

OPINION 37

OFFICIAL OPINION NO. 37

November 18, 1969

Hon. Eldon F. Lundquist
State Senator
600 East Boulevard
Elkhart, Indiana 46514

Dear Senator Lundquist:

This is in response to your request for an Official Opinion which asks whether residents of the City of Elkhart, who are subject to a levy for the bridge fund established by City Ordinance, can be exempted from the payment of an additional levy for the bridge fund of Elkhart County, which is administered by the County Commissioners.

In my opinion, they cannot be exempted. The authority for the levy of cumulative bridge funds is provided by the Acts of 1951, Ch. 299, Sec. 1, as amended and found in Burns' (1969 Supp.), Section 36-1910, which provides that before such fund can be established, it shall first be approved by the State Board of Tax Commissioners. The procedure for establishing a cumulative bridge fund and the levying of taxes for said fund is set forth in the Acts of 1951, Ch. 299, Sec. 2, as found in Burns', *supra*, Section 36-1911, which provides in part that such proposed levy shall be final and conclusive.

Until the ordinance is repealed, the residents of the City of Elkhart are not relieved from the payment of taxes levied for the cumulative bridge fund of Elkhart County merely because they are also subject to the payment of taxes levied for the cumulative bridge fund for the City of Elkhart.

It may be that sufficient funds are available and will continually become available in the Elkhart *County* Cumulative Bridge Fund to build and repair all bridges in Elkhart County, including those within the corporate limits of the City of Elkhart. If this should occur, and there is no necessity for a separate and additional bridge fund to be levied for the City of Elkhart, the proper procedure to be followed is to file a petition for the reduction or revision of such *city* bridge fund levy, not later than August 1 of any year, as specifically authorized by the Acts of 1951, Ch. 299, Sec. 3, as found in Burns' (1968 Supp.), Section 36-1912.

However, if the City of Elkhart intends to rely on the Elkhart County Bridge Fund to provide for the construction and maintenance of bridges in the City of Elkhart, it should be remembered that said county bridge fund is levied and appropriations therefrom are solely made at the discretion of the board of commissioners of Elkhart County.

It is, therefore, my conclusion that the residents of Elkhart cannot be exempted from the payment of an additional levy for the bridge fund of Elkhart County under the present laws and applicable ordinances.