The Legislature passed an additional act in 1937 which provided for nomination by the Clerk of the Supreme and Appellate Courts of special judges. Upon failure to qualify and upon certification by the clerk of the trial court that such special judge failed to qualify then the Clerk of the Supreme and Appellate Courts nominated additional judges. Burns 2-1430.

It is my opinion that a special judge should be allowed twenty-five dollars ($25.00) per day in those cases where the regular judge certifies to the Governor request for appointment of a special judge as provided by Acts of 1911, Ch. 159, P. 1, p. 418; amended by Acts of 1919, Ch. 70, P. 1, p. 430; Burns' Statutes 1933, Sec. 2-1415.

Where the Governor appoints a special judge upon certificate by the clerk pursuant to the Acts of 1903, Ch. 195, then such judge should receive ten dollars ($10.00) per day and mileage as provided in the Acts of 1941, Ch. 200, P. 1, p. 617; Burns' Supp., Sec. 2-1416.

It is my opinion that in all other cases within the statutes above described that the compensation of the special judges is ten dollars ($10.00) per day.

SOIL CONSERVATION: Whether State Highway Commission may make contributions under Soil Conservation District Act.

STATE HIGHWAY COMMISSION: Whether Commission may make contributions under Soil Conservation District Act.

September 24, 1941.

Mr. John Wolfe, Chairman,
Board of Supervisors,
Knox County Soil Conservation District,
Vincennes, Indiana.

Dear Sir:

I have your letter outlining plans of your board for a drainage project within your district which plans call for construction of a ditch to be paid for by owners of the land affected. You state that all landowners concerned, including the State Highway Commission, through its district engineer, agree that the amount which each is called upon to pay is fair and that all except the highway commission have placed the amount of
their payments with the chairman of the drainage association formed of the landowners, for payment to the contractor upon completion of the improvement.

The question raised is as to whether or not there is any statutory authority for the State Highway Commission to make payment toward the cost of the improvement.

There is in effect a statute, adopted prior to the adoption in 1937 of the Soil Conservation Districts Act (Acts 1937, Ch. 232, p. 1120; Sec. 15-1801 et seq. Burns’ Ind. Stats. Ann., supra, 1941), which authorizes construction, repair and maintenance of drainage improvements. (Acts 1935, Ch. 264, p. 1168; Sec. 27-101 et seq. Burns, etc., supra, 1933.)

Under this drainage statute assessments covering the cost of construction of a drainage improvement ultimately come to the court for confirmation after having been originally made by the County Surveyor pursuant to a petition authorized to be filed in the circuit or superior court or before the Board of County Commissioners.

In an official opinion to the State Highway Commission dated October 18, 1933, the Attorney General construed the 1933 drainage act as authorizing the State Highway Commission to pay an assessment made against it in a proceeding for the construction of a drainage improvement, when the assessment has been confirmed by the court in accordance with Sec. 16 of the drainage act (Sec. 27-116, Burns, etc., supra.) Opinions, Attorney General of Indiana, 1933, p. 479. This result was reached upon consideration of the provisions of the 1933 drainage act, supra, which indicate an intention that public highways might be benefited by such improvements and that benefits should be assessed against cities, towns, or other public or private corporations including any land, right, easement or water power affected. (Sec. 27-109.) Also, consideration was given that part of the appropriation act concerning the highway commission making provision for “payments for judgments and interest thereon and for making of settlements by the way of compromise.”

The Soil Conservation Districts Act, after describing the existing conditions which the act is intended to meet and the consequences ensuing from such conditions, states the legislative determination of appropriate corrective methods, including “the carrying on of engineering operations such as the construction of terraces, terrace outlets, check-dams, dykes, ponds, ditches, and the like” and numerous other methods not germane.
to this inquiry. (Sec. 15-1802, Burns, etc., supra, 1941.) Provision is made for a State Soil Conservation Committee (Sec. 15-1804) and the establishment of soil conservation districts which districts shall constitute governmental subdivisions of the state and “a public body corporate and politic.” The governing body of such district shall consist of supervisors selected as provided in the act.

Broad and comprehensive powers, designed to accomplish the purposes of the act are conferred upon the supervisors of a district so organized. These powers which have a bearing upon the question here involved are as follows:

1. To carry out preventive and control measures within the district, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, construction of terrace, terrace outlets, check-dams, dikes, ponds, ditches and the like. (Sec. 15-1808, Cl. 1).

2. To cooperate, or enter into agreements with any agency, governmental or otherwise, or any occupier of lands within the district, in the carrying on of erosion control and prevention operations within the district. (Sec. 15-1808, Cl. 2.)

3. To manage as agent of this state or any of its agencies, any soil conservation, erosion-control or erosion-prevention project within its boundaries; to act as agent for this state or any of its agencies, in connection with the acquisition, construction, operation or administration of any soil conservation, erosion-control or erosion-prevention project within its boundaries; to accept donations, gifts and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or extend such moneys, services, materials or other contributions in carrying on its operations. (Sec. 15-1808, Cl. 7).

As indicating a legislative intent that the supervisors of a district were being given authority to receive and expend moneys in carrying out its projects, Cl. (9) of Sec. 15-1808, should be noted:

“As a condition to the extending of any benefits under this act to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.”
Provisions calling for the cooperation of state agencies with supervisors of a district are contained in Sec. 14 of the Act:

"Agencies of this state which shall have jurisdiction over, or be charged with the administration of any state-owned lands, and of any county, or other governmental subdivision of the state, which shall have jurisdiction over, or be charged with the administration of, any county owned or other publicly owned lands, lying within the boundaries of any district organized hereunder, shall cooperate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this act. The supervisors of such districts shall be given free access to enter and perform work upon such publicly owned land." (Sec. 15-1814).

From the foregoing, there can be no question as to the authority of the supervisors of a district to decide upon the construction of a ditch, if found essential to a soil conservation project.

Such construction, if decided upon, may be withheld, under Sec. 15-1808, cl. (9), supra, until private owners of land to be benefited make contributions "in money, services, materials or otherwise to any operations conferring such benefits." Other provisions hereinafter referred to indicate that public bodies may make payments toward a project benefiting their lands, but the statute does not authorize the supervisors to require such bodies to make their payment as a condition to be performed prior to undertaking the construction.

That it was contemplated that federal or state ownership of lands to be benefited should not constitute an obstacle to carrying out such a project is indicated by the provisions of Sec. 15-1808, Cl. 7, particularly the underlined language contained in paragraph 3, supra. Rather the supervisors are authorized to act as "agents" of the public body owning or controlling such lands, in the construction and operation of the project.

In view of the provisions of Sec. 15-1814 directing cooperation between governmental agencies and the supervisors, and the provisions of Sec. 15-1808, Cl. (7) authorizing such supervisors to accept "donations, gifts and contributions" from governmental agencies for use in its operations, the General Assembly has vested in state agencies, such as the State Highway Commission of Indiana, certain authority and discretion relative to soil conservation projects benefiting state highways.
It must be observed that while "cooperation" is directed, the extent of such cooperation is not specifically defined, thus leaving with the state agency having charge of the lands an exercise of discretion as to whether benefits to its lands will justify a disbursement of its funds to the supervisors for construction of the project. If they find in the affirmative, they have authority to "contribute" toward such cost an amount which, in the exercise of their discretion is deemed sufficient. In accordance with the views expressed in the Attorney General's Opinion of October 18, 1933, to the Highway Commission, the amount of such payment which the Commission may determine to make toward the project should be made out of that portion of the funds appropriated to the Highway Commission of Indiana by Ch. 231, Acts of 1941, "for the specific purpose of constructing and improving highways" and designated as "(e) payments for judgments and interest thereon and for making of settlements by the way of compromise."

While, as above pointed out, payment may not be required of a public body before the improvement is made, it would nevertheless be necessary that the justification for such payment, and its amount, be determined, and the decision to make such payment be reached and communicated to the supervisors before construction of the project.

In conclusion, it is my opinion that the State Highway Commission of Indiana may, in the exercise of its discretion, make a payment, having a reasonable relation to the benefits conferred upon its highways, toward the cost of construction of a ditch or drainage improvement project to be constructed by the supervisors of your district as a part of its soil conservation program.