Mr. Robert W. Kellum  
Executive Secretary  
State Flood Control & Water Resources Commission  
1330 West Michigan Street  
Indianapolis 2, Indiana

Dear Mr. Kellum:

This is in answer to your request for an Official Opinion concerning Acts of 1947, Ch. 239, Sec. 48, as found in Burns’ Indiana Statutes (1948 Repl.), Section 27-1248, your letter of inquiry reading as follows:


“Section 48 authorizes the levy of a tax assessment for a preliminary fund. Does this preliminary tax assessment apply to only the real property in the district or to both the personal and real property? Intention in the 1955 amendments was to provide for it applying only to real property.”

Acts of 1947, Ch. 239, as amended, known and cited as the “Conservancy Act of Indiana” and found in Burns’ Indiana Statutes (1948 Repl.), Section 27-1201 et seq. is by its title:

“An act to prevent floods, to protect cities, towns, farms and highways from inundation, to conserve water for beneficial uses, and to authorize the organization of drainage and conservancy districts, and declaring an emergency.”

In order to carry the purposes of this Act into effect, the Acts of 1947, Ch. 239, Sec. 47, as last amended by the Acts of 1955, Ch. 200, Sec. 7, as found in Burns’ Indiana Statutes (1948 Repl., 1955 Supp.), Section 27-1247, authorizes the establishment of four funds within every conservancy district, to-wit: (1) The Preliminary Fund; (2) The Improvement
Fund; (3) The Bond Retirement Fund, and (4) The Maintenance Fund, each of which shall consist of the proceeds specified in the last above-mentioned section.

The Preliminary Fund is for the purpose of paying expenses of organization of the conservancy district, for surveys and plans, and for other incidental expenses which may be necessary until such time as money is received from the sale of bonds or otherwise. In part, this Fund is to be created by the levy of the tax as authorized by the Acts of 1947, Ch. 239, Sec. 48, as found in Burns' Indiana Statutes (1948 Repl.), Section 27-1248, which authorizes the Board of Directors of any conservancy district:

"* * * to levy upon the property of the district in each of not more than two (2) years a preliminary tax of not to exceed five cents (5¢) on each one hundred dollars ($100.00) of the assessed valuation of the district * * *." (Our emphasis)

This particular section of the Conservancy Act of Indiana has not been specifically amended.

Your letter refers first to an amendment of this Act in 1949, which can have reference only to the Acts of 1949, Ch. 218, previously found in Burns' Indiana Statutes (1948 Repl., 1953 Supp.), Section 27-1207. (Since the same section amended by said 1949 Act was amended in 1955, Acts of 1949, Ch. 218 may no longer be found in Burns' Indiana Statutes, the 1953 Supplement thereof having recently been replaced by the 1955 Supplement.) Although the above-cited 1949 amendment by its title was confined to amending only Section 7 of the Conservancy Act of Indiana and not Section 48, your inquiry is doubtless on account of the last sentence of Acts of 1949, Ch. 218, Sec. 1, which read as follows:

"* * * Any ad valorem taxes levied pursuant to the provisions of this act shall be levied and collected on all property in the district, both real and personal." (Our emphasis)

However, Section 7 of the Conservancy Act of Indiana, supra, was again amended by the Acts of 1955, Ch. 200, Sec. 3,
as found in Burns’ Indiana Statutes (1948 Repl., 1955 Supp.), Section 27-1207, effective March 10, 1955, the last sentence of which now reads:

“* * * Any ad valorem taxes levied pursuant to the provisions of this act shall be levied and collected on all property in the district.” (Our emphasis)

The Acts of 1947, Ch. 239, Sec. 2, as found in Burns’ Indiana Statutes (1948 Repl.), Section 27-1202, contains definitions of terms as used in the Act, among which are the following:

“‘Land,’ ‘property’ or ‘real property’ shall mean real property, as the words ‘real property’ are used in and defined by the laws of the state of Indiana, and shall embrace all railroads, tram-roads, roads, electric railroads, street and interurban railroads, streets and street improvements, telephone, telegraph and transmission lines, gas, sewerage and water systems, pipelines and rights of way of public service corporations, and municipal corporations, and all other real property whether public or private.” (Our emphasis)

In view of the above and foregoing, it is my opinion that your question should be answered as follows:

Since the Acts of 1947, Ch. 239, Sec. 48, as found in Burns’ Indiana Statutes (1948 Repl.), Section 27-1248, levies the tax upon the “property” of the district and has not been specifically amended, the preliminary tax assessment as therein provided is applicable only to “real property” as provided in Acts of 1947, Ch. 239, Sec. 2, as found in Burns’ Indiana Statutes (1948 Repl.), Section 27-1202. Further, whatever possible doubt may have existed by reason of the Acts of 1949, Ch. 218, was erased and the legislative intent was made certain by the Acts of 1955, Ch. 200, Sec. 3, as found in Burns’ Indiana Statutes (1948 Repl., 1955 Supp.), Section 27-1207 which deleted the words “both real and personal” as previously contained in the 1949 Act. Thus, both Section 7 and Section 48 of the Conservancy Act of Indiana are now consistent in confining the tax levy to “property” in the district which term is governed by the definition thereof as contained in Section 2 of the Conservancy Act of Indiana hereinabove quoted.