Acts 1971, P.L. 103, § 1, p. 479.]

8-17-5. COUNTY HIGHWAY ENGINEERS

8-17-5-1 [36-1122]. County highway engineer - Responsibilities. - The board of county commissioners of any county, or any two [2] or more counties acting under IC 36-1-7 [36-1-7-1 to 36-1-7-12], may employ a full-time county highway engineer who shall be responsible for the supervision of the design, construction, planning, traffic, and other engineering functions of the county highway department under the policies and directions established by the board, and who shall prepare or cause to be prepared all surveys, estimates, plans and specifications which are required. [Acts 1963, ch. 131, § 1; 1981, P.L. 11, § 61.]

Cross-Reference. Division of state aid to assist in employment of engineers, 8-11-3-7.

Opinions of Attorney-General. A county highway engineer may be employed at any time subsequent to August 12, 1963, but the state will not contribute towards the payment of any of his salary until after January 1, 1964. The payments made by way of a grant-in-aid subsidy are to be made available for use by the county in paying his annual salary during the same year in which the services are performed. There is no provision requiring the county to employ and pay an engineer a full year before distribution could be made to that county. 1963, No. 81, p. 328.

8-17-5-2 [36-1123]. Qualifications. - The county highway engineer shall be a registered engineer, licensed by the Indiana state board of registration for professional engineers, experienced in highway engineering and constructions and be or become a resident of the state of Indiana during his employment. [Acts 1963, ch. 131, § 2, p. 116; 1971, P.L. 104, § 1, p. 481.]

Opinions of Attorney-General. A county surveyor who is also employed by the board of county commissioners to serve as a county highway engineer is limited by the provisions of 17-3-72-3 (Burns' § 49-1055) and 17-3-72-10 (Burns' § 49-1062) as to the total amount of salary which he may draw for all services, 1964, No. 62, p. 337.

8-17-5-3 [36-1124]. Term of appointment. - The term of appointment for the county highway engineer shall be fixed by the board of county commissioners but shall not exceed four [4] years; however, the tenure of office may be terminated by the board. [Acts 1963, ch. 131, § 3, p. 116.]

8-17-5-4 [36-1125]. Salary - Expenses - Equipment. - The county highway engineer shall receive a salary fixed by the board of county commissioners and shall also be allowed actual traveling and other expenses incurred in the discharge of the duties of the office, salary and expenses to be payable out of county general funds, and/or the county distribution of motor vehicle highway account funds, and the county highway engineer fund. The board of county commissioners shall provide all facilities, equipment, and personnel reasonably required by the county highway engineer in the discharge of the duties of the office. [Acts 1963, ch. 131, § 4, p. 116.]

Opinions of Attorney-General. A county surveyor who is also employed by the board of county commissioners to serve as a county highway engineer is limited by the provisions of 17-3-72-3 (Burns' § 49-1055) and 17-3-72-10 (Burns' @ 49-1062) as to the total amount of salary which he may draw for all services. 1964, No. 62, p. 337.

8-17-5-5 [36-1126]. Bond - Work for other governmental units. - In the performance of his duties, the county highway engineer shall work under the policies and directions established by the board of county commissioners and shall, in the manner prescribed by IC 5-4-1 [5-4-1-1-5-4-1-19], give bond for the faithful performance of his duties. The county highway engineer shall not enter into contracts or agreements to provide engineering services for pay to other local governmental units: Provided, That he can enter into contracts to pro-
vide engineering services for pay with the board of county commissioners of any two or more counties, acting jointly, and, Provided, That at the direction of the county board of commissioners, the county highway engineer may perform, as a part of his official duties, highway engineering work for cities and towns within the county or counties. [Acts 1963, ch. 131, § 5; 1981, P.L. 47, § 11.]


8-17-5-6 [36-1127]. Duties. - In the discharge of his official duties, the county highway engineer shall, subject to the policies established by the board of county commissioners, perform the following functions:

(a) Classification of Road System. Prepare and publish a county-wide inventory and classification of the county highway system such that the total county federal-aid secondary system is included in the county primary or arterial system of roads.

(b) Bridge and Culvert Inventory. Prepare and keep a perpetual inventory of all bridges and culverts serving the county highway system; such inventory shall show the location, dimensions, condition and year built or installed for all bridges and major culverts.

(c) Standards for Road Construction. Prepare and publish standards of design, construction, and maintenance of the county arterial, feeder and local roads that will make the best and most economical use of local road materials.

(d) Long-Range Program. Prepare a long-range county-wide program of road and bridge construction and improvements, with the proposed projects arranged in order of priority. The program of proposed projects shall at all times cover a period of at least four years.

(e) Requests for Improvements. Investigate requests and petitions for road or bridge improvements that are received either by the commissioners or at public hearings and make recommendations to the board of county commissioners.

(f) Plans, Specifications, Contracts. Prepare surveys, designs, plans and specifications for all county road and bridge construction projects, whether built by county forces or let to contract; prepare contracts and advertise for bids.

(g) Construction Inspection. Make construction and materials inspection of all county road and bridge construction projects, whether built by county forces or let to contract, and inform the board of the status and progress of construction work, and certify the completion of construction projects.

(h) Traffic Safety Program. Develop a county-wide program of traffic safety that will provide for traffic control signs, signals, and speed limits, warning protection at railroad crossings, load limits, and detour routings.

(i) Approve Subdivision Streets. Inspect, check and approve the construction of subdivision streets that are to be taken into the county highway system; recommend appropriate action to the board when roads and streets in subdivisions are being taken into the county highway system.

(j) Estimates and Budgets. Prepare engineering estimates and make recommendations to the board as to the materials and equipment needed in the annual budgeting of both construction and maintenance funds. [Acts 1963, ch. 131, § 6, 116.]

8-17-5-7 [36-1128]. Performance of surveyor's duties. - County highway engineers employed pursuant to the provisions of this chapter shall perform the duties of the office of county surveyor which relate to roads and bridges, and to this extent and to the extent applicable, the provisions of IC 36-2-12 are hereby incorporated in this chapter by reference. [Acts 1963, ch. 131, § 7; P.L. 66-1984, § 99.]

8-17-5-9 [36-1130]. Engineer certified by auditor. - The county auditor of the county units that employ a full-time county highway engineer, meeting the requirements of this act [8-17-5-1-8-17-5-12], shall annually certify the same to the state auditor; such certification shall show the name and address of the county highway engineer and the serial number of his certificate of registration issued by the Indiana state board of registration. [Acts 1963, ch. 131, § 9, p. 116.]

Opinions of Attorney-General. A full-time county highway engineer cannot reach that status until registered and licensed by the Indiana state board of registration for professional engineers, thus the grant-in-aid subsidy to the county cannot be paid until the engineer meets the requirements of the section, including such licensing and such grant is not retroactive. 1966, No. 27, p. 202.

The county employing the engineer becomes eligible for a share of the grant upon the day that the engineer they hire meets all the requirements of the act. Thus their subsidy is based upon the number of days from the date of the qualification of the engineer to the end of the year and the number of days in the year. 1986, No. 27, p. 202.

8-17-5-12 [36-1133]. Highway supervisor's office not abolished. - This chapter shall not be construed as abolishing the office or employment of county highway supervisors; Provided, That the respective boards of county commissioners may provide for the county highway engineer to serve also as the county highway supervisor. [Acts 1963, ch. 131, § 12; P.L. 66-1984, § 101.]
Opinions of Attorney General. A county may claim a subsidy from the state for the employment of county highway engineer under 8-17-5-10 even when the county highway engineer also serves as the county highway supervisor as authorized by this section. 1977, No. 13, p. 33.

8-17-5-13. Applicability of section - Establishment of county engineering department by ordinance - Work of department supervised by county highway engineer - Organization by divisions. (a) This section applies to each county that employs a full-time county highway engineer under this chapter.

(b) A county engineering department may be established by ordinance.

(c) The county highway engineer shall, under the direction of the county executive, supervise the work of the department. The department may be organized into divisions. The divisions may perform county engineering services approved by the county executive. [IC 8-17-5-13, as added by Acts 1981, P.L. 11, § 62.]

8-17-7. HIGHWAY EXTENSION RESEARCH PROGRAM

8-17-7-2 [36-725]. Definitions. (a) "Local highway system," includes all roads, bridges, culverts, and the necessary supports thereto of earth, masonry, or other material, and further includes drainage facilities, as well as road-side developments within the rights-of-way.

"Department" refers to the state department of highways. [Acts 1959, ch. 331, § 2; 1980, P.L. 74, § 304.]

8-17-7-4 [36-727]. Purpose of research and extension program. (a) The research and extension program for the local highway system shall be for the purpose of developing and disseminating helpful information concerning local highway system planning, design, construction, operation, maintenance, financing, and administration.

(b) The department shall contract with an educational institution or a qualified private agency for the purpose of providing the research and extension program required under this chapter. Before executing the contract, the director of highways or his designee, shall meet with and obtain advice from committees designated by associations representing counties, cities, and towns. After the contract is awarded the institution or private agency receiving the contract shall meet regularly with the committees to obtain their advice. [Acts 1959, ch. 331, § 4; 1980, P.L. 74, § 305; 1981, P.L. 41, § 59.]

8-17-7-7 [36-730]. County commissioners to attend Purdue road school - Allowance for expenses of attendance. (a) It shall be the duty of each member of a board of county commissioners to attend and be present at any school or course conducted for local officials under IC 8-13-5-20; and the county council of each county may appropriate sufficient funds to pay each county commissioner of his county a per diem for expenses for each day or part of a day the commissioner is in attendance at any school or course conducted for local officials under IC 8-13-5-20, and to pay such commissioner a sum for mileage, for each mile necessarily traveled to attend such school, equal to that sum per mile paid to state officers and employees. The rate per mile shall change each time the state government changes its rate per mile. [Acts 1959, ch. 331, § 7; 1975, P.L. 15, § 9; 1980, P.L. 74, § 306.]

8-17-11. COUNTY LINE ROADS

8-17-11-2 [36-402]. Petition - Joint hearing. (a) Upon the presentation to the board of commissioners of any of said counties interested, at any regular session thereof, of a petition signed by seventy-five [75] resident freeholders, who are at least eighteen [18] years of age, of the townships abutting such county line road in any or all of such counties between which any such road is to be established, opened and laid out and improved by grading, graveling, paving with stone or macadamizing material, at least ten [10] of such petitioners to be from each township affected, said board of commissioners shall make and enter on record an order fixing the day to be named in said order when said board of commissioners shall meet in joint session, the board or boards of commissioners of the adjoining county or counties at the auditor's office or commissioners' room where said petition is filed, for the purpose of appointing viewers and a surveyor and engineer to perform the duties hereinafter described. The board of commissioners to which is presented such petition shall direct in their order that fifteen [15] days' notice be given by the auditor to the board or boards of commissioners of the county or counties adjoining, interested therein, of the presentation of such petition and the time and place of such joint session. [Acts 1907, ch. 209, § 2, p. 363; 1973, P.L. 23, § 5, p. 90.]

8-17-11-3 [36-403]. Contents of petition. (a) The petition or petitions filed herein shall set forth the beginning, course and termination and the general description of such public highway sought to be laid out and improved or improved hereunder, with the length of the road or roads sought to be laid out and improved or improved, together with a recommendation of the kind of improvement desired, which petition or petitions shall ask for the same character of improvement of the highway or highways described therein; Provided, however, That separate petitions may be so filed asking for the improvement of sections of such highway or highways which connect such highway with a free gravel or macadamized road at either end of all described,
and such board or boards shall consider all of such petitions as one [1] petition asking for the improvement of the whole line of road as described and connected, the same as if only one [1] petition asking for the whole line had been so filed: And, Provided further, That such petition or petitions shall have the affidavit of one or more freeholders of some township or townships abutting such highway sought to be improved attached stating that the said petition or petitions are signed by seventy-five [75] or more freeholders, who are at least eighteen [18] years of age, of such townships abutting such improvement prayed for, and that not less than ten [10] are from each township. [Acts 1907, ch. 209, 3, p. 363; 1973, P.L. 23, § 8, p. 90.]

NOTES TO DECISIONS

Affidavit of Freeholder.

In proceedings to construct improved highways on county lines, the petition filed with the board of county commissioners must be accompanied by the affidavit of a freeholder setting forth the matters required by statute in order to confer jurisdiction on the commissioners to act in the matter. Myers v. White (1914), 182 Ind. 108, 105 N. E. 775.

8-17-11-4 [36-404]. Notice by auditor. - It shall be the duty of the auditor, when said petition is filed, to give such notice by transmitting a certified copy of such order and petition including the names and proof attached to the auditor or auditors of such adjoining county or counties, the same to be served on the members of the board of commissioners of such adjoining county or counties by the auditor or auditors thereof at one upon the receipt of the same by calling them together and delivering such certified copy of such order to said commissioners, and also make record thereof in his office. [Acts 1907, ch. 209, § 4, p. 363.]

8-17-11-6 [36-406]. Viewers' report - Notice to taxpayers - Remonstrance. - Upon the filing of such reports by the engineer and viewers, the county auditor of each county shall, after a majority of such auditors having first agreed between or among themselves on a date to be fixed, give notice of the pendency of such petition to the taxpayers of the township in each of the counties to be affected by such improvements, by the publication of a notice in a weekly or daily newspaper of general circulation in each of such counties for two [2] weeks prior to the day fixed, stating in said notice that a joint meeting of the boards of commissioners of each of such counties shall be held on the day fixed in such notice at the auditor's office or commissioners' room of the county in which such petition is filed, with a brief description of the road and improvement and opposed there to shall file their remonstrance against said improvement, and that said boards of commissioners, when in joint session, shall hear any and all remonstrances filed. Any resident taxpayer affected by the improvement proposed may file his remonstrance against said improvement with the auditor of the county where said petition is pending at any time up to ten o'clock A.M., on the day fixed in said notices for said board to meet as aforesaid and not thereafter, and the only ground for a remonstrance shall be that said proposed improvement will not be of public utility or convenience. If more than one party remonstrates, the same shall be consolidated and tried together. Said boards of commissioners, when in joint session at such time and place, shall try the issues thus formed under the same rules and regulations as other cases are tried before boards of commissioners, and render their decision, and if said boards, by a majority vote of all the members of the boards present, find for the remonstrance and that said proposed improvement would not be of public utility or convenience, the petition shall be dismissed at the costs of the petitioners if they find against the remonstrance, then the costs made by reason of such remonstrance shall be adjudged against the remonstrator. [Acts 1907, ch. 209, § 6, 363.]

NOTES TO DECISIONS

Appeal.

Appeals may be taken from the action of boards of commissioners under this section. Myers v. White (1914), 182 Ind. 108, 105 N. E. 775.

Sufficiency of Report.

A report signed by two of the viewers is sufficient, even if one of those signing was appointed as an engineer. Board of County Comrs. v. State ex rel. Chenoweth (1921), 191 Ind. 335, 132 N. E. 680.

Where there were only two viewers, the board of county commissioners would not be deprived of jurisdiction because only one viewer made a report that the highway would be of public utility, and stating how and of what the road should be constructed, the other viewer refusing to sign; the proper procedure being to refer the matter back to such viewers for further consideration, or to appoint other viewers. Board of County Comrs. v. State ex rel. Chenoweth (1921), 191 Ind. 335, 132 N. E. 680.

8-17-11-7 [36-407]. Bids - Advertisement - Award. - If said boards of commissioners, by a majority vote of all the members present, find that said improvement petitioned for will be of public utility or convenience, and all claims for damages have been settled or fixed as hereinbefore in the chapter provided, said boards shall direct the county auditor of the county where said petition is filed to advertise for bids as provided for by IC 36-1-12, and the said auditor shall fix the time when said bids shall be received at his office and opened and shall see that the commissioners of his own county are summoned to appear at said time, and
at least ten (10) days notice be given to the commissioners of the other county or counties of the time and place or receiving and opening of the bids. And it shall be the duty of the county commissioners of the said counties interested to meet in joint session at the time and place fixed in said notice, and then and there award the contract as provided in IC 36-1-12, and the board, while in joint session, shall appoint a superintendent to superintend the construction and improvement of said road as provided by IC 8-20-1-69; Provided, however, That the notice for bids as required in IC 36-1-12 shall be published in one (1) paper in each county interested in such improvement for two (2) weeks successively in a weekly or daily newspaper of general circulation twenty (20) days before the day of letting, copies of which notice and proof of the publication thereof to be filed with the auditor of the county where the letting takes place by each paper publishing such notice, with the paper charges taxed thereon, before the letting, and in case of failure to so file said proof, no fee shall be taxed or collected for such publication so failing; and Provided, further, That the contractor or superintendent constructing such road or roads shall impartially and equitably employ the labor and teams of the various townships and counties interested in making such improvements, unless it costs more in some townships than others, then, in that case, the same may be employed wherever the same may be had the cheapest to such contractor. [Acts 1907, ch. 209, 7, p. 363; P.L. 66-1984, § 105.]

8-17-11-8 [36-408]. Work to be done under Act of 1906. - The laying out, constructing, or improvement of such county line road shall be done in all respects under IC 8-20-1, providing for gravel roads by taxation, and all laws supplementary thereto, where the provisions of said laws are applicable and not in conflict with the provisions of this chapter. [Acts 1907, ch. 209, § 8, p. 363; P.L. 66-1984, § 106.]

8-17-11-9 [36-409]. Assessments - Bonds. - The said board shall fix, in the order making and establishing said improvement, the ratio or part of such road or roads belonging to and assessable against each of the several townships sought to be taxed for such improvement, by giving and assessing to each township such proportion of such road or roads to be improved, counting one-half the road to the township or townships on either side thereof, and the boards of commissioners of the several counties interested and so notified, shall, upon notice from the auditor of the county where said proceedings are pending that the contract has been let, stating the amount of the contract price, and the amount of all other costs, damages allowed, and expenses of every kind necessary to complete such improvement, including all costs of engineer, viewers, publication of notices, help of engineer and viewers in surveying, superintendent of construction, and the fees and charges of the auditor of the county so constructing the improvement, which fees and charges shall be the same as in other like work in his office and shall belong to him individually, except that portion chargeable to his own county, which shall belong to it, but each county shall pay for the cost of printing its own bonds and the selling of same, issue the bonds of its county for a sum equal to the share or portion as assessed and apportioned to each township in its county, as so made and apportioned in the original order for the making of the improvements, as the share of roads in each county bears to the whole line of roads, plus the cost of printing and selling such bonds, and, upon the sale of such bonds, the proceeds shall be remitted to the auditor of the county where the petition is filed, and by him charged upon his books and then it shall be his duty to pay the same to the treasurer of his county, to be held by him as a special fund for the making of such improvements, and paid out upon warrants drawn by such auditor, as ordered by the board of commissioners of the county before whom the petition was filed, except the final payment, which shall be upon the joint order of said board. It is hereby made the duty of the several county treasurers of this state to sell all such bonds so issued, and to remit the proceeds to the auditor of the county where said petition is filed. [Acts 1907, ch. 209, § 9, 363.]

8-17-11-11 [36-411]. Acceptance of contract. - When said construction or improvement is completed according to the contract, plans and specifications, it shall be the duty of the engineer in charge of such work to notify the auditor of each county of the fact of such completion, and the auditor of the county where the petition was filed shall appoint a time and place for the commissioners of each county to meet, not more than twenty (20) days from the receipt of the notice from the engineer, and said auditor shall cause notice to be served on all the commissioners of each county, directing them to meet in joint session at the time and place fixed by him. And it shall be the duty of such commissioners to meet in joint session at such time and place and go over and inspect the road with the assistance and advice of the engineer, and shall, if they deem said work performed according to contract, plans and specifications, accept the same and make and enter of record an order accepting and receiving such work and order and allow the payment of the balance of the contract price due the contractor. But if such commissioners, while in joint session, after viewing such road, shall conclude that such work has not been performed according to contract, they shall summon before them such contractor and direct him to complete such work and they shall adjourn said joint session long enough to permit such contractor to complete said work, and they shall reassemble in joint session pursuant to such adjournment for the purpose of accepting said road and ordering pay-
ment therefor. And the county commissioners of such county, before finally adjourning said joint session, shall apportion such county line road, equally as nearly as may be, between their respective counties for the purpose of maintenance, and the respective portions as thus fixed shall thereafter be maintained by such counties as free turnpikes, gravel and macadamized roads are now or may hereafter be maintained by counties of this state. [Acts 1907, ch. 209, § 11, p. 363.]

8-17-11-12 [36-412]. Joint meetings. - For the purpose of carrying out the provisions of this chapter, the county commissioners of such counties may meet in joint session as often as may be necessary, and at such times and places as the board before which the petition is filed may appoint, due notice of the time and place having been served on the commissioners of the adjoining county or counties for not less than five [5] days. And such joint sessions may adjourn from day to day or from one [1] period to another as may be necessary. [Acts 1907, ch. 209, § 12, p. 363; P.L. 56-1984, § 107.]

8-17-11-13 [36-413]. Tie vote. - In case the vote of the members of the said boards of commissioners on the question of public utility or convenience shall result in a tie, and, by reason thereof, said boards cannot decide said question, then, in such case, the auditor of the county in which the petition is filed shall cast the deciding vote. [Acts 1907, ch. 209, § 13, p. 363.]

8-17-14. WEED CUTTING ON COUNTY ROADSIDES

8-17-14-1 [36-714]. Weeds on county highways - Cutting. - Each and every county highway supervisor and the county surveyor and boards of county commissioners of the counties where the county surveyor is charged by law with the supervision and maintenance of county highways, shall cut down or cause to be cut down, and removed from all county highways, by the highway department of the several counties of the state, all briars, thistles, burrs, tree sprouts, docks, willows, sumac, reeds, cattails, tall grass, marihuana, Indian or wild hemp or loco weed, shrubs and all other obnoxious growth within the limits of the county highway rights-of-way between the fifteenth of June and the first day of September in each year. [Acts 1939, ch. 140, §1, p. 674.]

Cross-References. Destruction of marihuana by township trustee, 35-24-2-4 (Burns' § 10-3547).

Removal of Canadian thistles, 15-3-4-5 (Burns' § 15-905).

NOTES TO DECISIONS

Persons to Whom Duty Owed.

Any duty imposed by this section on counties to clear weeds adjacent to county highways is intended for the benefit of adjoining landowners and not for that of motorists. Hurst v. Board of Comm'rs, - Inc. App. --, 446 N. E. 2d 347 (1983).

While this section may fill the field as to the duty owed contiguous landowners, a county cannot assert that it precludes any concurrent obligations owed by the county to a different class of individuals such as motorists. Hurst v. Board of Comm'rs, - Ind. App. --, 446 N. E. 2d 347 (1983).

Time Limits.

The statutory duty under this section which requires the county to cut undergrowth and weeds within county highway rights-of-way between July 15 and September 1 of each year was inapplicable in a suit alleging the county’s negligence in failing to cut undergrowth next to a right of way caused plaintiff’s accident where the accident occurred on May 26. Board of Comm’rs v. Hatton, - Ind. App. --, 427 N. E. 2d 696 (1981).

8-17-14-2 [36-715]. Payment of expenses. - All expenses for carrying out the provisions of this chapter shall be paid out of funds derived from the motor vehicle highway account. [Acts 1939, ch. 140, § 2, p. 674; P.L. 66-1984, § 108.]

8-17-14A. CLOSING UNSAFE HIGHWAYS - PERMITS FOR OBSTRUCTING OR CUTTING HIGHWAY

*8-17-14A-2* [36-717]. Temporary obstruction of highway by individual - Permit of commissioners - Record - Bond of party requesting permit - Condition of bond. - If any person shall desire to temporarily obstruct a county highway which obstruction may result in damage to the highway or temporary blocking of traffic over the highway, such person shall first obtain permission, in writing, which writing shall be entered of record, from the board of county commissioners of the county commissioners of adjoining counties acting together, if the obstructed or interrupted part thereof is located upon a county line or extends from one county to another.

Before such permission may be granted by any board of county commissioners, such person shall first file with each board of county commissioners from which permission is requested, a surety bond, in a sum to be fixed by and to the approval of such board of county commissioners, payable to the county, conditioned either upon the payment of any damages which such county or road may sustain or upon the proper restoration of such highway, as such county commissioners may direct. [Acts 1947, ch. 151, § 2, p. 473.]

*Compiler's Note. The number assigned to this section is not the official Indiana Code number. In the Indiana Code this section appears as 8-1-23-2. See compiler's note to 8-17-14A-1.
8-17-14A-3 [36-718]. Pipeline, conduit or drain, laying along or across county highway - Contract for restoration of highway and use thereof - Surety bond filed with commissioners - Contract not to create easement. - If any person shall desire to lay a pipeline, conduit or private drain, across or along any county highway of this state, such person shall first enter into a contract with the board of county commissioners in each county wherein it is desired to locate such pipeline, conduit or drain, which contract will obligate the owner thereof to restore the county highway to its original condition after the laying thereof and to reimburse the county for the use of such highway. In addition such person shall file with the board of county commissioners a surety bond, payable to the county, in a sum to be set by and to the approval of the board of county commissioners, conditioned upon the performance of such contract. No such contract shall give any person a permanent right or easement to use any county highway but such contract may give the right to use such highway so long as such pipeline, conduit or drain, does not interfere with the alteration, use, abandonment or public enjoyment of such county highway. [Acts 1947, ch. 151, § 3, p. 473.]

Compiler’s Note. The number assigned to this section is not the official Indiana Code number. In the Indiana Code this section appears as 8-1-23-3. See compiler’s note to 8-17-14A-1.

NOTES TO DECISIONS

In General.

Where a public utility has contracted with the board of county commissioners to lay a pipeline along a public highway, such use does not constitute an additional burden and servitude to the fee of abutting landowners subject to the easement for highway purposes. Fox v. Ohio Valley Gas Corp. (1968), 250 Ind. 111, 13 Ind. Dec. 593, 235 N. E. (2d) 108.

8-17-14A-4* [38-719]. "Person" defined. - The word person as used herein shall include a public utility, partnership, firm, association or corporation. [Acts 1947, ch. 151, § 4, p. 473.]

Compiler’s Note. The number assigned to this section is not the official Indiana Code number. In the Indiana Code this section appears as 8-1-23-4. See compiler’s note to 8-17-14A-1.

8-17-14A-5* [38-720]. Violation of chapter - Penalty upon conviction. - A person who installs a pipeline, conduit, or private drain, across or along any county highway, or blocks or damages any county highway without complying with this chapter, commits a class B infraction. [Acts 1947, ch. 151, § 5, p. 473; 1978, P.L. 2, § 809, p. 2.]

Compiler’s Notes. The number assigned to this section is not the official Indiana Code number.

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In the Indiana Code this section appears as 8-1-23-5. See Compiler’s Notes in the bound volume to 8-17-14A-1.

Cross References. Infraction and ordinance violation enforcement proceedings. 34-4-32-1--34-4-32-5.

NOTES TO DECISIONS

Injunction.

Where pursuant to this section and former 18-5-4-1, plaintiff was granted an easement to use public roadway for drainage, and where evidence clearly showed that defendant repeatedly obstructed the easement, and, at trial, stated that he would not voluntarily allow plaintiff to use the easement, trial court did not abuse its discretion by granting plaintiff an injunction to prohibit further obstructions by defendant. Kramer v. Rager, - Ind. App. --, 441 N. E. 2d 700 (1982).

8-18-2. TOOLS AND ARTERIALS FOR COUNTY HIGHWAY DEPARTMENTS

8-18-2-1 [36-1114]. Tools and materials - Requisitions - Publication of notice - Bids - Acceptance - Records. - (a) The official in charge of repair and maintenance of county highways shall file with the county auditor a requisition for all tools, implements, supplies, materials and equipment that is needed. Such requisition shall be on a form prescribed by the state board of accounts. The county auditor shall cause the requisition to be kept available for public inspection and shall cause to be published in accordance with IC 5-3-1 [5-3-1-1--5-3-1-9] the fact that the board of county commissioners will receive sealed proposals at the next regular meeting for furnishing the tools, implements, machinery, supplies, materials or equipment requisitioned by the official in charge of the repair and maintenance of the county highways. This legal notice shall show the estimated quantity of any article to be purchased, the time that delivery will be required, and time and place bids will be received and considered.

(b) The board of county commissioners shall proceed with the bidding process in accordance with IC 36-1-9 [36-1-9-1--36-1-9-12], but under no circumstances shall the board of county commissioners be required to purchase from one [1] bidder, all items for which bids are received. The board of county commissioners may enter into a contract at the bid price for a quantity less than the quantity estimated in the requisition, but shall not enter into any contract for a larger quantity than was requisitioned.

(c) Requisitions for purchase of machinery, equipment and road materials shall have attached detail specifications. Detail specifications shall be
recognized standard specifications which allow competitive bidding. All requisitions shall bear the file stamp of the county auditor showing date filed.

(d) The board of county commissioners shall record all bids received in a permanent record to be known as "bidders record," said record to be prescribed by the state board of accounts, and which record shall be open at all times to the inspection of the public and shall enter thereon orders for purchase, and reasons for selection, and the reasons for rejection if the low bid is not accepted.

(e) The board of county commissioners shall employ or contract with such teams, trucks or truck contractors, and employees as may be necessary to assist in and carry on the repair work on the roads under the charge of the official in charge of repair and maintenance of county highways, and the board of commissioners shall designate and employ all such assistants and employees, and shall determine the rate of wages to be paid for labor, trucks and teams. [Acts 1935, ch. 145, § 1, p. 496; 1953, ch. 209, § 1; 1975, P.L. 34, § 7; 1981, P.L. 57, § 23.]

Cross-Reference. Purchase of supplies exceeding §4,000, 5-17-1-1-5-17-1-9 (Burns' § 53-501--53-510).

8-18-2-2 [36-1115]. Payment of claims - When warrant may issue. - The county auditor shall draw his warrant in payment of any claim filed against any appropriation for the repair and maintenance of county highways only after the provisions of this chapter have been fully complied with. [Acts 1935, ch. 145, § 2, p. 496; P.L. 66-1984, § 109.]

NOTES TO DECISIONS

Defense Against Improper Payment.


Where county auditor's good faith in issuing warrants was coupled with evidence of custom and usage, reliance upon verified claims, certified statements of the county highway supervisor, the advice of the county attorney and the determination of the board of county commissioners, a defense which was sufficient to withstand an attack by demurrer was pleaded under 17-3-28-1 (Burns' § 49-3006). State ex rel. Steers v. Acree (1966), 139 App. 83, 8 Ind. Dec. 456, 217 N. E. (2d) 167.

8-18-2-3 [36-1116]. Repeal - Existing contracts. - All statutes and parts of statutes in conflict with this chapter are hereby repealed, but nothing in this chapter shall be construed as affecting contracts for the purchase of supplies, tools, and materials, upon which bids and offers have already been submitted before March 7, 1935. [Acts 1935, ch. 145, 3, p. 496; P.L. 66-1984, § 110.]

8-18-8. TRANSFER OF TOWNSHIP ROADS TO COUNTY HIGHWAY DEPARTMENT

8-18-8-5 [36-905]. Maintenance and repair - Gasoline tax and motor vehicle license fees - Taxes. - After September 10, 1932, all expenses incurred in the maintenance, repair, and preservation of county highways, including all township highways which are transferred to the counties and incorporated in the county highway system, as provided by Acts 1932 (s.s.), c. 16, shall be paid out of such funds as may be derived from the gasoline tax and the motor vehicle registration fees and which are paid to the several counties by the state, as provided by law, and no tax shall be levied after September 10, 1932, by any county in this state for the repair, maintenance, or preservation of county highways, except by unanimous vote of the county council in a case of extraordinary emergency or indispensable necessity. [Acts 1932 (Spec. Sess.), ch. 16, § 5, p. 28; P.L. 66-1984, § 111.]

Opinions of Attorney-General. This section does not authorize the levying of a tax for the repair, maintenance, or preservation of county highways. 1938, p. 340.

The term "highway" as used in this act cannot be construed to include bridges, and the construction and repair of bridges may not be made with appropriations from the county general fund. 1941, p. 376.

NOTES TO DECISIONS

Purpose of Statute.

The principal purpose of this section providing that all expenses incurred in the maintenance of county highways transferred to the county by the township, and incorporated in the county highway system, shall be paid out of such funds as may be derived from the gasoline tax and motor vehicle registration fund and paid to the several counties by the state, was to limit such expenses to the amount of such funds received from the state, and does not include debts incurred before the passage of such act. Board of County Comrs. v. Farmers State Bank (1937), 104 App. 692, 10 N. E. (2d) 769.

8-19-3. PETITION FOR ROAD IMPROVEMENTS - DONATION OF LABOR OR MATERIALS

8-19-3-1 [36-601]. County roads, improvement, petition. - Whenever ten [10] or more resident freeholders petition their board of county commissioners for assistance in grading any public highway connecting at either end with a county or state highway, or any highway improved according to this chapter, or the boundaries of any city, town, or village, the board of commissioners shall employ.
and pay out of the general fund of the county, a competent civil engineer, and, with him, shall view said highway, and if the board determines that it would be a public utility to grade and drain said highway, they shall order the engineer to survey the highway and prepare plans and specifications for its improvement, which plans and specifications shall set forth and show:

(1) The profile, the grade, and cross-section of the old and new roadway at least at each one hundred feet [100'] thereof, and the roadway shall be graded to a width of twenty feet [20'] between inside of ditches, except where physical conditions make such width impossible, and shall have a cross-section crown of eight inches [8'], and a grade not to exceed six percent [6%];

(2) The design of any necessary surface or sub-surface drains, gutters, culverts, bridges, retaining walls, guardrails, and other necessary supplemental road parts; and

(3) The method of grading and finishing the roadway;

all in such manner as to make the highway suitable to public traffic when maintained according to the best practice of maintaining such natural earth roads. [Acts 1921, ch. 178, § 1, p. 462; P.L. 66-1984, § 114.]

NOTES TO DECISIONS

In General.

In a proceeding for vacation of part of a public highway, the admission of testimony that a railroad company had contracted to maintain a certain other highway, if the one in question were vacated, was erroneous. Boss v. Deak (1930), 201 Ind. 446, 169 N. E. 673, 68 A.L.R. 788.

8-19-3-2 [36-602]. Expenses to be paid by petitioners. - Upon establishment of grades and being provided with plans and specifications by the engineer, or a competent superintendent, petitioned for and to be paid for by themselves, but appointed by the board of commissioners, shall improve the road according to plans and specifications. [Acts 1921, ch. 178, § 2, p. 462.]

8-19-3-3 [36-603]. County to aid in grading and draining. - Any township trustee may request the board of county commissioners for assistance in grading and draining any township highway, and if said request be approved in writing by a majority of the township advisory board, said request shall be acted upon in the same manner as provided in sections 1 and 2 [8-19-3-1 and 8-19-3-2] of this chapter; Provided, That the expenses of constructing the highway and the pay of the superintendent shall be paid out of the funds of the township in which the particular highway is located; Providing, further, that the township trustee or supervisor may act as superintendent if qualified and approved by the board of commissioners. [Acts 1921, ch. 178, § 3, p. 462; P.L. 66-1984, § 115.]

Cross-Reference. Township highways placed under jurisdiction of county commissioners, 8-18-8-1.

Opinions of Attorney-General. Trustee would not be entitled to compensation for services rendered as superintendent in the construction of highways under this section. 1934, p. 51.

8-19-3-4 [36-604]. Improved roads to be maintained by county. - When the grading and draining is completed in accordance with the plans and specifications, the engineer or the superintendent shall so report in writing to the commissioners, who shall accept the improved highway, and thereafter it shall be deemed a part of the improved roads of such county and shall be maintained by the county as otherwise provided by law. [Acts 1921, ch. 178, § 4, p. 462.]

Cross-Reference. Maintenance of county highways, 8-17-3-1--8-17-3-10.

8-19-3-5 [36-605]. Further improvement by township. - Nothing in this chapter shall be so construed as to prevent, after May 31, 1921, the further improvement of said highway by donation of labor, material and equipment by the freeholders of the township or with funds of same township; Provided, That any further improvement shall be under the direction of the county engineer, with the approval of the board of commissioners; and, Provided further, That nothing in this chapter shall prevent further improvement of said highway under other laws of the state. [Acts 1921, ch. 178, § 5, p. 462; P.L. 66-1984, § 118.]

8-20-1. LOCATION, RELOCATION OR VACATION OF COUNTY ROADS

8-20-1.28 [36-1705]. Poles and wires. - Corporations now formed or which may hereafter be organized for the purpose of constructing, operating, and maintaining telephone lines and telephone exchanges, or for the purpose of generating and distributing electricity for light, heat or power, are authorized to set and maintain their poles, posts, piers, abutments, wires and other appliances or fixtures upon, along, under and across any of the public roads, highways and waters of this state outside of cities and incorporated towns; and individuals owning telephone lines or lines for the transmission of electricity are hereby given the same authority: Provided, That the same shall be erected and maintained in such manner as not to inconvenience the public in the use of such roads, highways and waters: Provided further, That no trees shall be cut along such roads or highways without the consent of the abutting property-owners: Provided, also, That no pole or appliance shall be so located
as to interfere with the ingress or egress from any premises on said road, highway, or waters: Provided, further, That nothing herein contained shall be construed as depriving the county commissioners of any county of the power to require the relocation of any such pole, poles or appliances which may affect the proper uses of such highway for public travel, for drainage or for the concurrent use of other telephone lines or lines conducting electricity. The location and setting of said poles shall be under the supervision of the board of commissioners of the county. [Acts 1905, ch. 167, § 38, p. 521; 1911, ch. 161, § 1, p. 421.]

Opinions of Attorney-General. Indiana public utilities locate or relocate their facilities on, over, or under the right-of-way of Indiana highways as a matter of qualified right and not as a matter of privilege. 1967, No. 7, p. 34.

Cross-Reference. Poles and wires in streets, 18-1-6-15 (Burns' § 48-1902).

NOTES TO DECISIONS

Construction.

This section, providing that electric company shall not erect pole so as to incommodate highway, was not applicable so as to give rise to cause of action where motorist struck pole erected three feet from edge of road. Copeland v. Public Service Co. (1953), 232 Ind. 10, 111 N. E. (2d) 47.

Pleading.

Allegations in complaint were sufficient to present question of fact as to whether appellees violated this section. Copeland v. Public Service Co. (1952), 123 App. 345, 108 N. E. (2d) 273.

Railroad Right-of-Way.

The statute authorising telephone companies, and companies organized for generating and distributing electricity, to construct their lines on highways does not authorize such companies to construct their lines upon the right-of-way of a railroad company without the consent of the company. Muncie Elec. Light Co. v. Joliff (1915), 59 App. 349, 109 N. E. 433.

25-31-1. PROFESSIONAL ENGINEERS AND LAND SURVEYORS' LICENSES; STATE POLITICA SUBDIVISIONS REQUIRED TO HIRE - STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS CREATED

25-31-1-19. Political subdivisions -- Public Works -- Plans and specifications -- Engineer required. --

a. Except as hereinafter otherwise provided, no county, city, township, school corporation, or other political subdivision of this state shall engage in the construction or maintenance of any public work involving the practice of engineering for which plans, specifications, and estimates have not been prepared, certified, and sealed by, and the construction and maintenance executed under the direct supervision of, a professional engineer. Any contract executed in violation of this section shall be null and void.

b. No plat showing streets, lots, blocks, or any subdivision of land in the state of Indiana shall be approved by any county planing or zoning authority, nor shall it be accepted for transfer or recording by any county authority auditor or recorder, which has not been prepared or certified as to correctness of the survey by a registered land surveyor.

c. No official of this state, or of any city, town, county, township, or school corporation thereof, charged with the enforcement of any law, ordinance, or rule relating to the construction or alteration of buildings or structures, shall use or accept or approve any plans or specifications that have not been prepared by, or under the supervision of and certified by, a registered professional engineer. This subsection shall not apply if such plans or specifications have been prepared by, or under the supervision of and certified by, an architect who is registered under the laws of the state of Indiana. This subsection shall not apply to the construction of any building having therein thirty thousand [30,000] cubic feet or less, or to the alterations of any building or structure which cost ten thousand dollars [$10,000] or less and which do not involve changes affecting the structural safety. This section shall not be construed as to abridge, or otherwise affect, the powers of the fire prevention and building safety commission, or any other state board or department, to issue rules governing the safety of building or structures.

d. All maps required to show the underground workings of any mine, within this state, shall be prepared by a professional engineer or land surveyor, and shall be certified and sealed by such professional engineer or land surveyor. [Acts 1935, ch. 148, § 19, p. 51; 194, c. 262, § 8; 1957, ch. 32, § 9; 1961, ch. 277, § 9; 1965, ch. 284, § 9; P.L. 8-1984, § 121.]

32-5-2. EASEMENTS - ALIENATION OF EASEMENTS IN GROSS

32-5-2-1 [56-805]. Easements in gross - Alienation, inheritance and assignment. - Easements in gross created after July 6, 1961, may be alienated,
inherited, and assigned if instruments that create such easements in real property so state. [Acts 1961, ch. 268, § 1; 1982, P.L. 187, § 39.]

32-10-4. CUTTING OF HEDGE OR OTHER LIVE FENCES ALONG PUBLIC HIGHWAY

32-10-4-1. Hedges and live fences at intersections and crossings - Height - Trees and other obstructions - Limitations on application of chapter. - All hedge or live fences along the line of any highway within the state of Indiana shall be cut and trimmed down to a height of not to exceed five feet [5'], once in each calendar year in all cases where hedges or live fences or any other natural growths, except trees, connect with or are found at a highway intersection, or adjacent to any curve where the view of the highway may be intercepted, or with any railway or interurban right-of-way, such hedges or other growths shall be trimmed and maintained at a height of not to exceed five feet [5'] above the level of the center of the graved road bed in the highway adjoining said fence, and such altitude shall be maintained throughout the year for a distance of one hundred feet [100'] where the obstruction is a hedge fence and fifty feet [50'] where the obstructions consist of any other natural growths, except trees, commencing at the intersection of the highway and continuing along the lines dividing such highways and the property adjoining and no other obstructions to the view except natural elevations of land shall be maintained at such points where said roads intersect exceeding the altitude of five feet [5'] above the center of such highway. Where trees are found growing within fifty feet [50'] of any intersection of any highway with no other highway or with steam or interurban railroad, such trees shall be so trimmed that the view at such intersection will not be obstructed. After May 22, 1933, no building shall be erected within fifty feet [50'] of any such intersection. The provisions of this chapter shall not be construed to apply to highway intersections inside the corporate limits of cities and towns; nor shall any of the provisions of this chapter, except the provisions in regard to hedge fences, apply to any intersection except an intersection of state highway with another state, county or township highway or with steam or interurban railroad. [Acts 1891, ch. 39, § 1, p. 46; 1921, ch. 244, § 1, p. 704; 1933, ch. 181, § 1, p. 909; 1982, P.L. 187, § 153.]

NOTES TO DECISIONS

County Highways.

Counties owe no statutory duty to motorists to clear growth along county highways. Hurst v. Board of Comm'r's, - Ind. App. --, 446 N. E. 2d 347 (1983).

Height Requirements.

The language "a height of not to exceed five feet" as used in this section indicates nothing more than a duty to cut any offending growth of five feet. The statute does not impose a duty to cut below five feet if necessary to open the view. Board of Comm'r's v. Hatton, - Ind. App. --, 427 N. E. 2d 696 (1981).

32-10-4-2 [30-302]. Duties of officials in control of highway - Notice to owners or agents - Enforcement of costs when work done by public officials. - It shall be the duty of the trustee of each township or the county highway superintendent, or the state department of highways, or other proper officer in control of the maintenance of said highways, between the first day of January and the first day of April of each year to examine all hedge or live fences or other natural growths along the highways and such other obstructions as described in section 1 [32-10-4-1] of this chapter in their respective jurisdictions and if there shall be any hedge or live fences or other growths or obstructions along such highways which have not been cut, trimmed down and maintained to the height of not to exceed five feet [5'] in the last calendar year, immediately preceding the first day of January, they shall give the owner or owners thereof written notice to cut or trim such hedge or live fence and to burn the brush rimmed therefrom or remove any other obstructions or growths as hereinbefore described, such notice to be served by reading the same to said owner or owners, or by leaving a copy of the same at his or their usual place of residence; Provided, That if said owner or owners thereof be not residents of the township, county or state, where such hedge or live fence or other obstructions or growth is located, said notice shall be served upon his or their agent or tenant if here be any residing in said township and if there be not agent or tenant of said owner or owners in said township then such notice shall be served by mailing copy of same to said owner or owners directed to his or their last known post office and if such owner or owners, their agents or tenants do not proceed to cut and trim such fences and burn the brush trimmed therefrom or remove any such obstructions or growths within ten [10] days thereafter, in the manner heretofore provided, then such township trustee, county highway superintendent or state department of highways shall immediately cause such fences to be cut and trimmed or obstructions or growths removed down to the height of not to exceed five feet [5'] and burn the brush trimmed herefrom, and all expenses so incurred shall be assessed against and shall become a lien upon such lands the same as road taxes. The township trustee, county highway superintendent or state department of highways having charge of the work shall prepare an itemized statement of the total cost of the work of removing such obstructions or growths and shall
sign the statement and certify the same to the county auditor of the county in which such lands are located. The county auditor shall place the same on the tax duplicates and it shall be the duty of the county treasurer to collect such costs so entered on the duplicates at the same time and in the same manner as road taxes are collected and he shall have authority to issue a receipt for road taxes unless such costs so entered on the duplicates be paid in full at the same time, and if such costs be not so paid when due shall become delinquent and shall bear the same interest and in the same manner as other unpaid and delinquent taxes. Nothing in this chapter contained shall be construed to apply to buildings of a substantial character which are located at the intersection of public highways. [Acts 1891, ch. 39, § 2, p. 46; 1921, ch. 244, § 2, p. 704; 1933, ch. 181, § 2, p. 909; 1980, P.L. 74, § 432.]

NOTES TO DECISIONS

Height Requirements.

The language "a height of not to exceed five feet" as used in 32-10-4-1 indicates nothing more than a duty to cut any offending growth to five feet. The statute does not impose a duty to cut below five feet if necessary to open the view. Board of Commrs v. Hatton, - Ind. App., 427 N.E. 2d 696 (1981).

Road Width.

Where boundary lines have never been established by competent authority, the width of the road established by use is limited to that portion actually traveled and excludes any berm or shoulder. Board of Commrs v. Hatton, - Ind. App., 427 N.E. 2d 696 (1981).

32-10-4-3 [30-303]. Duty of prosecuting attorney. - It is hereby made the duty of the prosecuting attorney to prosecute such suit in the name of the state of Indiana on relation of such supervisor or gravel road superintendent, for which service, the prosecuting attorney shall receive a fee of ten dollars [$10.00], to be collected as a part of the costs of such suit. [Acts 1891, ch. 39, § 3, p. 46.]

32-10-6. EJECTMENT AND QUIET TITLE

32-10-6-2 [30-502]. Report of viewers - Order of board. - After having performed the duties required of them in section 1 [32-10-6-1] of this chapter, said viewers shall, as soon as practicable, submit a report, in writing, to the board of county commissioners of their doings, together with a tabular statement of the assessment made by them, which shall be deemed sufficient authority for said board of county commissioners to issue an order for the erection or construction of such fence and gates, in the absence of any remonstrance against the same; but if any remonstrance shall be made, said board may order or refuse to order the erection of such fence or gate, in their discretion. If the order shall not be made in consequence of any mistake or error committed by the viewers, other viewers may be appointed to perform the same service and report the same. [Acts 1875, ch. 65, § 2, p. 104; 1982, P.L. 187, § 160.]

32-10-6-3 [30-503]. Collection of assessments. - A certified copy of the report of the viewers, as approved by the board of commissioners, shall be filed in the office of the county auditor, and thirty [30] days after such fence and gates shall have been constructed, any person interested therein may make affidavit before such auditor, showing what property owners have not paid their several assessments; and the sums assessed against the person delinquent shall be entered upon the tax duplicate, by the auditor, to be collected by the treasurer as other taxes are collected, and when so collected, they shall be paid out to the property owners who have voluntarily paid the cost of such fence, in proportion to the amount of their several assessments. [Acts 1875, ch. 65, § 3, p. 104.]

32-10-6-4 [30-504]. Surveyor - Pay of viewers. - The viewers appointed under the provisions of this chapter may, if necessary, employ a surveyor, who shall be paid for his services such sum as may be agreed upon. It shall be the duty of the board of commissioners to fix the compensation of such viewers for their services, and the entire cost and expenses of the proceedings shall be taken and regarded as a part of the cost of the erection of said fence and gates, and shall be collected in the same manner. [Acts 1875, ch. 65, § 4, p. 104; 1982, P.L. 187, § 161.]

36-1-12. PUBLIC CONSTRUCTION

36-1-12-3. Purchase or lease of materials and performance of public work with own work force authorized for certain projects - Authority of board of aviation commissioners - Bidding exception for certain contracts by municipal and county hospitals. - (a) The board may purchase or lease materials in the manner provided in IC 36-1-9 [36-1-9-1–36-1-9-12] and perform any public work, by means of its own work force, in the construction, maintenance, and repair of any highway, bridge, or culvert without awarding a contract whenever the cost of that public work project is estimated to be less than seventy-five thousand dollars [$75,000]. For purposes of this subsection, the cost of a public work project includes the cost of materials, labor, equipment, rental, reasonable rate for use of trucks and heavy equipment owned, and all other expenses incidental to the performance of the project. When the project involves the rental of equipment with an operator furnished by the owner, or the installation or application of materials by the supplier of the materials, the project is considered to be a public work project and subject to
this chapter. However, an annual contract may be awarded for equipment rental and materials to be installed or applied during a calendar or fiscal year.

(b) A board of aviation commissioners or airport authority board may purchase or lease materials in the manner provided in IC 36-1-9 [36-1-9-1--36-1-9-12] and perform any public work, by means of its own work force and owned or leased equipment, in the construction, maintenance, and repair of any airport roadway, runway, taxiway, or aircraft parking apron whenever the cost of that public work project is estimated to be less than fifty thousand dollars [$50,000].

(c) Municipal and county hospitals must comply with this chapter for all contracts for public work. However, if the cost of the public work is estimated to be less than fifty thousand dollars [$50,000], as reflected in the board minutes, the hospital may have the public work done without receiving bids, by purchasing the materials and performing the work by means of its own employees and owned or leased equipment. [IC 36-1-12-3, as added by Acts 1981, P.L. 57, § 38; 1981, P.L. 58, § 3.]

36-1-12-8. Contracts for road or street work. - The board may award a public work contract for road or street work subject to the open price provisions of IC 26-1-2-305. The contract may provide that prices for construction materials are subject to price of materials adjustment. When price adjustments are part of the contract, the method of price adjustments shall be specified in the contract. However, this section does not authorize the expenditure of money above the total amount of money appropriated by the political subdivision or agency for road and street contracts. [IC 36-1-12-8, as added by Acts 1981, P.L. 57, § 38.]

36-1-12-9. Contracts in case of emergency. - In case of an emergency the board may contract for a public work project without advertising for bids if bids or quotes are invited from at least two [2] persons known to deal in the public work required to be done. The minutes of the board must show the names of the persons invited to bid or provide quotes. [IC 38-1-12-9, as added by Acts 1981, P.L. 57, § 38.]

Collateral References. 64 Am. Jur 2d Public Works and Contracts § 39.

"Emergency" within charter or statutory provision excepting emergency contract or work from requirement of bidding on public contracts. 71 A.L.R. 173.

36-2-12. COUNTY SURVEYOR

36-2-12-1. Application of county. - This chapter applies to all counties. [IC 36-2-12-1, as added by Acts 1980, P.L. 212, § 1.]
(10) Use any legal or equitable remedy that is necessary or considered proper to protect and enforce the rights of, and perform the duties of, the department of redevelopment;

(11) Exercise the power of eminent domain in the name of and within the corporate boundaries of the unit, in the manner prescribed by section 20 [36-7-14-20] of this chapter;

(12) Appoint an executive secretary, appraisers, real estate experts, engineers, architects, surveyors, and attorneys;

(13) Appoint clerks, guards, laborers, and other employees they consider advisable, except that these appointments must be made in accordance with the merit system of the unit, if such a system exists;

(14) Prescribe the duties and regulate the compensation of employees of the department of redevelopment;

(15) Provide a pension and retirement system for employees of the department of redevelopment, by using the Indiana public employees' retirement fund or a retirement plan approved by the United States department of housing and urban development;

(16) Discharge and appoint successors to employees of the department of redevelopment, subject to subdivision (13);

(17) Rent offices for use of the department of redevelopment, or accept the use of offices furnished by the unit;

(18) Equip the offices of the department of redevelopment with the necessary furniture, furnishings, equipment, records, and supplies;

(19) Expend, on behalf of the special taxing district, all or any part of the monies of the special taxing district;

(20) Contract for the construction of:
(A) Public ways;
(B) Sidewalks;
(C) Sewers;
(D) Waterlines;
(E) Parking facilities;
(F) Park or recreational areas; or
(G) Other public improvements;

necessary for the redevelopment of blighted areas within the corporate boundaries of the unit; and

(21) Contract for the construction, extension, or improvement of pedestrian skyways.

(b) As used in this section, "pedestrian skyway" means a pedestrian walkway within or outside of the public right-of-way and through and above public or private property and buildings, including all structural supports required to connect skyways to buildings or buildings under construction. Pedestrian skyways constructed, extended, or improved over or through public or private property constitute public property and public improvements, constitute a public use and purpose, and do not require vacation of any public way or other property. [IC 36-7-14-12, as added by Acts 1981, P.L. 309, § 33; 1981, P.L. 310, § 87; P.L. 23-1984, § 16.]

Cross References. Suits questioning the feasibility of project, 34-4-17-1--34-4-17-8.

Opinions of Attorney General. Public utilities must be reimbursed for expenses in relocating their facilities pursuant to urban renewal projects and such relocation, if for a public purpose, does not violate the constitutional provisions against "taking" and "impairment of contractual obligations," so long as just compensation is made. 1970, No. 28, p. 73.

NOTES TO DECISIONS

Jurisdiction.

In a condemnation action, the trial court did not have jurisdiction to rule on the issue of blight and did not err in refusing to hear evidence as to whether or not the area in question was in fact blighted. Murray v. City of Richmond, 257 Ind. 548, 28 Ind. Dec. 515, 276 N. E. 2d 519 (1971).

Transfer of Acquired Property.

A provision similar to subdivision (3) of this section did not so restrict the redevelopment commission that it could not exercise its rights of eminent domain to condemn blighted land and dispose of it to another public authority for a city-county building. Louis Fortriede, Inc. v. City of Fort Wayne, 250 Ind. 425, 14 Ind. Dec. 138, 236 N. E. 2d 35 (1968).

36-9-1. TRANSPORTATION AND PUBLIC WORKS - DEFINITION


36-9-6. CITY WORKS BOARDS

36-9-6-2. Supervision of city property - Cleaning of streets and alleys. - Unless otherwise provided by statute or ordinance, the works board shall supervise the streets, alleys, sewers, public grounds, and other property of the city, and shall keep them in repair and good condition. The works board shall provide for the cleaning of city streets
Cross References. Establishment and maintenance of public streets and ways, 36-9-2-5.

NOTES TO DECISIONS

Display of Placards.

An ordinance, enacted under the authority of this clause, making it unlawful to display any placard in any public street or sidewalk, except in processions, was not unconstitutionally arbitrary as to one alleged to have worn in public a shirt bearing the inscription, "Barber Shop Unfair to Organized Labor," Watters v. City of Indianapolis, 191 Ind. 671, 134 N. E. 482 (1922).

Lawns and Shade Trees.

While city had implied power to construct lawns, and otherwise decorate those parts of the street not necessary to public travel, at the expense of the general treasury, nevertheless when it sought to exercise the taxing power and to levy upon a particular class, the cost of the improvement, purely ornamental, it had to be able to point to some express provision of the statute conferring the right, as no power to tax would arise by implication. Adams v. City of Shelbyville, 154 Ind. 467, 57 N. E. 114, 77 Am. St. R. 484, 49 L.R.A. 797 (1900).

Cities may permit the maintenance of lawns and shade trees along streets, and such means may be used as are reasonably necessary to protect the same from injury. Teague v. City of Bloomington, 40 Ind. App. 68, 81 N. E. 103 (1907).

Liability for Injuries.

If a municipal corporation was compelled to pay damages caused by defects in a street when such defects were caused by the acts of a third person, such corporation could recover the amount paid from the person causing the defects in the street. City of Bloomington v. Chicago, I. & L.R.R., 52 Ind. App. 510, 98 N. E. 188 (1912).

Notice of Defects.

Notice to a city of defects in a street was inferred when it was of such a character and had continued for such a time that the proper officers of the city would have known of the same, if they had discharged their duties properly. City of Indianapolis v. Scott, 72 Ind. 196 (1880); City of Lafayette v. Larson, 73 Ind. 367 (1881); City of Logansport v. Justice, 74 Ind. 378, 39 Am. R. 79 (1881); City of Indianapolis v. Murphy, 91 Ind. 382 (1883); Aurora v. Bitner, 100 Ind. 396 (1885); City of Madison v. Baker, 103 Ind. 41, 2 N. E. 236 (1885); City of Michigan City v. Ballance, 123 Ind. 334, 24 N. E. 117 (1890); City of Fort Wayne v. Patterson, 3 Ind. App. 34, 29 N. E. 157 (1891); City of Frankfort v. Coleman, 19 Ind. App. 368, 49 N. E. 474, 65 Am. St. R. 412 (1898); City of Linton v. Smith, 31 Ind. App. 546, 68 N. E. 617 (1903).

Notice to the street commissioner, or to a member of the council, of a defect in a street was notice to the city. City of Lafayette v. Larson, 73 Ind. 367 (1881); City of Logansport v. Justice, 74 Ind. 378, 39 Am. R. 79 (1881).

Obstructions.


A permit given by a city to obstruct a portion of a street temporarily, while a building was being erected, could be revoked at any time. City of Indianapolis v. Miller, 27 Ind. 394 (1866).

Cities were required to keep the streets free from obstructions, and were liable for damages resulting from failure to do so. City of Indianapolis v. Gaston, 58 Ind. 224 (1877); City of Evansville v. Wilter, 86 Ind. 414 (1882).

The streets of a city were held in trust by the municipal corporation for public purposes, and the city could not authorize a permanent obstruction thereof for private uses. Pettis v. Johnson, 56 Ind. 139 (1877); State v. Berdette, 73 Ind. 185, 38 Am. R. 117 (1880); Sims v. City of Frankfort, 79 Ind. 446 (1881); Adams v. Ohio Falls Car Co., 131 Ind. 375, 31 N. E. 57 (1892); City of Tell City v. Bielefeld, 20 Ind. App. 1, 49 N. E. 1090 (1898).

If a city granted the right to obstruct temporarily a street, the city had to see that due care was used or the city could be liable for damages caused by such obstruction. City of Indianapolis v. Doherty, 71 Ind. 5 (1880).

Owners of property adjoining a street could not maintain a suit for the obstruction of the street unless they were specially damaged by such obstruction. Waltman v. Rund, 94 Ind. 225 (1884); Dwenger v. Chicago & G.T.R.R., 98 Ind. 153 (1884); Indiana, B. & W.R.R. v. Eberle, 110 Ind. 542, 11 N. E. 467, 59 Am. R. 225 (1887); Fassion v. Landry, 123 Ind. 136, 24 N. E. 96 (1890); Chicago, St. L. & P.R.R. v. Eisert, 127 Ind. 156, 26 N. E. 759 (1891); Dantzler v. Indianapolis Union Ry., 141 Ind. 604, 39 N. E. 229, 50 Am. St. R. 343, 34 L.R.A. 769 (1895).

If the encumbering or obstruction of streets or walks violated criminal statutes, a city could not provide for recovering a penalty for such acts. City of Indianapolis v. Higgins, 141 Ind. 1, 40 N. E. 671 (1895).

Safe Condition.

Cities were bound to keep the streets and sidewalks thereof in reasonably safe condition. City of
Lafayette v. Larson, 73 Ind. 367 (1881); City of Huntington v. Breen, 77 Ind. 29 (1881); City of Washington v. Small, 86 Ind. 462 (1882); Aurora v. Bitner, 100 Ind. 396 (1885); Glantz v. City of S. Bend, 106 Ind. 305, 6 N. E. 632 (1886); City of Goshen v. England, 119 Ind. 368, 21 N. E. 977 (1889); City of Michigan City v. Boeckling, 122 Ind. 39, 23 N. E. 518 (1890); City of Michigan City v. Ballance, 123 Ind. 334, 24 N. E. 117 (1890); City of Columbus v. Strassner, 124 Ind. 482, 25 N. E. 65 (1890); City of Franklin v. Harter, 127 Ind. 446, 26 N. E. 882 (1891); City of Alexandria v. Young, 20 Ind. App. 672, 51 N. E. 100 (1898); City of Decatur v. Stoops, 21 Ind. App. 397, 52 N. E. 625 (1899); City of Indianapolis v. Mitchell, 27 Ind. App. 589, 61 N. E. 947 (1901); City of Anderson v. Fleming, 160 Ind. 597, 67 N. E. 443, 66 L.R.A. 119 (1903); City of Alexandria v. Liebler, 162 Ind. 438, 70 N. E. 512 (1904); City of Vincennes v. Spees, 35 Ind. App. 389, 74 N. E. 277 (1905).

Cities had complete jurisdiction over all streets and public ways in their respective limits, and were consequently liable for failure to keep them in reasonably safe condition for travel. City of Bloomington v. Chicago, I & L.R.R., 52 Ind. App. 510, 98 N. E. 188 (1912).

Sidewalks.

Cities were liable for injuries caused by defective sidewalks, although such works were constructed by the adjoining property-owners. Higert v. City of Green castle, 43 Ind. 574 (1873); City of Huntington v. Breen, 77 Ind. 29 (1881).

It was the duty of cities to prevent anything overhanging a sidewalk that rendered the use of such walk dangerous. Grove v. City of Fort Wayne, 45 Ind. 429, 15 Am. R. 262 (1874).

The mere fact that snow fell on a sidewalk, melted, and subsequently froze, making it slippery, did not render the city liable for an injury caused by slipping and falling thereon. McQueen v. City of Elkhart, 14 Ind. App. 671, 45 N. E. 460 (1890).

State Highways.

This section, as to the duty to maintain and repair streets, was modified by the state highway act, and the state highway commission now has exclusive control of the maintenance and repair of streets which it has taken over as part of the state highway system. Gardner v. City of Covington, 86 Ind. App. 229, 158 N. E. 830 (1927).

Street Improvements.

City could improve streets without special assessments for the costs. Aurora v. Fox, 78 Ind. 1 (1881).

Street Lights.

Cities were not liable for damages because the streets were not lighted. Brinkmeyer v. City of Evansville, 29 Ind. 187 (1887); City of Vincennes v. Thuis, 28 Ind. App. 523, 63 N. E. 315 (1902); City of Vincennes v. Spees, 35 Ind. App. 389, 74 N. E. 277 (1905).

Cities could contract with individuals or companies for the lighting of the public streets when, by such contracts, the legislative power of the city was not impaired or restricted. City of Indianapolis v. Indianapolis Gas-Light & Coke Co., 60 Ind. 390 (1879); City of Vincennes v. Citizens’ Gaslight Co., 132 Ind. 114, 31 N. E. 573, 16 L.R.A. 485 (1892).

Cities had power to contract for the lighting of the streets and other public places of the city. Crowder v. Town of Sullivan, 128 Ind. 486, 28 N. E. 94, 13 L.R.A. 647 (1891); City of Crawfordsville v. Braden, 130 Ind. 149, 28 N. E. 849, 30 Am. St. R. 214, 14 L.R.A. 268 (1891); Folland v. Town of Frankon, 142 Ind. 546, 41 N. E. 1031 (1895); City of LaPorte v. Gamewell Fire-alarm Tel. Co., 146 Ind. 466, 45 N. E. 588, 58 Am. St. R. 359, 35 L.R.A. 686 (1896); Town of Gosport v. Pritchard, 156 Ind. 400, 59 N. E. 1058 (1901); Gaslight & Coke Co. v. City of New Albany, 156 Ind. 406, 59 N. E. 178 (1901); Meyer v. Town of Boonville, 162 Ind. 165, 70 N. E. 148 (1904).

The right of a municipal corporation to contract for lighting the streets was not a legislative power, and a contract therefor pursuant to formal ordinance or resolution was not required. Town of Gosport v. Pritchard, 156 Ind. 400, 59 N. E. 1058 (1901); Meyer v. Town of Boonville, 162 Ind. 165, 70 N. E. 148 (1904).

Street Railroads.

A city was without authority to enact an ordinance to compel a street-car company to sprinkle the portion of the streets between its tracks. City of S. Bend v. Chicago, S.B. & N.I.R.R., 179 Ind. 455, 101 N. E. 628, 1915D Ann. Cas. 966 (1913).

This section did not authorize the board of public works to give permission to a railroad company to extend its tracks upon streets and alleys not occupied by it. Indiana Rys. & Light Co. v. City of Kokomo, 183 Ind. 543, 108 N. E. 771 (1915).

Traction Engines.

The statute conferring on cities the exclusive power over streets and alleys did not authorize the enactment of an ordinance prohibiting the use of traction engines upon streets and alleys. Bogue v. Bennett, 158 Ind. 478, 60 N. E. 143, 83 Am. St. R. 212 (1901).

38-9-6-3. Custody and maintenance of city’s real and personal property. - (a) Unless other-
wise provided by statute or ordinance, the works board has custody of and may maintain all real and personal property of the city.

(b) A city works board may design, order, contract for, and execute:

(1) All work required to improve or repair any real or personal property that belongs to or is used by the city; and

(2) The reaction of all buildings and other structures needed for any public purpose. [IC 36-9-6-3, as added by Acts 1981, P.L. 309, § 79, 1982, P.L. 33, § 44.]

NOTES TO DECISIONS

Vacation of Highways.

The power to vacate existing highways located wholly within a city was, with certain exceptions, vested exclusively in such municipality; but a city had no authority to vacate the municipal half of a highway whose center formed the boundary-line of the city, at least, without joint action with the county. City of Gary v. Much, 180 Ind. 29, 101 N. E. 4 (1913); City of Richmond v. Miller, 58 Ind. App. 29, 107 N. E. 550 (1915).

36-9-6-6. Opening and changes in public ways and sidewalks - Grades. - (a) The works board may lay out, open, change, and fix or change the grade of any public way, sidewalk, or public place in the city.

(b) The works board may keep a record of the grades of all public ways and sidewalks in the city. [IC 36-9-6-6, as added by Acts 1981, P.L. 309, § 79; 1981, P.L. 46, § 8.]

Cross References. Vacation of public ways or places, 36-7-3-12.

NOTES TO DECISIONS

In General.

Municipal corporations could not release their power and control over streets. Vandalia R. R. v. State ex rel. City of S. Bend, 166 Ind. 219, 76 N. E. 980, 117 Am. St. R. 370 (1908), writ dismissed, 207 U.S. 359, 28 S. Ct. 130, 52 L. Ed. 246 (1907).

Boards of works had power to fix or change the grades of streets, although railroad tracks occupied a part of the street. Chicago, I. & L.R.R. v. Johnson, 45 Ind. App. 162, 90 N. E. 507 (1910).

The works board had authority to change the grade of a street or alley in the improvement of the same. Butler v. City of Kokomo, 62 Ind. App. 519, 113 N. E. 391 (1916).

Changes in Width.

In the absence of a statute specifically covering the matter, cities had exclusive power to narrow the width of a city street. City of Princeton v. Hanna, 187 Ind. 582, 113 N. E. 999, 120 N. E. 598 (1916).

Expense of Grading.

Streets could not be graded at the expense of property owners unless the same were paved with some kind of paving material. Jasper v. Casidy, 53 Ind. App. 678, 102 N. E. 278 (1913).

Obstructions.

Cities had no authority to authorize the permanent obstruction of streets. Pettis v. Johnson, 56 Ind. 139 (1877); State v. Berdetta, 73 Ind. 185, 38 Am. R. 117 (1880); City of Tell City v. Bielefeld, 20 Ind. App. 1, 49 N. E. 1090 (1898).

Opening of Streets.

If the damages assessed were not paid or tendered, the opening of the street could be enjoined. Town of Montgomery v. Baltimore & O.S.W.R.R., 29 Ind. App. 692, 65 N. E. 217 (1902).

Vacation of Streets.

If a street was located upon the boundary-line of a city, the city could not vacate that portion of the street within the corporate limits of the city. City of Gary v. Much, 180 Ind. 26, 101 N. E. 4 (1913).

36-9-6-7. Improvements and repairs. - The works board may design, order, contract for, and execute all work required to improve or repair any street, alley, wharf, or public place within the city. [IC 36-9-6-7, as added by Acts 1981, P.L. 309, § 79.]

Cross References. Establishment and maintenance of public streets and ways, 36-9-2-5.

NOTES TO DECISIONS

In General.

The power to determine the kind of and necessity for street improvements was vested in the municipal authorities, and the courts could not control such discretionary power by injunction. Cason v. City of Lebanon, 153 Ind. 567, 55 N. E. 788 (1899).

Allowance of Claims.

Boards of works had power to consider and allow claims for the repairs of streets, and to issue warrants for their payment. Brunaugh v. State, 173 Ind. 433, 90 N. E. 1019 (1910).

The allowance of claims by the board of public works of a city, presented by a street commissioner or person in charge of street work which was being done by the city, was a quasi-judicial act. City of Indianapolis v. National City Bank, 80 Ind. App. 677, 148 N. E. 675, rehearing denied, 141 N. E. 249 (1923).
Liability of City.

Where a city contracted with a contractor for street improvements and after the contractor at great expense had completed the work, the city wrongfully and without the contractor's consent took action which made it impossible for the contractor to complete the assessments against abutting property, the city was liable for the amount plaintiff had earned and thus rendered uncollectable. Blain v. City of Delphi, 195 Ind. 463, 145 N. E. 764 (1924).

Removal of Trees.

Town had authority to order removal of trees in streets. Hildrup v. Town of Windfall City, 29 Ind. App. 592, 64 N. E. 942 (1902).

State Highways.

This section, as to the duty to maintain and repair streets, was modified by the State Highway Act, and the state highway commission now has exclusive control of the maintenance and repair of streets which it has taken over as part of the state highway system. Gardner v. City of Covington, 86 Ind. App. 229, 156 N. E. 830 (1927).

36-9-6-9. Erection of lighting apparatus. - The works board may erect lamp posts or other lighting apparatus in the streets, alleys, and public places of the city. [IC 36-9-6-9, as added by Acts 1981, P.L. 309, § 79.]

Cross References. Installation of traffic lights at intersections with state highways, 9-4-3.1-4, 9-4-3.1-5.


NOTES TO DECISIONS

In General.

Municipal corporations had statutory authority to provide for lighting and public places. Crowder v. Town of Sullivan, 128 Ind. 486, 28 N. E. 94, 13 L.R.A. 647 (1891); City of Crawfordsville v. Braden, 130 Ind. 149, 28 N. E. 849, 14 L.R.A. 268 (1891); Rockebrandt v. City of Madison, 9 Ind. App. 227, 36 N. E. 444, 53 Am. St. R. 348 (1894); Foland v. Town of Frankton, 142 Ind. 546, 41 N. E. 1031 (1895); City of LaPorte v. Gamewell Fire-Alarm Tel. Co., 146 Ind. 466, 45 N. E. 588, 55 Am. St. R. 359, 35 L.R.A. 686 (1896); Town of Gosport v. Pritchard, 156 Ind. 400, 59 N. E. 1058 (1901); Gaslight & Coke Co. v. City of New Albany, 156 Ind. 406, 59 N. E. 176 (1901); Meyer v. Town of Boonville, 162 Ind. 165, 70 N. E. 146 (1904).

Towns had statutory authority to provide lighting facilities and contracts properly executed were enforceable. Town of Gosport v. Pritchard, 156 Ind. 400, 59 N. E. 1058 (1901); Meyer v. Town of Boonville, 162 Ind. 165, 70 N. E. 146 (1904).

Liability for Lack of Lighting.

Cities were not liable for damages because the streets were not lighted. Brinkmeyer v. City of Evansville, 29 Ind. 187 (1867); City of Vincennes v. Thuis, 28 Ind. 187 (1867); City of Vincennes v. Thuis, 28 Ind. App. 523, 63 N. E. 315 (1902); City of Vincennes v. Spees, 35 Ind. App. 389, 74 N. E. 277 (1905).

36-9-6-15. Removal of structures. - The works board may order the removal of any structure in a street, alley, or public place of the city. If the person maintaining the structure fails to remove it, the works board may remove it at his expense. [IC 36-9-6-15, as added by Acts 1981, P.L. 309, § 79.]

Opinions of Attorney General. City has
power to direct removal of structures on that part of street between curb and property line. 1947, No. 25, p. 106.

NOTES TO DECISIONS

In General.

The power of the works board of a city to direct removal of structures in streets was not derived from contract, but was statutory. City of Indianapolis v. Link Realty Co., 94 Ind. App. 1, 179 N. E. 574 (1932).

The works board of city could order the removal of a switch track laid by a private corporation pursuant to ordinance granting privilege, without ordering removal of all other switch tracks similarly situated, though conditions had not changed since granting the right. City of Indianapolis v. Link Realty Co., 94 Ind. App. 1, 179 N. E. 574 (1932).

Failure to Remove.

Cities were required to keep the streets free from obstructions, and were liable for damages resulting from failure to do so. City of Indianapolis v. Gaston, 58 Ind. 224 (1877); City of Evansville v. Wilter, 86 Ind. 414 (1882).

Recovery of Penalty.

If the encumbering or obstruction of streets or walks violated criminal statutes, a city could not provide for recovering a penalty for such acts. City of Indianapolis v. Higgins, 141 Ind. 1, 40 N. E. 671 (1895).

36-9-7. CITY DEPARTMENT OF TRAFFIC ENGINEERING

36-9-7-3. Personnel - Appointment of traffic engineer - Qualifications - (a) The personnel of the department of traffic engineering consists of a city traffic engineer, his assistants, and other employees necessary to perform the duties of the department. The city executive shall appoint the traffic engineer.

(b) The traffic engineer must:

(1) Have a thorough knowledge of modern traffic control methods;

(2) Be able to supervise and coordinate diversified traffic engineering activities and prepare engineer reports; and

(3) Either:

(A) Be a registered professional engineer who has practiced traffic engineering for at least one year;

(B) Have a certificate of engineer-in-training under IC 25-31 [25-31-1-1 - 25-31-1-32] and have practiced traffic engineering for at least two [2] years; or

(C) Have practiced traffic engineering for at least ten [10] years.

A person must furnish evidence of his qualifications under this subsection before he may be appointed by the executive. [IC 36-9-7-3, as added by Acts 1981, P.L. 39, § 80.]

Collateral References. 62 C.J.S. Municipal Corporations § 618.

36-9-7-4. Authority of engineer. - (a) The traffic engineer is responsible only to the city executive or safety board, and he may act only in an advisory capacity to the executive or board.

(b) The traffic engineer has full authority over all his subordinates. [IC 36-9-7-4, as added by Acts 1981, P.L. 309, § 80.]

36-9-7-5. Powers and duties of engineer. - The traffic engineer shall:

(1) Conduct all research relating to the engineering aspects of the planning of:

(A) Public ways;

(B) Lands abutting public ways; and

(C) Traffic operation on public ways;

for the safe, convenient, and economical transportation of persons and goods;

(2) Advise the city executive in the formulation and execution of plans and policies resulting from his research under subdivision (1);

(3) Study all accidental records, to which he has access at all times, in order to reduce accidents;

(4) Direct the use of all traffic signs, traffic signals, and paint markings, except on streets traversed by state highways;

(5) Recommend all necessary parking regulations;

(6) Recommend the proper control of traffic movement; and

(7) If directed to do so by ordinance, supervise all employees engaged in activities described by subdivisions (3) through (6). [IC 36-9-7-5, as added by Acts 1981, P.L. 309, § 80.]


36-9-8. ATTENDANCE AT ROAD SCHOOL

36-9-8-1. Application of chapter. - This chapter applies to all counties and municipalities. [IC 36-9-8-1, as added by Acts 1981, P.L. 309, § 81.]
in front or on either side of the city block or blocks described in the petition.

(b) When the petition has been filed and signed by the owner or owners of at least sixty percent [60%] of the real property in the city block or blocks described in the petition, the works board shall adopt a declaratory resolution for the making of the improvement as described in the petition and shall then:

(1) Prepare and place on file in its office, or with the municipal clerk if it has no office, a complete set of drawings, plans, and specifications for the lighting system and an estimate of the annual cost of the street lighting, which shall be kept open for inspection by the public and all prospective bidders; and

(2) Publish in accordance with IC 5-3-1 [5-3-1-1-5-3-1-9] a notice stating that on a day named after the last publication a public hearing shall be held, that interested persons may file remonstrances against the lighting system at the hearing, and that, at the hearing, the works board may sustain or overrule the remonstrances or may modify its original resolution, plans, or proceedings. [IC 36-9-9-3, as added by Acts 1981, P.L. 309, § 82; 1981, P.L. 45 § 41.]

- At the time specified in the notice under section 3 [36-9-9-3] of this chapter, the municipal works board shall conduct a hearing of any remonstrance on file. If, at the hearing, the works board finds that:

(1) The lighting system will not be of public benefit; or

(2) The annual benefits from the lighting system that will accrue to the property liable to be assessed will not equal or exceed the estimated annual cost of the improvement, after deducting the amount of the annual cost to be paid by the municipality;

the works board shall rescind the declaratory resolution for the lighting system and dismiss the petition, or modify the resolution, petition, drawings, plans, specifications, and estimated cost so that the lighting system will be of public benefit and the annual benefits that will accrue to the property liable to be assessed for the lighting system will equal or exceed its estimated annual cost, after deducting the amount of the annual cost to be paid by the municipality. However, the number of lumens per post and the number of posts designated in the petition may not be changed without the written consent of the petitioners. [IC 36-9-9-4.1, as added by Acts 1982, P.L. 6, § 26.]

36-9-9-5. Contract with utility for furnishing lighting - Bids - Limitation on annual cost - Action by public service commission. - (a) When
the declaratory resolution, as originally adopted or as modified, has been confirmed, the municipal works board shall notify and negotiate with any utility that operates and supplies electrical current within the municipality. The works board shall attempt to enter into a contract with the utility for the lighting described in the plans and specifications, and may cause the municipality to enter into such a contract, in strict accordance with the plans, drawings and specifications on file.

(b) If more than one [1] utility supplies electricity in the municipality and has the right to serve the electric system petitioned for, the municipal works board shall publish a notice in accordance with IC 5-3-1 [5-3-1-1--5-3-1-9]. The notice must state the nature of the work, state that drawings, plans, and specifications are on file in the office of the works board or the municipal clerk, call for sealed bids for the lighting and the maintenance of the system, and state that the bids must be filed not less than ten [10] days after the last publication and must comply with the manner and form in which bids for public improvements are filed in municipalities. If a satisfactory bid is received by the time fixed in the notice, the works board shall attempt to enter into a contract with the utility that is the lowest responsible bidder for the furnishing of that lighting.

(c) If the municipality owns and operates an electric utility and no other electric utility is authorized to render the service petitioned for, then the electrical lighting system petitioned for may be installed, maintained, and operated by the municipality. An electrical system established under this section shall be maintained, operated, and paid for in the same manner as an electrical system that is established under this chapter by a public utility.

(d) The annual cost of lighting as fixed by the contract may not exceed the estimated cost of lighting on file with the plans and specifications. The contract must require lighting service for a period of not less than five [5] years and not more than fifteen [15] years, and must describe in detail the service to be rendered and the prices to be paid to the utility.

(e) If the municipality is unable to make an agreement with a utility, the municipality may file its petition with the public service commission. The commission shall conduct a hearing on the petition, in accordance with law and the rules of the commission. The commission may then require a utility to construct the electric system of lighting in accordance with the plans and specifications on file with the municipality, and to maintain and operate the system at the prices, on the terms, for the period of time, and upon the conditions that the commission requires. Such an order of the commission is binding upon the municipality and utility:

(1) In the same manner as other orders of the commission; and

(2) As if a contract had been entered into between the municipality and the utility covering the same subject matter; subject to all rights of appeal from the commission.

(f) After a contract has been entered into between the municipality and utility and has been approved by the public service commission, or if the construction, maintenance, and operation of the lighting system has been ordered by the commission, the utility which is a party to the contract or order shall, within a reasonable time, construct the system in strict accordance with the agreement and order, and at the annual rates, tolls, or charges fixed by contract or by the order of the commission. The commission may investigate the rates, tolls and charges in the same manner and to the same extent that it may investigate and revise the rates, tolls, and charges for electric current supplied by a public utility under IC 8-1-2 [8-1-2-1--8-1-2-119]. [IC 36-9-9-5, as added by Acts 1981, P.L. 309, § 82; 1981, P.L. 45, § 42.]

36-9-9-6. Uniformity of lamps or systems - Supervision of installation - Report on completion. - (a) All street lamps or systems of lighting constructed, erected, or installed must be uniform in style and shall be installed under the supervision of:

(1) The municipal civil engineer; or

(2) Some other competent person;

as determined by the municipal works board. If the person supervising the work is not already under bond, he shall file a bond for the faithful performance of his duties in the sum and the manner directed by the works board.

(b) At the completion of the work, the person supervising the work shall file with the municipality his verified report that the work has been completed and complies in all respects with the drawings, plans, and specifications on file. If the report is found to be correct, the works board shall accept it on behalf of the municipality. [IC 36-9-9-6, as added by Acts 1981, P.L. 309, § 82.]

36-9-9-7. Contract payments to utility for service. - The municipality shall make to the utility operating the lighting system all payments required to be made to the utility for its service, in strict accordance with the terms of the contract or order under which the utility is operating. The municipality shall make the payments from its general fund or from a fund set aside for street lighting purposes, and shall be reimbursed for payments made in behalf of property owners by the collection of the assessments as provided in this chapter. [IC 36-9-9-7, as added by Acts 1981, P.L. 309, § 82.]
36-9-9-8. Lighting facilities at street intersections. - (a) For purposes of this section, all light posts that are:

(1) Located on the street upon which a lighting system is installed; and

(2) Within fifty feet [50'] of the nearest part of another street intersecting that street;

are considered to be at a street intersection.

(b) A municipality shall install, maintain, and operate at each street intersection lighting facilities that are at least equal to those in other parts of the lighting system. [IC 36-9-9-8, as added by Acts 1981, P.L. 309, § 82.]

36-9-9-9. Payment of street lighting costs - Proportionate payment for other costs of system - Zones. - (a) The municipality shall pay from its general fund or from a fund set aside for street lighting purposes:

(1) The entire cost of lighting and street intersections under section 8 [36-9-9-8] of this chapter; and

(2) Not less than thirty-five percent [35%] of the annual cost of lighting of the entire other part of the lighting system, with the exact percentage paid to be fixed by the municipal works board.

The municipal legislative body may, by ordinance, divide the municipality for lighting purposes into business zones, residence zones, or other classes of zones. The percentage of annual cost of the lighting system to be paid by the municipality must be uniform throughout each class of zones.

(b) The remaining annual cost of the lighting system shall be assessed against each lot or parcel of real property in the city block or blocks in front of which the lighting system is located, in the manner prescribed by section 10 [36-9-9-10] of this chapter. [IC 36-9-9-9, as added by Acts 1981, P.L. 309, § 82.]

36-9-9-10. Assessments for proportionate cost of system - Assessment roll - Payment - Lien of assessments. - (a) After an electrical lighting system has been completed and is ready for operation, the municipal works board shall assess the real property in the city block or blocks in front of which the lighting system is located, in the manner prescribed by section 10 of this chapter. The cost of the lighting system may be operated between the time of its completion and the beginning of the next calendar year; and

(2) In the case of a system of ornamental lighting, the costs of installing the system.

The preparation and filing of the assessment roll and all proceedings for its adoption and confirmation, notices to property owners, certifying the roll to the county treasurer, and all other proceedings in connection with the roll must be according to the statutes regarding public improvements in municipalities.

(c) The first assessment made against each lot or parcel of real property in a lien on that lot or parcel, from the time of the final acceptance of the electrical system by the municipality. The lien covers the cost of lighting for the part of the calendar year following acceptance of the system, the cost of lighting for the next full calendar year, and, in the case of a system of ornamental lighting, the cost of installing the system.

(d) The lien attaches upon March 1 of each year without further certification to the county treasurer, for the amount of the lighting cost for the succeeding calendar year and in the same proportions per foot front as fixed by the original assessment roll.

(e) Assessments made under this section shall be paid in the same manner as taxes as paid, at the regular tax paying periods following the adoption of the assessment roll. An assessment not paid at the time fixed by statute is subject to and may be collected according to the statutes regarding delinquent taxes, and all property upon which an assessment is a lien is subject to proceedings for the collection of taxes.

(f) The lien of an assessment under this section has equal priority with all other assessment liens and is superior to all other liens except liens for taxes. [IC 36-9-9-10, as added by Acts 1981, P.L. 309, § 82.]

NOTES TO DECISIONS

In General.

Former section did not authorize the assessment for anything except lampposts, and did not include the extension of a distributing system of conduits and cables. Wilt v. Buetter, 186 Ind. 98, 111 N. E. 926, 115 N. E. 49 (1916).

36-9-9-11. New contracts - Extension of existing contracts - Purchase of system by new utility. - (a) Six [6] months before the expiration of a contract or order entered into or made under section 5 [36-9-9-5] of this chapter, the municipal works board may:
(1) Negotiate and enter into a new contract;
(2) Extend the current contract;
(3) Procure an order of the commission; or
(4) Advertise for bids.

The works board shall then proceed in the manner provided by the preceding sections of this chapter.

(b) If a contract or order made under this section provides that an electrical system is to be operated by a utility other than the former utility and owner of the system, the new utility shall pay in cash to the former utility the full value at that time of the system, as determined by the public service commission. After payment, the former utility shall transfer title in the system to the new utility, which is then fully vested with ownership of the system. The new utility shall maintain and serve the system in accordance with this chapter. [IC 38-9-9-11, as added by Acts 1981, P.L. 309, § 82.]

38-9-9-12. Additional lighting facilities - Petition - Costs. - (a) Whenever a lighting system has been established in accordance with this chapter, and an owner of property within any city block or blocks included in the system wants lighting facilities in front of or near his property that:

(1) Are additional to those described in the plans and specifications on file; and

(2) Consist of either lighting posts or lamps of greater candlepower, or both;

the property owner may file his petition with the municipal works board. The petition must fully describe the additional lighting facilities that are wanted.

(b) The works board shall grant the petition and refer it to the person who supervises the system, who shall prepare and file:

(1) Plans and specifications for the additional lighting; and

(2) The estimated annual cost of the additional lighting.

(c) When the plans, specifications, and annual cost are approved by the works board and by the property owner, the works board shall notify the utility operating the lighting system. The utility shall immediately proceed to erect, install, construct, and connect the additional lighting at its own expense. The utility shall then operate and maintain the additional lighting facilities as a part of the original system in return for additional compensation that is:

(1) Agreed upon by all the interested parties and approved by the public service commission; or

The property owner who petitioned for the additional lighting facilities shall pay to the municipality the annual cost of those facilities. The additional annual cost, which shall be added to the original amount assessable against the petitioner’s property, is a lien upon the property and is payable in accordance with this chapter. [IC 38-9-9-12, as added by Acts 1981, P.L. 309, § 82.]

38-9-9-13. Additional service - Petition - Costs. - (a) Whenever:

(1) A lighting service has been established in accordance with this chapter or under another contract or arrangement; and

(2) At least sixty percent [60%] of the property owners upon one [1] side of the street on a city block or blocks lighted by the service file with the municipal works board their petition requesting that the lighting service be maintained on that side of the street in the block or blocks each night for a designated number of hours in addition to the number of hours of service prescribed by the current contract, arrangement, or plans and specifications; the works board shall grant the petition. The cost of the additional lighting shall be charged to and assessed against all of the lots or parcels of real property on the side of the street and on the city block or blocks on which additional lighting service is maintained.

(b) All proceedings for the establishment of additional service, the payments to the utility for additional service, and the making and collection of assessments and liens for additional service are governed by this chapter in the same manner as other proceedings, payments, assessments and liens. [IC 38-9-9-13, as added by Acts 1981, P.L. 309, § 82.]

38-9-10. COUNTY PAYMENT FOR MUNICIPAL STREET LIGHTS

38-9-10-1. Application of chapter. - This chapter applies to all municipalities and the counties in which they are located. [IC 38-9-10-1, as added by Acts 1981, P.L. 309, § 83.]

38-9-10-2. When county required to pay for street lights. - If:

(1) A county owns real property in a municipality;

(2) The municipality installs a lighting system to light the streets, alleys, and other public places in the municipality;

(3) As a part of that system, street lights are installed along a street abutting on the county property, on the opposite side of the street from the county property; and

(4) There are no street lights on the side of the
the county shall pay the cost of installing, maintaining, and operating street lights in front of its property, on the side of the street on which the property is located. [IC 36-9-10-2, as added by Acts 1981, P.L. 309, § 83.]

36-9-10-3. Amount to be paid for installation of lights. - (a) If a county is required to pay for the installation of municipal street lights under this chapter, the amount to be paid by the county shall be determined under this section.

(b) If the contract for the installation of the lighting system calls for payment for the system as a whole, the county shall pay the amount that bears the same ratio to the total contract price as the number of lights to be paid for by the county bears to the total number of lights contracted for. The municipal legislative body shall determine the amount to be paid under this subsection.

(c) If the contract for installation of the lighting system calls for payment at a fixed price per light, the county shall pay the amount determined by multiplying that price by the number of lights to be paid for by the county. [IC 36-9-10-3, as added by Acts 1981, P.L. 309, § 83.]

36-9-10-4. Amount to be paid for maintenance and operation of lights. - (a) If a county is required to pay for the maintenance and operation of municipal street lights under this chapter, the amount to be paid by the county shall be determined under this section.

(b) If the contract for the maintenance and operation of the lighting system calls for payment for the system as a whole, the county shall pay the amount that bears the same ratio to the total contract price as the number of lights to be paid for by the county bears to the total number of lights contracted for.

(c) If subsection (b) does not apply, the county shall pay the amount determined by multiplying the price paid by the municipality for the maintenance and operation of each light by the number of lights required to be paid for by the county. [IC 36-9-10-4, as added by Acts 1981, P.L. 309, § 83.]

36-9-10-5. Resolution - Appropriation for payment. - (a) If a county is required to pay for the installation, maintenance, or operation of municipal street lights under this chapter, the municipal clerk shall verify the amount to be paid by the county. The municipal legislative body must approve this amount by resolution, and shall file a certified copy of the resolution with the county auditor in the same manner that other claims against the county are filed.

(b) Within sixty [60] days after the copy of the resolution is filed, the county auditor shall call the county fiscal body into special session for the purpose of making an appropriation to pay the amount claimed in the resolution. The fiscal body shall make an appropriation to pay this amount within sixty [60] days after the copy of the resolution is filed.

(c) The county shall pay the cost of maintaining and operating the lights every three [3] months, upon the filing of a claim under this section. [IC 36-9-10-5, as added by Acts 1981, P.L. 309, § 83.]

36-9-17. GENERAL IMPROVEMENT FUND FOR MUNICIPALITY

36-9-17-7. Letting of contracts - Assessments - Payments. - (a) Contracts for public improvements authorized by this chapter shall be let according to the statutes authorizing municipalities to make and finance public improvements.

(b) As soon as any contract for the construction of a public improvement has been let, the municipal works board shall:

(1) Carefully compute the entire cost of the project, including payments made and to be made to the contractor and all incidental costs, expenses, and damages paid and incurred according to law; and

(2) Prepare and make out an assessment roll listing the assessments against the properties benefited.

In determining and fixing the amount of assessments, the giving of notice of assessments, the holding of public hearings, and the making of final determinations, subject to the right of appeal from those determinations, the municipal works board is governed by the street and sewer improvement statutes.

(c) Assessments made under this chapter are liens on the properties benefited from the time of the letting of the contract and shall be collected in the manner provided by law for the collection of Barrett Law assessments. However, the municipal works board shall fix a period of no more than five [5] years within which the assessments shall be paid. Any property owner liable for an assessment may elect to pay it in annual installments over the period of time fixed by the municipal works board by executing a waiver in the manner provided by the street and sewer improvement statutes.

(d) All payments of assessments and all payments made by the municipality for public improvements under this chapter shall be made into the general improvement fund. [IC 36-9-17-7, as added by Acts 1981, P.L. 309, § 90.]
NOTES TO DECISIONS

Contracts.

--Professional Services.

Contracts for professional services, such as the services of an architect, are not required to be competitively bid. State v. Brown, - Ind. App. --, 422 N. E. 2d 1254 (1981).

36-9-18. MUNICIPAL AND COUNTY BARRETT LAW

36-9-18-1. Application of chapter - Exceptions. - This chapter applies to all units except townships. However, section 3(b), 9(e), 9(f), 10, 11, 14(d), 24(c), 32, 33(d), 43, and 45 [36-9-18-3(b), 36-9-18-9(e), 36-9-18-9(f), 36-9-18-10, 36-9-18-11, 36-9-18-14(d), 36-9-18-24(c), 36-9-18-32, 36-9-18-33(d), 36-9-18-43, and 36-9-18-45] of this chapter do not apply to counties, and section 19(b) [36-9-18-19(b)] does not apply to municipalities. [IC 36-9-18-1, as added by Acts 1981, P.L. 309, § 91.]

36-9-18-2. Limitations on improvements. - (a) Improvements that may be made under this chapter are limited to:

1. Those described by subdivisions (1), (2), (3) and (4) of IC 36-9-1-2, and by subdivisions (8) and (12) of IC 36-9-1-8, in the case of county; or
2. Those described by subdivisions (2), (3), (4), (5), and (7) of IC 36-9-1-2, in the case of municipality.

(b) In the case of a county, improvements under this chapter may be made only in unincorporated areas that contain residential or business buildings and may not be made on any tract of land that:

1. Consists of ten (10) or more acres and contains only one (1) building that is used for residential purposes; or

Amendments. The 1986 amendment, effective September 1, 1986, substituted "(3), and (4) of IC 36-9-1-2, and by subdivisions (8) and (12) of" for "and (3) of IC 36-9-1-2" in subsection (a)(1).

NOTES TO DECISIONS

Constitutionality.

A statute providing for the appropriation of property by towns for public streets was constitutional. Pittsburgh, C., C. & St. L. Ry. v. Town of Wolcott, 162 Ind. 399, 69 N. E. 451 (1904).

Discretion of Board.

Acts 1905, ch. 129, § 107, as amended, did not require the board to give the property owner a notice to construct a sidewalk, but the order to require abutting owners to construct a sidewalk was entirely discretionary with the board. Frankenstein v. Coil Constr. Co., 127 Ind. App. 642, 143 N. E. 2d 468, 145 N. E. 2d 19 (1957).

Sidewalks.

Sidewalks could be improved under an order for the improvement of the street. Taber v. Grafmiller, 109 Ind. 206, 9 N. E. 721 (1887).

A sidewalk meant a footway along the side of a street. Marion Trust Co. v. City of Indianapolis, 37 Ind. App. 672, 75 N. E. 834 (1905).

Amendment. The 1986 amendment, effective September 1, 1986, substituted "(3), and (4) of IC 36-9-1-2, and by subdivision (8) and (12) of" for "and (3) of IC 36-9-1-2" in subsection (a)(1).

36-9-18-3. Preliminary resolution for improvements - Cross-sections, plans and specifications. - (a) A works board that wants to make an improvement must adopt a preliminary resolution for the improvement. The works board must at the same time adopt and place on file cross-sections, general plans, and specifications for the work.

(b) The cross-sections, plans, and specifications file under subsection (a) must conform to the paving standards adopted by the works board, unless engineering practice justifies a contrary design. [IC 36-9-18-3, as added by Acts 1981, P.L. 309, § 91.]

NOTES TO DECISIONS

Adoption of Plan.

Skill must be exercised in the adoption of a plan for street improvements as well as in the execution of the work. Indianapolis v. Huffer, 30 Ind. 235 (1863); Cummins v. Seymour, 79 Ind. 491, 41 Am. R. 618 (1881); Evansville v. Decker, 34 Ind. 325, 43 Am. R. 86 (1882); City of Seymour v. Cummins, 119 Ind. 148, 21 N. E. 549, 5 L.R.A. 126 (1889); City of Peru v. Brown, 10 Ind. App. 597, 38 N. E. 223 (1894); City of Valparaiso v. Spaeth, 166 Ind. 14, 76 N. E. 514 (1905).

If a city adopted a proper plan for work, and let a contract therefor, the contractor to use his own method for performing the work, the city would not be liable for the negligence of the contractor in performing the work. City of Seymour v. Cummins, 119 Ind. 148, 21 N. E. 549, 5 L.R.A. 126 (1889); City of Bloomington v. Wilson, 14 Ind. App. 476, 43 N. E. 37 (1896).

Intersections on Different Levels.

A city had power to contract for improvements at the intersection of two streets which were on
different surface levels, by building a bridge to carry one street over the other, and to provide for necessary drainage, and could pay for the same out of the public treasury. Blain v. City of Delphi, 195 Ind. 463, 145 N. E. 764 (1924).

Materials to be Used.

The municipal authorities could not delegate to the city engineer the authority to determine what materials would be used in the improvement of streets. City of Bluffton v. Miller, 33 Ind. App. 521, 70 N. E. 989 (1904).

Necessity for Improvement

Cities could not be compelled by mandate to improve streets to be paid for out of the general funds of the city. Mayor of Michigan City v. Roberts, 34 Ind. 471 (1870).

Necessity for improvement rested with the board and notice to property owner before assessment was confirmed was sufficient for jurisdiction. Millikan v. Crail, 177 Ind. 426, 98 N. E. 291 (1912).

The necessity or wisdom of an improvement was to be decided by the proper city or town authorities and not by the courts. Hutchins v. Incorporated Town of Fremont, 194 Ind. 74, 142 N. E. 3 (1924).

Negligence.

Municipal corporations were responsible to the same extent as natural persons for negligence or want of skill in the construction of works for the use of such corporations. Ross v. Madison, 1 Ind. 281, Smith 98, 48 Am. Dec. 361 (1848); Madison v. Ross, 3 Ind. 236, 54 Am. Dec. 481 (1851); Logansport v. Wright, 25 Ind. 512 (1865); Indianapolis v. Huffer, 30 Ind. 235 (1868); City of Vernon v. Voegler, 103 Ind. 314, 2 N. E. 821 (1885).

Passageways.

Acts 1905, ch. 129, § 107, as amended, (since repealed), authorizing street improvements, did not authorize city to improve a passageway used under a mere license. Turner v. Sievers, 73 Ind. App. 30, 126 N. E. 504 (1920).

Paving Materials.

Acts 1905, ch. 129, § 107 as amended, (since repealed), required that the particular kind of paving material be determined when specifications were placed on file for bids. Tousey v. City of Indianapolis, 175 Ind. 295, 94 N. E. 225 (1911).

Where a board of public works, pursuant to the provisions of § 107 of Acts 1905, ch. 129, as amended, (since repealed), had specifications prepared for five different kinds of wearing surface for a proposed street improvement, and advertised for bids thereon, but there was no petition by a majority of the property owners residing on the street requesting that any one of the several kinds of pavement be used, and a contractor submitted a bid to do the work, using "oil" asphalt, for a certain price, and another bid proposing to use Trinidad Lake asphalt for a higher price, the board had the right to award the contract to such contractor for the more expensive asphalt, if the board was of the opinion that that was the better pavement. Ogelsby v. City of Indianapolis, 89 Ind. App. 69, 149 N. E. 82 (1925).

City authorities could not provide that streets had to be improved with materials covered by letters patent. Monaghan v. City of Indianapolis, 37 Ind. App. 280, 76 N. E. 424 (1905).

Placing Plans on File.

The failure of the board of works of a city to have placed on file a map, clearly showing the boundary lines of the district beneficially affected by an improvement was, at most, an irregularity in the proceedings for the construction of the improvement, which irregularity was not available to property owners as a defense in an action brought by the contractor to enforce the lien of assessment. Varble v. O'Neil, 110 Ind. App. 164, 37 N. E. 2d 276 (1941).

Property Outside City.

Cities were liable for injuries caused to property outside of the city to the same extent as if such property was within the city. Columbus v. Hydraulic Woolen Mills Co., 33 Ind. 435 (1870); Evansville v. Decker, 84 Ind. 325, 43 Am. R. 86 (1882).

Reimprovement of Streets.

Reimprovement of streets could be ordered at the expense of the abutting property owners. Lux & Talbott Stone Co. v. Donaldson, 162 Ind. 481, 88 N. E. 1014 (1903).

38-9-18-4. Cost estimates for assessments - Inclusions. - (a) If the improvement is to be paid for in whole or in part by special assessments levied against the property to be benefited by the improvement, the works board must adopt and file an estimate of the cost of the public improvement.

(b) The estimate may include all incidental, inspection, and engineering costs occasioned by the proposed improvement. However, the salaries and expenses of the necessary and regularly employed personnel of the engineering department of the unit and the ordinary operating costs of the department may not be included as a part of the costs to be paid by special assessment. If the works board finds that it is necessary to employ additional engineering services for any particular improvement, the cost of the additional service actually performed in connection with the improvement may be included in the estimate.
(c) The incidental costs that are authorized by the preliminary resolution and included in the estimate may be added to the cost of the work and included in the assessment roll in the aggregate amount to be apportioned and assessed against the benefited property. The amount of incidental costs included in the assessment roll may not exceed the estimate.

(d) If the preliminary resolution provides for the inclusion and assessment of incidental costs, the works board shall include in any contract for the improvement a provision that requires all the incidental costs to be advanced and paid by the contractor to the board, upon the final acceptance of the improvement, for payment by the board to persons entitled to the costs. The contractor is then subrogated to all rights of the unit and those persons to all the incidental costs subsequently included in and assessed upon the roll, and the costs belong to the contractor as a part of the assessments. [IC 36-9-18-4, as added by Acts 1981, P.L. 309, § 91.]

NOTES TO DECISIONS

Assessment of Property Benefited.

Cost and expense of making street improvements could be assessed against property benefited. Pittsburgh, C., C. & St. L.R.R. v. Taber, 168 Ind. 419, 77 N. E. 741, 11 Ann. Cas. 808 (1908); Edwards v. Cooper, 168 Ind. 54, 79 N. E. 1047 (1907); Boswell v. City of Marion, 40 Ind. App. 289, 79 N. E. 1056 (1907); Diven v. Burlington Sav. Bank, 40 Ind. App. 678, 82 N. E. 1020 (1907).

The statute providing for the assessment of the cost of street improvements against the property benefited was not a taking of property without compensation, nor without due process of law or open to any other constitutional objections. Dawson v. Hipkind, 173 Ind. 216, 89 N. E. 863 (1909).

Statutes could authorize the assessment of the cost of street improvements against abutting property. Voris v. Pittsburg Plate Glass Co., 163 Ind. 599, 70 N. E. 249 (1904).

Cost Exceeding Benefits.

Streets could be improved when the cost thereof would exceed the benefits to the property that could be assessed for the improvement, but the city was required to pay the difference between the cost and the benefits. Gardner v. City of Bluffton, 173 Ind. 454, 89 N. E. 853, 90 N. E. 898, 1912A Ann. Cas. 713 (1909).

Payment from Public Funds.

When a city council contracted for public work and the same was to be paid for out of the general city funds, the city could not, after the work was completed, assess the cost thereof against property owners. Spaulding v. Baxter, 25 Ind. App. 485, 58 N. E. 551 (1900).

Property could not be assessed for street improvements in excess of the benefits resulting from the improvement, and if the assessments exceeded the benefits, the property owner could appeal to the courts for relief. Gardner v. City of Bluffton, 173 Ind. 454, 89 N. E. 853, 90 N. E. 898, 1912A Ann. Cas. 713 (1909).

36-9-18-5. Notice of hearing on preliminary resolution. - (a) Notice for a hearing on the preliminary resolution shall be published in accordance with IC 5-3-1 [5-3-1-1-.5-3-1-9]. The notice must call attention to the passage of the preliminary resolution and must state that on a day named the works board will hear all interested persons, and will decide whether the benefits to the property liable to be assessed for the improvement will equal its estimated cost.

(b) A similar notice shall be sent to each property owner affected by the proposed improvement. The mailing of the notices to owners as they appear on the assessor's books of the county in which the land is located complies with this subsection. [IC 36-9-18-5, as added by Acts 1981, P.L. 309, § 91; 1981, P.L. 45, § 52.]

NOTES TO DECISIONS

Jurisdiction.

Notice to property owners was required in order to obtain jurisdiction over their property. Daly v. Gubbins, 55 Ind. App. 86, 73 N. E. 833 (1905).

36-9-18-6. Engineer's estimate - Filing - Contents. - (a) At least ten [10] days before the day fixed for the hearing under section 5 [36-9-18-5] of this chapter, the engineer of the unit shall file with the works board an estimate of the maximum cost of the improvement proposed by the board. The estimate must include the cost of the guarantee under section 14 [36-9-18-14] of this chapter and the cost of the maintenance of the improvements for a period of at least three [3] years.

(b) A contract that exceeds the engineer's estimate may not be let under the preliminary resolution. [IC 36-9-18-6, as added by Acts 1981, P.L. 309, § 91.]

36-9-18-7. Hearing - Determination of aggregate amount of special benefits - Deduction from assessment for existing improvements - Remonstrances against improvements. - (a) On the day named in the notice under section 5 [36-9-18-5] of this chapter, the works board shall hear interested persons and then decide whether the benefits that will accrue to the property liable to be assessed for the improvement will equal the estimated cost. If the works board finds that the
benefits will not equal the maximum estimated cost of the improvement, the board shall determine in what aggregate amount the property liable to be assessed for the improvement will be specially benefited.

(b) The determination of the works board as to the aggregate amount of special benefits that will accrue to the property liable to be assessed on account of the improvement is final and conclusive, except as otherwise provided in subsection (d). If the contract for the improvement is subsequently executed, and the improvement made, the works board shall levy special assessments, not in excess of the cost of the improvement, for the amount determined. If the amount determined is less than the contract price, the remainder of the cost of the improvement is payable by the unit.

(c) If, before the improvement is ordered, any property already has an improvement in front of it that conforms to the general plan, the works board shall make an allowance to the owner of the property to be deducted from his assessment and from the total amount of the contract price.

(d) After the determination by the works board of the amount of special benefits that will accrue to the property liable to be assessed on account of the improvement, the board may either confirm, modify, or rescind the preliminary resolution. If the preliminary resolution is modified or confirmed, and the improvement is ordered, the resolution is final and conclusive on all parties. However, within ten [10] days after the hearing under this section, a majority of the persons who own the property to be assessed on account of the improvement may remonstrate against the improvement or take an appeal.

(e) If there is a remonstrance, the improvement may not be made unless specifically ordered by an ordinance passed by a two-thirds [2/3] vote of the legislative body. The ordinance must be passed within sixty [60] days after the remonstrance. [IC 36-9-18-7, as added by Acts 1981, P.L. 309, § 91; P.L. 213-1988, § 9.]

Amendments. The 1986 amendment, effective April 1, 1986, substituted "legislative body" for "body having the power to adopt ordinances under IC 36-1-3-6" at the end of the first sentence in subsection (e).

NOTES TO DECISIONS
Assessments.

An extra assessment against abutting property on a street for repairing basement and putting in substructure, in connection with a street-widening project, was void for want of statutory authority. Indiana Asphalt Paving Co. v. Grand Lodge, Knights of Pythias, 96 Ind. App. 300, 170 N. E. 85 (1930).

Board of Public Works.

A board of public works was presumed to have jurisdiction to levy strict assessments unless it was shown otherwise. Dyer v. Woods, 166 Ind. 44, 76 N. E. 624 (1906).

Compliance with Statute.

Municipal corporations in making improvements of streets must comply with the statute authorizing such improvements. City of Bluffton v. Miller, 33 Ind. App. 521, 70 N. E. 989 (1904).

Contesting Assessments.

Persons who did not elect to pay street improvement assessments by instalments could contest the amount of the assessments. Marion Bond Co. v. Johnson, 29 Ind. App. 294, 64 N. E. 628 (1902); Edwards v. Cooper, 168 Ind. 54, 79 N. E. 1047 (1907).

Improvement by Two-Thirds Vote.


Improvement Defeated.

Remonstrance would defeat improvement when signed by two-thirds of property owners residing on abutting lots who represented two-thirds of the lineal feet of the improvement. Maley v. Clark, 33 Ind. App. 149, 70 N. E. 1005 (1904).

Inconveniences.

Mere inconveniences to property owners would not entitle them to damages when the work was done properly. Cummins v. Seymour, 79 Ind. 491, 41 Am. R. 618 (1881).

Resolution for Improvement.

Where resolution for improvement of street was in part ultra vires, injunction should have been granted to prevent improvement of the illegal part. Adams v. City of Shelbyville, 154 Ind. 467, 57 N. E. 114, 77 Am. St. R. 484, 49 L.R.A. 797 (1900).

Resolution Sufficient.

Resolution to build new sidewalk upon the northeast side of a designated street, from another designated street to Main Street was sufficient notice although statement of an owner's frontage was incorrect. City of Greensburg v. Zoller, 28 Ind. App. 126, 60 N. E. 1007 (1901); Dyer v. Woods, 166 Ind. 44, 76 N. E. 624 (1906).

Time for Filing.

The board of public works of a city was not authorized to consider a landowner's remonstrance
against an assessment filed after the day designated in the statutory notice. City of Indianapolis v. Stutz Motor Car Co. of America, 94 Ind. App. 211, 180 N. E. 497 (1932).

Property owners were bound by assessment levied for street improvements if they failed to present their grievances at the time and in the manner provided by statute, unless the proceedings were entirely void. Varble v. O’Neil, 110 Ind. App. 164, 37 N. E. 2d 276 (1941).

33-9-18-8. Written objections by adjoining landowners - Proceeding in circuit or superior court - Appointment of special judge. - (a) Whenever the works board finally orders an improvement, forty percent [40%] of the persons who own property abutting the improvement and are subject to assessment may file written objections with the board stating that:

(1) The improvement is not needed by the public;

(2) The cost of the proposed improvement would be excessive considering the character and value of the property to be assessed;

(3) The cost will exceed the benefits to the property to be assessed; or

(4) The works board lacks the legal authority to order it.

The objections must be filed within five [5] days after the making of the final order. In considering an objection filed under subdivision (2), the court, at the hearing provided for in subsection (b), may consider the amount of assessments made against the property for public improvement during the preceding five [5] years.

(b) If the works board does not abandon the proposed improvement, the:

(1) Auditor, in the case of a county; or

(2) Clerk, in the case of a municipality;

shall, within five [5] days after the filing of the objection with the board, file with the clerk of the circuit or superior court of the county a copy of the order of improvement and the objections. The court shall then set a hearing as early as possible but not later than twenty [20] days after the filing of the objections with the court. All interested parties shall appear in court without further notice, and no further proceedings may be had by the unit relative to the improvement until the matters presented by the objections are heard and determined by the courts, without a jury.

(c) Objectors must file with their objections a bond with security to the satisfaction of the court in a sum to be fixed by the court. The bond must be conditioned on the objectors paying all or such parts of the costs of the hearing as the court may order.

(d) The court shall hear the evidence upon the date fixed under subsection (b), and may confirm the order of the works board or sustain the objections. The order of the court is conclusive, and all subsequent proceedings concerning the improvement must conform to the order.

(e) If for any reason the regular judge of the court cannot hear the objections within the twenty-day time limit established by subsection (b), a special judge may be appointed. [IC 33-9-18-8, as added by Acts 1981, P.L. 309, § 91.]

NOTES TO DECISIONS

Applicability of Clause.

The clause of Acts 1905, ch. 129, § 107, as amended (since repealed), providing "that in the event of the execution of any contract for any public improvements, the validity of any contract shall not subsequently be questioned by any persons, except in a suit to enjoin the performance of such contract, instituted by such person within ten days or prior to the actual commencement of the work thereunder," did not apply to the action of a town board after completion of the work by the contractor, or to the giving of notice to property owners of the preliminary or primary assessments, and of the time when the owners of real estate assessed could file remonstrances against such assessment. Peck v. Wm. M. Birch Co., 80 Ind. App. 58, 139 N. E. 696 (1923).

Appearance Before Council.

If land was not, either in whole or in part, liable to assessment, the owner was not required to appear before the common council at any stage of the proceeding for the purpose of protecting his property against an unlawful assessment, but could rely on the statute, and this was true even though the land was located in the neighborhood of the proposed improvement. Buckingham v. Kerr, 68 Ind. App. 290, 120 N. E. 422 (1918).

Claim Barred.

The sufficiency of the notice of letting the contract could not be tried in an action to collect an assessment. Wiles v. Hoss, 114 Ind. 371, 16 N. E. 800 (1887).

Complaint.

A complaint to recover for the improvement of a street must show that every step required by the statute for making the improvement has been taken. Anthony v. Williams, 47 Ind. 565 (1874); Moore v. Cline, 61 Ind. 113 (1878); Overshiner v. Jones, 66 Ind. 452 (1879).
A complaint had to show that the contract for the improvement was in writing and set forth a copy thereof. Budd v. Kraus, 79 Ind. 137 (1881).

A complaint had to show the cost of the improvement, the length thereof, and the width of the lot; and exhibits filed with a complaint, other than a copy of the assessment, would not aid the same. Mendenhall v. Clugish, 84 Ind. 94 (1882).

A complaint showing a substantial compliance with the statute was sufficient. Town of Auburn v. Eldridge, 77 Ind. 126 (1881); Dugger v. Hicks, 11 Ind. App. 374, 36 N. E. 1085 (1894).

Estoppel.

An abutting property owner who permitted street-widening contractor to repair owner's basement and put in substructure for street-widening project was not estopped to contest validity of an unauthorized assessment for such work and expense. Indiana Asphalt Paving Co. v. Grand Lodge, Knights of Pythias, 96 Ind. App. 300, 170 N. E. 85 (1930).

Injunction.

If the damages assessed were not paid or tendered, the opening of the street could be enjoined. Town of Montgomery v. Baltimore & O.S.W.R.R., 29 Ind. App. 692, 65 N. E. 217 (1902).

Liability for Payments.

A landowner who silently and without objection stood by and watched the improvement of a street could not avoid payment for the benefits he had received even though the proceedings were void. Haislip v. Union Asphalt Constr. Co., 70 Ind. App. 308, 123 N. E. 426 (1919).

Lien.

The lien of an assessment for a street improvement related to the time when the improvement was made, although an invalid assessment was set aside and a reassessment was made. Hibben v. Smith, 158 Ind. 206, 62 N. E. 447 (1902), aff'd, 191 U.S. 310, 24 S. Ct. 88, 48 L.Ed. 195 (1903).

Mandamus.

In a mandamus proceeding to compel the board of trustees of a town to file an assessment roll, where notice had been given and proof of publication made, it was the duty of the property owners affected to take notice of adjourned meetings, for the notice given was sufficient for all purposes. Harkins v. State ex rel. Miller, 217 Ind. 225, 27 N. E. 2d 365 (1940).

Order.

It was not necessary to specify in detail in the order what the street improvement would be. Taber v. Grafmiller, 109 Ind. 206, 9 N. E. 721 (1887); Ross v. Stackhouse, 114 Ind. 200, 16 N. E. 501 (1888).

When an order for the improvement of a street was adopted, the kind and character of the improvement had to be specified, and such matter could not be postponed until after bids were received. City of Bluffton v. Miller, 33 Ind. App. 521, 70 N. E. 989 (1904).

Payment of Damages.

If a town accepted the report of commissioners for the opening of a street, the damages assessed were to be paid or tendered to the property owners whether any benefits had been assessed against property or not. Terre Haute & L. Ry. v. Town of Flora, 29 Ind. App. 442, 64 N. E. 648 (1902).

Report of Commissioners.

If the commissioners failed to state in their report that any land would be benefited by the opening of a street, it was presumed that there were no benefits to be assessed upon any property. Terre Haute & L. Ry. v. Town of Flora, 29 Ind. App. 442, 64 N. E. 648 (1902).

Where the board of trustees did not accept the report of the commissioners as to the opening of a street within 20 days after the same was filed the proceedings were nullified. Town of Montgomery v. Baltimore & O.S.W.R.R., 29 Ind. App. 692, 65 N. E. 217 (1902).

Defects in report of commissioners assessing benefits and damages for the opening of a street were not sufficient to dismiss or vacate the proceedings when no objections were made to such report before the town trustees or in the circuit court. Pittsburgh, C., C. & St. L.R.R. v. Town of Wolcott, 162 Ind. 399, 89 N. E. 451 (1904).

36-9-18-9. Improvements or repair of sidewalks and curbs - Liability of adjoining landowners - Letting of general contract - Assessments - Improvement orders for street railroads. - (a) If the works board wants to improve or repair any sidewalks or curbs in the unit and adopts a final resolution to that effect, the board may require the owners of abutting property to construct or repair their own sidewalks or curbs. Notice of the order must be given to the abutting property owners either in person or by mail. Mailing of the notices to owners as their names appear on the assessor's books of the county in which the land is located complies with this requirement.

(b) A property owner has thirty [30] days from the date of the notice to construct the sidewalks or curbs or make the repairs as required by the notice.

(c) If a property owner fails to comply with the
order, the works board may have the sidewalk or curb constructed or repaired by an independent contractor. The works board may let a general contract for the making or repairing of all sidewalks or curbs of a specified material within the unit, at an agreed price per square yard for the sidewalk construction. If the contract is for work in a municipality, it may also specify the price per cubic yard for excavation and filling, and the price per lineal foot for curb. The letting of the contract is governed by the statutes regulating contractual authority of the unit.

(d) Assessments for the construction or repair of sidewalks or curbs shall be levied and collected according to this chapter. The entire cost of the sidewalk or curb improvements or repairs that the board undertakes by any one [1] resolution shall be assessed and apportioned against each lot or parcel of property abutting upon the improvement in the proportion the improved lineal front footage of each lot or parcel of property bears to the entire length of the improvement.

(e) The works board may issue a written improvement order requiring a railroad interurban, or interurban street railroad to comply with IC 8-6-12 [8-6-12-1]. [IC 36-9-18-9, as added by Acts 1981, P.L. 309, § 91; 1981, P.L. 317, § 16.]

NOTES TO DECISIONS

Apportionment of Costs.

The Act of 1929 applied to all improvements within its terms, and covered the method of apportioning the cost of the improvement between the city and the property owners. Swaim v. City of Indianapolis, 202 Ind. 233, 171 N. E. 871, 173 N. E. 827 (1930).

The provisions of Acts 1905, ch. 129, § 107, as amended (since repealed), providing for the improvement of streets, applied only where the cost of making such improvement was to be assessed against abutting property. City of Jeffersonville v. Louisville & S. Ind. Traction Co., 59 Ind. App. 237, 107 N. E. 749 (1915).

Discretion of Board.

Acts 1905, ch. 129, § 107, as amended, (since repealed) did not require the board to give the property owner a notice to construct a sidewalk, but the order to require abutting owners to construct a sidewalk was entirely discretionary with the board. Frankenstein v. Coil Constr. Co., 127 Ind. App. 642, 143 N. E. 2d 468, 145 N. E. 2d 19 (1957).

Enforcement of Assessments.

Demand for payment of cleaning or sprinkling assessments was not required before commencing suit to enforce such assessments. Myers v. Indianapolis Union Ry., 12 Ind. App. 170, 39 N. E. 907 (1895).

Liability of Cities.

Cities were liable for injuries caused by defective sidewalks, although such walks were constructed by the adjoining property owners. Higert v. City of Greencastle, 43 Ind. 574 (1873); City of Huntington v. Breen, 77 Ind. 29 (1881).

Liability of Property Owners.

The legislature had power to provide for the cleaning and sprinkling of streets and to require property owners to pay the costs thereof. Reinke v. Fuehring, 130 Ind. 382, 30 N. E. 414, 15 L.R.A. 224, 30 Am. St. R. 247 (1892).

Contractors for cleaning or sprinkling streets, when the expense was to be paid by assessment, had liens on adjacent property for the amount of the assessments, interests, costs and attorney's fees. Palmer v. Nolting, 13 Ind. App. 581, 41 N. E. 1045 (1895).

Maintenance of Lawn.

Cities may permit the maintenance of lawns and shade trees along streets, and such means may be used as are reasonably necessary to protect the same from injury. Teague v. City of Bloomington, 40 Ind. App. 68, 81 N. E. 103 (1907).

Payment of Assessments.

Assessments for sprinkling or sweeping streets were not payable by installments, nor could bonds be issued to anticipate or secure such payments. Myers v. Indianapolis Union Ry., 12 Ind. App. 170, 39 N. E. 907 (1895); Palmer v. Nolting, 13 Ind. App. 581, 41 N. E. 1045 (1895).

The fact that a city accepted from a landowner one-fourth of assessment, to which the city was absolutely entitled, did not preclude the city from appealing from a judgment reducing the assessment to such one-fourth. City of Indianapolis v. Stutz Motor Car Co., 94 Ind. App. 211, 180 N. E. 497 (1932).

Recovery for Price of Street Improvement.

The fact a completed contract was invalid as to cost of sodding did not prevent recovery for price of street improvement where the valid cost of improving the street could be separated. Ross v. Van Natta, 164 Ind. 557, 74 N. E. 10 (1905).

Recovery of Cost from Property Owner.

In an action by a town to recover the cost of constructing a sidewalk, the complaint did not need to aver that the contract for the work was in writing, nor was such contract the foundation of the action. Drew v. Town of Geneva, 159 Ind. 364, 65 N. E. 9 (1902).
Resolution Void.

Street improvement resolution was void for want of power of municipal authorities to assess cost of grading and sodding space between sidewalk and curb against abutters. Adams v. City of Shelbyville, 154 Ind. 467, 57 N. E. 114, 77 Am. St. R. 484, 49 L.R.A. 797 (1900).

Sidewalks.

A sidewalk meant a foot-way along the side of a street. Marion Trust Co. v. City of Indianapolis, 37 Ind. App. 672, 75 N. E. 834 (1905).

Taxing Power.

While city had implied power to construct lawns and otherwise decorate those parts of the street not necessary to public travel, at the expense of the general treasury, nevertheless, when it sought to exercise the taxing power and to levy upon a particular class the cost of the purely ornamental improvement, it had to be able to point to some express provision of the statute conferring the right, as no power to tax would arise by implication. Adams v. City of Shelbyville, 154 Ind. 467, 57 N. E. 114, 77 Am. St. R. 484, 49 L.R.A. 797 (1900).

36-9-18-10. Improvements on streets partially occupied by street railroads - Construction of improvement by railroad. - (a) If the track of a railroad, interurban, or interurban street railroad occupies any part of a street that is ordered improved under this chapter, the works board may, on petition of the railroad, provide in the plans and specifications for the improvement for different material and plan of construction for the part of the street occupied by the railroad.

(b) If the railroad is bound by contract to improve or pay the cost of improving any part of the street occupied by the railroad, then the railroad is entitled to construct all of that part of the improvement if:

1. The railroad elects to do so by written notice filed with the works board or other department of the unit having power to order the improvement, at any time before the adoption of the final resolution or ordinance providing for the improvement; and

2. The railroad tendered to pay the cost of the improvement as required by the contract.


NOTES TO DECISIONS

Contract.

The assessment for the cost of street improvement could not attach to abutting property where by contract it was left to city council whether they would assess the cost of pavement between rails against the railroad or abutting property and the council by ordinance directed it be levied against the property of the railroad company. State ex rel. Keith v. Common Council of Michigan City, 138 Ind. 455, 37 N. E. 1041 (1894).

Description.

A description in an action to foreclose a lien against a railroad company describing property as "a strip of ground 134 feet long abutting on North Main Street, between Broadway and North Streets" was insufficient, as it could not be located or surveyed from the description. Lake Erie & W.R.R. v. Walters, 9 Ind. App. 684, 37 N. E. 295 (1894).

A description of real estate to be assessed for street improvements against a railroad which described the property as "a tract of land, north side, between Front street and O. and M.R.R." was invalid for uncertainty and insufficiency. Becker v. Baltimore & O.S.W.R.R., 17 Ind. App. 324, 46 N. E. 685 (1897).

The description of the property assessed in a final assessment against a railroad company as a designated number of feet of its right-of-way was insufficient and could not be corrected in a complaint to foreclose the lien. Cleveland, C., C. & St. L.R.R. v. O'Brien, 24 Ind. App. 547, 57 N. E. 47 (1900).

Elevation.

The elevation of railroad tracks, though calling for the adjustment of street grades, was not a street improvement proceeding within the meaning of Acts 1905, ch. 129, § 111, as amended, (since repealed), after the 1919 amendment and prior to the 1925 amendment, and its provisions for appeal were not applicable. Cleveland, C., C. & St. L.R.R. v. City of Indianapolis, 89 Ind. App. 385, 165 N. E. 442 (1929).

Personal Judgment.

In addition to foreclosing a lien against a railroad company for improvement, the court could render a personal judgment against the company to be satisfied by levy and sale of its personal property. Lake Erie & W.R.R. v. Bowker, 9 Ind. App. 428, 36 N. E. 864 (1894); Pittsburgh, C., C. & St. L.R.R. v. Hays, 17 Ind. App. 201, 44 N. E. 375, 45 N. E. 675, 46 N. E. 597 (1896); Pittsburgh, C., C. & St. L.R.R. v. Fish, 158 Ind. 525, 63 N. E. 454 (1902).
Towns.

In view of the different modes of assessment of railroads, a town, in levying assessments for the payment of cost of paving street and alley intersections, had no authority to levy a tax upon a "railroad track," or to levy a tax against the property of a railroad company within the limits of a town, for street and alley intersections. New York, C. & St. L.R.R. v. Town of Mentone, 79 Ind. App. 589, 139 N. E. 152 (1923).

Tracks Bordering on Streets.


Tracks Wholly Within Streets.

Railroad tracks wholly within street were not liable to assessment for improvement of the street. Indianapolis & V.R.R. v. Capitol Paving & Constr. Co., 24 Ind. App. 114, 54 N. E. 1076 (1899).

36-9-18-11. Assessments for grading. - If the works board wants to grade the roadway of a street and assess the cost of the grading against the property specially benefited, it may let the contract under the statutes regulating contractual authority of units. Assessments for the grading must be levied and collected according to this chapter. [IC 36-9-18-11, as added by Acts 1981, P.L. 309, § 91.]

NOTES TO DECISIONS

Assessments.

Streets could not be graded at the expense of property owners unless the same were paved with some kind of paving material. Jasper v. Cassidy, 53 Ind. App. 678, 102 N. E. 278 (1913).

An extra assessment against abutting property on a street for repairing basement and putting in substructure, in connection with a street-widening project, was void for want of statutory authority. Indiana Asphalt Paving Co. v. Grand Lodge, Knights of Pythias, 96 Ind. App. 300, 170 N. E. 85 (1930).

Consequential Damages.

If a street was graded in a careful manner, pursuant to legal authority, the owners of contiguous lots could not recover consequential damages occasioned to such lots. Snyder v. President & Trustees of Rockport, 6 Ind. 237 (1855); Macy v. City of Indianapolis, 17 Ind. 267 (1881); Lafayette v. Bush, 19 Ind. 326 (1862); Vincennes v. Richards, 23 Ind. 381 (1864); Delphi v. Evans, 36 Ind. 90, 10 Am. R. 12 (1871); Weis v. Madison, 75 Ind. 241, 39 Am. R. 135 (1881); Aurora v. Fox, 78 Ind. 1 (1881); Cummins v. Seymour, 79 Ind. 491, 41 Am. R. 618 (1881); City of N. Vernon v. Voegler, 103 Ind. 314, 2 N. E. 821 (1885); Rice v. City of Evansville, 108 Ind. 7, 9 N. E. 139 (1886); Davis v. City of Crawfordsville, 119 Ind. 1, 21 N. E. 449, 12 Am. St. R. 361 (1889); City of Peru v. Brown, 10 Ind. App. 597, 38 N. E. 223 (1894); Hirth v. City of Indianapolis, 18 Ind. App. 673, 48 N. E. 876 (1897); City of Valparaiso v. Spatha, 166 Ind. 14, 76 N. E. 514 (1905).

Diversions of Water.

Cities had no right in grading streets to collect surface water in an artificial channel and cast it in a body upon another's land. Weis v. Madison, 75 Ind. 241, 39 Am. R. 135 (1881); Evansville v. Decker, 84 Ind. 325, 43 Am. R. 86 (1882); North Vernon v. Voegler, 89 Ind. 77 (1883); Crawfordsville v. Bond, 96 Ind. 236 (1884); Davis v. City of Crawfordsville, 119 Ind. 1, 21 N. E. 449, 12 Am. St. R. 361 (1889); City of New Albany v. Lines, 21 Ind. App. 380, 51 N. E. 346 (1898); City of Valparaiso v. Keyes, 30 Ind. App. 447, 66 N. E. 175 (1903).

Use of Earth.

Earth taken from one portion of a street in making an improvement thereof, could be taken and used in another portion of such improvement, but could not be used on a street not being improved. Delphi v. Evans, 36 Ind. 90, 10 Am. R. 12 (1871); Musselman v. Manly, 42 Ind. 482 (1873); Aurora v. Fox, 78 Ind. 1 (1881); Haas v. City of Evansville, 20 Ind. App. 482, 50 N. E. 46, 51 N. E. 105 (1898).

36-9-18-12. Competitive bidding for improvement work - Deposit of bid bond. - (a) If the works board finally orders an improvement, it shall advertise for bids for the work as required by IC 36-1-12. The advertisement must state that on the day named, the unit will receive bids for the improvement according to the resolution as modified or confirmed and must also state the part of the costs of the improvement, if any, that will be paid by the unit. On the day named, all bids shall be publicly opened and considered.

(b) If the works board finally orders an improvement and has advertised for bids, it shall require each bidder to deposit with his bid, at his option, either a bid bond or a certified check for the greater of:

(1) An amount not less than two and one-half percent [2 1/2%] of the engineer's estimate of the cost of the improvement; or
(2) One hundred dollars [§100];
to insure the execution of the contract.

(3) If a bidder elects to deposit a bid bond, the
bond must be payable to the board with sufficient
sureties, and the bond must be conditioned upon
the bidder's execution of a contract in accordance with
his bid if accepted by the board and must provide
for forfeiture of the amount of the bond upon his
failure to do so. The board shall return a successful
bidder's check or bond when he enters into a con-
tract with the board. [IC 36-9-18-12, as added by

NOTES TO DECISIONS

Sufficiency of Notice.

The sufficiency of the notice of letting the con-
tract could not be tried in an action to collect an
assessment. Wiles v. Hoss, 114 Ind. 371, 16 N. E.
800 (1887).

36-9-18-13. Contracts for improvements -
Limitation on contract actions. - The contract
for an improvement must be for the entire improve-
ment. After the execution of a contract for an
improvement, the validity of the contract may be
questioned only in an action to enjoin the perform-
ance of the contract. Such an action must be
brought:

(1) Before the actual commencement of work
under the contract, for an improvement by a
county; or

(2) Before:

(A) The actual commencement of work under
the contract; or

(B) Within ten [10] days after the execution of
the contract;

whichever is later, for an improvement by a munici-
pality. [IC 36-9-18-13, as added by Acts 1981, P.L.
309, § 91.]

Cross References. Suits against municipali-
ties questioning project, 34-4-17-1—34-4-17-8.

NOTES TO DECISIONS

Advertisements.

The letting of contracts for the work must be
advertised properly. Moberry v. Jeffersonville, 38
Ind. 198 (1871); McEwen v. Gilker, 38 Ind. 233
(1871); Kretsch v. Helm, 45 Ind. 438 (1874); Taber
v. Ferguson, 109 Ind. 227, 9 N. E. 723 (1887).

Assignment.

If a contract for an improvement provided that
it could not be assigned, an assignee could not col-
clect assessments made for the improvements.

Deffenbaugh v. Foster, 40 Ind. 382 (1872).

If the city council ratified the assignment of a
contract, it was the same as if assent had been ori-
ginally given to the assignment. Taber v. Ferguson,
109 Ind. 227, 9 N. E. 723 (1887); Sims v. Hines, 121
Ind. 534, 23 N. E. 515 (1890).

The assignee of a contractor could recover
against the city for difference between the amount
of a void assessment and the contract price. City of
Bloomington v. McDaniel, 92 Ind. App. 291, 168
N. E. 187 (1929).

Changes and Modifications

Changes and modifications could be made in
contracts without impairing the rights of contrac-
tors to collect the expense of the improvement.
Board of County Comm'rs v. Silvers, 22 Ind. 491
(1864); Hellenkamp v. Lafayette, 30 Ind. 192 (1868);
Sims v. Hines, 121 Ind. 534, 23 N. E. 515 (1890);
35, 191 N. E. 91 (1934).

Conflict of Interest.

An officer of the city could not enter into a con-
tract with the city for the improvement of a street.
Brasil v. McBride, 69 Ind. 244 (1879); Ft. Wayne v.
Rosenthal, 75 Ind. 156, 39 Am. R. 127 (1881); Case
v. Johnson, 91 Ind. 477 (1883); Benton v. Hamilton,
110 Ind. 294, 11 N. E. 238 (1887).

A contract was not void because the deputy
city engineer, who had no direct or indirect interest
in the contract, was the father-in-law of the con-
tractor. Cason v. City of Lebanon, 153 Ind. 567, 55
N. E. 768 (1899).

Contract Terms.

Contracts for street improvements must be
made in reference to the terms and conditions
specified in the notice. Wickwire v. City of Elkhart,
144 Ind. 305, 43 N. E. 216 (1896).

Contractor's Action to Collect.

When a municipal corporation was sued by a
contractor to recover money paid to it for a street
improvement, and the corporation sought to have
the acceptance of the improvement set aside
because of fraud, the property owners who paid the
money to the corporation had a right to intervene
in the action. Town of Woodruff Place v. Gorman,
179 Ind. 1, 100 N. E. 296 (1912).

In an action by a contractor to compel a town
and its officers to pay a balance due for paving cer-
tain streets and alleys, irregularity in the levy for
the improvement was no defense to the contractor's
action, in the absence of a showing than an in-
jusitce had been done, and in absence of complaint of
such levy. Town of Dublin v. State ex rel. Kirkpa-
trick, 198 Ind. 164, 152 N. E. 812 (1926).
Debt Limit.

Indebtedness of city for its part of street improvements beyond constitutional limit did not render contract invalid. Cason v. City of Lebanon, 153 Ind. 587, 55 N. E. 768 (1899).

Estoppel.

Where a city proceeded to make street improvements in good faith under a statute which had been impliedly repealed, property owners who stood by with notice of the improvements and permitted the same to be made without objection were estopped to enjoin collection of the assessment of costs of the improvements. City of Indianapolis v. Dillon, 212 Ind. 172, 6 N. E. 2d 966 (1937).

Final Assessments.

A contractor's assignee could not require the board of public works to make final assessments to pay for street improvement unless the work had been finally accepted. State ex rel. German Inv. & Security Co. v. City of Indianapolis, 188 Ind. 885, 123 N. E. 405 (1919).

Fraud.

If a municipal corporation was sued by a contractor to recover money paid to it for street improvements, the corporation could file a cross-complaint to have the acceptance of such improvements set aside because of fraud. Town of Woodruff Place v. Gorman, 179 Ind. 1, 100 N. E. 296 (1912).

Injunction.

Injunction was the proper procedure for questioning collection of assessments. Reeves v. Grottendick, 131 Ind. 107, 30 N. E. 889 (1892); DePuy v. City of Wabash, 133 Ind. 336, 32 N. E. 1016 (1893); Robinson v. City of Valparaiso, 136 Ind. 616, 36 N. E. 644 (1894); New Albany Gaslight & Coke Co. v. Crumbo, 10 Ind. App. 360, 37 N. E. 1052 (1894); City of Terre Haute v. Mack, 139 Ind. 99, 38 N. E. 468 (1894); Calkiss v. Koons, 15 Ind. App. 599, 43 N. E. 158 (1896); City of Bloomington v. Phelps, 149 Ind. 596, 49 N. E. 581 (1898); McKee v. Town of Pendleton, 154 Ind. 652, 57 N. E. 532 (1900); Taylor v. City of Crawfordsville 155 Ind. 403, 58 N. E. 490 (1900).

The proviso declaring that the validity of an improvement contract could be questioned only by a suit to enjoin performance was not unconstitutional either on the ground that its subject-matter was not expressed in the title of the act of which it was a part, or on the ground that it denied free access to the courts. Woolley v. Indiana Asphalt Paving Co., 187 Ind. 575, 120 N. E. 597 (1918).

In suit to enjoin street improvements on the ground that work was not done in accordance with contract and specifications, an answer alleging that suit to enjoin must be brought within ten days was demurrable. Neil v. Turner, 77 Ind. App. 78, 125 N. E. 228 (1919).

A suit to enjoin must be brought within ten days after execution of the contract or prior to work thereunder. Griggs v. City of Vincennes, 78 Ind. App. 21, 134 N. E. 503 (1922).

Property owner could not defend against contractor's action to foreclose liens, on the ground of invalidity of the contract, where he had not brought action within ten days to enjoin the proceeding. Webster v. Independent Constr. Co., 80 Ind. App. 499, 139 N. E. 150 (1923).

A suit to enjoin confirmation of an assessment roll, which was not begun within ten days after execution of the contract for the street improvement, was begun too late. Nees v. Allen, 94 Ind. App. 549, 165 N. E. 564 (1929).

The sufficiency of a street improvement proceeding to establish a lien in favor of the contractor could not be questioned on account of defects or irregularities in the proceeding, except in a suit to enjoin performance of the contract, within ten days from the time of the execution of the contract or prior to commencement of the work. Hoffman v. Incorporated Town of Rochester, 209 Ind. 529, 198 N. E. 783 (1935).

In a street improvement proceeding to enjoin the enforcement of an assessment roll and collection of assessments against property of abutting owners, an amended complaint alleging that defendants filed a remonstrance against the said street improvement within 10 days after the common council had confirmed the declaratory resolution and ordered the improvement to be made was properly stricken as a sham pleading, where the record showed that the remonstrance was filed prior to the confirmation order of the council. Allen v. Nees, 103 Ind. App. 537, 6 N. E. 2d 344 (1937).

Letting of Contract.

A contract could be made for the improvement of more than one block or square at the same time. Lafayette v. Fowler, 34 Ind. 140 (1870).

Extra work could be provided for in letting a contract for improving a street. Boyd v. Murphy, 127 Ind. 174, 25 N. E. 702 (1890).

It was proper, in letting a contract for improving a street, to provide that the contractor must keep the street improved in repair for seven years, although the contractor could consider such repairs in fixing the amount of his bid. Shank v. Smith, 157 Ind. 401, 61 N. E. 932, 55 L.R.A. 564 (1901).
Liability.

If a contract for a street improvement was invalid, neither the city nor property owner was liable to the contractor for the expense of the improvement. Johnson v. Common Council of Indianapolis, 18 Ind. 227 (1861); Newman v. Sylvester, 42 Ind. 106 (1873).

If a city council acted beyond its jurisdiction in making a contract for a street improvement, the members of the council were not personally liable to the contractor. Newman v. Sylvester, 42 Ind. 106 (1873).

A city did not become liable to a contractor for the expense of a street improvement because the city officers did not perform their duties. Greencastle v. Allen, 43 Ind. 347 (1873).

Liabilities of cities to contractors for cost of improving streets was secondary under statutes providing for assessment against abutting owners. Porter v. City of Tipton, 141 Ind. 347, 40 N. E. 802 (1895); Indiana Bond Co. v. Bruce, 13 Ind. App. 550, 41 N. E. 958 (1895); City of New Albany v. Conger, 18 Ind. App. 510, 47 N. E. 852 (1897); City of Huntington v. Force, 152 Ind. 368, 55 N. E. 443 (1899).

Where a city had contracted with a contractor for street improvements and after the contractor, at large expense, had completed part of the work, the city wrongfully and without the contractor's consent did acts which rendered it impossible for him to finish the work and perfect his right to enforce assessments against abutting property, the city could be held liable for the amount plaintiff had earned and thus rendered uncollectable. Blain v. City of Delphi, 195 Ind. 463, 145 N. E. 764 (1924).

A town was not released from its contract obligation to levy an assessment and to pay a contractor for street improvements by the failure of its officers to levy the proper assessments within the year designated by statute. Town of Dublin v. State ex rel. Kirkpatrick, 198 Ind. 164, 152 N. E. 812 (1926).

Order for Improvement.

A sufficient order for the improvement must be adopted before a contract can be let. Merrill v. Abbott, 62 Ind. 549 (1878).

An order for the improvement of a street was required to sufficiently specify the nature and plan of the work as to afford a basis for letting the contract. Merrill v. Abbott, 62 Ind. 549 (1878); Smith v. Duncan, 77 Ind. 92 (1881); Taber v. Grafmiller, 109 Ind. 206, 9 N. E. 721 (1887).

If notice was given and a contract let for the improvement of one street, such contract could not be made to cover another street without a further order and notice of letting the contract. Stephen-


38-9-18-14. Contractor's guarantee of workmanship and materials. - (a) A contractor for an improvement must guarantee his workmanship and all materials used in the work.

(b) The guarantee must be in the following form:

"The contractor warrants his workmanship and all materials used in the work and agrees that during the guarantee period specified he will at his own expense make all repairs that may become necessary by reason of improper workmanship or defective materials. The maintenance obligation, however, does not include repair of any damage resulting from any force or circumstance beyond the control of the contractor, nor is the contractor a guarantor of the plans and specifications furnished by the (county, city, or town)."

(c) If repairs become necessary, the unit must give written notice to the contractor to make them. If the contractor fails to begin the repairs within thirty [30] days after the notice is received, the unit may make the repairs by its own employees or by independent contract, and may recover from the contractor and his sureties the reasonable cost of the repairs and the cost of their supervision and inspection. At the expiration of the guarantee period, the unit has sixty [60] days in which to notify the contractor of any necessary repairs.

(d) Whenever the repairs necessary to be made at the expiration of the guarantee period amount to more than half the surface of any one [1] block, the entire pavement of that block shall be taken up and relaid in accordance with the original specifications. [IC 38-9-18-14, as added by Acts 1981, P.L. 309, § 91.]

NOTES TO DECISIONS

Acceptance of Work.

A contractor of street improvements had no right to have work finally accepted by the board of public works until completed within the terms of the contract. State ex rel. German Inv. & Security Co. v. City of Indianapolis, 188 Ind. 685, 123 N. E. 405 (1919).

Setting Aside Acceptance.

If municipal authorities were induced by fraud to accept a street improvement as being completed according to contract, an action would lie to have such acceptance set aside. Town of Woodruff Place v. Gorman, 179 Ind. 1, 100 N. E. 296 (1912).

38-9-18-15. Monthly estimates of work done - Issuance of certificates to contractor. - A con-
tractor for an improvement is entitled to monthly estimates of the work done during each month. The estimates shall be made by the engineer of the unit and approved by the works board, and the board shall issue to the contractor certificates for eighty-five percent [85%] of the amount due the contractor by the estimates. The contractor is entitled to receive the amounts named in the certificates in cash or improvement bonds to be collected or issued by the unit. The certificates are negotiable instruments. [IC 36-9-18-15, as added by Acts 1981, P.L. 309, § 91.]

36-9-18-16. Acceptance of completed improvement. - An improvement that is completed according to contract must then be accepted by the works board. [IC 36-9-18-16, as added by Acts 1981, P.L. 309, § 91.]

36-9-18-17. Cost estimate upon completion of project. - Upon the completion of an improvement according to contract, the cost of the improvement shall be estimated according to the whole length of the improvement. [IC 36-9-18-17, as added by Acts 1981, P.L. 309, § 91.]

Cross References. Accounting systems for local road and street authorities, 8-17-4.1-1--8-17-4.1-9.

36-9-18-18. Assessments for cost of improvement - Property subject to assessment. - (a) The total cost of an improvement as determined under section 17 [36-9-18-17] of this chapter, except for one half [1/2] of the cost street and alley intersections, shall be assessed on the abutting lands or lots in the manner prescribed by this chapter.

(b) The remaining one half [1/2] of the cost of street and alley intersections shall be assessed on the lands or lots abutting on the streets or alleys that intersect the improved street or alley. Lands and lots may be assessed for a distance of:

(1) One [1] block in either direction along the intersecting street or alley, if it crosses the improved street or alley; or

(2) One [1] block along the intersecting street or alley, if it enters but does not cross the improved street or alley.

(c) For purposes of this section, the distance from the intersection of:

(1) A street or alley improved under this chapter; and

(2) Another street or alley;

along the other street or alley to the street line of the next intersecting street or alley is considered one [1] block. [IC 36-9-18-18, as added by Acts 1981, P.L. 309, § 91.]

NOTES TO DECISIONS

Each Lot Separately.

Assessments for street improvements were required to show the amount for which each separate lot or parcel of land was liable. Ealf v. Johnson, 40 Ind. 235 (1872); Becker v. Baltimore & O.S.W.R.R., 17 Ind. App. 324, 46 N. E. 685 (1897); Pittsburgh, C., C. & St. L.R.R. v. Oglesby, 155 Ind. 452, 76 N. E. 165 (1905).

The assessment for the cost of improvement must be made upon each lot or parcel of ground separately, and each lot or parcel of ground subject to the assessment for the improvement should bear its separate and distinct burden of the assessments as apportioned in the manner provided by statute. Frankenstein v. Coil Constr. Co., 127 Ind. App. 642, 145 N. E. 2d 468, 145 N. E. 2d 468, 145 N. E. 2d 19 (1957).

Front-foot Rule.

A statute providing for the assessment of the cost of street improvements by the front-foot rule was not invalid, and an assessment under such a statute was deemed prima facie correct but did not prevent the making of an assessment according to benefits. City of Indianapolis v. Holt, 155 Ind. 222, 57 N. E. 966 (1900).

The statute providing for the assessment of lots for street improvements according to their frontage upon the street did not conflict with any of the provisions of the federal or state constitution. Martin v. Wills, 157 Ind. 183, 60 N.E. 1021 (1901); Leeds v. DeFrees, 157 Ind. 392, 61 N. E. 930 (1901), Wray v. Fry, 158 Ind. 92, 62 N. E. 1004 (1902).

An ordinance requiring an assessment for a street improvement to be made according to the front-foot rule was not invalid, as such ordinance was to be construed in connection with the statute regulating such assessment. McKee v. Pendleton, 162 Ind. 667, 69 N. E. 997 (1904).

Lots at End of Street.

Lots at the end of the street were liable for an assessment for the improvement of the street. Helm v. Witz, 35 Ind. App. 131, 73 N. E. 846 (1905).

Non-Abutting Land.

An assessment of land which did not abut on the improved street, which was not adjacent to the improved street, in the sense that it was liable for a portion of the primary assessment carried back, and which was separated from the improved street by another public thoroughfare, was void. Buckingham v. Kerr, 68 Ind. App. 290, 120 N. E. 422 (1918).
Parks and Public Property.


Part of Width Improved.

When only a part of the width of a street was improved, property on both sides of the street was assessable for the improvement. Indianapolis & V.R.R. v. Capitol Paving & Constr. Co., 24 Ind. App. 114, 54 N. E. 1076 (1899); Klein v. Nugent Gravel Co., 162 Ind. 509, 70 N. E. 801 (1904).

Presumptions.

The presumption was that the members of the board fixing the assessment did their duty fairly and to the best of their judgment. Clarke v. City of Evansville, 75 Ind. App. 500, 131 N. E. 82 (1921).

Release of Contract.

Cities could not, by contract, release property from assessments for street improvements that was made liable by law to assessment. Pittsburgh, C., C. & St. L.R.R. v. Oglesby, 165 Ind. 542, 76 N. E. 165 (1905).

Servient Use of Street.

In a proceeding by a city of the first class to widen the roadway of a certain street and to narrow the sidewalks thereof, the property owners must share the expense of conforming their servient use of the street by basement extending under the sidewalk, by maintenance of such basement thereunder, to the dominant use of the city, in conformity with the change to be made by the city. Swaim v. City of Indianapolis, 202 Ind. 233, 171 N. E. 871, 173 N. E. 287 (1930).

Sewers.

Costs of sewers constructed as part of street improvements could be assessed against property as a part of the improvement of a street. Kirland v. Board of Pub. Works, 142 Ind. 123, 41 N. E. 374 (1885).

36-9-18-19. Basis for assessment - Assessment of back lots - Platted subdivisions. - (a) Lots, parcels, and tracts of land bordering on an improvement shall be assessed on the basis set forth in this chapter, without regard to the depth of the lots, parcels, or tracts back from the front line of the improvement. However, after the final hearing before the works board as to the actual benefits to abutting and adjacent property, the board may assess other property behind the first lot if:

1) The back lot is within one hundred fifty feet [150'] of the line of the improvement; and

2) The board finds at the hearing that properties behind the abutting lot and within one hundred fifty feet [150'] of the improvement are specially benefited by it;

but only in the amount the lands or lots are specially benefited. Lots or lands adjacent to the improvement are liable for the payment of the assessment as set forth on the final assessment roll.

(b) Whenever an improvement is constructed within a platted subdivision, the works board may assess all or part of the lots in that subdivision or any other platted subdivision connected to it by the improvement. [IC 36-9-18-19, as added by Acts 1981, P.L. 309, § 91.]

NOTES TO DECISIONS

Method of Assessment.

In carrying back portions of the primary assessment, the several tracts were required to be assessed in their consecutive order, and no intervening tract could be ignored. Buckingham v. Kerr, 68 Ind. App. 290, 120 N. E. 422 (1918).

The plan of carrying a portion of the primary assessment back from the tract abutting on the street and distributing it on the successive tracks in the rear constituted the only method by which "adjacent" lands could be assessed whether there was diverse ownership or not. Buckingham v. Kerr, 68 Ind. App. 290, 120 N. E. 422 (1918).

The provision for the special tax district limit of 150 feet from the street line was not affected by statute providing that primary assessments shall be made without regard to the depth of abutting property. Buckingham v. Kerr, 68 Ind. App. 290, 120 N. E. 422 (1918).

The provision that lots bordering on the street to be improved be primarily assessed without regard to their depth was not intended to enlarge the special tax district, but was for another purpose, namely, to provide against the contingency that an abutting lot be very narrow and that its portion of the primary assessment exceed its value. Should such a case exist, the entire portion must, nevertheless, be levied on the lot, but a readjustment to avoid confiscation could be made after a hearing. Buckingham v. Kerr, 68 Ind. App. 290, 120 N. E. 422 (1918).

Property.

--Not Subject to Assessment.

A public highway could not be crossed and lands beyond it assessed, although the same was within 150 feet of the street. City of Frankfort v. State ex rel. Ross, 128 Ind. 438, 27 N. E. 1115 (1891).
No assessment, whether primary or secondary, could extend to land across another street even though the land on both sides of such other street was owned by one and the same person and was within 150 feet of the street to be improved. Buckingham v. Kerr, 68 Ind. App. 290, 120 N. E. 422 (1918).

--Subject to Assessment.

Church property was liable for an assessment for the improvement of a street on which it was situated. Rausch v. Trustees of United Brethren in Christ Church, 107 Ind. 1, 8 N. E. 25 (1886).

Lots at the end of a street were subject to assessment for the improvement of the street. Helm v. Witz, 35 Ind. App. 131, 73 N. E. 848 (1905).

Assessments made to pay the expense of a street improvement could be made against property that did not abut on the street if lot first assessed was less in depth than 150 feet from the line of the street improved, and the lot assessed that did not abut on the street was back of the lot first assessed. Hoffman v. Zollman, 49 Ind. App. 664, 97 N. E. 1015 (1912).

Notwithstanding the 1919 amendment (Acts 1919, ch. 142, p. 631) of § 108 of Acts 1905, ch. 129, which was carried forward in the amendment of 1921, the board of works of the city of Indianapolis (a city of the first class) had the right to assess a part of the cost of improving a street on lots and lands which did not abut on the street improved, if they were within 150 feet of such street. Axt v. City of Indianapolis, 87 Ind. App. 580, 158 N. E. 523 (1927).

36-9-18-20. Assessment roll - Contents. - As soon as a contract for an improvement has been completed, the works board shall have an assessment roll prepared for the property abutting on and adjacent to the improvement, which is liable to assessment under this chapter. The assessment roll must include:

(1) The name of the owner of each parcel of property;

(2) A description of each parcel of property; and

(3) The total assessment, if any, against each parcel of property, listed opposite from each name and description.

A mistake in the name of the owner or the description of property does not void the assessment or lien against the property. [IC 36-9-18-20, as added by Acts 1981, P.L. 309, § 91.]

NOTES TO DECISIONS

Assessment as Taxation.

The process determining the property liable to be assessed was essentially one of taxation. Buckingham v. Kerr, 68 Ind. App. 290, 120 N. E. 422 (1918).

Notice of Adjourned Meetings.

In a mandamus proceeding to compel the board of trustees of a town to file an assessment roll, where notice had been given and proof of publication made, it was the duty of the property owners affected to take notice of adjourned meetings, for the notice given was sufficient for all purposes. Hankins v. State ex rel. Miller, 217 Ind. 225, 27 N. E. 2d 385 (1940).

Special Damages.

Where, in the improvement of a public street, there had been, after the completion of the work, an assessment of benefits, it was presumed that any special damages to abutting properties were adjusted in the fixing of the assessments. Butler v. City of Kokomo, 62 Ind. App. 519, 113 N. E. 391 (1916).

36-9-18-21. Presumption of special benefits - Conclusiveness of assessment - Notice requirements. - (a) The assessment indicated against each lot, tract, or parcel of land on the assessment roll is presumed to be the special benefit to the lot, parcel, or tract of land and is the final and conclusive assessment unless it is changed under section 22 [36-9-18-22] of this chapter.

(b) Immediately after the assessment roll is completed and filed, the works board shall publish a notice according to IC 5-3-1 [5-3-1-1—5-3-1-9]. The notice must:

(1) Describe the general character of the improvement;

(2) State that the assessment roll, with the names of owners and descriptions of property subject to assessment and the amounts of presumptive assessments, if any, is on file and can be seen at the works board’s office; and

(3) Name a time and date after the date of the last publication on which the works board will, at its office, receive and hear remonstrances against the amount assessed on the roll, and determine whether the lots or tracts of land have been or will be benefited by the improvement in the amounts listed on the roll, in a greater or lesser sum than that listed on the roll, or in any sum

(c) This subsection applies only to counties. The notice must also describe the platted subdivision or parts of the subdivision on which there is property that is benefited and liable for assessment.

(d) This subsection applies only to municipalities. The notice must also describe:
(1) The public way or public place on which the improvement has been made;

(2) The terminals of the improvement; and

(3) The public ways;

(A) That intersect the improvement, or are parallel to the improvement and within one hundred fifty feet [150'] of the improvement; and

(B) On which there is property that is benefited and liable for assessment. [IC 36-9-18-21, as added by Acts 1981, P.L. 309, § 91.]

NOTES TO DECISIONS

Final Assessment.

Where, pending an appeal by a contractor from a judgment against him on his complaint to mandate the officials of a city to adopt a final assessment roll for a street improvement completed by him, a final assessment roll was adopted in the amount of the original assessment, much below the contract price, and appellant accepted the amount as adopted, the appeal was dismissed, even though he expressly stated he was accepting it in part payment, since there could be only one final assessment, and the city had no power to levy an additional one. State ex rel. Western Constr. Co. v. City of Peru, 182 Ind. 689, 107 N. E. 737 (1915).

In a proceeding to foreclose a street improvement lien, the landowner's failure to appeal from the determination by the board of public works as to the amount of benefits operated to make the assessment final and conclusive. Mead Constr. Co. v. Wilson, 200 Ind. 443, 164 N. E. 313 (1929).

Hearing of Objections.

An aggrieved property owner could appear at the time fixed and present his objections and the common council had plenary power to adjust in accordance with benefits received. Leeds v. DeFrees, 157 Ind. 392, 61 N. E. 930 (1901).

Property owners could not set up in defense of an action to collect a street improvement assessment that they were not given an opportunity to be heard as to the assessment, as they could compel the city authorities to grant a hearing. Brown v. Central Bermudes Co., 162 Ind. 452, 69 N. E. 150 (1903).

Property owners were given ample opportunity to contest the validity of street improvement assessments, and they could not complain of want of due process of law. Dawson v. Hipskind, 173 Ind. 216, 89 N. E. 883 (1909).

If street improvement assessments were merely defective, they could be corrected by supplemental proceedings. Curless v. Watson, 54 Ind. App. 110, 100 N. E. 576 (1913).

Property owners were bound by assessments levied for street improvements if they failed to present their grievances at the time and in the manner provided by statute, unless the proceedings were entirely void. Varble v. O'Neil, 110 Ind. App. 164, 37 N. E. 2d 276 (1941).
Omitted Property.

Authorities had power to assess omitted property. Sands v. Hatfield, 7 Ind. App. 357, 34 N. E. 654 (1893).

36-9-18-23. Completion of assessment roll - Finality of decisions by works board - Appeals. - (a) The works board shall complete the assessment roll and render its decision by modifying or confirming the roll, showing the total amount of special benefits opposite each name and description of property on the roll. When completed, the assessment roll shall be delivered to:

(1) The county assessor, for an improvement by a county; or

(2) The municipal fiscal officer, for an improvement by a municipality.

(b) The decision of the works board as to all benefits is final and conclusive on all parties, except that any owner of an assessed lot or parcel of land who has filed a written remonstrance with the board may appeal to the circuit or superior court for the county. [IC 36-9-18-23, as added by Acts 1981, P.L. 309, § 91.]

NOTES TO DECISIONS

In General.

When an assessment roll had been approved by a board of works and a copy thereof delivered to the finance department, a court could not compel such board to make a new assessment for such a sum as the court deemed right. Gorman v. State ex rel. Koester, 157 Ind. 205, 60 N. E. 1083 (1901).

Appeal from Circuit Court.

Under Acts 1905, ch. 129, § 107, as amended (since repealed), the determination of the circuit court in proceedings on appeal from a final order for improvement of a street was final and not appealable. State ex rel. Jones v. Williams, 187 Ind. 89, 118 N. E. 564 (1918).

Appeal Not Civil Proceeding.

An appeal from the assessment was not a civil proceeding within the civil procedure code. Clarke v. City of Evansville, 75 Ind. App. 500, 131 N. E. 82 (1921).

Change of Venue.

Whether on appeal to the circuit court from the final order on improvement of the street, a change of venue could be granted, involved the construction of a statute, which was a judicial determination not controllable by mandamus. State ex rel. Jones v. Williams, 187 Ind. 89, 118 N. E. 564 (1918).

Collateral Attack.

Assessments by the board of public works for street improvements were not, in the absence of appeal therefrom, subject to collateral attack, but could only be challenged by appeal as provided by statute. Mead Constr. Co. v. Wilson, 200 Ind. 443, 164 N. E. 313 (1929).

Estimate Final.

The estimate for street improvements could not be increased at the stage of issuing and marketing bonds. Porter v. City of Tipton, 141 Ind. 347, 40 N. E. 802 (1895).

Extension of Improvement.

After an order was made for the improvement, and it was determined what property would be benefited thereby, the line of improvement could not be extended and such property charged with the expense thereof. City of Columbus v. Storey, 35 Ind. 97 (1871).

Extent of Right of Appeal.

If property owners deemed that assessments made by the board of works for public improvements were excessive, their remedy was an appeal. Farnham v. Schneider, 48 Ind. App. 509, 96 N. E. 173 (1911).

A property owner appealing to the circuit or superior court had no right to appeal from the judgment of such court where only the amount of the assessment was involved. Clarke v. City of Evansville, 75 Ind. App. 500, 131 N. E. 82 (1921).

On appeal to the circuit or superior court, the inquiry was limited to whether the final assessment exceeded the actual benefit. Clarke v. City of Evansville, 75 Ind. App. 500, 131 N. E. 82 (1921).

The right of appeal to the circuit or superior court was only as to the amount of assessment, not as to whether land was liable to an assessment. Cleveland, C., C. & St. L.R.R. v. Muncie, 76 Ind. App. 64, 131 N. E. 426 (1921).

Property owners could appeal to the circuit or superior court from a decision of the common council sustaining street improvement assessments. Raschka v. Hobart, 87 Ind. App. 538, 161 N. E. 650 (1929).

An appeal could be taken only when authorized by statute and then only in the manner, upon the conditions, and for the reasons named in the statute. City of Indianapolis v. Stutz Motor Car Co. of America, 94 Ind. App. 211, 180 N. E. 497 (1932).

Mandamus.

The judge on appeal from the assessment of benefits could be mandated to render a judgment in
favor of the relator against the city for the amount his assessment had been reduced on such appeal. State ex rel. Neal v. Beal, 185 Ind. 192, 113 N. E. 225 (1916).

Remedying of Defects.

The final estimate and assessment could be amended and corrected. Ball v. Balfé, 41 Ind. 221 (1872).

Sufficiency of Petition.

In an appeal from an assessment, a petition, containing what the statute provided it should contain, was sufficient. Simon v. City of Wabash, 58 Ind. App. 127, 107 N. E. 738 (1915).

38-9-18-24. Primary assessment roll - Contents - Assessments payable to disbursing officer. - (a) After the works board approves and accepts the entire work under any contract and allows a final estimate, it shall deliver a certified copy of the assessment roll completed under section 23 [38-9-18-23] of this chapter to the disbursing officer of the unit.

(b) The duplicate assessment roll, to be known as "the primary assessment roll," must show the amount due on each piece of property if paid in cash within the time limit, and the amount of waivers filed. The roll must also have an appropriate column in which payments may be properly credited by the disbursing officer.

(c) All assessments, whether payable in installments or not, are payable to the disbursing officer, who shall receive them, give proper receipts, and enter the proper credit. [IC 38-9-18-24, as added by Acts 1981, P.L. 309 § 91.]

38-9-18-25. Notice to property owners - Installment payments. - (a) Upon receipt of the primary assessment roll, the disbursing officer shall, by mail, notify each affected person of the amount of the assessment against his property. The notice must state:

(1) That the amount is due within thirty [30] days after the approval of the assessment roll by the works board; and

(2) That any person who wants to pay his assessment by installments must, by the due date, enter into a written agreement under subsection (b).

(b) A person who wants to pay his assessment in ten [10] annual installments must, by the due date, enter into a written agreement that in consideration of that privilege he will make no objection to any illegality or irregularity regarding the assessment against his property, and will pay the assessment as required by law with specified interest. The agreement shall be filed in the office of the disbursing officer.

(c) An assessment of less than one hundred dollars [$100] may not be paid in installments. [IC 38-9-18-25, as added by Acts 1981, P.L. 309, § 91.]

NOTES TO DECISIONS

In General.

A landowner who executes a waiver and an installment agreement under this section becomes personally liable, not under the statute, but by the agreement to pay made after the debt was created and for valuable consideration. Wayne County Sav. Bank v. Gas City Land Co., 156 Ind. 682, 59 N. E. 1048 (1901); Scott v. Hayes, 182 Ind. 548, 70 N. E. 879 (1904); Hayes v. Shirk, 167 Ind. 569, 78 N. E. 653 (1908); Dunkirk Land Co. v. Zehner, 35 Ind. App. 694, 74 N. E. 1099 (1905); City of Indianapolis v. City Bond Co., 42 Ind. App. 470, 84 N. E. 20 (1908); Hennessey v. Breed, Elliott & Harrison, Inc., 92 Ind. App. 165, 176 N. E. 251 (1931); Feder v. Gary State Bank, 98 Ind. App. 513, 186 N. E. 379 (1933).

Acceleration.

Payment of an installment of a street improvement assessment by cashing of check related back to delivery of check to city clerk and defeated action by bondholder to enforce lien of assessment as in default. Indiana Bond Co. v. Bruce, 13 Ind. App. 550, 41 N. E. 958 (1895).

Action on Waiver.

Since the waiver by property owners under the Barrett Law was a contract beneficial to the property owner and the bondholder alike, it was not necessary that the statute specifically provide for an action upon the waiver executed by the property owner containing his promise to pay. Englehart's Estate v. Larimer, 211 Ind. 218, 5 N. E. 2d 304 (1936).

Decedent's Estates.

An executor who executed a waiver to secure right to pay street assessments in annual installments was personally liable. Hayes v. Shirk, 187 Ind. 569, 78 N. E. 653 (1908).

Installment Payments.

Payment of installment before due by delivery of check to treasurer was payment at the time check was delivered to the treasurer where the check was collected and credit entered after installment became due. Indiana Bond Co. v. Bruce, 13 Ind. App. 550, 41 N. E. 958 (1895).

All subsequent installments became due on failure of property owner to pay an installment for an assessment for street improvements when due although delinquent installment was paid to city treasurer before foreclosure proceedings were com-

If an assessment against each of several lots for a street improvement was less than $10.00, the owner of such lots did not have the right to pay such assessments by installments, although the aggregate assessments against the several lots belonging to the same owner exceeded such sum. Wallace v. Newcastle Realty Co., 57 Ind. App. 120, 106 N. E. 615 (1914).

Irregularities in Assessment.

If a property owner elected to pay his assessment by installments, he could not defeat the collection of the assessment on the ground of irregularities. Richcreek v. Moorman, 14 Ind. App. 370, 42 N. E. 943 (1896); Dunkirk Land Co. v. Zehner, 35 Ind. App. 694, 74 N. E. 1099 (1905).

Limitation of Actions.

The limitation against an action to foreclose municipal improvement liens commenced to run from the date when the last installment became due, unless the lienholder served statutory notice of the default in any installment, in which case the bar was five years from default and notice and period of grace. Hennessey v. Breed, Elliott & Harrison, Inc., 92 Ind. App. 165, 176 N. E. 251 (1931).

In an action to foreclose municipal improvement, assessment liens payable in installments, the record was held to sustain the finding that the five-year statute had not run. Hennessey v. Breed, Elliott & Harrison, Inc., 92 Ind. App. 165, 176 N. E. 251 (1931).

Personal Liability.

The property owner’s waiver and agreement to pay the assessment created a personal liability which could be enforced by the foreclosure of the lien, or in a separate action. Feder v. Gary State Bank, 98 Ind. App. 513, 186 N. E. 379 (1933); Central Bldg. & Loan Ass’n v. Gary State Bank, 186 N. E. 382 (Ind. App. 1933); Larimer v. Gary State Bank, 186 N. E. 384 (Ind. App. 1933); LaPlante v. Englehart’s Estate, 186 N. E. 385 (Ind. App. 1933).

Waivers.

Persons who desired to pay assessments for street improvements by installments were required to sign and file a waiver within 30 days after the allowance of the final estimate, and the filing of a petition to have an assessment reduced did not have the effect of extending the time for filing such waiver. Schaefer v. Hines, 56 Ind. App. 17, 102 N. E. 838 (1913).

The waiver by a property owner of irregularity of assessments prohibited him from making any defense to validity of the assessment, as against the purchaser of bonds for amount of the assessment, who relied on such waiver. City Nat’l Bank v. Van Houten, 96 Ind. App. 656, 153 N. E. 782 (1926).

Property owners signing waivers or paying sewer assessments were estopped to claim their assessments were unjust, unequal, or unconstitutional, even though others who appealed to the circuit court had their assessments reduced on a compromise and settlement. Allendorf v. City of Indianapolis, 95 Ind. App. 415, 176 N. E. 240 (1931).

36-9-18-26. Time and manner of payment - Delinquent assessments. - Except as provided in section 27 [36-9-18-27] of this chapter, if an agreement has not been signed and filed under section 25 [36-9-18-25] of this chapter, the entire assessment is payable in cash without interest within thirty [30] days after the approval of the assessment roll by the works board. If not paid when due, the total assessment becomes delinquent and bears interest at the rate of eight percent [8%] per annum from the date of the final acceptance by the board of the completed improvement. [IC 36-9-18-26, as added by Acts 1981, P.L. 309, § 91.]

36-9-18-27. Certification of judgment from appeal of assessment - Notice to property owner - Time and manner of payment. - (a) If a property owner appeals the assessment made against his property to the circuit court the clerk of the court shall certify the judgment of the court to the disbursing officer, who shall immediately notify the property owner of the amount of the assessment fixed by the court.

(b) The property owner has thirty [30] days from the date the notice is sent to pay the assessment in cash or to elect to pay the assessment in installments by entering into an agreement under section 25 [36-9-18-25] of this chapter. The unit shall then issue bonds in the amount of the assessment fixed by the court, bearing the date of the final acceptance of the work. The assessment bears interest:

(1) From the date of the final acceptance of the work; and

(2) At the same rate per annum as the bonds issued for the work.

(c) Any part of the assessment that the court orders to be assessed against the unit bears interest:

(1) From the date of the final acceptance of the work; and

(2) At the same rate per annum as the bonds issued for the work;

and may be paid by the unit in any manner provided by law for paying other assessments against

36-9-18-28. Assessment lien - Enforcement. - The unit has a lien against each parcel of real property that is assessed for the construction, maintenance, or repair of an improvement, or for the taking of lands for any purpose of the unit. The lien is established when the assessments are certified to the disbursing officer for collection. The unit may bring a foreclosure action to enforce the lien against a person who defaults in payment of the assessment. [IC 36-9-18-28, as added by Acts 1981, P.L. 309, § 91.]

NOTES TO DECISIONS

Attorneys.

A board of county commissioners had authority to employ attorneys to take such legal measures as necessary to reimburse the treasury of the county for money paid out of the treasury on account of the location and repairing of ditches. Holman v. Robbins, 5 Ind. App. 436, 31 N. E. 883 (1892).

Complaint.

A complaint to foreclose an assessment lien for street improvements sufficiently showed the adoption of the resolution therefor pursuant to Acts 1905, ch. 129, § 107, prior to 1921 amendment (since repealed), where it alleged that the common council adopted a declaratory resolution providing for the improvement of the street, with full details, drawings, and specifications for said work which were then on file in the office of the city civil engineer. Hoffman v. Zollman, 49 Ind. App. 664, 97 N. E. 1015 (1912).

Enforcement of Lien by City.

The city could pay the contractor and enforce the assessment. City of Connersville v. Merrill, 14 Ind. App. 303, 42 N. E. 1112 (1896).

Assessments for public improvements were payable to the city, and the city could maintain an action to foreclose such liens. Lehman v. City of Goshen, 178 Ind. 54, 98 N. E. 1, 710 (1912).

If a city advanced money due to a contractor for the improvement of a street, the city could sue to enforce the assessments made against property to pay the expense of the improvement when the work was completed and accepted. Lehman v. City of Goshen, 178 Ind. 54, 98 N. E. 1, 710 (1912).

Liens Without Statute.

Prior to the enactment of Acts 1907, ch. 110, § 1 (since repealed), there was no statutory provision for acquiring liens against public property. Fry v. P. Bannon Sewer Pipe Co., 179 Ind. 309, 101 N. E. 10 (1913).

Personal Liability.


A landowner who executes a waiver and an installment agreement under 36-9-18-25 becomes personally liable, not under the statute, but by the agreement to pay made after the debt was created and for valuable consideration. Wayne County Sav. Bank v. Gas City Land Co., 156 Ind. 662, 59 N. E. 1048 (1901); Scott v. Hayes, 162 Ind. 548, 70 N. E. 879 (1904); Hayes v. Shirk, 187 Ind. 589, 78 N. E. 853 (1906); Dunkirk Land Co. v. Zehner, 35 Ind. App. 694, 74 N. E. 1099 (1905); City of Indianapolis v. City Bond Co., 42 Ind. App. 470, 84 N. E. 20 (1908); Hennessey v. Breed, Elliott & Harrison, Inc., 92 Ind. App. 165, 176 N. E. 251 (1931); Feder v. Gary State Bank, 98 Ind. App. 513, 186 N. E. 379 (1933).

In an action to foreclose a street improvement assessment that was payable by installments, the plaintiff was entitled to a personal judgment against the defendant. Edward C. Jones Co. v. Perry, 26 Ind. App. 554, 57 N. E. 583 (1900); Dunkirk Land Co. v. Zehner, 35 Ind. App. 694, 74 N. E. 1099 (1905).

Liens for street improvement assessments could be foreclosed after personal judgment was taken against the property owner for the assessment. City of Indianapolis v. City Bond Co., 42 Ind. App. 470, 84 N. E. 20 (1908).

The taking of a personal judgment against a lot owner who had agreed to pay the assessment by installments did not prevent a foreclosure of the lien. City of Indianapolis v. City Bond Co., 42 Ind. App. 470, 84 N. E. 20 (1908).

Liens for street improvement assessments could be foreclosed after personal judgment was taken against the property owner who had executed a waiver. City of Indianapolis v. City Bond Co., 42 Ind. App. 470, 84 N. E. 20 (1908).

Deficiency Judgment.

In a suit to foreclose the lien, the right to a deficiency judgment existed by reason of the personal obligation assumed by the signer of the waiver. Englehart's Estate v. Larimer, 211 Ind. 218, 5 N. E. 2d 304 (1936).
Priority.

Where the same property was assessed for separate improvements the last assessment took precedence as a lien over those previously made. Burke v. Lukens, 12 Ind. App. 648, 40 N. E. 641, 54 Am. St. R. 539 (1895).

Lien of assessment was senior to mortgages. City of Bloomington v. Phelps, 149 Ind. 596, 49 N. E. 581 (1898).


The liens of two or more street improvement assessments were equal regardless of the time they were made where the statute was silent on the question of priority as between holders of such liens. Brownell Imp. Co. v. Nixon, 48 Ind. App. 195, 92 N. E. 693, 95 N. E. 585 (1910).

If a person holding a tax deed for a lot was served with a notice of a proposed street improvement, and he then knew that his title under the tax sale was defective, and he failed to make the fact known, he could not afterwards set up his lien for taxes as a preferred lien over the lien for the street improvement assessment. Dixon v. Thompson, 52 Ind. App. 560, 98 N. E. 738 (1912).

Where language of each statute was that lien "shall have precedence over all liens, except taxes," the liens acquired under each of the statutes were equal, neither having precedence over the other, regardless of the fact that one lien was acquired before the other. Citizens Trust & Sav. Bank v. Fletcher Am. Co., 207 Ind. 328, 190 N. E. 868, 192 N. E. 451, 99 A.L.R. 1474 (1934).

Release.

Payment to the treasurer of an installment released the lien thereof although the treasurer failed to apply the money properly. Jessen v. Pierce, 25 Ind. App. 222, 57 N. E. 941 (1900).

Repeal of Statute.

Lien of assessment was not divested by the repeal of a statute. Phillips v. Jollisaint, 7 Ind. App. 458, 34 N. E. 653, 847 (1893).

38-9-18-29. Receipt of installment payments by disbursing officer - (a) The disbursing officer shall receive the payment of assessment installments, keep all accounts of them, and give proper vouchers for them.

(b) Proceeds arising from assessments for the payment of a particular improvement may not be diverted to the payment of any other improvement. The proceeds from assessments for the payment of a particular improvement constitute a separate special fund for:

(1) The payment of contractors for the particular work, upon the allowance of estimates by the works board; or

(2) The security and payment of any bonds issued in anticipation of the collection of the assessments for the improvement. [IC 38-9-18-29, as added by Acts 1981, P.L. 309, § 91.]

NOTES TO DECISIONS

Advance Payment.

Deficits arising in improvement funds, on account of prepayment of assessments referred to in this section, were deficits which arose because some of the holders of property subject to assessment for Barrett Law improvements, who signed a "waiver" and had agreed to pay the assessments in installments, had paid up their entire assessments and stopped interest thereon. LaPlante v. City of Vincennes, 100 Ind. App. 264, 194 N. E. 191, 195 N. E. 297 (1935).

Credits for Payments.

It was the duty of the treasurer when assessments were paid to enter the proper credits on the assessment rolls. Indiana Bond Co. v. Bruce, 13 Ind. App. 550, 41 N. E. 958 (1895); Jessen v. Pierce, 25 Ind. App. 222, 57 N. E. 941 (1900).

Payment to the treasurer of an installment satisfied the same although the treasurer did not pay the money to the person entitled thereto. Jessen v. Pierce, 25 Ind. App. 222, 57 N. E. 941 (1900).

Deposit.

Street improvement funds were city funds required to be deposited in public depositories. Weidner v. City of Richmond, 90 Ind. App. 425, 165 N. E. 332 (1929).

Liability of City or Town.

A city could not be held liable for the payment of street assessment bonds, except out of a special fund to be accumulated from assessments made against the property benefited. Rottger v. Union City, 101 Ind. App. 438, 196 N. E. 355 (1935).

38-9-18-30. Failure to pay installment - Failure to collect assessment or installment - Notice of delinquency - Actions to collect. - (a) Failure to pay an installment of principal or interest when it is due makes all installments of principal yet unpaid due and payable immediately, if the unpaid installment of principal or interest is not paid within the grace period provided. If the unit fails to collect an unpaid assessment or install-
ment when due, no liability accrues against the unit, but the owner of the bonds, or the person to whom is due and owing the amount of the unpaid assessment for the performance of the work, is entitled to proceed in court to enforce the lien or the unpaid assessment, to recover interest, costs, and a reasonable attorney’s fee, and to have the proceeds of sale applied to his claim.

(b) When a person defaults in the payment of an installment of principal or interest, the disbursing officer shall mail notice of the delinquency to the person in accordance with IC 36-9-19 [36-9-19-1–36-9-19-32], whether or no a waiver has been signed. A notice mailed to the person in whose name the lands are assessed, addressed to the person within the unit, is sufficient notice. There is no liability for an attorney’s fee unless an action is actually brought on the assessment.

(c) An action to collect an unpaid assessment may not be brought until the notice required by subsection (b) has been given.


NOTES TO DECISIONS

Acceleration.

If an installment was not paid when due, the entire assessment became due, although the delinquent installment was paid soon after it was due and before suit to foreclose was commenced. Marion Bond Co. v. Blakely, 30 Ind. App. 374, 65 N. E. 291, 66 N. E. 71 (1902).

The owner of the lien or assessment had the option to declare the entire debt due on default, and in the absence of his doing so and serving the 15-day notice, the bonds would mature according to their terms, and would be barred only by the provisions of 32-8-8-1. Hennessey v. Breed, Elliott & Harrison, Inc., 92 Ind. App. 165, 176 N. E. 251 (1931).

Cash Payment.

The collecting officer had no authority to accept anything but cash from a property owner in payment of the assessment on his property. Conter v. State ex rel. Berezner, 211 Ind. 659, 8 N. E. 2d 75 (1937).

Limitation of Actions.

An action by Barrett Law bondholders to recover the amount of assessments collected by the city which should have been paid to the plaintiffs, but which was misapplied and paid to holders of bonds not included in the series of bonds next becoming due, was one based on a contract in writ-
36-9-18-32. Bonds issued in anticipation of collection of assessments - Date - Exemption from taxation. - Bonds issued in anticipation of the collection of assessments for an improvement must bear the date of the completion of the improvement under the contract and the acceptance of it by the works board. The bonds draw interest from that date and are exempt from taxation for all purposes. [IC 36-9-18-32, as added by Acts 1981, P.L. 309, § 91.]

36-9-18-33. Maturation of bonds - Interest. - (a) The works board may provide in the preliminary resolution that the bonds issued in anticipation of the collection of the assessments be issued so as to mature not less than fifteen [15] years nor more than thirty [30] years from the date of issuance, with interest payable semiannually from the date of issue. Bonds issued in this manner mature serially, so that some bonds mature each year until the final maturity date of the issue is reached.

(b) If a petition requesting maturation of bonds as provided in this section is filed by a majority of the resident freeholders affected by the improvement before the sixteenth day after the resolution is first published, the works board must issue the bonds accordingly.

(c) The works board may fix the rate of interest on the bonds issued. [IC 36-9-18-33, as added by Acts 1981, P.L. 309, § 91.]

36-9-18-34. Rights of bondholders - Sale to satisfy bonds and coupons - Amount and distribution of sale proceeds. - (a) Bonds issued in anticipation of the collection of assessments and liens upon the respective lots or parcels of ground. The liens stand as security for the bonds and coupons until they are paid, with full power to enforce the lien by foreclosure in court as provided in this chapter if the bond or coupon is not paid on presentation to the disbursing officer.

(b) Sales to satisfy the bonds and coupons shall be made as provided in this chapter for sales upon judgments or decrees foreclosing liens for assessments levied for improvements, except that the first bondholder who brings a foreclosure action against the property or any part of the property is entitled to have the proceeds of the action applied pro rata to the payment of his own bonds and of bonds held by others.

(c) The property upon which the assessment is placed may not be sold for less than the amount of the assessment, attorney's fees, and costs, and the proceeds of the sale shall be distributed as provided in this chapter. If the property sells for more than enough to pay the principal, interest, attorney's fees, and costs, the surplus shall be paid to the property owner or party lawfully entitled to it.

(d) Only one [1] foreclosure action may be brought against any one [1] lot or parcel of land, but all lots or parcels of land against which the assessments are in default may be joined in one [1] proceeding.

(e) The bonds are negotiable instruments and are free from all defenses by property owners. The bonds need not recite the steps taken in ordering the improvement or directing the assessment, and may instead make a general reference to this chapter. [IC 36-9-18-34, as added by Acts 1981, P.L. 309, § 91.]

**NOTES TO DECISIONS**

In General.

The holders of bonds issued to raise money to pay for the improvement of streets or construction of sewers could sue to enforce assessments made against property for the purpose of paying such bonds. Indiana Bond Co. v. Bruce, 13 Ind. App. 550, 41 N. E. 958 (1895); Marion Bond Co. v. Blakely, 30 Ind. App. 374, 65 N. E. 291, 66 N. E. 71 (1902); Scott v. Hayes, 162 Ind. 548, 70 N. E. 879 (1904).

In action by holders of improvement bonds to recover interest thereon from date of maturity to date of payment of each bond, the evidence was sufficient to sustain the decision that the city did not have sufficient improvement funds received by it as payment under the Barrett law assessments when the bonds in question were presented for payment. LaPlante v. City of Vincennes, 100 Ind. App. 284, 194 N. E. 191, 195 N. E. 297 (1935).

Bondholders could institute an action to enforce Barrett Law assessments for the benefit of themselves and all other bondholders. Englehart's Estate v. Larimer, 211 Ind. 218, 5 N. E. 2d 304 (1936).

The holder of municipal assessment bonds had the right to maintain an action on a claim in a descendent's estate, based on waivers authorized by statute and signed by decedent in his lifetime, as the owner of property beneficially affected by the construction of a sewer improvement, for the purpose of enforcing the contractual rights and contractual and statutory remedies in favor of himself and other bondholders who were in like situation, but if claimant was to recover the full amount due for the use and benefit of himself, it must be made to appear that there are no other bondholders in a like situation, and, where that fact did not appear, the judgment of the court in favor of claimant for the full amount of descendant's obligation was ordered modified on appeal so as to require the amount to be paid into the office of the clerk-treasurer of the city for the benefit of claimant and all other bondholders, if any, in a like situation, and in such amounts as under the law they were entitled.
Compromise.

In a suit by a bondholder for himself and for other bondholders in like situation, the court could not vest a receiver or other officer of the court with power to compromise for bondholders not before the court, and to accept for them less than the full rights and remedies to which they were entitled under their contracts. Read v. Becskiewicz, 215 Ind. 365, 18 N. E. 2d 789, 19 N. E. 2d 465 (1939).

Constitutionality.

Acts 1941, ch. 224 (since repealed), providing a remedy for governmental units by sale of land in satisfaction of tax liens and in discharge of junior Barrett Law liens, was not unconstitutional as depriving the bondholders of substantive rights under their bond contracts, since the statute merely provided an additional remedy of the governmental units without depriving the bondholders of any substantial right or of any existing remedy, the lien on the property or the amount due thereunder not being altered or modified in any respect. First Bank & Trust Co. v. Ralston, 222 Ind. 584, 55 N. E. 2d 115 (1944).

Liability of City.

A city, which collected improvement assessments paid under the Barrett Law from property owners, was liable to holders of bonds of series nine and ten for their pro rata share of all collections received on the ninth and tenth installments, even though the city has used such funds received in payment of such installments to pay and retire bonds and coupons of the fifth, sixth, seventh, and eighth series of such improvement resolution. City of Hammond v. Melville, 114 Ind. App. 602, 52 N. E. 2d 845 (1944).

Limitations of Actions.

Statute of limitations did not begin to run against owner of Barrett Law bonds until after city received payments on assessments from property owners and refused bondholder's demand for payment of the amount received. Keilman v. City of Hammond, 124 Ind. App. 392, 114 N. E. 2d 813, 116 N. E. 2d 515 (1953).


Where city treasurer had received payments for Barrett Law bonds prior to date on which he stamped them as not paid for want of funds, he thereby concealed the truth and was guilty of at least constructive fraud which stayed the statute of limitations. Keilman v. City of Hammond, 124 Ind. App. 392, 114 N. E. 2d 813, 116 N. E. 2d 515 (1953).
Where property owner, and Barrett Law bondholder, after statute of limitations had run against city on assessments against property, determined not to take advantage of his personal privilege, and paid the assessment to the proper city official, city could not thereafter retain this money and refuse to pay to Barrett Law bondholders the money so paid in. Keilman v. City of Hammond, 124 Ind. App. 392, 114 N. E. 2d 813, 116 N. E. 2d 515 (1953).

Order of Payment.

If all bonds issued on improvement assessments under the Barrett Law could not be paid in full, because of insolvency of property owners or depreciation in the value of the property, the law did not require that the funds collected be prorated among unpaid bonds; but each of the ten groups of bonds issued against assessments were payable out of assessments on hand as the group fell due. Read v. Beczkiewicz, 215 Ind. 365, 18 N. E. 2d 789, 19 N. E. 2d 465 (1939).

Personal Liability.

For personal liability of landowner after execution of waiver and agreement to pay assessment, see this heading under Notes to Decisions set out following 36-9-18-28.

36-9-18-35. Action by contractor to foreclose assessment lien. - A contractor who is entitled to enforce liens or assessments, or his assignee, may bring an action against a person who has defaulted in payment of an assessment to foreclose the lien established by that assessment. [IC 36-9-18-35, as added by Acts 1981, P.L. 309, § 91.]

NOTES TO DECISIONS

Acceptance of Work.

Acceptance of work by the board of public works was conclusive in an action to enforce the lien of an assessment. Darnell v. Keller, 18 Ind. App. 103, 45 N. E. 676 (1896).

Defenses.

An answer alleging that the whole cost of the improvement was assessed against defendant's property and none against the property on the opposite side of the street, that no waiver was signed, that no claim had been made to pay the assessment in installments and that defendant had paid one-half of the cost of the improvement was a good defense to a complaint to foreclose a lien for a street improvement. Green v. Shanklin, 24 Ind. App. 608, 57 N. E. 269 (1900).

The denial of a hearing was not available as a defense in an action to enforce the collection of street assessments. Shank v. Smith, 157 Ind. 401, 61 N. E. 932, 88 L.R.A. 564 (1901).

In actions to foreclose street improvement assessments, defendants could not set up a defense that their property was damaged by the improvement. Thompson v. Mitchell, 54 Ind. App. 258, 100 N. E. 20 (1912).

A defense that changes made in the contract were necessary and were not so substantial or material as to void the contract but were of detail in the method of construction was sufficient in an action to enjoin enforcement of paving assessment based on change in contract amounting to fraud. Crawshaw v. Mead-Balch Constr. Co., 100 Ind. App. 35, 191 N. E. 91 (1934).

--Collateral Attack.

All objections to the validity of the contract were unavailable in actions to collect street assessments. Kellems v. Republic Constr. Co., 77 Ind. App. 18, 131 N. E. 545 (1921).

In a proceeding to charge owners of land abutting on an improvement, in a proceeding for declaratory judgment, the fact that the contractor and some of the abutting owners were not made parties to the action rendered the judgment merely irregular, and did not defeat recovery of assessments for the improvement and the enforcement of a lien therefor against abutting property in the contractor's suit. Hoffman v. City of Rochester, 209 Ind. 529, 198 N. E. 783 (1933).

In an action to foreclose a street improvement lien, the proceedings which led to the assessment for the improvement could not be collaterally attacked by owners of the property assessed for the cost of the improvement. Bachelder v. Harshbarger, 105 Ind. App. 41, 10 N. E. 2d 927 (1937).

In street assessment proceedings, where abutting landowners whose properties were assessed for the cost of the improvement did not question the regularity of the proceeding pertaining to the adoption of the final assessment roll in which the amount of the benefits assessed against their properties was finally determined, and did not appeal from such action to the circuit court of the county for redress, the assessment as made was final and conclusive upon them, when attacked collaterally. Bachelder v. Harshbarger, 105 Ind. App. 41, 10 N. E. 2d 927 (1937).

--Credit for Improvements.

A defense in a suit to enforce an improvement assessment that property owner had previously improved the property and was entitled to a credit was insufficient unless it showed that the improvement previously made was in accord with the general plan and could be incorporated with the improvement for which the assessment was made. Spades v. Phillips, 9 Ind. App. 487, 37 N. E. 297 (1894); City of Connersville v. Merrill, 14 Ind. App.
303, 42 N. E. 1112 (1896); Holloran v. Mormon, 27 Ind. App. 309, 59 N. E. 869 (1901); Lux & Talbott Stone Co. v. Donaldson, 162 Ind. 481, 68 N. E. 1014 (1903).

Estoppel to Dispute Validity.

Property owners could be estopped to dispute the validity of street improvements by failing to make objection before the completion of the work. Taber v. Ferguson, 109 Ind. 227, 9 N. E. 723 (1887); Ross v. Stackhouse, 114 Ind. 200, 16 N. E. 501 (1888); Jenkins v. Stetler, 118 Ind. 275, 20 N. E. 788 (1889); DePuy v. City of Wabash, 133 Ind. 338, 32 N. E. 1016 (1893); City of Bloomington v. Phelps, 149 Ind. 596, 49 N. E. 581 (1898); Spaulding v. Baxter, 25 Ind. App. 485, 58 N. E. 551 (1900); Taylor v. Patton, 160 Ind. 4, 66 N. E. 91 (1903); Lux & Talbott Stone Co. v. Donaldson, 162 Ind. 481, 68 N. E. 1014 (1903); Boswell v. City of Marion, 40 Ind. App. 289, 79 N. E. 1056 (1907); Haislip v. Union Asphalt Constr. Co., 70 Ind. App. 308, 123 N. E. 426 (1919).

Evidence.

Evidence in actions to enforce assessments must show that all essential steps to make a legal assessment were taken. Pittsburgh, C., C. & St. L.R.R. v. Fish, 158 Ind. 525, 63 N. E. 454 (1902).

Life Tenants and Remaindermen.

The life tenant could not extinguish the title of the remainderman by purchasing the property at a sale for an assessment for street improvements, but since the remainderman was benefited by a permanent betterment of the property, he was liable to pay his proportionate share of the assessment. Hay v. McDaniel, 26 Ind. App. 683, 60 N. E. 729 (1901); Merrett v. Ritter, 158 Ind. 491, 63 N. E. 855 (1902).

Notice.

In a suit for the foreclosure of an assessment lien, the statutes of this state did not provide for notice and no notice was required prior to the filing of a suit to foreclose such lien. Frankenstein v. Coil Constr. Co., 127 Ind. App. 642, 143 N. E. 2d 468, 145 N. E. 2d 19 (1957).

Parties.


In actions to enforce unpaid street improvement assessments, it was not proper to make the municipal corporation a party. Town of Windfall City v. First Nat'l Bank, 172 Ind. 679, 87 N. E. 984, 89 N. E. 311 (1909).

In foreclosure of a street assessment lien, the owner of the real estate foreclosed against was a necessary party defendant, and a judgment and decree, in case he was not made a party, was void as to him. Coddington v. Nees, 72 Ind. App. 141, 125 N. E. 657 (1920).

Personal Actions.

Personal actions would not lie to collect assessments for street improvements, but the remedy of the contractor was against the property only. Darnell v. Keller, 18 Ind. App. 103, 45 N. E. 876 (1896); Edward C. Jones Co. v. Perry, 26 Ind. App. 554, 57 N. E. 583 (1900); Wayne County Sav. Bank v. Gas City Land Co., 156 Ind. 662, 59 N. E. 1048 (1901).

Personal Liability.

For personal liability of landowner after execution of waiver and agreement to any assessment, see this heading under Notes to Decisions set out following 36-9-18-28.

36-9-18-36. Foreclosure actions - Complaint - Evidence - Defenses. - (a) The complaint for a foreclosure action under this chapter need not set forth the specific proceedings leading to the final assessment, but it must include:

(1) The date on which the contract for the improvement was finally let;

(2) The name of the improvement;

(3) The amount and date of the assessment;

(4) A statement that the assessment is unpaid; and

(5) A description of the property on which the assessment was levied.

(b) At the trial of a foreclosure action, the plaintiff need not introduce proof of the proceedings before the works board leading to the final assessment, but the plaintiff must introduce the final assessment roll, or a copy of it. The roll or copy, which must be properly certified, is presumptive evidence that all steps required to be taken in making the final assessment were taken by the works board.

(c) A defense to a foreclosure action may not be based on:

(1) Any irregularity in the proceedings making, ordering, or directing the assessment; or

(2) the propriety or expediency of any improvement.
In addition, a property owner who has exercised the option to pay his assessment in installments and has signed a waiver may not raise any defense to a foreclosure action. [IC 36-9-18-36, as added by Acts 1981, P.L. 309, § 91.]

NOTES TO DECISIONS

Complaint.

Complaints to enforce assessments made against property for the improvement of streets must plead all the acts done by the municipal officers, and all facts essential to show their authority and show the amount of the assessment or assessment. Van Sickel v. Belknap, 129 Ind. 558, 28 N. E. 305 (1891); Dugger v. Hicks, 11 Ind. App. 374, 36 N. E. 1085 (1894); City of Connorsville v. Merrill, 14 Ind. App. 303, 42 N. E. 1112 (1896); Bosarge v. McGillicuddy, 19 Ind. App. 26, 47 N. E. 397, 48 N. E. 1042 (1897); Cleveland, C., C. & St. L.R.R. v. Edward C. Jones Co., 20 Ind. App. 87, 50 N. E. 319 (1898); Spaulding v. Baxter, 25 Ind. App. 485, 58 N. E. 551 (1900); Burris v. Baxter, 25 Ind. App. 536, 58 N. E. 733 (1900); Leeds v. DeFrees, 157 Ind. 392, 61 N. E. 930 (1901); Wray v. Fry, 158 Ind. 92, 62 N. E. 1004 (1902); Deane v. Indiana Macadam & Constr. Co., 161 Ind. 371, 68 N. E. 866 (1903); Daly v. Gubbins, 35 Ind. App. 86, 73 N. E. 833 (1905); Low v. Dallas, 165 Ind. 392, 75 N. E. 822 (1905); Lehman v. City of Goshen, 178 Ind. 54, 98 N. E. 1, 710 (1912); Town of Woodruff Place v. Gorman, 179 Ind. 1, 100 N. E. 296 (1912); Curless v. Watson, 54 Ind. App. 110, 100 N. E. 576 (1913); Schaefer v. Hines, 56 Ind. App. 17, 102 N. E. 838 (1913).

The portion of the assessment roll relating to the property of defendant must be set forth as an exhibit in a complaint to collect an assessment. Sloan v. Faurot, 11 Ind. App. 689, 39 N. E. 539 (1895).

In an action by bondholder to collect assessments, an allegation in complaint that city failed or refused to pay the assessment was strictly formal and did not require proof. Scott v. Hayes, 162 Ind. 548, 70 N. E. 879 (1904).

A complaint to foreclose a lien must show compliance with the provisions of statute relating to notice. Schaefer v. Hines, 56 Ind. App. 17, 102 N. E. 838 (1913).

In an action by a street contractor to foreclose an assessment lien on certain described abutting real estate, the complaint was not subject to the objection that it did not allege in detail all the proceedings and steps taken by the board of trustees of the town in ordering such improvement, letting of the contract for construction thereof to plaintiff, its performance by him, the adoption of the preliminary assessment roll, hearing thereon, and adoption of the final assessment roll. Bachelder v. Harshbarger, 105 Ind. App. 41, 10 N. E. 2d 927 (1937).

Demand.

A demand was not a necessary condition precedent before suit to foreclose a lien. Myers v. Indianapolis Union R.R., 12 Ind. App. 170, 39 N. E. 907 (1895).

The allegation in a complaint for foreclosure of a lien for street improvements "that more than ten days before the bringing of this suit the plaintiffs notified the defendants in writing of said assessment and the amount thereof, with interest, and where the same was payable" showed sufficient demand. Low v. Dallas, 165 Ind. 392, 75 N. E. 822 (1905).

36-9-18-37. Amount of recovery - Foreclosure sales - Redemption. - (a) In a foreclosure action brought under this chapter, the plaintiff is entitled to recover the amount of the assessment, principal and interest, and a reasonable attorney's fee. The court shall order the sale to be made without relief from valuation or appraisal law.

(b) The county sheriff shall sell the property in the same way that lands are sold on execution and shall, within five [5] days after the sale, execute a certificate to the purchaser. The certificate vests title in the purchaser when it is delivered, subject only to the right to redeem.

(c) An irregularity or error in making a foreclosure sale under this chapter does not make the sale ineffective, unless it appears that the irregularity or error substantially prejudiced the property owner.

(d) A property owner has two [2] years from the date of sale in which to redeem his property. He may redeem his property by paying the principal, interest, and costs of the judgment, plus interest on them at the rate prescribed by IC 6-1-37-10.

(e) If the property is not redeemed, the sheriff shall execute a deed to the purchaser. The deed relates back to the final letting of the contract for the improvement and is superior to all liens, claims, and interests except liens for taxes. [IC 36-9-18-37, as added by Acts 1981, P.L. 309, § 91; 1981, P.L. 317, § 18.]

NOTES TO DECISIONS

Attorney Fees.


The right to attorney fees arose only by statute and could not arise until an action to foreclose the
lien was brought. Indiana Bond Co. v. Jameson, 24 Ind. App. 8, 56 N. E. 37 (1900).

Attorney fees were properly includable in a judgment in an action by bondholders to collect street improvement bonds under act commonly known as the Barrett Law. Scott v. Hayes, 162 Ind. 548, 70 N. E. 879 (1904).

The attorney fee allowed in actions to enforce the payment of street improvement assessments could not exceed the amount fixed by the statute. Thompson v. Mitchell, 54 Ind. App. 258, 100 N. E. 20 (1912).

Evidence of "a reasonable attorney's fee" was properly admitted though it exceeded the maximum fixed by the statute. Pittsburgh, C., C. & St. L. R. R. v. Yates, 190 Ind. 112, 129 N. E. 465 (1921).


Constitutionality.

The provision of the statute allowing an attorney fee to the plaintiff in actions to enforce street improvement assessments was constitutional. Brown v. Central Bermudes Co., 162 Ind. 452, 69 N. E. 150 (1903); Pittsburgh, C., C. & St. L. R. R. v. Taber, 168 Ind. 419, 77 N. E. 741, 11 Ann. Cas. 808 (1906).

Lien Priority.

A statutory provision that the lien of Barrett Law assessments had precedence over all liens except taxes meant that taxes were a prior lien over Barrett Law assessments. First Bank & Trust Co. v. Ralston, 222 Ind. 584, 55 N. E. 2d 115 (1944).

Acts 1931, ch. 99, § 6 (since repealed), providing, as did earlier statutes, that Barrett Law assessments were prior and superior to all liens, excepting taxes, but providing in addition that a sale by the county auditor who had purchased the real estate for the benefit of the school fund was for an amount sufficient to pay the Barrett Law assessments and the school fund mortgage, did not repeal statute concerning priority of school fund mortgages, and did not contemplate priority or Barrett Law liens, but provided for the payment of both liens as a condition to a sale by the auditor, and hence no advantage was intended in favor of the Barrett Law assessment as against the lien of the school fund. Rosenbloom v. Hutchins, 222 Ind. 590, 55 N. E. 2d 315 (1944).

Parties.

In foreclosure of a street assessment lien, the owner of the real estate foreclosed against was a necessary party defendant, and a judgment and decree, in case he was not made a party, was void as to him. Coddington v. Nees, 72 Ind. App. 141, 125 N. E. 857 (1920).

Personal Liability.

For personal liability of landowner after execution of waiver and agreement to any assessment, see this heading under Notes to Decisions set out following 36-9-18-28.

Priority.

Where the county auditor, on foreclosure of a school fund mortgage, purchased the real estate for the benefit of the school fund and paid a Barrett Law lien from the fund pursuant to statute, the property purchased represented a school fund asset which was looked to primarily to produce on resale a sufficient sum to reimburse the school fund, not only for the amount of the loan and interest but for the amount paid by the auditor out of such fund to discharge the Barrett Law lien, interest, damages, and costs, and, upon resale, if the property did not bring a sufficient amount to discharge those entire amounts, the county was chargeable with the deficiency. Rosenbloom v. Hutchins, 222 Ind. 590, 55 N. E. 2d 315 (1944).

Public Property.

The public square of a county bordering on a street was liable to an assessment for the improvement of the street, but such square could not be sold to any such assessment. Board of County Comm'r's v. Shrade, 36 Ind. 87 (1871); Lowe v. Board of County Comm'r's, 94 Ind. 553 (1884).

If a city acquired title to property on which a lien existed, the lien could be foreclosed. City of Indianapolis v. City Bond Co., 42 Ind. App. 470, 84 N. E. 20 (1908).

Sale of Property.

In a suit to foreclose a lien securing bonds issued on improvement assessments, the property could not be sold for less than the amount of the assessment, attorney's fees, and costs. Read v. Baczekiewicz, 215 Ind. 389, 18 N. E. 2d 789, 19 N. E. 2d 465 (1939).

Tax Sale.

If parcels of land, upon which Barrett Law bonds were a lien, exceeded in value all tax and special liens, the bondholder had an adequate remedy at law by foreclosure of the liens, and hence an action for injunctive relief against a tax sale of the parcels was not available to him. First Bank & Trust Co. v. Ralston, 222 Ind. 584, 55 N. E. 2d 115 (1944).

Title Conveyed.

If property was sold in pursuance of a lien for a street improvement assessment, the purchaser
obtained title free of mortgage liens except the right of mortgages to redeem from the sale. O'Brien v. Bradley, 28 Ind. App. 487, 81 N. E. 942 (1901).

36-9-18-38. Parties to foreclosure actions - Special fund - Allocation of proceeds - Payment of judgment - Duties of disbursing officer. - (a) In every foreclosure action under this chapter, except when the unit is the plaintiff, the plaintiff must name the officer who has custody of the improvement funds of the unit as a party defendant, and must name that officer as custodian of the improvement assessment fund of the unit. That officer shall then notify the attorney of the unit to appear in the action.

(b) The fiscal officer of the unit shall trace the proceeds of the foreclosure so that any proceeds arising from the assessments for the improvement of any particular project are not diverted to the payment of any other improvement, and shall see that in each case the judgment proceeds constitute a special fund for the payment of contractors or bondholders for the particular work. The proceeds shall be allocated to the proper public improvement fund for pro rata distribution to the bondholders or contractors who are entitled to them.

(c) The court costs and the attorney fees allowed in foreclosure actions shall be paid directly to the clerk of the court to satisfy that part of any judgment, but the remainder of the judgment shall be paid directly to the disbursing officer for the benefit of the special improvement fund of the department that is entitled to the foreclosure proceeds. The disbursing officer shall enter the payment on the records and duplicates, and satisfy the judgment docket as to the payment of the judgment. The court decree of foreclosure must assign these duties to him.

(d) In every foreclosure action under this chapter, except when the unit is the plaintiff, the plaintiff must forward to the disbursing officer a copy of the complaint that sets out, among other allegations, the name of the owner or owners being sued, the description of the property, the name of the improvement, and the number of the roll. The disbursing officer shall enter the facts upon the duplicate involving the litigated assessment while the action is pending. All dismissals of foreclosure litigation and all proceedings of sheriff's sales in foreclosures of assessment liens shall be certified to the disbursing officer.

(e) While a foreclosure action is pending, the assessment may not be certified for collection, and bills or statements for payments may not be given to anyone except the plaintiff's attorney of record. [IC 36-9-18-38, as added by Acts 1981, P.L. 309, § 91.]

36-9-18-39. Reductions of installments. - (a) If property is sold by the sheriff and there is not enough money collected to pay the principal and interest in full, or if a court orders a reduction of principal and interest as assessed, a statement showing the amount of the reduction of the installments shall be certified to the disbursing officer.

(b) Upon the receipt of the statement, the disbursing officer shall calculate the reduction that applies to each installment and enter on the bonds and coupons the amount of the reduction whenever the bonds and coupons are presented for payment. [IC 36-9-18-39, as added by Acts 1981, P.L. 309, § 91.]

36-9-18-40. Person not complying with proceed disposal requirements considered receiver. - A person who disposes of the proceeds of foreclosure litigation in any way other than as provided by this chapter is considered to be a receiver for those entitled to the proceeds. In such instances the statute of limitations does not apply. [IC 36-9-18-40, as added by Acts 1981, P.L. 309, § 91.]

36-9-18-41. Authorization and issuance of certificates of indebtedness - Maturity date - Interest. - (a) Any difference between the total assessments for an improvement and the contract price of the improvement shall be paid by the unit. The unit's part of the cost of an improvement shall be paid from the general fund of the unit, if possible. If this is not possible, the unit may issue bonds or certificates of indebtedness to the contractor for the amount of the unit's part of the cost. The unit's fiscal officer shall issue the bonds or certificates and shall fix their denominations at the time of any subsequent reduction of assessments on appeal.

(b) The certificates of indebtedness issued under this section entitle the contractor to the amounts they specify when a fund for their redemption has been provided.

(c) The certificates of indebtedness are negotiable instruments and bear interest from the date of the final acceptance of the work. The certificates must be authorized by a resolution adopted by the works board and shall be signed by:

(1) The county auditor, for an improvement by county; or

(2) The municipal executive and fiscal officer, for an improvement by a municipality.

(d) The rate of interest on the certificates of indebtedness shall be fixed in the resolution of the works board. The rate may not be less than the current rate being paid on bonds then being issued in anticipation of the collection of special assessments.
(e) The certificates of indebtedness are payable out of the proceeds of the special tax levy or sale of bonds under section 42 [36-9-18-42] of this chapter.

This fact must be recited on the face of the certificates.

(f) The resolution authorizing the issuance of the certificates of indebtedness may provide that no more than one half [1/2] of the certificates are payable on June 30 of the year in which the special levy to pay them is collected (if a levy has been made in lieu of the sale of bonds) and the balance on December 31 of the same year. Otherwise, all of the certificates mature on December 31 of the year in which the levy is collected.

(g) The certificates of indebtedness do not draw interest after the maturity date named in them unless they are presented for payment on that date and stamped "not paid for want of funds." If not paid for want of funds, the certificates may be presented for payment again at six-month intervals after their maturity date, until they are paid.

(h) If a sufficient levy or sale of bonds is not made in any year for the payment of the certificates of indebtedness, they shall be paid when money becomes available for that purpose out of taxes collected from any subsequent levy of the special tax or sale of bonds. [IC 36-9-18-41, as added by Acts 1981, P.L. 309, § 91.]

**36-9-18-42. Funding for payment of certificates of indebtedness - Rates and collection of special tax levy.** - (a) For the purpose of raising money for the payment of certificates of indebtedness issued under section 41 [36-9-18-41] of this chapter, the fiscal body of the unit may:

(1) Levy a special tax on all property in the unit each year;

(2) Issue and sell the bonds of the unit; or

(3) Appropriate money from the general fund of the unit or from any other source.

(b) A special tax levied under this section shall be fixed at a rate on each one hundred dollars [$100] of assessed valuation of taxable property in the unit sufficient for the payment of the certificates, together with interest, that were or will be issued between July 1 of the preceding year and July 1 of the year in which the levy of taxes is made.

(c) A special tax levied under this section shall be levied, certified to the county auditor, and collected in the same manner as other taxes are levied, certified, and collected, and shall be deposited in a separate fund known as the "county (or municipal) improvement certificate fund" for application to the payment of the certificates. The balance of the fund does not revert to the general fund at the end of any fiscal year, but carries over in the fund for the next fiscal year. [IC 36-9-18-42, as added by Acts 1981, P.L. 309, § 91.]

**36-9-18-43. Special assessments - Levy and collection - Limitation on use - Issuance and sale of certificates in anticipation of collection of special assessments.** - (a) In addition to issuing bonds and certificates of indebtedness under section 41 [36-9-18-41] of this chapter, a unit may place part of the cost of an improvement from a fund raised by special assessments against all of the lands and lots in the unit. The unit comprises a special assessment district for that purpose.

(b) The special assessments shall be levied in proportion to the value of the lands or lots, exclusive of the value of improvements on them, as they are assessed for general taxation.

(d) The special assessments shall be levied annually at the time of the levy of general taxes, and the levy must be for the amount necessary to pay the cost, with interest, of all work done during the year for which the special assessments are levied.

(e) The special assessments are payable at the time of payment of general taxes.

(f) The fund raised under this section is a specific fund to be held and used only for the purpose prescribed by this section.

In anticipation of the collection of the special assessments, certificates in denominations not exceeding five hundred dollars [$500] shall be issued under a resolution adopted by the works board in the name of the unit. The fiscal officer shall sell the certificates or deliver them to the contractor, as directed by the works board. The certificates entitle the holder to the amounts named in them when a fund for their redemption has been collected, and they are negotiable instruments. One half [1/2] are payable on December 31 of that year. The certificates must be dated as of the date of the final acceptance of the improvement and may bear interest at any rate. [IC 36-9-18-43, as added by Acts 1981, P.L. 309, § 91.]

**NOTES TO DECISIONS**

In General.

When levying special assessments, the common council was exercising the power of taxation and in a very special way. Buckingham v. Kerr, 68 Ind. App. 290, 120 N. E. 422 (1918).

The action of a common council in levying street improvement assessments was quasi-judicial, but the council was not a court, not even one of an inferior nature, and hence the law of collateral attack on judicial decisions did not apply, in its full

Crossings.

Under statute which provided that half the cost of street and alley intersections would be apportioned upon lots abutting upon the intersecting streets or alley of the first street parallel to the improved street or alley, a lot abutting upon an alley intersecting the improved street and between the improved street and the next parallel street was assessable. Praigg v. Western Paving & Supply Co., 143 Ind. 358, 42 N. E. 750 (1896).

Extra Assessment.

An extra assessment against abutting property on a street for repairing basement and putting in substructure, in connection with a street-widening project, was void for want of statutory authority. Indiana Asphalt Paving Co. v. Grand Lodge, Knights of Pythias, 96 Ind. App. 300, 170 N. E. 85 (1930).

Illegal Assessments.

If property that was not liable to assessment was assessed to pay street improvement bonds, the municipal corporation was not liable for the amount of such illegal assessment. Town of Windfall City v. First Nat'l Bank, 172 Ind. 679, 87 N. E. 984, 89 N. E. 311 (1909).

36-9-18-44. Defects or irregularities in contracts, assessments or liens. - If a defect or irregularity results in the invalidity of a contract, assessment, or lien under this chapter, the defect or irregularity shall be corrected by supplementary proceedings that substantially comply with this chapter. [IC 36-9-18-44, as added by Acts 1981, P.L. 309, § 91.]

NOTES TO DECISIONS

In General.

If the first assessment was void another assessment could be made. Reeves v. Grottendick, 131 Ind. 107, 30 N. E. 889 (1892); Gorman v. State ex rel. Koester, 157 Ind. 205, 60 N. E. 1083 (1901); Helm v. Witz, 35 Ind. App. 131, 73 N. E. 846 (1905).


36-9-18-45. Alternative method for improvements on public ways - Establishment and use of revolving fund. - (a) As an additional method of making surface improvements on public ways, the works board may:

1. Make the improvements with the municipality's materials and employees; and

2. Assess the cost of the improvements against the abutting property owners.

However, an improvement under this section must be at least one city block long.

(b) A works board acting under this section shall determine a feasible cost for labor and materials per square yard for nonpermanent and permanent types of street surfaces. The works board, on its own motion or on the petition of any owner of property abutting on any residential street, shall then:

1. Name certain public ways, including those petitioned for, for which an improvement is proposed.

2. Give notice of the proposed improvement, in person or by mail, to the owners of property abutting on and affected by the proposed improvement; and

3. Hold a public hearing at the time and place set out in the notice. Notice of the hearing shall be given by publication in accordance with IC 5-3-1 [5-3-1-1-5-3-1-9].

(c) At the hearing, the works board shall:

1. Inform the abutting owners of their individual cost for each type of surface improvement; and

2. Inform the owners that the board shall order the improvement if, within the time fixed at the hearing, the owners:

A. Determine, by a majority vote, the type of improvement they want; and

B. Tender the cost of the improvement to the municipality.

(d) After the hearing, the works board shall order the improvement unless:

1. It finds that the improvement should not be made; or

2. The abutting owners do not comply with the conditions listed in subsection (c)(2).

(e) A municipality acting under this chapter may establish a revolving fund and may appropriate an amount of no more than ten thousand dollars [$10,000] for that fund. Payments made by property owners under this section shall be paid into the fund, and the cost of material and labor for the improvements shall be paid out of the fund. The fund, which may be used only for the purposes of this section, does not revert to the general fund until the municipality ceases to act under this section. [IC 36-9-18-45, as added by Acts 1981, P.L. 309, § 91; 1981, P.L. 45, § 53.]
"Curb" means a stone or row of stones, or a similar construction of concrete or other material, along the margin of the roadway, as a limit to the roadway and a restraint upon and protection to the adjoining sidewalk space. [IC 8-11-11.1-1, as added by Acts 1977, P.L. 110, § 1, p. 517.]

8-11-11.1-2. Curb ramp required. - All new construction or reconstruction of public roads or streets funded wholly or in part by funds of the state, a county, or any city or town shall include the installation of permanent curb ramps at crosswalks at all intersections where curbs and permanent sidewalks are constructed. [IC 8-11-11.1-2, as added by Acts 1977, P.L. 110, § 1, p. 517.]


8-6-1. RAILROAD-HIGHWAY CROSSINGS
8-6-1-8 [55-1808]. Grades of railroads. - In any case of grade separation under the provisions of this chapter, no plan shall be adopted by the commission or order made requiring a grade of any railroad track that shall exceed the established maximum or ruling grade governing the operation of that division or part of the railroad on which separation of grades is to be made without the consent of the company operating said railroad, nor requiring the construction of a heavier grade than two percent [2%] on such street railroad, interurban street railroad, or suburban street railroad, nor shall the track or tracks of the companies concerned be required to be placed below high-water marks at the point where such change is made. [Acts 1913, ch. 182, § 6, p. 508; P.L. 82-1984, § 96.]

8-6-2.1. RAILROAD CROSSING GRADE SEPARATIONS
8-6-2.1-8. Grade separation -- Minimum clearance -- Maximum grade. - Where the highway is carried over the railroad, or where one [1] railroad is carried over another railroad, the clearance from the top of the railroad track to the bottom of the superstructure over the track must be at least twenty-two feet [22']. The plans for the improvement shall not require a permanent grade of any main line railroad track to exceed three tenths of one percent [.3%] unless a greater grade is agreed upon by the railroad company affected. [IC 8-6-2.1-8, as added by Acts 1980, P.L. 8, § 70.]

8-11-11. CURB RAMPING
8-11-11.1-1. "Curb" defined. - As used in this chapter [8-11-11.1-1--8-11-11.1-3]:

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10-1
CHAPTER 11
TRAFFIC CONTROL AND MANAGEMENT

8-6-6. RAILROAD DANGER SIGNS AND FLAGMEN AT HIGHWAY CROSSINGS

8-6-6-1 [55-2001]. Warning signs required - Penalty. - It is a class C infraction for a person, or the lessee or receiver of any person, who owns or operates any line of steam or interurban railroad to run trains without installing and maintaining, at each grade crossing of its railroad with any public highway, railroad crossing signs (crossbucks) and number of tracks signs if required, placed at right angles with the highway, where possible. The construction of the signs and warning notice must be in conformance with the manual on uniform traffic control devices adopted under IC 9-4-1-30. [Acts 1911, ch. 224, § 1, p. 543; 1913, ch. 242, § 1, p. 876; 1978, P.L. 2, § 824; 1982, P.L. 78, § 1.]

Cross References. Infraction and ordinance violation enforcement proceedings, 34-4-32-1–34-4-32-5.

NOTES TO DECISIONS

Maintenance.


Public Highway Crossings.


Sign Required.

The railroad is not obligated to place a circular railroad crossing warning sign at a crossing. Its only obligation is to mark the crossing with crossbuck signs. Gasich v. Chesapeake & O. R.R., - Ind. App. --, 453 N. E. 2d 371 (1983).

8-6-7. EXTRA-HAZARDOUS RAILROAD GRADE CROSSINGS

8-6-7-1 [55-2012]. Extra-hazardous grade crossings. - The public service commission of Indiana shall have the exclusive power and it shall be its duty, upon proper petition by any five [5] or more citizens of this state or the county commissioners of any county of this state to conduct a hearing to declare as dangerous or extra-hazardous any grade crossing in this state which said commission shall find to be of such a character as that the safety of the users of such highway requires the installation of automatic train-activated warning signals or other crossing safety devices.

Such petition, hearing and all proceedings thereon shall be had in conformity with the law governing petitions, hearings and proceedings before said commission in regard to rates and service of public utilities. [Acts 1931, ch. 89, § 1, p. 255; 1933, ch. 61, § 1, p. 427; 1935, ch. 234, § 1, p. 1230; 1965, ch. 200, § 1.]

8-11-1. LIMITED ACCESS ROADS.

8-11-1-4 [36-3104]. Traffic regulations. - The department of highways and the proper authorities of any county, city, or town having charge of any highway or street affected by this chapter, are authorized to design any limited access facility and to regulate, restrict or prohibit access as to best serve the traffic for which such facility is intended. In this connection such authorities are authorized to divide and separate any limited access facility into separate roadways by the construction of raised curbings, central dividing sections, or other physical separations, or by designating such separate roadways by signs, markers, stripes, and the proper land for such traffic by appropriate signs, markers, stripes and other devices. No access facilities to or from abutting lands, except at such designated points at which access may be permitted, upon such terms and conditions as may be specified from time to time by rules and regulations adopted and promulgated as by law provided. [Acts 1945, ch. 245, § 4, p. 1113; 1980, P.L. 74, § 105.]

NOTES TO DECISIONS

Determination of Right of Access.

An action to review the administrative determination of the state highway department denying opening of a driveway from a limited access highway to a filling station is not available to try out the issues that should be determined in a proceeding in eminent domain. Huff v. Indiana State Highway Comm. (1958), 238 Ind. 280, 149 N. E. (2d) 299.
8-17-1. COUNTY UNIT LAW.

8-17-1-40 [36-708]. Traffic rules and regulations made by commissioners. - The board of commissioners for the several counties may make suitable rules and regulations covering traffic upon any highway in the county, and if the highway is upon a county line, the joint board of commissioners of the respective counties may make such traffic rules and regulations as shall be suitable, and the board of commissioners shall be authorized to take such steps and do such things as are necessary to enforce the rules when made.

Opinions of Attorney-General. The board of county commissioners may lower or raise the prima facie reasonable speed limits on the roads in the county system and may post signs giving notice thereof on the roads. Any speed violation on the county roads is an offense against the state and is a misdemeanor. 1959, No. 56, p. 272.

8-17-9. DESIGNATING PREFERENTIAL COUNTY ROADS

8-17-9-2 [36-1618]. Marking of intersecting highways with stop signs. - All highways and roads intersecting such preferential highways shall be clearly marked, at every intersection, with stop signs to warn all vehicles using such intersecting highways and roads to stop before crossing or entering any such preferential highways. [Acts 1961, ch. 54, § 2, p. 105]

8-17-9-3 [36-1619]. Signs purchased from state prison - Cost and expense - Time limitation for carrying out purpose of statute. - Boards of commissioners shall purchase said stop signs or yield right-of-way signs from the Indiana state prison in the manner provided by law, and shall cause such stop signs to be erected. All costs and expenses incurred by boards of commissioners in designating such preferential highways and in purchasing and erecting stop signs shall be paid with funds set aside for their county from the motor vehicle highway account. Boards of commissioners shall complete the work of designating such preferential highways and of erecting such stop signs as expeditiously as possible and within eight [8] years from July 1, 1961. [Acts 1961, ch. 54, § 3, p. 105; 1967, ch. 103, § 1, p. 191.]

8-17-10. COUNTY ROAD GUIDE-POSTS

8-17-10-1 [36-1601]. Guide-posts on highways. - The board of commissioners of each and every county in this state may cause guide-posts and guide-boards to be erected, maintained and kept in repair at the forks, intersections or crossing places of the most important public highways which cross such county. Plain and legible inscriptions, in letters, figures and other appropriate devices, giving the directions and distances to and the names of the most important cities and towns to which such public highway leads, shall be conspicuously displayed on the exposed surface of such guide-boards. [Acts 1917, ch. 164, § 1, p. 671]


8-17-10-2 [36-1602]. Guide-posts -- Construction, maintenance and repairs. - All posts, guide-boards, letters, figures and devices shall be of secure and workmanlike manner. The substance, character, form and design of such post, guide-boards, letters, figures and devices shall be prescribed by the state highway engineer, and shall be purchased by the several boards of county commissioners in conformity therewith and in the same manner in which other county supplies are purchased. On free gravel or macadam highways, all guide-posts and guide-boards shall be installed, maintained and kept in repair under the direct supervision of the county highway superintendent; the installation, maintenance and repair of all such guide-posts and guide-boards shall be subject to the approval of the board of commissioners of the county in which they are located. All expenses incurred in the purchase erection, maintenance and repair of guide-posts and guide-boards shall be paid out of the general fund of the county by order of the board of county commissioners and on the warrant of the county auditor. [Acts 1917, ch. 164, § 2, p. 671; 1921, ch. 52, § 1, p. 140.]

Amendments. The 1921 amendment substituted "general fund" for "automobile fund" in the last sentence.

Cross References. Purchase of county supplies, 5-17-1-1 -- 5-17-1-9 (Burns §§ 53-501 -- 53-509)

Office of highway superintendent abolished, 8-17-6-1.

9-4-1. UNIFORM ACT REGULATING TRAFFIC ON HIGHWAYS

9-4-1-1 [47-1801]. Meanings of words and phrases. - The following words and phrases when used in this act [9-4-1-1--9-4-1-137] shall, for the purpose of the act, have the meanings respectively ascribed to them in this article. [Acts 1939, ch. 48, § 1, p. 289.]

9-4-1-13 [47-1813]. Local authorities. - Local Authorities. Every county, municipal, and other local board or body having authority to adopt local police regulations under the constitution and laws of this state. [Acts 1939, ch. 48, § 13, p. 289; 1975, P.L. 101, § 3.]

9-4-1-19 [47-1819]. Control devices and signals. - (a) Official Traffic Control Devices. All
signs, signals, markings, and devices, including railroad advance warning signs, not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

(b) Official Traffic Control Signal. Any device not inconsistent with this chapter, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

(c) Railroad Sign or Signal. Any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train. [Acts 1939, ch. 48, § 19, p. 289; 1978, P.L. 62, § 1.]

9-4-1-27. Provisions of chapter uniform throughout state - Adoption of nonconflicting or nonduplicating ordinances authorized - Disposition of fines collected. - (a) The provisions of this chapter shall be applicable and uniform throughout this state. Local authorities may, however, adopt by ordinance additional traffic regulations with respect to streets and highways under their jurisdiction, so long as they do not conflict with or duplicate the provisions of a statute.

(b) Fines assessed for violations of traffic ordinances adopted by local authorities may be deposited into the general fund of the appropriate political subdivision. [Acts 1939, ch. 48, § 27, p. 289; 1980, P.L. 211, § 7.]

NOTES TO DECISIONS

Construction.

This section cannot be construed as authorizing the duplication of state criminal statutes by municipal ordinances, and the rights of municipalities are therefore limited by this section and IC 9-4-1-28 to the adoption of additional traffic regulations with respect to streets and highways under their jurisdiction. Mitsch v. City of Hammond, 234 Ind. 285, 125 N. E. 2d 21 (1955), rehearing denied, 234 Ind. 293, 126 N. E. 2d 247 (1955).

9-4-1-28 [47-1828]. Powers of local authorities. - (a) The provisions of this chapter shall not be deemed to prevent local authorities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from doing any of the following:

(1) Regulating the standing or parking of vehicles.

(2) Regulating traffic by means of police officers or traffic control signals.

(3) Regulating or prohibiting processions or assemblages on the highways.

(4) Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one [1] specific direction.

(5) Regulating the speed of vehicles in public parks.

(6) Designating any highway as a through highway and requiring that all vehicles stop before entering or crossing the same or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances to such intersection.

(7) Restricting the use of highways as authorized in section 125 [9-4-1-125] of this chapter.

(8) Regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee.

(9) Regulating or prohibiting the turning of vehicles at intersections.

(10) Altering the prima facie speed limits as authorized in this chapter.

(11) Adopting other traffic regulations as are specifically authorized by this chapter or governing traffic control on public school grounds when requested to do so, by the governing body of the school corporations.

(b) Local control of the routes of state highways in cities and towns shall include only the power of enforcement of the provisions of this chapter and of the regulations passed by the department of highways.

(c) No ordinance or regulation adopted under subsection (a)(4), (a)(5), (a)(6), (a)(7), (a)(9), (a)(10), or (a)(11) of this section shall be effective until signs giving notice of such local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate.

(d) Notwithstanding subsection (b) of this section, IC 8-12-2 [8-12-2-1-8-12-2-17], and IC 9-4-1-38, a city or town may authorize and pay for signs, by ordinance, to be erected along the routes of state highways if:

(1) The sign is an information sign stating only that a famous person is or was a resident of that city or town;

(2) The sign conforms to the manual on traffic control devices standards for historical signs; and

(3) A copy of the sign ordinance is sent to the director of the department of highways.

(e) The director of the department of highways may, within sixty [60] days after the effective date of any ordinance adopted under subsection (d), prohibit the erection of or cause removal of the sign.
if he finds that the sign:

(1) Creates a traffic hazard; or


NOTES TO DECISIONS

In General.

Where complaint charged violation of city ordinance in failure to stop at preferential street, citing the ordinance which specified the preferential street, but failed to mention the state statute which required stops to be made at preferential streets, and the evidence tended to show that such statute was violated, the complaint must be considered to conform to such proof. Clinton G. Cauldwell, Inc. v. Patterson, 133 Ind. App. 138, 177 N. E. 2d 490 (1962).

Local Parking Regulations.

The parking of a motor vehicle is considered as a privilege of the public and incidental to the use of the street for travel, and when an abutting property owner parks his automobile in front of his property he does so as a member of the public and in so doing is subject to reasonable traffic and parking regulations. Andrews v. City of Marion, 221 Ind. 422, 47 N. E. 2d 968 (1943).

Parking Lots.


9-4-1-80 [47-1901]. Department of highways to adopt sign manual. - The department of highways shall adopt a manual and specifications for a uniform system of traffic control devices consistent with and supplemental to the provisions of this chapter, for use upon highways within this state. Such uniform system shall correlate with and so far as possible conform to the system current as approved by the American Association of State Highway Officials. The department of highways shall from time to time, as it deems necessary, revise, correct and keep up to date, this manual. [Acts 1939, ch. 48, § 30, p. 289; 1980, P.L. 74, § 370.]

Cross References. Installation of traffic control devices, 9-4-3.1-1-9-4-3.1-5.

Manner and effect of promulgation of traffic signs, signals, devices, rules, and regulations, 9-4-1-125.

Uniform traffic control devices, 9-4-2-1-9-4-2-3.


9-4-1-31 [47-1902]. Department of highways to sign all state highways. - (a) The department of highways shall place and, except as otherwise provided in this section, maintain such traffic control devices conforming to its manual and specifications upon all state highways, including the state maintained routes thereof through any incorporated city or town, as it shall deem necessary to indicate and to carry out the provisions of this chapter, or to regulate, warn, or guide traffic.

(b) No local authority shall place or maintain any traffic control device upon any highway in the state highway system or the state maintained routes thereof through any incorporated city or town until it has received written permission of the department of highways, except as otherwise provided in this section.

(c) All traffic control signals in place on June 30, 1939, on the routes of state highways through any city or town, except cities of the first class, shall be investigated by the department of highways. If the department of highways shall determine, upon the basis of an engineering and traffic investigation, that any traffic control signal is not necessary for the safe, convenient, economical, and orderly movement of traffic, such signal shall be removed by the department of highways and be returned to the authority responsible for its erection. If the department of highways shall determine, upon the basis of an engineering and traffic investigation, that any traffic control signal now in place is necessary for the safe, convenient, economical, and orderly movement of traffic, then such signal shall remain in place, and the department of highways shall cause to be affixed thereto a tag, or seal, showing that such signal has been approved by the department of highways. [Acts 1939, ch. 48, § 31, p. 289; 1980, P.L. 74, § 371.]

Cross References. Classification of cities, 18-2-1-1, 18-2-1-5.

Opinions of Attorney General. The determination of when and under what circumstances traffic control devices, including "stop" signs may be used, is within the sound discretion of the state highway department. 1961, No. 2, p. 14.

9-4-1-32 [47-1908]. Local traffic control devices. - Local authorities, in their respective jurisdictions, shall place and maintain such traffic control devices upon highways under their jurisdiction, not including state highways, as they may deem necessary to indicate and to carry out the provisions of this act [9-4-1-1-9-4-1-137], or local traffic ordinances, or to regulate, warn or guide traffic. All such traffic control devices hereafter erected shall conform to the state manual and specifications. [Acts 1939, ch. 48, § 32, p. 289.]
Cross References. Installation of traffic signal devices on state highways, 9-4-3.1-1-9-4-3.1-5.

Powers of local authorities, 9-4-1-28.

Preferential county highways, marking 8-17-9-1-8-17-9-3.

9-4-1-38 [47-1904]. Obedience to official traffic control devices, police officers or flagmen. - (a) No driver of a vehicle or motorman of a street car shall disobey the instructions of any official traffic control device placed in accordance with the provisions of this chapter, unless at the time otherwise directed by a police officer.

(b) When traffic control devices or flagmen are utilized at worksites on any public highway for traffic control, all motorists shall exercise extraordinary care to secure the mutual safety of all persons and motorists at the worksite.

(c) All traffic shall observe and obey all such traffic control devices including signals, signs and warnings and any and all such directions, signs or warning devices that may be given or displayed by a police officer or flagman for the purpose of safely controlling traffic movement at the worksite and generally promoting safety there. [Acts 1939, ch. 48, § 33, p. 289; 1979, P.L. 107, § 3.]

NOTES TO DECISIONS

In General.

The right-of-way as between vehicles at an intersection where traffic is controlled by traffic control signals must be determined by the special rules of 9-4-1-35, and not by other sections of the act dealing with vehicles within, entering, and approaching intersections. Indianapolis Rys., Inc. v. Boyd, 222 Ind. 481, 53 N. E. 2d 762 rehearing denied, 222 Ind. 499, 54 N. E. 2d 272 (1944).

IC 9-4-1-104, prohibiting vehicles from driving upon or to across the car tracks within an intersection in front of a street car which started across the intersection, does not apply to an intersection where traffic is controlled by control signals. Indianapolis Rys., Inc. v. Boyd, 222 Ind. 481, 53 N. E. 2d 762 rehearing denied, 222 Ind. 499, 54 N. E. 2d 272 (1944).

Motormen.

A street car entering an intersection controlled by traffic control signals and making a left turn therein has no greater right to the use of the streets than an automobile would have under the same circumstances, and it is the duty of the motorman to operate the car with due regard for the rights of others lawfully using the streets. Indianapolis Rys., Inc. v. Boyd, 222 Ind. 481, 53 N. E. 2d 762 rehearing denied, 222 Ind. 499, 54 N. E. 2d 272 (1944).

Evidence that motorists entering into a certain street intersection controlled by traffic control signals were accustomed to enter into the intersection slowly on the green light and wait to cross street cars until street cars, entering the intersection from the opposite direction, had made a left turn therein was properly excluded, since a custom contrary to duly enacted traffic regulations or general law of the road should not be admitted to evince a violation of the regulation, and the act that prior to the accident street cars had turned left through automobile traffic proceeding through the intersections, the latter slowing down or stopping to avoid a collision, gave the street cars no right-of-way of automobiles. Indianapolis Rys., Inc. v. Boyd, 222 Ind. 481, 53 N. E. 2d 762 rehearing denied, 222 Ind. 499, 54 N. E. 2d 272 (1944).

In an action for damages for injuries sustained by a taxicab driver as a result of a collision between the taxicab at a street intersection controlled by traffic control signals and a street car which had entered the intersection from the opposite direction and turned left therein, illustration by plaintiff's counsel of his point in closing argument that the motorman was bound to use due care consisting of a reference to a bus making a left turn at a street intersection in the city where the case was tried, and with which the members of the jury were familiar, advanced no new argument or point to which defendant's counsel was entitled to reply, since both a street car and a bus were subject to the provisions of 9-4-1-35 concerning intersections where traffic was controlled by traffic control signals. Indianapolis Rys., Inc. v. Boyd, 222 Ind. 481, 53 N. E. 2d 762 rehearing denied, 222 Ind. 499, 54 N. E. 2d 272 (1944).

Taxicabs.

A taxicab, which entered an intersection controlled by traffic control signals when the signal light turned green before a street car entered the intersection from the opposite direction and made a left turn, had the right-of-way as against the street car. Indianapolis Rys., Inc. v. Boyd, 222 Ind. 481, 53 N. E. 2d 762 rehearing denied, 222 Ind. 499, 54 N. E. 2d 272 (1944).

A taxicab driver who proceeded through an intersection pursuant to the green light of a traffic control signal was not guilty of contributory negligence as a matter of law merely because he saw a street car approaching from the opposite direction which would make a left turn at the intersection, and was aware of its presence at all times, but, regardless of that fact, drove his taxicab upon the tracks, where it was shown that other automobiles were following closely behind him and he could not keep his eyes constantly on the street car and safely drive across the intersection, it being necessary for him to be on the lookout for pedestrians and other

9-4-1-34 [47-1004a]. Traffic control signs - Preferential right-of-way - Indication by stop of yield signs - Whenever traffic at an intersection is controlled by signs, preferential right-of-way may be indicated by stop signs or yield signs as authorized elsewhere in this act [9-4-1-1-8-4-1-137]. [Acts 1939, ch. 48, § 33a, as added by Acts 1957, ch. 290, § 2.]

Cross References. Violation of this section is a class C misdemeanor, 9-4-1-127.

9-4-1-38 [47-1908]. Display of unauthorized signs, signals, or markings. - (a) No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic control device or any railroad sign or signal. No person shall place or maintain, nor shall any public authority permit, upon any highway any traffic sign or signal bearing thereon any commercial advertising. However, under criteria to be jointly established by the department of highways may authorize the posting of any of the following:

1. Limited tourist attraction signage.
2. Business signs on specific information panels on the interstate system of highways and other freeways.

All costs of manufacturing, installation and maintenance to the department of highways for any business sign posted under this section shall be borne by the business. No person shall place, maintain, or display any flashing, rotating, or alternating light, beacon, or other lighted device which is visible from any highway and which may be mistaken for or confused with a traffic control device or for an authorized warning device on an emergency vehicle. This shall not be deemed to prohibit the erection, upon private property adjacent to highways, of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(b) No person shall place, maintain, or display any advertising sign, signal, or device on or over the roadway of any highway.

(c) No person shall place, maintain, or display any advertising sign, signal, or device on any highway in cities between the curb and sidewalk, and in case curb and sidewalk join, no person shall place, maintain, or display on the sidewalk any advertising sign, signal, or device closer than ten feet [10'] from the curb line, and overhanging signs shall not overhang the curb.

(d) No person shall place, maintain, or display any advertising sign, or device of any character within one hundred feet [100'] of any highway outside the corporate limits of any incorporated city or town, which obstructs the view of such highway, or of any intersecting highway, street, alley, or private driveway of a person traveling such highway for a distance of five hundred feet [500'] or less from such sign or device as he approaches the same.

(e) No person shall place, maintain, or display any advertising sign, or device of any permanent or semipermanent character on any highway right-of-way, outside or inside the corporate limits of any incorporated city or town.

(f) Every such prohibited sign, signal, or marking is declared to be a public nuisance, and the authority having jurisdiction over the highway is empowered to remove the same or cause it to be removed without notice. [Acts 1939, ch. 48, § 37, p. 289; 1957, ch. 290, § 3; 1982, P.L. 78, § 3; P.L. 134-1983, § 1.]

9-4-1-40 [47-1910]. Accidents involving death or injuries to persons or property -- Failure to stop -- Penalties. - (a) The driver of any vehicle involved in an accident resulting in injury to or death of any person or injury to property shall immediately stop such vehicle at the scene of such accident or as close thereto as possible, and shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of section 42, 43, or 44 [9-4-1-42, 9-4-1-43, or 9-4-1-44] of this chapter. Every such stop shall be made without obstructing traffic more than is necessary.

(b) A person who fails to stop or comply with the requirements of section 42, 43, or 44 of this chapter after causing injury to any person or damage to the property of another commits a class B misdemeanor. However, the offense is a class D felony if the accident involved serious bodily injury to or the death of any person. [Acts 1939, ch. 48, § 3, p. 289; 1953, ch. 195, § 1; 1957, ch. 341, § 1; 1978, P.L. 2, § 925; P.L. 76-1984, § 1.]

Amendments. The 1984 amendment rewrote subsection (b).


Indiana Law Review. Survey of Recent Developments in Indiana Law, Criminal Law (Stephen J. Johnson), 16 Ind. L. Rev. 119.
NOTES TO DECISIONS

In General.

There is no requirement that a person comply with this section prohibiting the leaving of the scene of a property damage accident unless there is damage to the property of another. Lowe v. State, -- Ind. App. --, 433 N.E.2d 798 (1982).

Proof.

--Driving Vehicle.

In order to be convicted of leaving the scene of an accident, it must be proved that defendant was driving the automobile involved in the accident and where defendant was found six blocks from accident in an intoxicated condition and he admitted owning the same type of vehicle as that involved in the accident but only other evidence was that the involved vehicle was registered to a person with the same last name as defendant, it was insufficient to prove he was driving. Floyd v. State, -- Ind. App. --, 73 Ind. Dec. 786, 399 N.E.2d 49 (1980).

--Evidence Sufficient.

Where bicyclist was riding along side of roadway when struck by vehicle and broken side rear view mirror was found at scene, and later defendant was found intoxicated and asleep in his pickup truck about 14 miles from the accident, and the broken rearview mirror was from his truck, evidence was sufficient to connect defendant with the accident. Williams v. State, -- Ind. App. --, 415 N.E.2d 118 rev'd on other grounds, -- Ind. --, 423 N.E.2d 598 (1981).

9-4-1-58 [47-2005]. Local authorities - Alteration of limits. - (a) Whenever local authorities in their respective jurisdictions determine on the basis of an engineering and traffic investigation that the maximum speed permitted under this chapter is greater or less than reasonable and safe under the conditions found to exist on a highway or part of a highway, the local authority may determine and declare a reasonable and safe maximum limit thereon which:

1. Decreases the limit within urban districts but not to less than twenty [20] miles per hour; or

2. Increases the limit within an urban district but not to more than sixty [60] miles per hour during daytime and fifty [50] miles per hour during nighttime; or

3. Decreases the limit outside an urban district, but not to less than thirty-five [35] miles per hour.

(b) Local authorities in their respective jurisdictions shall determine by an engineering and traffic investigation the proper maximum speed for all local streets and shall declare a reasonable and safe maximum speed permitted under this chapter for an urban district.

(c) Any altered limit established as hereinabove authorized shall be effective at all times or during hours of darkness or at other times as may be determined when appropriate signs giving notice thereof are erected on such street or highway.

(d) Local authorities shall not have power to alter speed limits on any highway or extension thereof in the state highway system except that incorporated cities and towns may establish speed limits on state highways upon which a school is located: Provided, that such limit shall only be valid if (1) the limit is not less than twenty [20] miles per hour, (2) the limit is imposed only in the immediate vicinity of the school, (3) children are present, (4) if the speed zone is properly signed, and (5) the department of highways has been notified of the limit imposed, by registered or certified mail. [Acts 1939, ch. 48, § 56, p. 289; 1959, ch. 141, § 1; 1967, ch. 138, § 4; 1973, P.L. 84, § 1; 1980, P.L. 74, § 372.]

NOTES TO DECISIONS

Evidence.

The burden was upon the plaintiffs to show and prove that the general law on speed limits had, as authorized by statute, been modified by municipal ordinance and in the absence of proof of enactment of such an ordinance, judicial knowledge of which the courts do not take, any reference to such an ordinance was held irrelevant. Enyart v. Blacketer, - Ind. App. --, 51 Ind. Dec. 370, 342 N. E. 2d 654 (1976).

Although references to a 20 mile-per-hour speed limit sign could not be introduced as evidence of the legal speed limit without evidence that a local ordinance had reduced the state-wide speed limit, photographs and references to the sign were admissible as having probative value in suggesting the motorist's inattentiveness in general, in depicting the setting of the collision and in establishing whether the motorist acted as a reasonably prudent person would act. Meeker v. Robinson, - Ind. App. --, 60 Ind. Dec. 107, 370 N. E. 2d 392 (1977).

Fines Assessed for Breach of Local Ordinance.

Since no penalty is provided for violation of an ordinance passed pursuant to this section, a fine assessed under such an ordinance does not constitute a fine assessed for the breach of a state penal law, within the contemplation of Const., art. 8, § 2, and therefore does not automatically become a part of the common school fund. State v. Town of Roseland, - Ind. App. --, 66 Ind. Dec. 474, 383 N. E. 2d 1076 (1978).
9-4-1-59 [37-2006]. Minimum speed regulation - Determination by department of highways - Interstate highways - Fines. - (a) No person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with the law. Any person who is driving at such slow speed and under such circumstances that three [3] or more other vehicles are blocked and cannot pass on the left around this vehicle, shall give right-of-way to such vehicle by pulling off to the right of the right lane at the earliest reasonable opportunity and allowing the blocked vehicles to pass.

(b) Whenever the department of highways or local authorities within their respective jurisdictions determine, on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the respective department of highways or such local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law. A limit so determined and declared by appropriate resolution, regulation or ordinance becomes effective when appropriate sign or signals giving notice of the limit of speed are erected along such part of a highway.

(c) All vehicles that travel at a speed less than the established maximum shall travel in the right lanes to provide for better flow of traffic on interstate defense network of dual highways.

(d) No person shall operate a truck, truck tractor, road tractor, trailer, semitrailer or pole trailer on the interstate defense network of dual highways in any lane except the far right lane, provided that, such vehicles may use the left lane for the purpose of passing a slower moving vehicle, entering or leaving the highway, or where a special hazard exists that requires for safety reasons, the use of an alternate lane.

(e) No person shall operate a truck, truck tractor, road tractor, trailer, semitrailer or pole trailer on any interstate highway consisting of three [3] or more lanes in one direction, in any lane other than the two [2] far right lanes, provided that such vehicles may use an alternate lane where necessary to enter or leave a highway or where a special hazard exists that requires, for safety reasons, the use of an alternate lane.

(f) For the purpose of enforcing this section, the term "trailer" as used in subsections (d) and (e) shall mean the combination of any motor vehicle towing another vehicle or trailer.


NOTES TO DECISIONS

Contributory Negligence.

Operation of a tractor-trailer at a speed of 20-30 miles per hour in the right-hand lane of a four-lane highway impeded the normal and reasonable flow of traffic in violation of this section and constituted causal negligence where a bus, being negligently driven, collided with the rear of the tractor-trailer. Markiewicz v. Greyhound Corp., 7 Ind. Dec. 353, 358 F. 2d 26 (7th Cir.), cert. denied, 385 U.S. 828, 87 S. Ct. 64, 17 L. Ed. 2d 65 (1966).

Farm Tractor.

In suit brought by driver of tractor and farm wagon which was struck in rear by truck, whether driver of tractor was guilty of contributory negligence in driving too slowly was question for jury. Pohlman v. Perry, 122 Ind. App. 222, 103 N. E. 2d 911 (1952).

9-4-1-74 [47-2019a]. Driving on divided, limited access freeways or interstate highway systems. - Whenever any highway has been divided into two [2] roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway and no vehicle shall be driven over, across, or within any such dividing space, barrier or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection established by public authority.

Limited access. No person shall drive a vehicle onto or from any limited access roadway except at such entrances and exits as are established by the public authority in control of said roadway.

Freeway or interstate highway system. No person shall drive a vehicle onto or from any freeway or interstate highway system except at such entrances and exits as are established by the public authority in control of said highway. Provided further, when special crossovers between the main roadways of a freeway or interstate highway system are provided for emergency vehicles or maintenance equipment only, said freeway or interstate highway system shall be posted prohibiting "U" turns, and it shall be unlawful for the driver of any vehicle except an emergency vehicle or maintenance equipment to use such crossovers or make a "U" turn anywhere on said freeway or interstate highway system.
Restrictions on use of freeway or interstate highway system. The department of highways may by resolution or order entered in its minutes, and local authorities may be ordinance, with respect to any freeway or interstate highway system under their respective jurisdictions, prohibit the use of any such highway by pedestrians, bicycles or other non-motorized traffic or by any person operating a motor-driven cycle. The department of highways or the local authority adopting any such prohibiting regulation shall erect and maintain official signs on the freeway or interstate highway system on which such regulations are applicable and when so erected no person shall disobey the restrictions stated on such signs. [Acts 1939, ch. 48, § 70a, as added by Acts 1947, ch. 338, § 11, p. 1336; 1955, ch. 76, § 4, p. 158; 1971, P.L. 126, § 1; 1980, P.L. 74, § 379.]

NOTES TO DECISIONS

Negligence.

Although plaintiff was traveling the wrong way on a divided highway it was improper for trial court to direct a verdict against him where he alleged negligence on the part of defendant with whom he had a head-on collision, but the question of negligence should have been submitted to the jury. Garr v. Blissmer, 132 Ind. App. 635, 177 N. E. 2d 913 (1962).

Applicability.

This section does not apply to a road closed to the public. L. W. Edison, Inc. v. Teagarden, - Ind. App. --, 423 N. E. 2d 709 (1981).

Cross References. Uniform traffic ticket form used for violation of county, city and town ordinances, 17-2-2.5-9, 18-5-12.5-1.

Violation of this section a class C misdemeanor, 9-4-1-127.

9-4-1-75 [47-2020]. Required position and method of turning at intersections. The driver of a vehicle intending to turn at an intersection shall do so as follows:

(a) Both the approach for a right turn and a right turn shall be made as close as practical to the right-hand curb or edge of the roadway.

(b) Approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and after entering the intersection, the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered.

(c) Approach for a left turn from a two-way street into a one-way [street] shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection. A left turn from a one-way street into [a] two-way street shall be made by passing to the right of the center line of the street being entered upon leaving the intersection.

(d) Where both streets or roadways are one way, both the approach for a left turn and a left turn shall be made as close as practicable to the left-hand curb or edge of the roadway.

(e) The department of highways and local authorities in their respective jurisdictions may cause markers, buttons or signs to be placed within or adjacent to intersections, and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection and when markers, buttons, or signs are so placed, no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons, or signs. [Acts 1938, ch. 48, § 71, p. 289; 1947, ch. 338, § 12, p. 1336; 1980, P.L. 74, § 380.]

NOTES TO DECISIONS

Reasonable Safety.

This section proscribes any lane movement until it can be done with reasonable safety regardless of the presence of pedestrians or other vehicles. Steward v. State, - Ind. App. --, 436 N. E. 2d 859 (1982).

Sufficiency of Evidence.

Evidence which showed that defendant drove in an erratic manner, crossing the center line three times and driving onto the right side berm once within a two-mile distance, and was also driving faster than the speed limit and when stopped appeared to be intoxicated, was ample to support finding that he engaged in lane movement which violated this section. Steward v. State, - Ind. App. --, 436 N. E. 2d 859 (1982).

Instructions to Jury.

An instruction given in the form of this section with other proper instructions was not improper when there was nothing to indicate that it confused or misled the jury or that a different verdict might have resulted had it not been given. McKeown v. Calusa, - Ind. App. --, 56 Ind. Dec. 136, 359 N. E. 2d 550 (1977).

Negligence.

The driver of an automobile within an intersection for a left turn must so turn that his automobile will be entirely to the right of the center of the highway which he is entering at the time he is entering it, and if in the course of making such turn and entering the intersection all or part of the automobile is to the left of the center of the intersection street, the driver is violating the law and

Y Intersection.

Statute providing for manner driver intending to turn at an intersection must follow was intended to apply to right angle intersections. Armstrong v. Matzat, 127 Ind. App. 498, 138 N. E. 2d 918 (1957).

Statute pertaining to left turns on public highways was not applicable to motorist who was driving on state highway and who proceeded straight ahead without changing his direction through Y intersection of state highway with federal highway. Armstrong v. Matzat, 127 Ind. App. 498, 138 N. E. 2d 918 (1957).

9-4-1-107 [47-2115]. Designating dangerous railroad grade crossings - Erection of yield or stop signs. - The department of highways, with reference to state highways and highway routes through cities, and local authorities, with reference to other highways under their jurisdiction, may designate particularly dangerous highway grade crossings of railroads. Notwithstanding the provisions of sections 31 [9-4-1-31] and 32 [9-4-1-32] of this chapter requiring conformance with a manual of uniform traffic control devices, the commission or appropriate local agency shall erect either a yield or stop sign on the street or highway right-of-way approaching the designated crossing. When such stop signs are erected, the driver of any vehicle shall stop within fifty [50] feet but not less than ten [10] feet from the nearest track of such grade crossing and shall proceed only upon exercising due care. [Acts 1939, ch. 48, § 101, p. 289; 1955, ch. 155, § 1; 1979, P.L. 110, § 1; 1980, P.L. 74, § 381.]

Cross References. Violation of this section a class C misdemeanor, 9-4-1-127.

Opinions of Attorney General. This section applies to "street railway grade crossings," if there are any, which are outside or beyond any business or residence district. 1963, No. 26, p. 124.

NOTES TO DECISIONS

In General.

Where appellant permitted questions concerning the stopping at railroad crossings to go into evidence, in action for damage resulting from jolt while crossing railroad, appellant could not complain that it was error to permit allegations and proof under statute to go to jury. Chicago & Calumet Dist. Transit Co. v. Stravatzakes, 129 Ind. App. 337, 156 N. E. 2d 902 (1959).

9-4-1-110 [47-2118]. Stopping or yielding at through highways - Stop signs - Yield signs. - (a) The department of highways with reference to state highways, and highway routes through cities, and local authorities with reference to other highways under their jurisdiction, may, upon an engineering and traffic investigation, designate through highways and erect stop or yield signs at specified entrances thereto or may designate any intersection as a stop or yield intersection and erect like signs at one or more entrances to such intersection.

(b) Every stop sign and yield sign shall be manufactured and installed in conformance with the Indiana manual on uniform traffic control devices for roads and streets as provided under section 30 [9-4-1-30] of this chapter and under IC 9-4-2-1.

(c) Every driver of a vehicle shall stop or yield in obedience to any such sign as the case may be, before entering such intersection except when directed to proceed by a police officer or traffic control signal. [Acts 1939, ch. 48, § 104, p. 289; 1957, ch. 290, § 5; 1967, ch. 262, § 1; 1980, P.L. 74, § 382.]

Cross References. Powers and duties of local authorities, 9-4-1-28.

Violation of this section a class C misdemeanor, 9-4-1-127.

Opinions of Attorney General. This act does not require the use of "stop" signs at intersections where automatic traffic controls are present and leaves the use of such signs to the sound discretion of the state highway department. 1961, No. 2, p. 14.

9-4-1-125 [47-2133]. When the department of highways or local authorities may restrict right to use highways -- Rules and regulations of department -- Evidence. - (a) Local authorities with respect to highways under their jurisdiction, except highways in the state highway system and the state-maintained routes thereof through cities and towns, may by ordinance prohibit the operation of vehicles upon any such highway or impose restrictions as to the weight of vehicles to be operated upon any such highway, for a total period of not to exceed ninety [90] days in any one [1] calendar year, whenever any said highway by reason of deterioration, rain, snow, or other climatic conditions will be seriously damaged or destroyed unless the use of vehicles thereon is prohibited or the permissible weights thereof reduced.

(b) The local authority enacting any such ordinance shall erect or cause to be erected and maintained signs designating the provisions of the ordinance at each end of the portion of any highway affected thereby and at intersecting highways, and the ordinance shall not be effective unless and until such signs are erected and maintained.

(c) Local authorities with respect to highways under their jurisdiction, except highways in the
state highway system and the state-maintained routes thereof through cities and towns, may also by ordinance prohibit the operation of trucks or other commercial vehicles, or may impose limitations as to the weight, size or use thereof, on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways. Suitable and convenient routes shall be provided for traffic so diverted and appropriately marked.

(d) The department of highways shall likewise have the same authority as granted to local authorities in subsections (a) and (c) to determine by resolution and to impose limitations as to weight, size and use of vehicles operated upon any highway in the state highway system, including the state-maintained routes thereof through cities and towns, and such restrictions shall be effective when signs giving notice thereof are erected upon the highway or portion of any highway affected by such resolution. A person who violates such a restriction commits a Class C infraction.

(e) Whenever under the provisions of this chapter the department of highways is empowered to designate or determine the location of, necessity for, and extent of:

(1) Traffic signals, section 31 [9-4-1-31] of this chapter;
(2) State speed zones, section 57(b) [9-4-1-57] of this chapter;
(3) Speed limits on elevated structures, section 60(b) [9-4-1-60] of this chapter;
(4) No passing zones, section 70 [9-4-1-70] of this chapter;
(5) One-way roadways, section 71(a) [9-4-1-71(a)] of this chapter;
(6) Certain lanes for slow moving traffic, section 72(c) [9-4-1-72(c)] of this chapter;
(7) Course of turning movements at intersections, section 75(3) [9-4-1-75(3)] of this chapter;
(8) Dangerous railroad crossing requiring stops, section 107 [9-4-1-107] of this chapter;
(9) Through highways and stop intersections, section 110 [9-4-1-110] of this chapter;
(10) Angle parking, section 115 [9-4-1-115] of this chapter; or
(11) Restrictions on the use of highways for certain periods or for certain vehicles, this section;

such designation or determination shall be by order of the director of the department of highways and shall except for item (1) be evidenced by official signs or markings as provided in this chapter.

On the trial of any person charged with the violation of the restrictions thus imposed and in all civil actions, oral evidence of the location and content of such signs or markings shall be prima facie evidence of the adoption and application of such restriction by the department of highways and the validity thereof. The department of highways shall upon request by any party in any action at law furnish, under seal of the commission, a certified copy of the order establishing the restriction in question which shall be accepted by any court as conclusive proof of such designation or determination by the director of the department of highways. Such certified copies shall be furnished without cost to the parties to any court action involving such restriction upon request.

Whenever under the provisions of this chapter a permit or permission [of] the department of highways is required such permit shall be in writing and under the seal of the department of highways.

(f) The manual of uniform traffic control devices required by section 30 [9-4-1-30] of this chapter, the regulations and requirements for construction of private drives and controlling the cutting of curbs in cities as provided in section 119 [9-4-1-119] of this chapter, and any other rules or regulations of state-wide application, not evidenced by official signs or markings, made by the department of highways not covered by this chapter but authorized by other statutes shall be promulgated under IC 4-2-22 [4-22-2-1 -- 4-22-2-12]. All courts of this state shall take judicial knowledge of the authenticity and of the contents of the rules and regulations so published. The copy of any rule or regulation so published shall be admissible in evidence without further evidence to establish the provisions of such rules or regulations, or their authenticity, or the fact that such rules or regulations have been duly drawn up, published, and made effective as required and provided by law.

(g) All rules and regulations of state-wide application shall be so published, but traffic regulations carrying penalty for violation and requiring the use of signs or markers to make them effective need not be published but shall be officially adopted by order of the director of the department of highways. [Acts 1939, ch. 48, § 156, p. 289; 1979, P.L. 25, § 2; 1980, P.L. 74, § 385.]

Compiler's Notes. The bracketed reference to 4-22-2-1 -- 4-22-2-12 was inserted by the compiler as 4-22-2 was apparently the reference intended.

Cross References. Infraction and ordinance violation enforcement proceedings, 34-4-32-1 -- 34-4-32-5.
9-4-2. UNIFORM ACT REGULATING TRAFFIC ON HIGHWAYS

9-4-2-1 [47-1901a]. Adherence to sign manual required. - The Indiana Manual on Uniform Traffic Control Devices for Streets and Highways shall be adhered to by all governmental agencies within the state responsible for the signing, marking and erection of all traffic control devices on all streets and highways within the state. The Indiana Manual on Uniform Traffic Control Devices for Streets and Highways shall substantially conform with the Manual on Uniform Traffic Control Devices for Streets and Highways, 1961 Edition, and the Manual for Signing and Pavement Marking for the National System for Interstate and Defense Highways, 1962 Edition, and all other manuals and revisions to the above manuals having the concurrence of the federal highway administrator. All future revisions to the above mentioned manuals may be considered to become a part of the Indiana Manual on Uniform Traffic Control Devices for Streets and Highways, if concurred in by the department of highways and made a part of the manual by lawful promulgation. The department of highways may add control devices to the state manual in those areas where the federal standards are silent. [Acts 1969, ch. 139, § 1; 1980, P.L. 74, § 387.]


NOTES TO DECISIONS


Duty Not Imposed.

The Manual on Uniform Traffic Control prescribed by this section is a guide and does not impose a particular duty and where plaintiff did not introduce evidence sufficient as a matter of law to establish a violation, a directed verdict in favor of road contractor and city defendants was proper. Smith v. Cook, - Ind. App. --, 57 Ind. Dec. 98, 361 N. E. 2d 197 (1977).


Where county officials had made determination to erect a sign, the provisions of the manual were binding and county was not exempt from liability under 34-4-16.5-3 where it failed to follow the provisions of the manual in erecting the sign. Harvey v. Board of Comm’rs, - Ind. App. --, 416 N. E. 2d 1296 (1981).

9-4-2-2. Effective date. All streets and highways within the State shall be signed and marked in conformity with the Indiana manual on Uniform Traffic Control Devices for Streets and Highways by January 1, 1971. [Acts 1969, ch. 139, § 2.]

9-4-2-3. Repeal This act [9-4-2-1-9-4-2-3] shall repeal all existing acts or portions thereof which are not in conformity with the provisions of the Indiana Manual on Uniform Traffic Control Devices for Streets and Highways. [Acts 1969, ch. 139, § 3.]

9-4-3.1. TRAFFIC SIGNALS ON STATE HIGHWAYS

9-4-3.1-1 [47-1902c]. Conformity to Indiana manual. - All traffic signal control devices on all streets and highways within this state shall conform in all respects with the standards, specifications, and warrants as set forth in the Indiana manual on uniform traffic control devices for streets and highways. [IC 9-4-3.1-1, as added by Acts 1972, P.L. 80, § 1.]

9-4-3.1-2 [47-1902d]. Traffic engineering studies required - Hearings. - All traffic signal installations on any street and highway within the state shall be erected only after the completion of traffic engineering studies which verify that the traffic signal control is warranted as set forth in the Indiana manual on uniform traffic control devices for streets and highways. If the proposed installation is in the immediate vicinity of a school and the installation does not meet the requirements of this section, the governmental unit responsible for the control of traffic at this location shall grant a special hearing on the question to persons who have properly petitioned for such an installation. [IC 9-4-3.1-2, as added by Acts 1972, P.L. 80, § 1; 1974, P.L. 37, § 1.]

9-4-3.1-3 [47-1902e]. Nonconforming traffic signals - Removal by governmental agency. - All traffic signals upon all streets and highways within the state not conforming to the provisions of section 1 [9-4-3.1-1] of this chapter shall be removed by the governmental agency having jurisdiction over the highway. [IC 9-4-3.1-3, as added by Acts 1972, P.L. 80, § 1.]

9-4-3.1-4 [47-1902f]. Erection of signals on state highways - Permission to erect. - All public and private agencies are hereby prohibited from erecting any traffic control devices on any state-maintained highway without the written permission of the department of highways. However, the state department of highways with respect to signals on state highways in cities and towns shall install any signal that meets the standards, specifications, and warrants as set forth in the Indiana manual. The state shall grant written permission to any city or town to erect such signal if it is not possible for the state immediately to do so. The department of
highways shall maintain responsible control of all traffic signals on the state highway system. [IC 9-4-3.1-4, as added by Acts 1972, P.L. 80, § 1; 1980, P.L. 74, § 388.]

9-4-3.1-5 [47-1902g]. Traffic signals on state highways - Property of state. - All traffic signal installations on state routes will become the property of the department of highways. [IC 9-4-3.1-5, as added by Acts 1972, P.L. 80, § 1; 1980, P.L. 74, § 389.]

9-4-14. SHOPPING CENTER TRAFFIC CONTROL

9-4-14-1. Contract to regulate traffic - Conditions - Penalty. - (a) A county, city, or town (referred to as "unit" in this section) and the owner or lessee of a shopping center located within the unit may contract to empower the unit to regulate by ordinance the parking of vehicles and the traffic at the shopping center, subject to approval by the fiscal body of the unit by ordinance. For purposes of this section, "shopping center" may be defined by ordinance of the unit entering into a contract under this section.

(b) The contract may provide for:

(1) The erection by the unit of the stop signs, flashing signals, or yield signs at specified locations in a parking area and the adoption of appropriate regulations, or the designation of any intersection in the parking area as a stop intersection or as a yield intersection and the ordering of like signs or signals at one or more entrances to that intersection;

(2) The prohibition or regulation of the turning of vehicles or specified types of vehicles at intersections or other designated locations in the parking areas;

(3) The regulation of a crossing of any roadway in the parking area by pedestrians;

(4) The designation of any separate roadway in the parking area for one-way traffic;

(5) The establishment and regulation of loading zones;

(6) The prohibition, regulation, restriction, or limitation of the stopping, standing, or parking of vehicles in specified areas of the parking area;

(7) The designation of safety zones in the parking area and fire lanes;

(8) The removal and storage of vehicles parked or abandoned in the parking area during snowstorms, floods, fires, or other public emergencies, or found unattended in the parking area where they constitute an obstruction to traffic or where stopping, standing, or parking is prohibited, and for the payment of reasonable charges for such removal and storage by the owner or operator of any such vehicle;

(9) The cost of planning, installation, maintenance, and enforcement of parking and traffic regulations to be borne by the unit, by the property owner or lessee, or for a percentage of that cost to be shared by both the unit and the property owner or lessee;

(10) The installation of parking meters on the shopping center parking area; and the contract may establish whether the expense of installing those parking meters and maintenance thereof shall be that of the unit or that of the shopping center owner or lessee, with any monies obtained from those parking meters belonging to the unit and not to the shopping center owner or lessee; and

(11) Such additional reasonable rules and regulations with respect to traffic and parking in a parking area as local conditions may require for the safety and convenience of the public or of the user of the parking area.

(c) No contract entered into between any unit and any shopping center owner under this section may exceed a period of twenty [20] years, and no lessee of a shopping center may enter into such a contract for a longer period of time than the length of his lease.

(d) Any contract entered into between any unit and any shopping center owner or lessee under this section shall be recorded with the county recorder in the county in which the unit is located, and no regulation made under the contract may take effect until three [3] days after the contract is so recorded. Signs shall be posted within the shopping center no later than three [3] days after the contract is so recorded stating that shopping center parking and traffic regulations are enforceable by local law enforcement officials.

(e) The unit may adopt an ordinance providing for punishment of violations of the parking and traffic regulations in effect at any shopping center under the contract. [IC 9-4-14-1, as added by Acts 1975, P.L. 105, § 1; 1978, P.L. 2, § 945; 1980, P.L. 211, § 11.]


9-8-5.5. TRAFFIC SAFETY PROGRAMS

9-8-5.5-1. Contracts to promote traffic safety and study traffic accident problems. - The board of county commissioners of any county or the board of public works, board of public works and safety, or the department of transportation of any city may contract with any nonprofit organization to promote traffic safety and study traffic accident problems with the approval of the county council or
the common council. [IC 9-6-5.5-1, as added by Acts 1973, P.L. 87, § 1.]

9-6-6. ADOPTION OF INTERSTATE TRAFFIC SAFETY COMPACT

9-6-6-1 [47-3019]. Interstate compact for traffic safety. - The state of Indiana join[s] with other states of the union in accordance with Public Law 684 of the 85th Congress in relating an Interstate Compact for Traffic Safety. [Acts 1959, ch. 339, § 1.]

9-6-6-2 [47-3020]. Notification to officials of other states. - The governor of the state of Indiana and the director for traffic safety for the state of Indiana be authorized and directed to notify the proper officials of the other states that Indiana recognizes the need for uniform traffic safety regulations and standards for the maintenance of traffic safety measures; and also to urge all of the states to join in the Interstate Compact for Traffic Safety which has been authorized by the United States Congress. [Acts 1959, ch. 339, § 2.]

9-8-1. SIZE AND WEIGHT -- EQUIPMENT -- PERIODIC VEHICLE INSPECTION

9-8-1-2 [47-530]. Vehicles on state highways -- Dimensions -- Security of load. - (a) Except as otherwise provided by law, the maximum limitations on width, length, and height of vehicles imposed by this section apply to the vehicle and load:

(1) The maximum width limitation, excepting safety devices and mirrors, is eight feet, six inches [8'6"].

(2) No vehicle shall exceed a total maximum height of thirteen feet, six inches [13'6"].

(3) No single vehicle operated under its own motive power shall exceed a length of thirty-six feet [36'].

(4) No combination of two [2] vehicles coupled together shall exceed a total length of sixty feet [60'], except:

(A) A combination of two [2] vehicles coupled together which are especially constructed to transport other vehicles or boats;

(B) A combination of two [2] vehicles coupled together being transported in a driveway or towaway service;

(C) Any pole trailer owned by, or operated for, a public utility, as defined in IC 8-1-2-1, while such pole trailer is being used in connection with the utility services of such public utility; or

(D) Trailers used in transporting oil field equipment or pipe for the transmission of oil or gas.

(5) No combination of three [3] or more vehicles coupled together shall exceed a total length of sixty-five feet [65'], and any number of vehicles in a combination coupled together which are especially constructed to transport other vehicles or boats, and any number of vehicles in a combination coupled by the towbar, saddlemount, or fullmount methods, may be less than, but shall not exceed a total length of sixty-five feet [65']. Nothing in this chapter shall be construed to prohibit the hauling of other vehicles or parts of vehicles in transit.

(6) No load on any vehicle or combination of vehicles shall extend more than three feet [3'] beyond the front bumper, and no more than four feet [4'] beyond the rear of any combination of vehicles especially constructed to transport other vehicles or boats, and shall be in addition to any other length limit set forth in this section.

(7) No vehicles shall carry any load extending beyond the line of fenders on the left side of such vehicle nor extending more than six inches [6'] beyond the line of the fenders on the right side thereof.

(8) No vehicle, except one containing poultry or livestock being transported to market, shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent its contents from dripping, sifting, leaking, or otherwise escaping therefrom.

(9) The maximum length limitations for buses are as follows:

(A) For articulating buses used for public transportation purposes, sixty-five feet [65'].

(B) For conventional school buses operating under IC 9-8-2.5, thirty-six feet [36'].

(C) For transit buses operating under IC 9-8-2.5, forty-two feet [42'].

(D) For all others, forty feet [40'].

(b) The height limitations set forth in this section shall not be construed to require a clearance of such height or to relieve the owners of vehicles not exceeding such limitations from liability for any damage.

(c) A farm tractor may draw not more than two [2] wagons or farm implements upon any public highway, and such wagons or implements shall conform with all other provisions of law respecting the use of such public highways.

(d) Notwithstanding the provisions of subsection (a) of this section, motor vehicles designed and used for hauling other motor vehicles may transport loads consisting of equipment designed to convert trucks, the weight of which does not exceed eleven
thousand [11,000] pounds, into a vehicle equipped
with living quarters for persons traveling upon the
highways. However, the transporting motor vehicle
may not exceed a total maximum width of eight
feet six inches [8’6”].

e) Notwithstanding subsection (a), and 
exclusive of safety and energy conservation devices,
refrigeration units, and other devices such as cou-
pling devices, the following are the maximum limi-
tations on length of a truck tractor, semitrailer,
truck tractor-semitrailer combination, or truck
tractor-semitrailer-trailer combination:

(1) The maximum length of the semitrailer unit
operating in a truck tractor-semi trailer combination 
is forty-eight feet, six inches [48’6”].

(2) The maximum length of the semitrailer unit 
or trailer operating in a truck tractor-semitrailer-
trailer combination is twenty-eight feet, six inches
[28’6”].

(3) No maximum overall length limit is imposed 
on truck tractor-semitrailer or truck tractor-
semitrailer-trailer combinations.

For purposes of this subsection, "truck tractor"
means a noncargo carrying power unit designed to
operate in combination with a semitrailer or trailer.
Nothing in this subsection prohibits the transporta-
ton of motor vehicles on part of the truck tractor.

(f) Notwithstanding any other subsection, any
trailer or semitrailer of such dimensions as those
that were in actual and lawful use in this state on
December 1, 1982 may be lawfully operated on the
235; 1941, ch. 219, § 1, p. 659; 1947, ch. 205, § 1;
1949, ch. 176, § 1; 1953, ch. 238, § 1; 1955, ch. 56, §
1; 1961, ch. 113, § 1; 1963, ch. 185, § 1; 1965, ch.
142, § 1; 1971, P.L. 133, § 1; 1973, P.L. 90, § 1;
124, § 1; P.L. 140-1983, § 1.]

9-8-1-12 [47-536]. Weight of vehicles --
Heavy-duty highways -- Axle, axle weight, and
tandem axle defined. - (a) It shall be unlawful to
operate or to cause to be operated upon any high-
way of this state any vehicle or combination of
vehicles having weight in excess of one [1] or more
of the following limitations:

(1) The total gross weight, with load, in pounds 
of any vehicle or combination of vehicles shall not
exceed an overall gross weight on a group of two [2]
or more consecutive axles produced by application
of the following formula:

\[ W = 500 \times L \times N - 1 + 12N + 36 \]

where W equals overall gross weight on any group 
of two [2] or more consecutive axles to the nearest
five hundred [500] pounds, L equals distance in feet
between the extreme of any group of two [2] or
more consecutive axles, and N equals number of
axles in the group under consideration, except that
two [2] consecutive sets of tandem axles may carry
a gross load of thirty-four thousand [34,000] pounds
each, providing the overall distance between the
first and last axles of such consecutive sets of tan-
dem axles is thirty-six feet [36’] or more. The
overall gross weight limit, calculated under this sub-
division, may not exceed eight thousand [80,000]
pounds.

(2) The total weight concentrated on the road-
way surface from any tandem axle group, shall not
exceed seventeen thousand [17,000] pounds for each
axle of the assembly.

(3) No vehicle shall have a maximum wheel
weight, unladen or with load, in excess of eight hun-
dred [800] pounds per inch width of tire, measured
between flanges of rim nor an axle weight in excess
of twenty thousand [20,000] pounds.

(b) The enforcement of weight limits under this
section is subject to the following:

(1) It is lawful to so operate if operating within
the scope of a permit, under weight limitations estab-
lished by the department of highways and in effect
on July 1, 1956, secured as provided in section 16
[9-8-1-16] of this chapter.

(2) It is lawful to operate or cause to be
operated a vehicle or combination of vehicles on a
heavy duty highway so declared by the department,
if operated within the limitations so imposed.

(3) Whenever any of the weight limitations as
provided in subsection (a) are utilized on any high-
way of this state which is a part of the national
system of interstate and defense highways the refer-
cence to weight tolerance in IC 9-8-1-22 does not
apply.

(4) The provisions of subsection (a) do not apply
to any highway, road or street, or to any bridge for
which a lesser weight limit is imposed by local
authorities pursuant to IC 9-4-1-125 or IC 9-8-1-15.
However, any such local authority may by
appropriate action establish and designate any
county or city highway, road or street or part
thereof as a heavy duty highway subject to the
weight limitations established under subsection (d).

(5) Vehicles operated on toll road facilities are
subject to rules of weight adopted for toll facilities
by the department of highways under IC 8-15-2 and
are not subject to subsection (a) when operated on
a toll facility.

(c) Notwithstanding subsection (a), the greater
of the weight limits imposed under subsection (a) or
this subsection applies to vehicles operated upon
any highway of this state. The weight limits in
effect on January 4, 1975, for any highway which is
not designated as a heavy duty highway under subsection (d) were:

(1) The total gross weight, with load, in pounds of any vehicle or combination of vehicles shall not exceed seventy-three thousand two hundred eighty [73,280] pounds.

(2) The total weight concentrated on the roadway surface from any tandem axle group, shall not exceed sixteen thousand [16,000] pounds for each axle of a tandem assembly.

(3) No vehicle shall have a maximum wheel weight, unladen or with load, in excess of eight hundred [800] pounds per inch width of tire, measured between flanges of rim nor an axle weight in excess of eighteen thousand [18,000] pounds.

(d) The department is authorized to establish and designate certain highways as heavy duty highways and to disestablish and remove any highway or part thereof, from any designation of heavy duty highways theretofore designated by it as a heavy duty highway. All such designations and removals shall be made by rules duly adopted as provided by law. From time to time such department shall publish a map showing all heavy duty highways then designated by it. Whenever the department shall have designated a heavy duty highway it shall also fix the maximum weights which may be transported on such highways. Such maximum weights shall not exceed the following limitations:

(1) No vehicle shall have a maximum wheel weight, unladen or with load, in excess of eight hundred [800] pounds per inch width of tire, measured between flanges of rim, nor an axle weight in excess of twenty-two thousand four hundred [22,400] pounds.

(2) The total weight concentrated on the roadway surface from any tandem axle group, shall not exceed eighteen thousand [18,000] pounds for each axle of the assembly.

(3) The total gross weight, with load, in pounds of any vehicle or combination of vehicles shall not exceed eighty thousand [80,000] pounds.

No highway of this state shall be designated a heavy duty highway unless the department shall find that such highway is so constructed and can be so maintained, or is in such condition, that the use thereof as a heavy duty highway will not materially decrease or contribute materially to the decrease of the ordinary useful life of such highway.

(e) A truck specially designed and equipped with a self compactor or detachable container and used exclusively for garbage or refuse operations may, when laden with garbage or refuse, transmit to the surface of a highway, except a highway which is part of the national system of interstate and defense highways, a gross weight of not more than twenty-four thousand [24,000] pounds upon a single axle, and a gross weight of not more than forty-two thousand [42,000] pounds upon a tandem axle group. When unladen, however, such trucks must comply with the axle limitations applicable to all other trucks. Nothing in this subsection exempts trucks, laden or unladen, from the limitations on wheel weights imposed by subsection (c) of this section.

(f) As used in this chapter:

(1) "Axle weight" means the total weight concentrated on one [1] or more axles spaced less than forty inches [40'] from center to center.

(2) "Axle" means the common axis of rotation of one [1] or more wheels or rollers whether power driven or freely rotating, and whether in one [1] or more segments and regardless of the number of wheels carried thereon.

(3) "Tandem axle group" means two [2] or more axles spaced more than forty inches [40'] and less than one hundred eight inches [108']. For the purpose of enforcing the single axle weight limitation, the third axle of a tri-axle group of a truck shall be treated as if it were single axle if it is independently suspended. [Acts 1931, ch. 83, § 8, p. 235; 1937, ch. 275, § 2, p. 1274; 1941, ch. 219, § 2, p. 659; 1949, ch. 269, § 2; 1951, ch. 266, § 1; 1953, ch. 23, § 2; 1971, P.L. 133, § 3; 1977, P.L. 133, § 1; 1980, P.L. 74, § 394; 1981, P.L. 66, § 12; 1981, P.L. 125, § 1; 1982, P.L. 89, § 1.]
over any bridge, causeway or viaduct when its gross weight is greater than the gross weight allowed on such bridge, causeway or viaduct.

(b) IC 4-22-2 does not apply to a restriction or traffic control determination under this section that is by order of the director of the department of highways and purely local in nature, applying to one [1] or more described bridges, causeways, or viaducts. [Acts 1931, ch. 83, § 9, p. 235; 1980, P.L. 74, § 399; P.L. 91, 1989, § 44.]

Cross References. General powers of local authorities over highways, 9-4-1-28.

Power of local authorities and state highway commission to make regulations concerning specific highways, 9-4-1-125.

9-8-1-16 [47-538]. Weights and loads - Permits by department or local authorities. - (a) The department or local authorities having jurisdiction over any public highway or street and being responsible for the repair and maintenance thereof, upon proper application in writing and upon good cause shown, may grant permits for transporting heavy vehicles and loads, or other objects, not conforming to sections 2 [9-8-1-2] and 12 [9-8-1-12] of this chapter, whenever in the discretion of any such officer or body other traffic will not be seriously affected and the highway or bridge thereon will not seriously be damaged thereby.

(b) A permit may be issued for:

(1) A single trip;

(2) A definite period of time not exceeding thirty [30] days; or

(3) A ninety-day period of time.

(c) An annual permit also may be issued to any commercial motor vehicle for the pulling of a combination unit which meets the size and weight standards for Indiana toll roads, prescribed by the department. Such annual permit shall not be issued for a distance greater than fifteen [15] total miles to the toll road and shall be valid only when used in conjunction with toll road travel.

(d) A permit may designate the route to be traversed and contain any other restrictions or conditions deemed necessary by the authority granting such permit for a proper protection of such traffic, highway or bridge; however, in the event of any breakdown or threatened breakdown of electric, gas, water or telephone public utility facilities in the state, the public utility whose services to the public are or may be affected thereby may in such emergency, without securing any permit, transport over any highways or streets of this state heavy vehicles and loads, or other objects, not conforming to the provisions of sections 2 [9-8-1-2] and 12 [9-8-1-12] of this chapter as it is reasonably necessary so to do in order to restore such utility service at the earliest practicable time or to prevent the interruption of its utility service, but in each such case such public utility shall, not later than the second succeeding day that is not a Sunday or holiday, report the fact of such transportation to the public authority from whom a permit would otherwise have been required and shall pay to such public authority the fee that would have been due for such a permit, and the making of such report and payment of such fee shall be deemed to satisfy all requirements of this chapter in respect of the securing of any permit for the trip required by such emergency.

(e) Such permit so issued shall not be construed as protection to, nor as a defense by, any holder thereof in the event the restrictions and regulations provided herein are violated.

(f) Before any such permit shall be issued the applicant shall satisfy the officer or body issuing such permit of his responsibility to respond in damages for any injury to the highway or bridge or furnish satisfactory bond or other security to the satisfaction of such issuing officer or body.

(g) The special permit fee is ten cents [10¢] per mile of travel, loaded or unloaded, for all permits issued to exceed the legal length, width, or height limit but in no event shall the fee be less than ten dollars [$10.00] nor more than twenty-five dollars [$25.00] and for the ninety-day permit, described in subsection (b)(3) of this section, a minimum fee of ten dollars [$10.00] and a maximum fee of seventy-five dollars [$75.00].

(h) For all permits issued to exceed the legal weight limit, the fee shall be twenty-five cents [25¢] per mile of travel, loaded or unloaded, but in no case shall the fee be less than ten dollars [$10.00] and the fee shall be fifty dollars [$50.00] for the ninety-day permit, described in subsection (b)(3) of this section, a minimum fee of ten dollars [$10.00] and a maximum fee of one hundred fifty dollars [$150].

(i) When the application for a permit involves transporting heavy vehicles or loads, or other objects, which exceed the legal length, width, or height limit and which also exceed the legal weight limit in the same movement, the applicant shall pay only the greater of the two [2] mileage fees and the issuing officer or body shall issue a single oversize-overweight permit, but in no event shall the fee for such combined permit so issued exceed fifty dollars [$50.00] and for the ninety-day permit, described in subsection (b)(3) of this section, a maximum fee of one hundred fifty dollars [$150].

(j) Annual permits, however, shall be issued for an annual fee of ten dollars [$10.00] for each such permit.
(k) When any such permit is issued by the issuing officer or body, it shall be submitted to the department of treasury for approval, and thereupon the department shall fix the fee to be paid, and, upon the payment of such fee, or tax, the department shall validate such permit, and the fee or tax so received shall be credited to the state highway account.

(l) Every such permit shall be carried in or on the vehicle or other object to which it refers and shall be open to inspection by any peace officer. A person shall not violate any of the terms or conditions of such a special permit. The issuance of a special permit as provided in this section shall not relieve the responsibility for damages to highways imposed by this chapter, and the issuance of any such special permit for the use of a vehicle already registered and licensed, or for the use of vehicle not subject to registration and licensing, under IC 9-1, or for the moving of objects other than vehicles under such special permit, shall not require further registration and licensing in order to authorize the issuance of such special permit. [Acts 1931, ch. 83, § 10, p. 235; 1937, ch. 275, § 3, p. 1274; 1953, ch. 210, § 1; 1965, ch. 322, § 1; 1971, P.L. 133, § 4; 1978, P.L. 2, § 955; 1980, P.L. 74, § 396; 1981, P.L. 127, § 1; 1982, P.L. 89, § 2.]

Cross References. Authority of commission and local authorities to restrict the use of specific highways, 9-4-1-125.

General powers of local authorities over highways, 9-4-1-28.

Moving heavy equipment across railroads, 9-4-1-109.

Opinions of Attorney General. Temporary permit to operate vehicle with overload does not satisfy requirement of registration under 9-1-4-1 et seq. 1948, No. 32, p. 184.

Two separate areas of regulations are contemplated by this section, each designed to control a distinct and separate phase of highway use, and each the subject of a separate fee and permit, which is issued by the state highway commission or local governmental body responsible for the repair and maintenance of the public highways or streets. 1970, No. 33, p. 87.

9-8-1-19.9. Exemptions. - The provisions of this chapter shall not apply to machinery or equipment used in highway construction or maintenance by the state department, counties, or municipalities; nor to farm drainage machinery; nor to implements of husbandry, when so constructed that they can be moved without material damage to the highways; nor as limiting the width or height of farm vehicles when loaded with farm products; and the vehicles enumerated in this section may be removed or operated as to avoid any material damage to the highway, or unreasonable interference with other highway traffic. For the purpose of this chapter, any truck hauling unprocessed leaf tobacco is a farm vehicle loaded with a farm product. [IC 9-8-1-19.9, as added by Acts 1978, P.L. 8, § 9; 1980, P.L. 74, § 398.]

9-8-1-25. Permits for transporting oversized semitrailers or trailers designed to be used with semitrailers. - (a) The department or local unit authorized to issue permits under section 16 [9-8-1-16] of this chapter may issue permits for transporting semitrailers, or trailers designed to be used with semitrailers, which exceed the width and length limitations imposed under this chapter from the manufacturing facility to the person taking title to the vehicle including any other destination in the marketing cycle.

(b) A permit issued under this section may designate the route to be traversed and may contain any other restrictions or conditions required for the safe movement of the vehicle.

(c) A permit issued to the manufacturer under this section must be applied for and be reissued annually after its initial issuance.

(d) The fee for an annual permit issued under this section is two hundred dollars ($200) and may be paid in quarterly installments.

(e) No limit is imposed on the number of movements generated by the manufacturer who is issued an annual permit under this section. [IC 9-8-1-25, as added by P.L. 140-1983, § 2.]

Effective Dates. P.L. 140-1983, § 3 provides that this section take effect retroactively to April 6, 1983.

36-9-2. GENERAL POWERS CONCERNING TRANSPORTATION AND PUBLIC WORKS

36-9-2-2. Transportation systems. - A unit may establish, aid, maintain, and operate transportation systems. [IC 18-1-1.5-14, 18-4-2-16, recodified as IC 36-9-2-2 by Acts 1980, P.L. 211, § 4.]
NUMERICAL INDEX TO STATUTES

Below is a list of all the statute sections contained in volume II. The sections are listed numerically by Indiana Code citation number. After the number is a brief description of the statute and, in parentheses, the volume II chapter number containing that section. These statute sections are divided into their respective statute chapters, with the chapter title appearing above the individual sections (i.e. the numerous sections of Title 8, Article 20, Chapter 1 (IC 8-20-1) are all grouped together beneath the 8-20-1 title: "County roads - Location, Vacation and Eminent Domain").

Volume II is divided into chapters corresponding to those in volume I, so that statutes relevant to the material discussed in the User's Manual (volume I) can be found in the corresponding chapter of volume II. The statutes are arranged in numerical order in the chapters to further facilitate the searching process. Thus, all statutes relevant to Local Authority can be found in Chapter 2, and are arranged in numerical order in that chapter, Road Revenue statutes are in Chapter 8 in numerical order, etc.

Unfortunately, due to space constraints, some statutes that pertain to more than one topic discussed in the User's Manual are only reproduced once in this volume. Therefore this index is provided to aid the reader in locating relevant statutes. Given an IC citation number from the text of the User's Manual, this index will lead the reader to the appropriate chapter of volume II where the statute can be found.

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Volume II
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Indiana Law Relating to Local Streets and Roads Work

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