which provides that the cost of cleaning out and repairing ditches and drains may be made by assessment against the real estate benefited thereby.

Therefore, it is my opinion that in the enactment of Chapter 314, Acts 1943, the Legislature had in mind that the county council has the power and authority to limit the amount which may be spent upon the cleaning out and repairing of any one ditch by limiting the amount of money to be appropriated for such purpose and thereby requiring the work to be done under and pursuant to the provisions of Chapter 264, Acts 1933, and the amendatory Acts thereof.

STATE HOUSING BOARD: Liability of local authorities with respect to residents upon Federal Government owned lands within the state but which have not been ceded to the Federal Government.

October 30, 1943.

Mr. T. A. Moynahan, President,
State Housing Board of Indiana,
850 North Pennsylvania Street,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in which you state that in several communities throughout the State of Indiana the United States Government has acquired land and developed certain Federal war housing projects, some of which projects being operated directly by the Government and the remainder leased to and operated by local housing authorities.

You further state that in each case the Government acquired in its name and owns the land and the projects, among which are those located in the City of Evansville and adjacent thereto; in Perry Township, Martin County, known as Burns City and Crane; in the City of Fort Wayne; in Union Township, LaPorte County, known as Kingsford Heights Project; and the Cities of Charlestown, New Albany, and South Bend.

You further state that the land for the majority of said projects was acquired by the United States Government under Public Law No. 849, 76th Congress, approved October 14,
1940, as amended, popularly known as the Lanham Act. The land for the balance of the projects, you state was acquired by the United States Government under Public Law No. 9, 77th Congress, approved March 1, 1941, as supplemented by Public Law No. 73, 77th Congress, approved May 24, 1941, and Public Law No. 353, 77th Congress, approved December 17, 1941, and referred to as the Temporary Shelter Acts.

You further state that there is no evidence that the State of Indiana has ceded or attempted to cede exclusive jurisdiction over the lands involved to the United States Government nor that the United States Government has requested, accepted, or asserts exclusive jurisdiction over the lands involved. I assume this statement is based upon the fact that the Government has not attempted to comply with Section 62-1001, Burns' Indiana Statutes Annotated, which, in order to amount to a cession of jurisdiction by the State, requires the United States Government to prepare and file an accurate description and plat of such lands with the Governor of the State, which, as to Indiana, would ordinarily operate as an acceptance by the United States Government of the provisions of the Indiana statute. This opinion likewise is based upon the assumption that no such plat has ever been filed by the United States Government as to any of the projects named. Based upon the above facts, you submit the following questions and request that an official opinion be written in answer thereto.

"1. Has the exclusive civil and criminal jurisdiction of such federal public war housing projects been ceded by the State of Indiana to the United States of America and such cession accepted by the United States of America, in view of the foregoing constitutional and statutory provisions, so as to in any way relieve public officers of this State and the local communities of their jurisdiction, responsibility and duties with regard to the tenants of such projects?

"2. Has concurrent civil and criminal jurisdiction been ceded to the United States of America so as to in any way relieve public officers of this State and the local communities of their jurisdiction, responsibilities and duties with regard to the tenants of such projects?"
“3. If your answers to questions 1 and 2 are in the negative, have the public school corporations of the State, including school townships, school towns, and school cities, county superintendents of schools, the State Superintendent of Public Instruction, and other school officials, been relieved of any jurisdiction, responsibilities, and duties with regard to the children of school age residing in such projects and, if so, is this violative of the Fourteenth Amendment to the United States Constitution and Article 8, Section 1, of the Constitution of the State of Indiana?

“4. If your answers to questions 1 and 2 are in the affirmative, and notwithstanding the fact that in each case the domicile of the tenants and, in most cases, their places of occupation, are on property owned by the Federal Government:

“(a) Are such tenants immune from the civil and criminal process of the State?

“(b) Are such tenants relieved and exempt from the obligation to pay personal property, poll, and gross income taxes?

“(c) Are such tenants immune from arrest for the violation of state law?

“(d) Do state and local police and peace officers have the authority to enter upon said property, and within the constitutional limitations subject the homes and the persons of such tenants to search and seizure and make arrests for violations of state laws? and

“(e) Are such tenants, if otherwise eligible under the law, entitled to vote in state and local elections?”

Subdivision 17 of Section 8 of Article 1 of the Constitution of the United States provides as follows:

“The congress shall have power * * *

“(17) To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of govern-
ment of the United States, and to exercise like author-
ity over all places purchased by the consent of the
legislature of the state in which the same shall be, for
the erection of forts, magazines, arsenals, dockyards,
and other needful buildings; * * *.”

The consent of the legislature of Indiana contemplated by the
above constitutional provision has been conditionally given by
Section 62-1001, supra, provided an accurate description and
plat of such land so acquired has been filed with the Governor
of the State, and provided also that the language “other need-
ful buildings” is sufficient to embrace the type of improve-
ments referred to in your request. My attention has been
called to the case of James v. Dravo Contracting Company,
302 U. S. 134, in which it is held by the Court that “other
needful buildings” as used in Article 1, Section 8, supra, em-
braces:

“whatever structures are found to be necessary in the
performance of the functions of the Federal Govern-
ment.”

James v. Dravo Contracting Co., 302 U. S. 134
at 143.

Note also the following, quoting from page 142:

“Are the locks and dams in the instant case ‘needful
buildings’ within the purview of Clause 17? The State
contends that they are not. If the clause were con-
strued according to the rule of *e*jusd*em* *generis, it
could be plausibly contended that ‘needful buildings’
are those of the same sort as forts, magazines, arsenals,
and dock-yards, that is, structures for military pur-
poses. And it may be that the thought of such ‘strong-
holds’ was uppermost in the minds of the framers.
Elliott’s Debates, Vol. 5, pp. 130, 440, 511; Cf. Story on
the Constitution, Vol. 2, Sec. 1224. But such a narrow
construction has been found not to be absolutely re-
quired and to be unsupported by sound reason in view
of the nature and functions of the national government
which the Constitution established.”
It appears that the improvements described in your request are within the provision of the United States Constitution providing that Congress shall have power "to exercise exclusive legislation in all cases whatsoever, over * * * all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; * * *

However, quite irrespective as to whether the buildings and real estate upon which they are situated are of such a type as would authorize the United States to acquire exclusive jurisdiction, I think it must be apparent, from the statement of facts already announced, that the full terms of the cession as provided by the Indiana Statute, supra, has not been complied with, nor has the Government accepted jurisdiction even though the language of the statute of Indiana is broad enough to comply with the constitutional provision requiring the consent of the legislature of the State to such cession. I make this statement because of the fact that a cession by the State has not resulted from the facts as stated, having regard solely to the Indiana statute, but on the further ground of lack of acceptance of such consent by the Government. It is well settled that the Government may acquire title to real estate within the boundaries of a state in the exercise, if necessary, of eminent domain, but the acquiring of title to such real estate alone does not amount to a cession of jurisdiction. As was said by the Court in the case of Kohl et al v. United States, 91 U. S. 367 at page 373:

"The proper view of the right of eminent domain seems to be, that it is a right belonging to a sovereignty to take private property for its own public uses, and not for those of another. Beyond that, there exists no necessity; which alone is the foundation of the right. If the United States have the power, it must be complete in itself. It can neither be enlarged nor diminished by a State. Nor can any State prescribe the manner in which it must be exercised. The consent of a State can never be a condition precedent to its enjoyment."
Thus far, the Court is speaking of the exercise of the power of eminent domain by which title is acquired, but when it comes to the question of jurisdiction and the transfer of jurisdiction, the following, immediately following the above quotation, is the rule. As stated by the Court:

"Such consent is needed only, if at all, for the transfer of jurisdiction and of the right of exclusive legislation after the land shall have been acquired."

This is directly in line with the United States Constitutional provision contained in Article 1, Section 8, where it is provided that Congress shall have power to exercise exclusive jurisdiction "over all places purchased by the consent of the legislature of the state in which the same shall be for the erection of forts, magazines, arsenals, dock-yards and other needful buildings;" (our emphasis). In this same connection, I call your attention to a quotation in the opinion of the Court in James v. Dravo Contracting Company, supra, and appearing on page 147 of the report where it is said:

"It is not questioned that the State may refuse its consent and retain jurisdiction consistent with the governmental purposes for which the property was acquired. The right of eminent domain inheres in the Federal Government by virtue of its sovereignty and thus it may, regardless of the wishes either of the owners or of the States, acquire the lands which it needs within their borders. Kohl v. United States, 91 U. S. 367, 371, 372. In that event, as in cases of acquisition by purchase without consent of the State, jurisdiction is dependent upon cession by the State and the State may qualify its cession by reservations not inconsistent with the governmental uses."

In that same connection, note also the language of the Court in the case of Silas Mason Company et al. v. Tax Commission of Washington et al., 302 U. S. 186 at page 197:

"The acquisition of title by the United States is not sufficient to effect that exclusion. It must appear that the State, by consent or cession, has transferred to the
United States that residuum of jurisdiction which otherwise it would be free to exercise."

Note: The "exclusion" referred to above was the taxing authority of the state and the exercise by the state of its police power.

I think it is likewise true that, under the facts as stated by you, the United States Government has never accepted jurisdiction of the tracts referred to, even if it could be held that the consent of the state to such exclusive jurisdiction had been unconditionally given. Indeed, I find that the Federal Government, instead of accepting jurisdiction of the above tracts, has expressly provided that the acquisition of such real property as authorized by Congress in the Lanham Act, which is made applicable to the other tracts,

"shall not deprive any State or political subdivision thereof * * * of its civil and criminal jurisdiction in and over such property, or impair the civil rights under the State or local law of the inhabitants on such property."

See Section 1547, Title 42, 1942 Cumulative Annual Pocket Supplement, U. S. C. A.; also Section 1552 of the same supplement.

Upon the basis of the facts and applicable law as above indicated, in my opinion both your first and second questions should be answered in the negative.

Your third question, by reason of the method in which it is stated, cannot be fully answered categorically. In my opinion, however, the public school corporations of the state, including school townships, school towns, and school cities, city superintendents of schools, the State Superintendent of Public Instruction, and other school officials have not been relieved of any jurisdiction, responsibility, or duty with regard to the children of school age residing in such projects. This part of your third question having been answered as above, the second part requires no answer.

Your fourth question contains five subdivisions, for which you request an answer if questions 1 and 2 are answered in
the affirmative. Since questions 1 and 2 are answered in the negative, apparently no further answer is required as to question 4. I think, however, I probably should indicate my opinion upon these particular subjects embodied in question 4. Subdivision (a) is as follows:

"(a) Are such tenants immune from the civil and criminal process of the State?"

The answer is No.

Subdivision (b) is as follows:

"(b) Are such tenants relieved and exempt from the obligation to pay personal property, poll, and gross income taxes?"

The answer to this question is likewise in the negative.

Subdivision (c) is as follows:

"(c) Are such tenants immune from arrest for the violation of state law?"

The answer is No.

Subdivision (d) is as follows:

"(d) Do state and local police and peace officers have the authority to enter upon said property, and within the constitutional limitations subject the homes and the persons of such tenants to search and seizure and make arrests for violations of state laws?"

The answer to this question is that such officers have the same authority as in other parts of the state.

Subdivision (e) is as follows:

"(e) Are such tenants, if otherwise eligible under the law, entitled to vote in state and local elections?"

I see no reason why the answer to this question should not be in the affirmative. In this connection, I call your attention to two cases in which this question has been under consideration. The first case to which I desire to refer is the case of State ex rel. Parker, Attorney General et al. v. Cocoran, Com-
missioner of Elections of Kansas City et al., reported in 128 Pac. 2d at 999. In the above case, referring to Section 1547, Title 42, U. S. C. A., supra, the Court held that the term "civil rights" should be construed as broad enough to include political rights based upon the provision of Section 1547, supra. The Court sustained the right to register for voting wherever the above section applied.

I call your attention also to Johnson v. Merrill, County Clerk, reported in 126 Pac. 2d 873, in which case the same conclusion was reached.

SECRETARY OF STATE: Construction of 1943 Act for the organization and reincorporation of churches with respect to voting rights of members, etc.

November 2, 1943.

Mr. Warren Day,
Chief Corporation Counsel,
Office of Secretary of State,
State House,
Indianapolis, Indiana.

Dear Mr. Day:

I have your letter of September 29 in which you request my official opinion upon several questions arising from Chapter 108 of the Acts of the 1943 General Assembly entitled: "An Act for the incorporation, organization and reincorporation of churches, religious societies and religious organizations." Your first question is:

"Do the members under said Act have voting rights?"

Undoubtedly the members of such a corporation do have voting rights which cannot in this opinion be specifically enumerated and delimited because those rights will necessarily depend to a great extent upon the articles of incorporation and by-laws. We do, however, know that certain voting rights are secured to the members by law. For instance, in Section 2