

OPINION
47-85

February 12, 1947 (OPINION)

DRAINS

RE: Cost of Cleaning and Repairing - How Apportioned

You have requested the opinion of this office as to the method of apportioning the levy authorized under chapter 329 of the Session Laws of 1945 for cleaning and repairing of drains.

Section 61-2142 of the 1943 Revised Code, as amended by chapter 329 of the Laws of 1945, provides that "the levy in any one year for cleaning out or repairing any drain shall not exceed a maximum of fifty cents per acre on any lands in such drain district."

This same section also provides that "the cost of such keeping open and in repair shall in all cases be assessed, levied, and collected in the same manner as provided in this chapter for the construction of drains in the first instance . . ."

The foregoing provision of chapter 329 of the Laws of 1945 for apportioning the cost of cleaning or repairing a drain is self-explanatory. The lands benefited are required to be assessed for benefits in the same proportion of the cost thereof as the lands were originally assessed when the drain was constructed. A mathematical illustration will show the required method. Assuming that the amount apportioned against a tract of land described as the northwest quarter of section 1, township _____, within the drainage district, originally was \$320.00, or \$2.00 per acre, and assuming that this amount was the maximum sum apportioned to any quarter within the district; when such drain is cleaned or repaired, said quarter would be assessed at fifty cents per acre of \$80.00, if the maximum amount of fifty cents is required. In other words, the maximum assessment permitted under chapter 329 against section 1 for cleaning and repairing such drain would be twenty-five percent of the original cost.

Now, regardless of what the amounts apportioned to other lands may be, applying twenty-five percent to the benefits originally apportioned to such lands will give the amount which should be apportioned thereto for cleaning and repairing the drain, provided the maximum amount of fifty cents per acre is levied. Thus, if \$275.00 was originally apportioned to the northeast quarter of section 1, the amount apportioned under the fifty cents per acre levy would be twenty-five percent of \$275.00, or \$68.75; or if the amount originally apportioned to the southwest quarter of section 1 was \$200.00, the amount apportioned under the fifty cents per acre levy would be \$50. If the maximum levy assessed by the county board is, for example, twenty-five cents per acre, then the amount apportioned to the said northwest quarter of section 1 in the illustration used would be \$40.00, or 12.5 percent. By applying 12.5 percent to each assessment originally apportioned, the total assessment apportioned to each quarter section would be readily ascertained.

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