

OPINION 32

OFFICIAL OPINION NO. 32

December 8, 1975

Honorable Woodrow Wilson
Indiana State Senator
Monroeville, Indiana

Dear Senator Wilson:

This is in response to your request for my official opinion in answer to the following questions:

"1. Are assessments for reconstruction and/or annual maintenance of legal drains property taxes? If so, are they subject to the property tax freeze and the 20% Property Tax Replacement, as authorized by the 1973 tax package?

"2. Are school corporations authorized, under IC 1971, 6-1.1-22-15 or any other statute to withhold delinquent ditch assessments from monies due an employee of the school?"

ANALYSIS

I.

The imposition of property taxes is governed by the provisions of the Indiana Code 1971, Title 6, Article 1.1. The general intent of the statutes is to impose a levy on the valuation of property for the express purpose of financing governmental functions.

The Indiana Drainage Code, Code Sections 19-4-1-1 *et seq.*, creates a drainage board in each Indiana county and sets forth procedures both for the construction of new drains and for the reconstruction, maintenance, or vacating of existing drains. Code section 19-4-7-9 provides that the payment of the entire cost for the construction, reconstruction, and maintenance of legal drains is to be apportioned to the several tracts of land that are assessed in proportion to the benefit percentage assigned to each tract. The statute provides that bonds issued to finance an improvement are not the general

obligation of the county, the drainage board, or any person but give rise to a lien upon the benefited lands in the ratio of the assessment. The collection of the drainage assessment is normally processed by the county treasurer in conjunction with the real property tax. Although Code Section 19-4-7-11 provides for the inclusion of the drainage assessment in the annual property tax assessment statement which is mailed to property owners by the county treasurer, it requires the indication that a drainage assessment is distinct from general taxes.

The drainage assessment is not a tax levied upon all non-exempt property for the support of governmental functions but rather is an attempt to recover the costs of construction, reconstruction and maintenance of legal drainage from the property owners specifically benefited. Because the drainage assessment is not a tax, it is not subject to the property tax freeze or the property tax replacement credit provided in Code Sections 6-1.1-21-1 *et seq.* This interpretation is supported by the fact the legislature, in creating the Property Tax Replacement Fund, specifically excluded special assessments from the term "taxes." Further, Code section 6-1.1-1-17 defines "special assessment" to include a drainage assessment.

II.

Your next question is whether a school corporation is authorized to withhold ditch assessments from money due its employees. Code Section 6-1.1-22-15 provides as follows:

"If the county treasurer finds that a person whose name is certified to him under section 14 [6-1.1-22-14] of this chapter is delinquent in the payment of his taxes, he shall certify the name of that person and the amount of the delinquency to the official of the political subdivision who is to make payment to the person. The disbursing officer shall periodically make deductions from money due the person and shall pay the amount of these deductions to the county treasurer."

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Code Section 19-4-7-11(c) of the Indiana Drainage Code states:

“For the purposes of the collection of any assessment the word ‘assessment’ shall be regarded as taxes within the meaning of, and the manner of collection shall be in accordance with, the Property Tax Collection Act of 1963 as the same may be amended from time to time or replaced, *except that an assessment will not be the personal obligation of the owner of the lands affected by the assessment and only the land actually affected by an assessment shall be sold for delinquency*, and except further that an annual assessment for periodic maintenance which is twenty-five dollars [\$25.00] or less shall be paid at the first time each year when general property taxes are payable.”
(Emphasis mine)

Thus, the Drainage Code, *supra*, clearly provides that the assessment will not be the personal obligation of the owner of benefited lands; only the land actually affected by an assessment shall be sold for delinquency. Specifically Code section 19-4-7-13(a) states that the lien of a ditch assessment shall attach to the lands assessed.

Although a school corporation is a political subdivision within the meaning of Code section 6-1.1-1-12, it may not withhold monies due to an employee to satisfy a delinquent drainage assessment.

CONCLUSION

It is, therefore, my Official Opinion (1) that assessments for reconstruction and/or annual maintenance of legal drains are not property taxes and accordingly are not subject to the property tax freeze and property tax replacement credit provided by the 1973 tax package. It is also my Official Opinion (2), that school corporations are not authorized under IC 1971, 6-1.1-22-15, or any other statute, to withhold delinquent drainage assessments from monies due an employee of the school.