private person as to the court house, or any part thereof, under the laws now in force.

"There is no statute in this State authorizing the boards of commissioners to rent the court house, or any part thereof, for private use. * * *"

The General Assembly has given County Commissioners the power to appoint trustees to do certain stated acts concerning county-owned hospitals as shown by Burns' Statutes, Sec. 22-3217. It does not appear that the Legislature has given County Commissioners, much less Boards of Trustees of County-owned Hospitals, the specific power to lease county property for private uses. Members of the Board of Trustees of the hospital are appointed by the Board of County Commissioners. The Board of Trustees of the hospital are proposing to enter into a lease contract, rather than the Board of County Commissioners. It does not appear that County Commissioners have been granted such power to lease, therefore the Trustees of the hospital do not have such power.

It is therefore concluded that the proposed lease is unauthorized and would be invalid.

STATE BOARD OF ACCOUNTS: Remedy in case of defaulted ditch bonds.

Ditch Bonds: Remedy in case of default.

January 18, 1943.

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

Dear Sir:

This will acknowledge receipt of your letter of January 16, 1943, requesting my opinion upon the following questions, to wit:

"1. Does the statute of limitation cease to run on the lien of a ditch assessment when the real estate
liable for such assessment is sold at tax sale and certificate of sale is issued therefor?

2. If the tax sale the real estate liable for a delinquent ditch assessment is sold, does the ditch assessment lien become a regular tax lien?

3. If the sale of real estate at tax sale for delinquent ditch assessments is held invalid, does the lien of the tax certificate of purchase issued expire with the lien of the original ditch assessment?

4. Assuming that there is no money in the ditch fund pertaining to a particular ditch, what rights does a bondholder have to enforce collection of the delinquent ditch assessments against real estate sold at tax sale and which delinquent assessments were not included in such sale?

5. If the holder of bonds issued in anticipation of the collection of ditch assessments, buys real estate sold at tax sale for delinquent ditch assessments on such ditch:
   (a) What additional rights does he obtain?
   (b) What are his rights to enforce his tax lien?"

Your letter fails to state under what Act the ditch assessments or the bonds issued under ditch establishment proceedings have been made or issued, as the case may be, and for this reason I must assume that such ditch assessments or bonds have been issued under Chapter 264, Acts of 1933 and amendatory Acts thereto and what I have to say in this opinion will be based upon that assumption.

1. Replying to Question No. 1, it is my opinion that the statute of limitations is tolled and ceases to run if and when the real estate liable in a ditch assessment proceeding has been sold by the county treasurer to enforce the payment of the delinquent assessment in the same manner that real estate is sold for delinquent taxes. This is true for the reason that the sale of the real estate for the delinquent ditch assessment is one of the methods provided by the statute for the enforcement of the collection of the assessment and such sale has the same force and effect as instituting an action to enforce a debt. It is a well established principle of law that in such instances the commencement of the action tolls the running of the statute of limitations whatever the period may be.
2. Answering Question No. 2, it is my opinion that the tax sale of the real estate liable for a delinquent ditch assessment has the same force and effect as a sale of real estate for the payment of delinquent state, county and municipal taxes. Burns’ Revised Statutes 1933, Sec. 27-134, being Section 34 of Chapter 264, Acts of 1933, expressly provides as follows:

"* * * Such assessment shall constitute a lien upon such tracts or parcels of land, respectively, and shall be collected at the same time and in the same manner as taxes are collected; and when collected, shall be applied to the ditch improvement fund; and in the event that such assessments, or one or more of them shall not be paid when due, such failure to pay shall result in the same penalties as attach upon the non-payment of taxes, as provided in cases of delinquent taxes, and such lands shall, upon the failure of payment of such assessments or installment, or any part thereof, be placed upon the list of lands to be sold at tax sale, and shall be sold at tax sale at the same time and in the same manner as is provided for under the general law for making tax sales, and the same penalties shall attach and the same rights shall be acquired upon purchase at such tax sale as in other cases, including the execution and delivery of tax deeds and the rights and remedies provided for in cases of property sold at tax sales. * * *"

As above stated, when the real estate is sold at tax sale to enforce the payment of the delinquent ditch assessment, the effect is the same as in other tax sales of real estate, except however, that the proceeds derived from such sale are inferior to any lien for state, county and municipal taxes. Section 35 of the same Act, being Burns’ Revised Statutes 1933, Sec. 27-135, expressly provides that the amount of such ditch assessment shall have priority and follow all other improvement liens upon the affected real estate in order as to the date of the attachment of the assessment. This section of the statute does not provide that the ditch assessment lien shall be superior to the lien for taxes or any other liens
including mortgages except improvement liens of a similar character. It is established by the decisions of the Supreme and Appellate Courts of Indiana that ditch assessment liens are purely statutory and their character, extent and priority must be determined and controlled solely and exclusively by the language of the statute whereby such liens are created. See Citizens, etc., v. Fletcher, etc. (1934), 207 Ind. 328, at 330; Marshall, etc., v. Watkins (1939), 106 Ind. App. 235, at 240. Under prior statutes it has been expressly held that drainage assessment liens are inferior to general tax liens. See McCollum v. Uhl, 128 Ind. 304; Allen v. Rice, 16 Ind. App. 572; Ellison v. Branstrator, 45 Ind. App. 307.

3. Answering Question No. 3, supra, it is my opinion that in view of the language contained in Sec. 27-134 Burns' Revised Statutes 1933, which provides that the same rule shall apply in cases of sale of real estate for delinquent ditch assessments as in case of the sale of real estate for delinquent taxes, the lien created by the statute for the delinquent ditch assessment is transferred to the purchaser of the certificate issued at such tax sale and such purchaser is subrogated to all the rights of the lien created by the statute in the event the tax sale is held to be invalid and that in an appropriate action instituted by the holder of the tax certificate at such sale, it would be the duty of the court to determine the amount of the lien and order the real estate sold to satisfy such lien the same as in other tax sales where, for any reason, the sale is proven to be invalid. For this reason the lien could be enforced even though the lien for the ditch assessment has expired under the statute, provided, of course, that the tax sale was held prior to the expiration of the original ditch assessment lien.

The statute regulating the sale of real estate for delinquent taxes provides that the purchaser is not entitled to a tax deed until the expiration of two years from the date of the tax sale (Burns' Revised Statutes 1933, Sec. 64-2101) and since the running of the statute of limitations is tolled by the tax sale itself, the lien created by the statute and transferred to the purchaser at the tax sale would continue and the purchaser would have the right to enforce his lien by the sale of the property if for any reason it is established that the tax sale or the tax deed issued pursuant thereto is invalid.
4. In answering Question No. 4, it is necessary to state that the statute providing for the establishment of drainage provides two methods for the payment thereof. The first is by assessments made against each particular tract of real estate involved and when this assessment has been duly determined as provided by the statute, it is placed upon the tax duplicate and becomes a lien against the particular real estate involved. (Burns' Revised Statutes 1933, Sec. 27-134.) The second method is by the issuance of bonds by the board of county commissioners to reimburse the ditch improvement fund. (Burns' Revised Statutes 1933, Sec. 27-136.) The following section, Burns' Revised Statutes 1933, Sec. 27-137, provides that the bonds so issued shall not be an obligation of the county issuing such bonds, but such bonds shall be a lien as provided in Section 35 of the Act (Burns' Revised Statutes 1933, Sec. 27-135) against each parcel of real estate described as assessed for benefits in each ditch so bonded to the full extent of the unpaid assessment thereon. It is my opinion that if bonds have been issued, as provided by the statute, the bondholder is restricted and limited to his remedy under the bond and that in order to enforce the payment of the ditch assessment, such bondholder is required to file suit to foreclose the lien created by the statute and held by him under and by virtue of the bond and that in cases where bonds have been issued, any sale of the real estate to collect the delinquent installments would be invalid. In other words, the holder of the bond, by accepting or purchasing the bond, elects to enforce the payment of the ditch assessment under the bond and he cannot pursue the first remedy of enforcing the collection of his ditch assessment by a tax sale of the real estate.

Your fourth question also asks what right does a bondholder have to enforce collection of the delinquent ditch assessments against real estate sold at a tax sale and which delinquent assessments were not included in such sale. I understand this inquiry to mean that in the case assumed in your question, the real estate has been sold by the county treasurer for delinquent state, county and municipal taxes and was not sold to enforce the payment of any delinquent ditch assessment. If this is true, then the holder of the bond, issued for the ditch assessment, would have the right to institute an
action to foreclose the lien held by virtue of his bond regardless of the tax sale held because of the delinquent state, county and municipal taxes.

5. In answering the first half of your fifth question, I call your attention to my answer heretofore given to your fourth question in which I stated that it was my opinion that if bonds had been issued as provided by the statute, the bondholder would be restricted and limited to his remedy under the bond and that any sale of the real estate by the county treasurer to collect the delinquent installments of the ditch assessment would be invalid and for this reason the bondholder who purchased the real estate, sold at tax sale for delinquent ditch assessments on such ditch, would not acquire or obtain any additional rights.

In answer to the second half of your fifth question, it is my opinion that the bondholder would be limited to his rights under the bond to enforce his tax lien as heretofore stated in answer to Question No. 4.

With reference to the length of time which is given by statute for the enforcement of any lien for ditch assessments, I call your attention to Sec. 27-140 Burns’ Revised Statutes 1933, Supp. of 1942, which is Section 1 of Chapter 73, Acts of 1941, which expressly provides that “the lien of all assessments for ditches, drains, and dredges, where such ditch, drain or dredge has been completed, shall cease and expire five years after the date on which the last payment on such assessment is due and payable as shown by the record creating and effecting such lien.” Under this statute, it is my opinion that any action or remedy to enforce the lien, either by tax sale or by an action upon the bond, must be commenced within five years from the date on which the last payment on the assessment is due and payable as shown by the record. This is true for the reason that under the decisions of the Supreme and Appellate Courts of Indiana, the Legislature has the right to limit the time for the enforcement of any lien if such legislation pertains only to the remedy whereby the substantive right may be enforced. (See Citizens, etc., v. Fletcher, etc., 207 Ind. 328, at 330; Marshall v. Watkins, 106 Ind. App. 240.)

Trusting that I have fully answered each of your questions, I beg to remain.