STATE BOARD OF ACCOUNTS: Whether Chapter 314 of the Acts of 1943 authorizes payment of the expense of cleaning and repairing private ditches and drains out of the general fund of the county.

June 11, 1943.

Hon. Otto K. Jensen,
State Examiner,
Department of Inspection and Supervision of Public Offices,
State House,
Indianapolis, Indiana.

Dear Mr. Jensen:

I am in receipt of your letter dated June 7th, requesting an interpretation as to the provisions of Chapter 314 of the Acts of 1943, which is entitled "An act concerning drainage." Your specific question reads as follows:

"1. Does chapter 314 of the Acts of 1943, authorize the payment, from the general fund of the county, the expense of cleaning and repair of private ditches and drains constructed over and upon the land of two or more owners by private contract?"

Section 1 of Chapter 314 reads as follows:

"Be it enacted by the General Assembly of the State of Indiana, That the cleaning, repairing and general superintendence of all open ditches or drains other than open dredge ditches of court record, and all tile ditches or drains having tile eight inches in diameter or larger which directly or secondly drain two or more tracts of farm lands owned by two or more different owners and not under common ownership directly or indirectly into any established ditch, tile, drain or live stream that may have been, or may hereafter be, constructed either cooperatively or under private contract or by virtue of any law of this state shall be under the exclusive charge and supervision of the county surveyor of the county in which such ditches, drains or tile drains or any part thereof are located, and it shall be the duty of the county surveyor to see that all such ditches or drains or such part or parts
thereof as lie within his jurisdiction, are cleaned and kept open and in proper repair and free from obstructions, and in such manner that they will fully and completely discharge the functions for which they were designed and intended, and such surveyor shall likewise have and exercise general supervision over such ditches and drains when the work of cleaning and repairing shall have been completed.”

Burns’ R. S. 1933, Section 1-201, provides:

“The construction of all statutes of this state shall be by the following rules, unless such construction be plainly repugnant to the intent of the legislature or of the context of the same statute:

“First. Words and phrases shall be taken in their plain, or ordinary and usual, sense. * * *”

The Supreme Court of Indiana has expressly held that in construing a statute the court should look to the language used and give literal interpretation thereto, if such language is plain, unambiguous and definite, and that the statute must be held to mean what it plainly says. See

Cheney v. State, 165 Ind. 121 on 125;
Rogers v. Calumet, etc., 213 Ind. 576;
Pabst, etc. v. Schuster, 55 Ind. App. 375.

Applying the foregoing rule of construction to the language contained in Section 1 of Chapter 314, Acts of 1943, it is my opinion that all tile ditches or drains having tile eight inches in diameter, or larger, which directly or secondly drain two or more tracts of farm land, owned by different owners, directly or indirectly into any established ditch, tile, drain or live stream that has been, or may hereafter be, constructed either cooperatively or under private contract, or by virtue of any law of this state, comes within the provisions of the act and under the supervision of the county surveyor.

Therefore my opinion is that your question should be answered in the affirmative provided the ditches and drains referred to, either directly or indirectly, empty into any established ditch, tile, drain or live stream which has been constructed either under private contract or by virtue of any drainage law of this state.