Indiana Statutes Annotated, Dec., 1941, Cumul. Supplmt., 26-1601 for a possible exception or modification applicable in all counties having a population of 111,000 to 160,000 at the preceding census; the authority of towns to make such sales will, in general, be controlled by 9 Burns’ Indiana Statutes Annotated, 1933 Ed., 48-301, Clause 2; and the general authority of cities to make such sales is contained in 9 Burns’ Indiana Statutes Annotated, 1933 Ed., 48-1407, Clause 50 (but see 9 Burns’ Indiana Statutes Annotated, 1933 Ed., 48-7005, Clause 5, applicable in cities of the first class).

In response to your specific inquiry I do not know of any short-cut methods to accomplish the ends you desire. The statutory methods must be followed in each instance.

STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS: Whether a county surveyor who is not a licensed engineer is disqualified from acting as an engineer in drainage proceedings.

May 7, 1942.

Mr. L. T. Gootee, Secretary,
Indiana State Board of Registration for
Professional Engineers and Land Surveyors,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion on the following question:

“Is a County Surveyor, who has not met the requirements of Chapter 148, Acts of 1935, to practice professional engineering, qualified by virtue of his office as County Surveyor to accept the appointment as engineer for the allotment for recleaning and reconstruction of a public ditch or drain, in which said engineer is in charge of the reconstruction and final acceptance of the work?”

The answer to this question requires an examination of Chapter 264 of the Acts of 1933 concerning drainage. Section 20 of said Chapter 264, as amended by Chapter 162, Acts of
1937, Section 2, (Burns' 1933 (Pocket Supp.) Sec. 27-120) provides for the filing of a petition for cleaning public ditches so as to conform to the original specifications, and provides further that:

"Such repair, extension or change or the installation, construction and maintenance of control dams therein shall be executed in conformity to the preceding sections of this act, and all provisions thereof, relative to notice and remonstrance thereto and proceedings of such remonstrance, shall, so far as applicable hereto, apply to the execution of such repair, change or extension, or the installation, construction and maintenance of control dams therein. The duties of the surveyor shall, so far as applicable to the proceedings thereunder, be the same as in case of original construction of public drains. * * * The provisions of this section relative to the construction of any work or drainage shall, so far as applicable hereto, if not in conflict therewith, govern in the proceedings for and execution of the repair, change or extensions or the installation, construction and maintenance of control dams therein, herein provided."

Section 2 of said Chapter 264, Acts 1933, provides as follows:

"The township trustee(s) shall be ex officio deputies of the county surveyor for their respective townships but shall receive no additional compensation, and shall not be required to give any additional bonds other than their bonds as township trustee. The surveyor is hereby authorized to appoint as many deputies and assistants as his work shall require, subject, however, to the approval of the board of county commissioners. If the county surveyor is not a licensed engineer, or shall be disqualified by reason of his ownership of lands affected by any work or kinship to any person whose lands shall be affected, the court shall appoint a competent, disinterested licensed engineer to act in the matter, who shall have the same authority as the regularly elected surveyor, being bound by the same oath, and shall give bond as fixed by the court.
He shall preserve in his office and turn over to the surveyor legible copies of all notes made by him in the discharge of his duties."

(Burns’ Indiana Statutes, 1933, Sec. 27-102.)

It is apparent from the foregoing sections that a county surveyor who is not a licensed engineer is disqualified from accepting the appointment as engineer for the alteration or repair of public drains pursuant to Chapter 264, Acts 1933, Section 20, as amended by Acts 1937, Chapter 162, Sec. 2, supra. Although the county surveyor is given the duty of general supervision over the construction and repair of public drains, the section requiring the appointment of a licensed engineer to act if the county surveyor is not a licensed engineer compels the conclusion that it was the intent of the legislature that the matter of construction, repair and maintenance of public drains be placed under the control of engineers who are licensed according to the provisions of Chapter 148, Acts of 1935, Burns’ 1933, Sec. 63-1517.

This conclusion is inescapable unless the provisions of Section 19, Chapter 148, Acts 1935, can be interpreted as an exception. Said section, insofar as it is pertinent, reads as follows:

“In the following cases persons shall be exempt from the provisions of this act: * * * (G) County Surveyors. The practice of land surveying by any duly elected and qualified county surveyor of any county in the State of Indiana.”

It is to be noted that the foregoing section does not mention the practice of professional engineering, which is defined by said Chapter 148, Acts 1935, as including, among other things, professional services in planning, designing, or responsible supervision of any construction in connection with any public or private project wherein the public welfare, or the safeguarding of life, health or property, is concerned, when such professional service requires the application of engineering principles or data.

Consequently, it is my opinion that unless a county surveyor is a licensed engineer he is disqualified from acting and the court must appoint a licensed engineer in drainage proceedings of the nature referred to in your inquiry.