INTRODUCTION

The writer does not pretend to have answers to all questions about the Indiana Drainage Code of 1965. In fact, an admission that the author has more questions than answers would be in order and would be the truth.

Insofar as possible the Indiana State Board of Accounts has confined itself to matters pertaining to the funds, financing and accounting for funds. However, it is almost impossible to properly analyze one phase of the drainage code without getting into other related areas, and so it should be understood that these comments are not represented to be legal opinions but merely the views arrived at in discussions at the State Board of Accounts.

Because of the requirement that public records be examined by the State Board of Accounts, it is necessary that some basic guidelines be established for our own use in examinations. We do not seclude these things; in fact these guidelines are usually made known to the officers having charge of the records we will be examining at some later time. So it was with the drainage code. On January 18, 1966 the State Board of Accounts mailed a circular to county auditors, county surveyors and drainage boards giving a preliminary outline to be followed in keeping records of financial transactions under the terms of the drainage code. This circular did not touch upon funds for maintenance.

THE FUNDS

The funds recognized by the drainage code are:

a. General Drain Improvement Fund
b. Bond Redemption Fund
c. Maintenance Funds
d. County General Fund
Look into the character of each of these funds to determine how they may be applied.

According to Section 701 of the drainage code, the general drain improvement fund shall consist of:

1. All funds in any ditch or drainage fund created pursuant to any act repealed by the provisions of this act, *not otherwise allocated*;
2. proceeds from sale of ditch bonds;
3. costs collected from petitioners in a drainage petition;
4. appropriations made from the general fund of the county or taxes levied by the county council for drainage purposes;
5. money received from assessments upon lands benefited for construction or reconstruction of a legal drain;
6. interest and penalties received on collection of delinquent drain assessments and interest received for deferred payment of drain assessments; and
7. money repaid to the general drain improvement fund out of a maintenance fund.

**Previous Ditch Funds**

To fully understand the character of the general drain improvement fund, each of these sources of money bears some further analysis. **Number 1, “All funds in any ditch or drainage fund created pursuant to any act repealed by the provisions of this act, *not otherwise allocated* . . .”** without doubt includes the money formerly to the credit of the general ditch improvement fund which has been in use for several years. However, the drainage code appears to have intended that in instances where unused allocations existed on January 1, 1966, such allocations should continue to be recognized for use in 1966 and as long thereafter as necessary for the purpose of completing the project for which the allocation was originally made. Also, under the terms of the law repealed by the drainage code, it was possible that where a balance remained to the credit of a particular ditch after construction costs had been paid, such balance was dedicated for maintenance of that particular ditch. In instances such as this, it is perfectly reasonable to think that a fund so dedicated by the former law should remain as a usable maintenance fund for the particular ditch. A view opposite to this would recognize that by legislative action a trust could be violated. This would not stand up under any test heretofore known in Indiana. Therefore, if on December 31, 1965, a balance remained in the general ditch improvement fund dedicated for maintenance of a particular ditch, it is our opinion such balance, on January 1, 1966, became a part of general
drain improvement fund, but remained dedicated to the maintenance of the ditch to which it originally belonged.

Ditch Bonds

No problem exists under Number 2, "... proceeds from sale of ditch bonds." In instances such as this, it is perfectly reasonable to think that an amount of the bonds may be placed in general drain improvement fund; any premium received and all accrued interest on bonds sold must be receipted to the bond fund.

Collections From Petitioners

Number 3 refers to "... costs collected from petitioners in a drainage petition." This perhaps merits more comment than surface appearance may indicate. This is true because this is the only place in the code where mention is made of receiving money from petitioners. It is not hard to find justification for saying that expense incurred by a county pursuant to a petition should be repaid to the county if proceedings in the matter fail. To the writer, this seems reasonable and right. However, this is not stated in the code. Whether the omission was oversight or intentional is not known, but unless some safeguard is established to avoid loss to the general drain improvement fund in this manner, loss will certainly occur. As this matter now stands, the only possible safeguard would be the drainage board to prevail upon the attorney, for the petitioners, to require the petitioners to furnish with the petition a good and sufficient bond guaranteeing payment of expenses if proceedings do not result in the establishment of the project as requested in the petition.

 Appropriations

Number 4 deals with "... appropriations made from the general fund of the county or taxes levied by the county council for drainage purposes." Mr. Phillipi has already discussed this phase of the code.* It is necessary only to emphasize that the limit on the aggregate amount a county may appropriate to the general drain improvement fund may not exceed the equivalent of 30 cents on each $100 of taxable property in the county. This express limit raises the question as to whether the equivalent of a 30-cent tax levy may be placed in the General Drain Improvement Fund in addition to whatever amount the county may have previously placed in its general ditch improvement fund under the prior law. We do not believe such a meaning is implied in the drainage code.

* See the preceding paper in these Proceedings.
Assessments for Construction

Number 5, "... money received from assessments upon lands benefited for construction and reconstruction of legal drains" is practically self-explanatory. One point to be remembered, though, is that these assessments are not the same as assessments for maintenance funds. The handling of maintenance funds will be discussed later.

Interest and Penalties

Number 6, "... interest and penalties received on collection of delinquent drain assessments and interest received for deferred payment of drain assessments" also is self-explanatory except perhaps to point out that penalties for failure to pay drainage assessments when due results in the imposition of the same penalties as for failure to pay property taxes when due. The rate of interest on deferred installments of drainage assessments is 6 percent per annum.

Payment From Maintenance Funds

Number 7, "... money repaid to the general drain improvement fund out of maintenance funds." This item leads into a discussion of "Maintenance Funds," but before discussing maintenance funds, consider first "Bond Fund."

ACQUIRING FUNDS BY SALE OF BONDS

It is not only possible, but very probable that the general drain improvement fund will not be adequate to finance all necessary projects. This seems to have been recognized in the code itself through the authorization given for issuance and sale of bonds. This phase of the code is work to be done by members of the legal profession. All are aware of the fact that drainage bonds or ditch bonds have not always enjoyed a good reputation. The reason is quite obvious; owners benefited did not pay assessments promptly, laws governing enforcement of assessments were not always strong and officers did not employ enforcement measures to the full extent provided. The reputation of bonds issued for drains can be improved by simply reversing whatever caused the undesirable reputation. This will require concerted effort on the part of county officials plus legislation toward improvement in the area of enforcement of collections.

Again, for the sake of clarity, it should be understood that when bonds are sold, the proceeds enter the county funds only as follows:

Principal—to general drain improvement fund,
Premium and Accrued Interest—to bond redemption fund.
All assessments for construction on a ditch financed by a bond issue must be placed in the bond redemption fund for the purpose of paying the bonds and interest. A separate bond redemption fund is to be kept for each separate bond issue (Sec. 703).

MAINTENANCE FUNDS

This matter is governed for the most part by Article IV of the code. It simply states a method by which the county drainage board establishes a maintenance assessment on a particular drain. Incidentally, if the drainage board intends to maintain ditches, the maintenance funds should be established as rapidly as needs for maintenance become apparent. A maintenance fund assessment is against the lands affected by a particular drain and is usable only for maintenance of the individual drain and to repay the general drain improvement fund for maintenance and repair paid from the general drain improvement fund prior to creation and collection of a maintenance assessment. Recently the question was raised, What happens if the landowners remonstrate against the maintenance assessment? This question seems to be well answered by Section 404 which states that “... not less than five (5) days before the date of hearing before the board any owner of lands named in the schedule of assessments may file written objection with the board alleging that the benefits assessed against his land are excessive.” From this wording it becomes apparent that when the drainage board determines that a maintenance assessment is necessary, the matter is not one against which an official remonstrance may be lodged; it is a matter in which each individual landowner may raise objection to his assessment on the sole grounds that it is excessive. The last sentence, in Section 405, states that if a judicial review of the findings and order of the board is not requested within 20 days from the date of publication of the notice of assessments, the board’s order shall become conclusive.

COUNTY GENERAL FUND

There is no need for much discussion about the source of the county general fund. Except for officers’ fees and some miscellaneous items, receipts to the county general fund are made up of general property taxes.

Mr. Phillipi has already touched upon the limitations on the use of the county general fund for drainage expense. More information on this is provided below.

Up to this point, this discussion has been about the origin and source of the funds recognized by the drainage code. The uses of the funds
are limited to those things stated in the law itself. Before discussing those uses, consider very briefly two questions arising under this drainage code:

1. How are claims for expense to be processed?
2. Can the general drain improvement fund be invested?

In the handling and processing of claims arising pursuant to the drainage code, opinions may differ because the code itself does not prescribe any methods. In view of the fact that the code does not state how claims are to be processed, filed and allowed, it is our opinion that we must look to the general laws for guidance. This means that claims for drainage costs will be processed in exactly the same manner as claims against the county for any other purpose. The claims should be approved (this does not mean allowed) by the drainage board, filed with the county auditor, advertised in the usual manner and then allowed by the board of commissioners. This is an orderly method and should work very well.

Whether or not the legislature considered the investment of the general drain improvement fund is not known, but there may be very strong indication against investing it. Paragraph (d), Section 701 provides that whenever the drainage board finds that the fund is in excess of what is necessary to meet expenses likely to be paid from it, if the same has been raised by taxation, it shall issue an order directing the excess to be transferred to the county general fund. It appears that if there is an excess, instead of investing it, it should be returned to the county general fund.

USES OF THE FUNDS

The uses to which the funds may be applied are fairly well stated in the code itself. Section 701, which creates the general drain improvement fund states that it shall be used:

"... to pay the cost of construction or reconstruction of a legal drain, or the cost of periodically maintaining a legal drain in the event that a maintenance fund has not been established for the drain, or if a maintenance fund has been established and it is insufficient, then the general drain improvement fund shall be used to pay such deficiency."

The exact manner in which the funds are to be applied is outlined in the code.

It is important to note that the general drain improvement fund may be used for periodic maintenance when necessary. It is equally important to observe that this same section, as well as other sections of the code, contemplate that funds so expended are to be returned to the general
drain improvement fund from maintenance assessments levied on the properties benefited. Going back to number 7 in the enumeration of sources of money in the general drain improvement fund it is found that the expression “Money repaid to the general drain improvement fund out of a maintenance fund. . . .”

Before discussing the use of the maintenance fund, read Section 407 exactly as it is written:

“SEC. 407. The maintenance fund for each legal drain or unit created under the authority of this act shall be subject to the use of the board, or joint board, as the case may be, for the necessary or proper repair or maintenance of the particular drain or unit, and such repair or maintenance may be done whenever in the judgment of the board, upon the recommendation of the surveyor, the same is necessary. The payment for all such maintenance work shall be made out of the appropriate maintenance fund, provided however, if the board desires to have maintenance work performed on any drain or unit, and if a maintenance fund has not been established for such drain or unit, or if a maintenance fund has been established but the same is not sufficient to pay for such work, then the general drain improvement fund shall be used to pay the cost of such work or to pay for such deficiency, and in either event the general drain improvement fund shall be repaid the amount so expended out of funds received by the appropriate maintenance fund when the same is established or when the same becomes sufficient.”

As to uses, the key words are for the necessary or proper repair or maintenance of drains and “. . . the general drain improvement fund shall be repaid the amount expended for maintenance out of funds received by the maintenance fund when the same is established or when the same becomes sufficient.”

Again, it is emphasized that the general drain improvement fund cannot carry the load of maintenance over long periods of time. Each drainage board should carefully analyze its own financial condition and not delay too long the fixing of maintenance assessments.

USES OF COUNTY GENERAL FUND

Mr. Phillipi has discussed the purposes to which general fund money may be put. It is emphasized that basically, general fund money may be used only for the expense of operation of the board. There is no general fund money to be applied directly to any construction, reconstruction or maintenance.
KEEPING OF RECORDS

County auditors have been instructed to keep records of receipts and disbursements for each ditch or drain on the same kind of forms they have used in past years. When some questions we have are settled, no doubt the forms will be revised to exactly fit the drainage code.

Our advice to drainage boards is to keep a full set of minutes of proceedings. If the minutes are ever required in a court or judicial review of a drainage matter, it will be rewarding to be able to submit records you can be proud of.

Experience has clearly shown us that all problems are never completely solved, but in this study the state board of accounts is willing to assist any public officer in any reasonable way to see the drainage code work as the general assembly intended that it should. We have discussed possible amendments to the code with interested persons and we expect to continue assisting whenever possible. Problems are never insurmountable as long as we have the freedom to meet.