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from the other subdivisions thereof as well as from all of the rest of the section, the particular reference is intended to apply solely to the subdivision in which it is contained and to exclude its application from all of the rest.’”

In the statute under consideration the Legislature referred to two different classes of duties to be performed by the Lieutenant Governor, the Speaker of the House, and other members of the General Assembly, set out a per diem expense allowance for days spent performing such duties, and specifically excluded the Lieutenant Governor from receiving any expense allowance in connection with one of the two classes of duties. The principle expressed in *Highland Sales* would permit no conclusion but that the Legislature intended that the Lieutenant Governor receive the expense allowance connected with the performance of the other class of duty.

For the above reasons it is my opinion that you, the Lieutenant Governor, are entitled, as President of the Senate, to the \$20.00 per day expense allowance paid to Legislators during the 1965 regular and special sessions of the General Assembly.

OFFICIAL OPINION NO. 16

September 8, 1966

**COUNTY OFFICERS—County Drainage Board—Procedure
for Collecting Assessments—Duties of County Auditor
—Duties of County Treasurer—Option of
Landowners to Pay in Installments.**

Opinion Requested by Mr. Richard L. Worley, State Examiner, State Board of Accounts.

I am in receipt of your recent letter requesting my Official Opinion on certain aspects of the Indiana Drainage Code, Acts

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1965, ch. 305, the same being Burns IND. STAT. ANN., §§ 27-2001 through 27-2606.

Your questions concern the procedure for collecting assessments for the construction or reconstruction of drains, so it would be best to set out the sections of the Act providing the authority to establish such assessments prior to answering your direct questions.

Section 709, Burns § 27-2409, provides :

“After the letting of the contract for construction or reconstruction the board shall ascertain the full cost of the improvement including the contract price, incidental expenses, damages, attorney’s fees, if any; and the board shall apportion such costs to the several tracts of land assessed in proportion to the benefit percentage assigned to each tract.”

Section 710, Burns § 27-2410, provides, in part :

“(a) The list of assessments for an improvement as apportioned in accordance with the last preceding section of this article shall be certified by the board to the county auditor in each county in which there are lands to be assessed. . . .

“(c) The auditor shall extend assessments for construction and reconstruction upon a book, to be known as ditch duplicate, for the full period of payment allowed for all assessments for construction and reconstruction, with interest at six per cent [6%] per annum upon all payments deferred beyond one year from the date that the certification is made.”

In relation to the assessments so established you asked four questions, which will be answered in order :

- “1. Does a county drainage board have authority or is it the duty of that board to fix the number of years over which an assessment for construction or reconstruction may be amortized?”

Section 712 of the Act, Burns § 27-2412, provides:

“All final assessments, other than annual assessments for periodic maintenance, shall be due and may be paid upon the date of certification of the final assessment to the auditor, except *the owners of lands liable for the payment of such assessments may elect* to pay the same in equal instalments of not less than fifty dollars [\$50] per year, plus interest on the deferred payments, extending over a period of not more than five [5] years, the yearly payments to be made biannually at the time general taxes are payable.” (Emphasis added.)

It appears, then, that the owners of lands being assessed would have the option to determine the number of years over which the assessment may be amortized, and that the Drainage Board has no authority.

There is an exception to the above rule. Section 715 of the Act, Burns § 27-2415, provides:

“Whenever the board determines by resolution spread upon its minutes that the cost of a particular improvement is in excess of that which the owners of lands to be assessed may conveniently pay in instalments over a five [5] year period, it shall authorize the sale of bonds to finance the improvement.”

The Board does have the authority and the duty to determine whether the amortization period should be greater than five years. If the Board does so determine, it also has the duty to determine the exact number of years to be allowed. Section 717 of the Act, Burns § 27-2417 provides in part:

“Whenever the board resolves to sell bonds, it shall determine . . . (2) the period over which it shall be repaid, . . .”

In summary, the Board has the authority and the duty to determine whether the assessment is to be paid within five years and, if not, to set the number of years in which it must be paid.

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- “2. If the answer to question number 1 is in the affirmative, should such time limit be fixed prior to the assessments being certified to the county auditor?”

Insofar as the answer to the first question is in the affirmative, the answer to this question must also be in the affirmative. Section 717 of the Act, Burns § 27-2417, as quoted above, provides that at the time of deciding to finance the construction by bonds, the Board must also determine the period of time for redeeming such bonds. Further, clause (c) of § 710, also quoted above, provides that the auditor will extend the assessment certified to him for the full period of payment allowed. This the auditor could not do unless the Board had already made its determination.

- “3. If the answers to questions number 1 and 2, above, are to the effect that a drainage board is not authorized or required to fix the number of years over which an assessment is to be amortized prior to certification to the county auditor, upon what basis can a county auditor extend assessments on the ditch duplicate as required by paragraph (c) Section 710 and how can a county treasurer determine the amount of the assessment currently due for the purpose of stating the amount in the statement to the landowner as required by Section 711?”

As your question indicates, in those instances where the Drainage Board determines that bonds should be issued and fixes the term of years for redeeming such bonds, the auditor has no problem extending assessments on the ditch duplicate, nor does the treasurer have any problem determining the amount of the assessment currently due.

In those cases where the assessment is to be paid within the five-year period, it would appear that the auditor is to extend the assessment certified to him over the entire five-year period. This conclusion is based on the provision in § 710(c) that the auditor is to extend the assessments for the full period of payment allowed. When bonds are not issued, the landowner is automatically, by the operation of § 712, *supra*, allowed

five years to pay the assessment. This conclusion is also supported by § 711 of the Act, Burns § 27-2411, which provides, in part:

“(a) Within thirty [30] days after receipt of the certification of final costs for the construction or reconstruction of an improvement by the auditor he shall deliver a copy of the ditch duplicate to the county treasurer who shall, within fifteen [15] days after receipt of such copy, mail to each person owning lands assessed for the improvement a statement showing the total amount of the assessment and the instalment currently due, which statement shall state that such owner may pay the assessments in full within one year or he may pay only the instalment due within the current year with deferred payments in annual instalments with interest at six per cent [6%] per annum.”

There is, however, an exception to this rule. Section 712, Burns § 27-2412, set out above, provides that such assessments are to be paid in equal instalments of not less than fifty dollars (\$50.00) per year. If the total assessment is of an amount less than two hundred and fifty dollars (\$250.00), then the auditor should extend the assessment on the ditch duplicate only for the number of years that would permit the payment of equal instalments in an amount greater than fifty dollars (\$50.00).

“4. If the answer to question numbered 1 is in the affirmative, is Section 712 to be interpreted to mean that the landowner's election is limited to making a decision whether to pay the assessment in full within one year or to pay the annual installments, the number of which has been determined by the drainage board?”

This question is perhaps the most difficult to answer since the Drainage Code makes no specific provision concerning the number of times the property owner may elect to pay the assessment in total or by installments.

That the property owner has such a choice at the time the first installment is due, whether or not bonds have been issued,

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is certain. Section 711 of the Act, Burns § 27-2411, provides in clause (a) that the county treasurer, when he first receives a copy of the ditch duplicate from the auditor, will:

“ . . . mail to each person owning lands assessed for the improvement a statement showing the total amount of the assessment and the instalment currently due, which statement shall state that such owner may pay the assessment in full within one year or he may pay only the instalment due within the current year with deferred payments in annual instalments with interest at six per cent [6%] per annum.”

The question is whether a property owner who chooses to pay only the installment due may later, at the time of paying another installment, choose to pay the entire balance of the assessment with the interest due thereon. In my opinion, he may make such a choice.

If bonds have not been issued and the property owners are paying the assessment in installments not to extend over five years, then refusing to accept the full payment of the amount of the assessment outstanding would, in effect, be putting the Drainage Board in the position of a money lending institution. The only reason for not permitting pre-payment in such instances would be that such prepayment would not permit the Drainage Board to collect the six per cent (6%) per annum interest on that money in the future. Investing money at six per cent (6%) interest is not a proper function of the Drainage Board.

For those constructions financed by bonds, the bonds sold are regulated by § 718 of the Act, Burns § 27-2418. Clause (b) specifically provides:

“All bonds or installment notes shall provide that the same may be called by the board for refunding or for prepayment without penalty.”

There is, then, no reason why the Board should not permit the property owner to pay the full amount of the assessment outstanding at the time any installment is due since the Board

in turn may use that prepayment to prepay bonds without penalty.

The conclusion that prepayment of the outstanding amount of the assessment is possible is reinforced by contrasting the provisions of the Drainage Code herein involved with the elaborate provisions made for the redemption of Barrett Law bonds issued by cities and towns to finance public improvements. For instance, Acts 1931, ch. 99, § 4, as last amended by Acts 1961, ch. 217, § 1, the same being Burns IND. STAT. ANN., § 48-4404, specifically provides that any property owner whose property has been assessed for improvements, and who has chosen to pay the assessment in installments, may later pay the entire assessment and stop the interest, but to do so he must pay a penalty that amounts to more than one year's interest on the amount he prepays. Since there are no similar provisions in the Drainage Code, the only possible conclusion is that the Legislature intended that the property owner may pay the total assessment at the time any installment is due.

The preceding answers can probably best be summarized by pointing out the procedure on a step by step basis.

(1) The County Drainage Board determines the whole cost of the construction or reconstruction and assesses that cost against the properties benefited in proportion to the benefits received by the properties.

(2) The County Drainage Board then determines whether the amount of the assessment is so large that it cannot be conveniently paid by the property owner in a five-year period. If the Board determines by a resolution spread upon its minutes that the assessment is that large, then the Board may authorize the sale of bonds, at the same time specifying the number of years to redeem the bonds. The Board must then certify the assessments to the County Auditor, specifying the allowed amortization period if bonds are to be issued.

(3) The Auditor extends the assessments on the ditch duplicate for either the period of the bond issue or the five-year statutory payment, modifying the statutory payment if the assessment is less than two hundred fifty dollars (\$250.-00). Within thirty days after receipt of the certification from

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the County Board, the Auditor must deliver a copy of the ditch duplicate to the County Treasurer.

(4) The County Treasurer within fifteen days after receiving the copy of the ditch duplicate must mail to each landowner being assessed a statement showing the amount of the assessment and the amount of the current installment.

(5) The assessed property owner may, at the time any installment is due, choose to pay either the installment then due or the entire amount of the assessment still outstanding. Similarly, the Drainage Board may at any time redeem the bonds issued to finance the construction or reconstruction.

I believe the foregoing procedure is not only in accord with the provisions of the Drainage Code, but is also the simplest method of collecting the property assessments.

OFFICIAL OPINION NO. 17

September 12, 1966

**CRIMINAL LAW—Taking Samples of Blood Without
Search Warrant—Application of Rule in Schmerber
v. California—Necessity That Sample be
Taken by Medical Personnel.**

Opinion Requested by Supt. Robert A. O'Neal, Indiana State Police.

This is in response to your request for an opinion concerning what the recent decision of the Supreme Court of the United States on the taking of a blood sample for use as evidence of intoxication by the police will have on the law of the State of Indiana on this same subject.