Accounts, State Board Of: Public tile drains, repairs less than $50.00, whether payment may be made out of general ditch improvement fund.

October 13, 1939.

Hon. E. P. Brennan, State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of October 11, 1939, wherein you request an official opinion concerning the provisions of section 6, chapter 225, Acts of 1935, and in which you ask the following questions concerning said Act:

"1. Can the repairs to a public tile drain, costing under $50.00, be paid out of the general ditch improvement fund?

"2. Can the surveyor impose or apportion assessments against the benefited property for repairs to a public tile drain, if the total cost of such repairs is under $50.00?

"3. If questions 1 and 2 are answered in the negative, from what fund can the cost of such repairs be made?"

The provisions of section 48, chapter 264, Acts of 1933, of which the 1935 Act is amendatory, provided for the repair of public tile drains by the county surveyor and that the work need not be done by contract if the cost of such repairs was $50.00 or less. In such instances it was provided that the cost of such repairs should be paid out of the general ditch improvement fund. The 1935 Amendatory Act deleted the provisions relative to payment of such costs out of the general ditch improvement fund and likewise certain language relative to the apportionment and assessment of such costs.

Applying the usual canons of statutory construction, it appears to me that the legislature by deleting these provisions intended that such repairs should not be paid out of the general ditch improvement fund and that such repairs should be made the cost of the county. In other words, the language of the statute is clear and unambiguous and must be given its clear import. There being no contradictory provisions therein, there is no room for interpretation. This being the
case, the following language would seem to govern the repair of public tile drains when such repair costs less than $50.00.

"Upon receipt of such notices such surveyors shall proceed immediately to have such tile drain repaired without advertising, letting a contract or contracts for the performance of the work, if the total costs of such repairs does not exceed $50.00."

The statute likewise explicitly states that the costs of repairs shall be paid out of the ditch improvement fund only when the repairs are made pursuant to a contract or contracts; the provisions of the statute being that repairs costing more than $50.00 shall be by contract. This would consequently prohibit the payment of the cost of non-contract repairs from the ditch improvement fund since payments out of that fund are specifically limited by the amendatory Act to contract repairs costing more than $50.00.

In view of the foregoing, it is my opinion that your first question must be answered in the negative and that the tile drain repairs costing less than $50.00 must be paid out of some fund specifically appropriated therefor as the statute, by its omission, does not include such costs among those to be paid out of the ditch improvement fund.

Your second inquiry must likewise be answered in the negative as there is no statutory authorization in said section which would permit the assessment of lands to defray such costs. The Act specifically limits assessments on benefited land owners to those drain repairs costing more than $50.00.

In answer to your third inquiry, it is my opinion that the cost of repairs amounting to less than $50.00 must be paid out of some fund appropriated for that purpose.

I wish to call your attention to the final provisions of section 1, chapter 110, Acts of 1935, which prohibit the expenditure of any public funds which have not been appropriated for the purposes for which they are to be expended. I quote the following language from said section:

"In all other instances, including all payments from any general or special fund to be used by any county or by the board of commissioners of any county in the construction, maintenance or repairs of any highways or bridges therein, or for any purpose other than as above stated no warrant shall be drawn upon, or money paid
out of the county treasury, unless an appropriation by
the county council therefor has been made, for the
calendar year in which the payment is made, and which
appropriation remains unexhausted: Provided, how-
ever, That nothing contained in this Act shall be so
construed as to apply to any funds received from the
State or the federal government for poor relief, unem-
ployment relief, old age pension or other funds which
may at any time be made available under "The Economic
Security Act," or under any other federal Act provid-
ing for civil and public works projects. (Acts 1899,
ch. 154, sec. 22, p. 343; 1935, ch. 110, sec. 1, p. 407.)"

In conclusion, it is therefore my opinion that before any
legal expenditure can be made for the repair of public tile
drains, the provisions of the last worded statute must be
complied with and specific funds appropriated therefor. This
would, of course, prohibit the payment of such costs out of the
ditch improvement fund.

TAX COMMISSIONERS, STATE BOARD OF: Madison-Mil-
ton Bridge, whether taxes which were delinquent prior
to transfer of property from private corporation to Com-
monwealth of Kentucky are now a lien; method of col-
lection.

Mr. C. R. Benjamin, Commissioner,
State Board of Tax Commissioners,
State House,
Indianapolis, Indiana.

October 17, 1939.

Dear Sir:

This is in answer to your letter of September 25, 1939, con-
cerning the collection of delinquent taxes assessed against a
former owner of the Ohio River Bridge which extends be-
tween the City of Madison, Indiana, and Milton, Kentucky.
Your letter is as follows:

"The State Board of Tax Commissioners has received
the following communication from the treasurer, audi-
tor, assessor and county attorney of Jefferson County
and the city attorney from the City of Madison.