

**OPINION**  
**57-62**

August 1, 1957 (OPINION)

COUNTIES

RE: Drainage Board - Assessment of Maximum Levy

This is in reply to your letter under date of July 29, 1957, in which you request the opinion of this office relative to the interpretation of certain provisions of Chapter 347 of the Session Laws of 1955. You request answers to the following questions concerning the authority of the County Drainage Board:

- "1. Can the board act on its own initiative only and assess the fifty cents per acre assessment for the clean-out and repair of any county drain?"
  
- "2. Is the Drainage Board restricted in the manner in which it can proceed to clean out or repair any particular drain? In other words, could the Drainage Board assess the fifty cents per acre for the maximum two years and clean out only one end or say one-half of particular drain? Also, in connection therewith, for a partial cleaning out would the Drainage Board be prohibited from cleaning out a portion of a drain and using up its maximum accumulated fund and then a year or so later reassessing and finishing the clean-out and repair of the particular drain?"

Answering question No. 1, it is our opinion that the board of drainage commissioners on its own initiative may assess the maximum levy authorized under Section 45 of Chapter 347 of the Session Laws of 1955, and may accumulate a fund as provided therein. The board is vested with discretion as to when a levy is necessary in order to enable it to "keep drains open and in good repair". But when requested by petition of fifty-one percent of affected landowners, it becomes the "mandatory duty" of the board of clean-out and repair such drain to the extent that available funds will permit.

Answering question No. 2, it is our opinion that a county board of drainage commissioners is vested with authority to determine when a drain requires cleaning and repairing and the best method of doing the work. In its exercise of such authority the board should of course, be guided by the findings of an engineer as to the extent of the work needed and the probable cost thereof. When the cost of cleaning and repairing a drain will exceed an amount produced by the maximum levy of fifty cents per acre, together with the amount that has been accumulated, the board is confronted with the problem of what to do under the particular circumstances. The term "cleaning and repairing a drain", as used in Chapter 347 of the 1955 Session Laws means cleaning or repairing such drain in such places or spots as will make the whole drain function and benefit the lands assessed.

It is our opinion that when the maximum levy of fifty cents per acre has been made and a fund accumulated, as authorized under Section 45

of the 1955 Drainage Act, the board may under the provisions of Section 46 "proceed with such leaning out" but cannot in the same year make an additional levy to clean and repair a drain unless petitioned to do so by sixty-one percent of the landowners affected. The next and following year the board may again levy not to exceed fifty cents per acre or may accumulate a fund as provided in Section 45 of the Drainage Act.

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