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.

October 17, 1939.

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

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.
'In the year 1929, a New York corporation named Madison Bridge Company, acting under an Act of Congress, authorizing the same, constructed a bridge across the Ohio River at Madison, Indiana, and operated this bridge as a toll bridge until about December 1, 1937. That part of said bridge north of low water on the north side of the Ohio River was assessed for State, county, township and city taxes in the City of Madison, Madison Township, Jefferson County, State of Indiana, and such taxes were paid for all years to and including the taxes for the year 1936, payable in the year 1937.

On the 10th day of December, 1937, the Madison Bridge Company conveyed the bridge (including the part thereof located in the State of Indiana) to the State of Kentucky and the State of Kentucky is now operating said bridge.

At the time the bridge was conveyed, taxes for the year 1937 had become a lien thereon on March 1, 1937, and after the formulation of budgets in the fall of 1937 by various Indiana taxing units, the taxes for 1937 payable in 1938 on the portion of said bridge in the State of Indiana was ascertained to be $4,978.98, based upon a valuation of $125,000.00.

The Madison Bridge Company did not pay these taxes and has now been dissolved and the proceeds of the sale of the bridge we are informed have been paid to a trustee for the bondholders.

The State of Kentucky, through its Attorney General has denied the liability of the State of Kentucky for these taxes, which with penalties thereon now amount to $5,377.30 * * * .

1. In your opinion are delinquent taxes due from the Madison Bridge Company that were a lien upon the property of such company when such property was conveyed from the Madison Bridge Company to the Commonwealth of Kentucky?

2. If such tax claim as is referred to in the letter quoted herein is a legal claim what procedure would you advise in an effort to collect same?"
Attached to your letter is a copy of a deed and agreement by the terms of which the Commonwealth of Kentucky acquired the bridge. From this instrument, dated December 10, 1937, it appears that the bridge property covered by the deed included certain tracts of land in Jefferson County, Indiana. We assume that all of the bridge property covered by the delinquent tax is located on this land and is within the territorial limits of the State of Indiana. The deed contains the following provision:

"Except as herein expressly limited or otherwise specifically indicated, the Bridge Company covenants that it is lawfully seized of the bridge and rights aforesaid and that it has full power and authority to convey same; that said bridge and rights are free from all liens, including taxes, this conveyance being made, however subject to all options, conditions and obligations granted or imposed by the United States of America, the counties of Jefferson, Indiana, and Trimble, Kentucky, the cities of Madison, Indiana, and Milton, Kentucky, and all of such obligations and conditions so imposed and subject to which the rights, grants, franchises and privileges conveyed hereby were granted to the Bridge Company, are now hereby assumed by the Commonwealth, which agrees to perform same."

Under the Indiana Tax Law the lien of the State for all taxes attaches to all real estate on the first day of March annually. The statute is as follows:

"Lien of taxes on real estate.—The lien of the State for all taxes for State, county, school, road, township and all other purposes, and all taxes for city, town or municipal purposes, shall attach on all real estate on the first day of March annually; and such lien on real estate for all taxes due from the owner thereof, which have been heretofore placed on the tax duplicate or which have heretofore accrued or which shall accrue or attach on or before the first day of March, 1919, with interest and penalties in each case, shall continue for ten (10) years from and after the first Monday in May, 1920, and no longer, unless already sold for taxes, and such lien on real estate for all such taxes as shall at-
tach or accrue or become due from the owner thereof from and after the first day of March, 1919, with the interest and penalties in each case, shall continue for ten (10) years from and after the first Monday in May in each year in which such taxes become due and payable according to law, and no longer, unless already sold for taxes; which lien shall in nowise be affected or destroyed by any sale or transfer of any such real estate: * * *"

Acts of 1919, Ch. 59, Sec. 335, Burns Ind. Stat. Anno. 1933, Sec. 64-2825.

The fact that the bridge property was devoted to a public purpose does not affect the legality of the tax or the lien of the State. Neither does the fact that the bridge is an instrument of interstate commerce nor the fact that it spans a navigable river which formed a boundary line between two states nor that it was erected by authority of Congress make it exempt from any of the provisions of the State Tax Law.

Susquehanna Co. v. Tax Comm. (No. 1), 283 U. S. 291;
Pittsburgh, etc., Ry. v. Board of Public Works, 172 U. S. 32;

In the Henderson Bridge case just cited the Supreme Court of the United States held that under the Kentucky tax law the City of Henderson could legally impose a tax on that part of the Henderson bridge between low-water mark on the Ohio side of the Ohio River and the low-water mark on the Kentucky shore.

In my opinion, the tax assessed against the Madison-Milton bridge was a valid lien upon all the bridge property in Indiana.

The next question is whether or not the sale and transfer of the bridge from the private bridge company to the Commonwealth of Kentucky canceled the lien. It is unnecessary to cite authorities to show that parties can not by a contract entered into between themselves bring about a situation so as to exempt property from taxation. This particular question is decided in the Henderson Bridge Company case cited above where the bridge company defended an action to collect taxes
on the ground that it had a contract with a railroad company to use the bridge and the payment of taxes was inconsistent with that contract.

Does the fact that a sovereign state, the Commonwealth of Kentucky, acquired the title to the bridge and now controls it have any bearing on the question? In a former opinion from this office, Attorney General Hoard decided that where another state owns land within the limits of Indiana it acquires such estate subject to all the incidents of ownership and is subject to taxation.

Opinions of 1886, page 34.

The following decisions sustained this view:

State, ex rel., Taggart v. Holcomb, 85 Kan. 138, 50 L. R. A. (N. S.) 244;
Susquehanna Canal Co. v. The Commonwealth, 72 Pa. St. 72;
People v. City of St. Louis, 291 Ill. 650, 126 N. E. 529.

If we were to assume that the Commonwealth of Kentucky was exempt from taxes under the Indiana statutes, nevertheless the lien which attached on March 1, 1937, would not be lost by reason of transfer to one whose property under the Indiana law is exempt from taxation. In the case of Philadelphia v. Pennsylvania Institute, etc., 63 Atlantic 420, a tax had been assessed against certain property, and before the tax was paid, the property was transferred to the Pennsylvania Institute for the Blind, a benevolent institution which was exempt from taxation under the Pennsylvania law. The court decided that inasmuch as the tax was levied before the change in ownership, the lien was not lost. To the same effect is McHenry Baptist Church v. McNeal, 86 Miss. 22, 38 Southern 195. There it was held that property which was subject to a lien when purchased by a church was still subject to the lien notwithstanding church property was exempt from taxation under the state law.

I have not overlooked decisions which hold that where a municipality of a state acquires property in the state on which the tax has not been paid that the lien of the state is extinguished.
Gasaway v. Seattle, 100 Pac. 991, 21 L. R. A. (N. S.) 68, and note;

But the law as stated in those decisions is based upon grounds which do not enter into this Madison bridge question. I am therefore of the opinion that the State of Indiana has not lost its lien upon that part of the Madison-Milton bridge located within the State of Indiana because of its transfer to the Commonwealth of Kentucky.

Your second question raises a problem of policy and of legal procedure. The fact that the State has a lien upon the property in Indiana, given it by statute, does not mean that the enforcement of this lien would exhaust all the methods of collecting the tax. If there are any assets belonging to the Madison Bridge Company they may be pursued. However, I am of the opinion that the lien still holds and should be enforced like any other tax lien on real estate by following out the statute, and if the sale of that part of the bridge in Indiana does not result in a collection of all of the tax, any appropriate proceedings may be had in court to enforce payment.

INSURANCE, DEPARTMENT OF: Public property, whether legally insurable in mutual companies.

October 18, 1939.

Hon. Geo. H. Newbauer,
Insurance Commissioner,
Department of Insurance,
Indianapolis, Indiana.

Dear Sir:

Your letter of October 3 requests an opinion upon the question as to whether public officials may legally insure public property in mutual insurance companies.

Enclosures with your letter furnish an account of the opinion of the Attorney General of Texas which holds that public property can not be insured by mutual companies, such opinion being based upon the constitutional provision of Texas, that "the legislature shall have no power to authorize any county, city, town or political corporation or subdivision of this state to lend its credit or to grant public money or thing of value
in aid of or to any individual, association or corporation what-
soever, or to become a stockholder in such corporation, associa-
tion or company."

Somewhat similar provisions appear in the Indiana Consti-
tution but they are not as broad in their scope or to the
same effect as the Texas provision, and it is my opinion that
a like prohibition does not exist against public officials in
Indiana.

Two opinions of former attorney generals of Indiana, one
by Attorney General U. S. Lesh, of January 17, 1922, and a
second by Attorney General James M. Ogden, of April 24,
1931, I believe are correct in their conclusions that public
property may be insured in this State by mutual companies.

INSURANCE, DEPARTMENT OF: Insurance company or-
 ganized under Act of 1897, right to amend charter.

October 19, 1939.

Hon. George H. Newbauer,
Insurance Commissioner,
Department of Insurance,
State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of September 29th requests an opinion from
me as to whether an insurance company organized and operat-
ing under chapter 195, of the Acts of 1897, may amend its
charter, no provision having been made in that Act, which
relates to assessment insurance companies, for the amendment
of a charter.

My answer to your question is in the negative. Neither the
Act in question nor the provisions of any subsequent law per-
taining to insurance or insurance companies grants any right
or power of amendment of a charter of an assessment com-
pany, and this would seem to be conclusive in the matter.