

OFFICIAL OPINION NO. 49

June 19, 1952.

Honorable Otto K. Jensen,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion concerning Section 54 of Chapter 239 of the Acts of 1947, which act is known as the "Conservancy Act of Indiana."

You have pointed out that there is at the present time a Conservancy District in Indiana known as the West Lafayette Conservancy District, which District was organized under the act in question. You state that the project has been completed and that benefits and damages assessed pursuant to the Act did not include property in the entire District but only in part of such District. The particular questions raised, you state, are as follows:

"A question has arisen regarding the maintenance levy assessment referred to in Section 54, of the 1947 Conservancy Act. We would like to have your Official Opinion on the following questions:

"(1) Is the Maintenance Levy to be made against only that property which is directly benefitted as given in the Appraiser's Report of Benefits and for Damages?

"(2) Is the Maintenance Levy to be made against all of the property within the boundaries of the Conservancy District?

"(3) Is the Maintenance Levy to be made against only those properties which made assessments over the twenty (20) year period?"

In order to answer your questions, it will be necessary to consider other sections of the act in addition to Section 54, however at the outset, in order to reach a proper determination, we quote the following excerpts from Section 54 as follows:

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“* * * To maintain, operate and preserve the reservoirs, ditches, drains, dams, levees, canals, sewers, pumping stations, treatment and disposal works or other properties or improvements acquired or made pursuant to this act and to strengthen, repair and restore the same, when needed, and for the purpose of defraying the current expenses of the district, the board of directors may upon the substantial completion of said improvements and on or before the first day of July in each year thereafter, levy an assessment upon each tract or parcel of land and upon each municipal corporation within the district, subject to assessments under this act to be known as a ‘Conservancy Maintenance Assessment’; * * *

“The amount of the maintenance assessment paid by any parcel of land or municipal corporation shall not be credited against the benefits assessed against such parcel of land or municipal corporation; *but the maintenance assessment shall be in addition to any assessment that has been or can be levied under Section 51.* * * *” (Our emphasis.)

In addition to the foregoing, I feel that it is necessary to point out other sections of the Act, which do have some bearing upon my conclusions herein.

The last paragraph of Section 7 of the Act reads as follows :

“* * * All property, real and personal, located within the territorial limits of said district as hereinbefore defined shall be subject to a special tax to pay the principal and interest of any bonds issued for the purpose of providing funds to pay the total cost of the construction of the proposed additions, extensions, improvements and works, and of acquiring all necessary lands or rights of way necessary to carrying out the purpose of the district, including all necessary incidental expenses as hereinafter specified, which said special tax is hereby declared to be and constitute the amount of special benefits resulting to all said property from such improvements, extensions, additions and works, and shall be levied and collected as hereinafter provided.”

Section 47 of the Act specifies the various funds of the district and sets forth how the monies of every district shall be administered. There are four main categories, the first of which is "Preliminary Fund," the second the "Improvement Fund," third "Bond Retirement Fund" and the fourth, pertaining to the "Maintenance Fund," reads as follows:

"* * * Maintenance Fund, which shall consist of the proceeds of maintenance assessments levied annually in accordance with this act, earnings from the operation of the works of the district, and all receipts not otherwise assigned by law or by order of the board, and which shall be used for the payment of operation, maintenance, and other current expenses of the district. * * *"

Section 52 of the Act treats with the "Assessment Record" of the district and defines certain procedures upon the part of the authorities and also upon the part of the property owners assessed. I believe the following excerpt taken from the first paragraph of Section 52 points in the proper direction to determine this matter. I refer to the following language and which is used therein.

"* * * When such assessment has been paid, the secretary of the board shall enter upon the said assessment record and the duplicate thereof opposite each item for which payment is made, the amount paid and the words 'paid in full', *and such assessment shall be deemed satisfied. The payment of such assessment shall not relieve the landowner or municipal corporation from the necessity for the payment of a maintenance assessment nor for payment of any further assessment which may be necessary as herein provided. * * **" (Our emphasis.)

An examination and study of the entire act in question from which the above quotations are taken leads me to the following conclusions.

I am of the opinion that the answer to your first question should be in the affirmative but in so answering it I think all the property within a given district is presumed to be directly benefitted and, therefore, the answer to your second question

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is also in the affirmative. See Section 32 of the act which reads as follows:

“If the appraisers find that lands or other property not embraced within the boundaries of the district will be affected by the proposed improvement, or should be included in the district, they shall appraise the benefits and damages to such land, and shall file notice, in the court, of the appraisal which they have made upon the lands beyond the boundaries of the district, and to the land which in their opinion should be included in the district. The appraisers shall also report to the court any lands which in their opinion should be eliminated from the district.”

I quote this Section in order to show the apparent overall intent of the Legislature.

The answer to your third question is to be found in the quotation above where reference is made to Section 52 and I would also point out to you that reference is made to the so-called “Maintenance Levy” in Section 54 and in both instances the language is clear the “Maintenance Levy” is to be in addition to any other levies or assessments under the act, therefore, I conclude that the answer to your third question is in the negative. It seems to me that the manner of payment of the assessment has no bearing whatsoever upon the assessment of the “Maintenance Levy.”

It is to be noted that this opinion does not deal with the question of apportionment of assessments between landowners in the Conservancy District, and nothing said herein is intended to rule on that question.