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greater or lesser than two thousand dollars (\$2,000.00). It is doubtful that any law permits a public agency to have work performed without a contract being let, although many laws do provide for an informal procedure for letting contracts in certain specified instances.

All drainage work performed by a third party who has entered into a contract with the Drainage Board must be inspected and approved by the surveyor before payment is to be made. Section 707 of the Act, Burns § 27-2407, provides, in part:

“(a) The contract between the board and a successful bidder shall provide: . . .

“(2) that no claim for payment under the contract will be approved by the board until the work for which the claim is presented has been approved by the surveyor; . . .”

The following section specifies the procedure to be followed by the surveyor in indicating his approval of the work done. All maintenance work not let by contract is done by the surveyor himself and so inspection and approval are automatic.

OFFICIAL OPINION NO. 21

September 30, 1966

STATUTES AND RECODIFICATION—COUNTY OFFICERS —Indiana Drainage Code—Duties of County Surveyors Concerning Minor Repairs.

Opinion Requested by Mr. William J. Andrews, Acting Director, Department of Natural Resources.

I am in receipt of a letter from your predecessor containing several questions pertaining to the 1965 Indiana Drainage Code, Acts 1965, ch. 305, the same being Burns IND. STAT.

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ANN., §§ 27-2001—2606. The questions basically concern “minor repairs,” which repairs must be considered maintenance in view of the language used by § 110 of Acts 1965, ch. 305, the same being Burns IND. STAT. ANN., § 27-2010, which provides, in part:

“(c) A legal drain is in need of periodic maintenance when, by periodically cleaning out, spraying, removing obstructions, and making minor repairs, the drain will perform the function for which it was designed and constructed and will be adequate to properly drain all lands affected thereby under existing conditions.”

The answers to the questions will, therefore, be based on those provisions in the Code relating to the maintenance of legal drains.

The questions also concern the function of the County Surveyor in relation to the maintenance of legal drains. These matters are discussed at length in an official opinion recently issued to Representative John W. Donaldson on this subject, the same being O.A.G. No. 20, 1966, p. 123, *ante*. The analysis and conclusions reached in that opinion are so closely allied to the questions posed in this letter that that opinion should be considered part of the instant opinion, and should be read prior to considering the answers presented herein.

Opinion No. 20, 1966 to Representative Donaldson notes that the County Drainage Board has the discretion to decide whether maintenance work on a given legal drain should be let by contract or performed by the County Surveyor under the standards set out in the Act. I concluded that any maintenance work let by contract must be let in accordance with the procedures set out in §§ 705 and 706 of the Drainage Code, Burns §§ 27-2405, 27-2406.

Prior to answering the questions set out in the letter from your predecessor it might be helpful to extract from the Drainage Code certain provisions relating to maintenance.

Section 109; Burns § 27-2010:

“(a) The surveyor shall classify all legal drains in the county as (1) drains in need of reconstruction, (2)

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drains in need of periodic maintenance, and (3) drains which should be vacated. . . .

“(e) The surveyor shall submit a written report to the board setting forth his classification of legal drains in order of priority for action thereon by the board, and this report may be made from time to time during the process of classification. The board may adopt the classifications as made by the surveyor, and his order of work priority, or may modify the same. If 10% of the landowners request the board to classify or reclassify a drain affecting their land, the board shall, after giving of notice to all affected landowners as in Section 112 provided, conduct hearing thereon, and adopt a proper classification thereof.

“(f) When the classification has been adopted by the board, or when a partial classification has been adopted, the board shall consult with the surveyor and shall prepare and make public a long range plan for (1) the reconstruction of legal drains classified under paragraph (a) (1) of this section, (2) the establishment of annual maintenance assessment for legal drains classified in need of periodic maintenance under (a) (2) of this section, and (3) the vacating of legal drains classified under paragraph (a) (3) of this section, which plan shall set forth the approximate date each drain will be referred to the surveyor for report. In fixing such dates the board shall give consideration to the work load of the surveyor and the estimation by the surveyor of the time it will take to prepare each report. The long range plan may be amended or changed at any time by the board, and shall be reconsidered and brought up to date once each year.”

Section 401; Burns § 27-2153:

“When the board has referred a legal drain classified in need of periodic maintenance to the surveyor he shall prepare a maintenance report, and shall include therein the estimated annual cost of periodically maintaining the drain and the name and address of each

owner, if known, and the legal description of the land of each owner . . .”

Section 402; Burns § 27-2154:

“When the board has received the maintenance report of the surveyor it shall prepare a schedule of assessments, which shall contain (1) a description of each tract of land determined to be benefited and the name and address of the owner thereof, which name, address and description shall be taken from the surveyor’s report, (2) the per cent of the estimated cost of periodically maintaining the drain to be assessed against said tract of land, the percentage to be based upon the benefit to each tract of land resulting from the improvement, and (3) the dollars and cents amount annually assessed against each tract of land for such periodic maintenance. The per cent allocated to all lands benefited shall total one hundred per cent [100%].”

Section 702; Burns § 27-2402:

“A maintenance fund is hereby created for each legal drain located in each county, or if two or more legal drains are combined into a unit pursuant to article four of this act, then for each such unit. . . .

“The county auditor shall set up a separate ledger account for each legal drain or unit whenever the drainage board shall fix an annual assessment for the periodic maintenance of such drain or unit against lands benefited, and the county auditor shall, in each year in which assessments are to be made, extend such assessments upon the ditch duplicate.”

Section 710; Burns § 27-2410:

“(b) Whenever the order of the board establishing an annual assessment for periodic maintenance shall become final said annual assessment shall be certified to the county auditor in each county in which there are lands to be assessed, which annual assessment shall

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be collected each year until changed or terminated by the board.”

Section 711; Burns § 27-2411:

“(b) The treasurer shall each year add to the tax statements of the person owning the lands affected by an assessment, designating it in a manner distinct from general taxes, the full annual assessment for periodic maintenance and all construction and reconstruction assessments due in the year the statement is sent.”

Section 408; Burns § 27-2160:

“(b) The board may at any time increase or decrease the amount annually assessed against the lands of all owners affected by an improvement if the board determines that the estimation made by the surveyor of the cost of periodically maintaining the drain was either insufficient or excessive.”

The above statutes clearly reveal the legislative intent to keep drains in a working condition through periodic maintenance. Such maintenance is to be a continuing yearly process for each legal drain. The surveyor's maintenance report contains an estimate of the annual maintenance cost of each legal drain; the annual assessment for maintenance is to be levied every year until further action by the Drainage Board.

With the preceding discussion and O.A.G. No. 20, 1966 as background, we may now examine the specific questions in the letter.

Question one reads as follows:

- “1. Can a county drainage board authorize the county surveyor to proceed to have made a particular kind or kinds of minor repairs on legal drains, and order the cost to be paid from the General Drain Improvement Fund of the County if no maintenance fund has yet been established for each legal drain that is to receive such repair, with the requirement that when and if a maintenance fund is established and is sufficient, that the General

Drain Improvement Fund will be reimbursed from the appropriate maintenance fund?"

The question actually contains two separate questions, which I shall consider as follows (a) the authority given the surveyor to make minor repairs, and (b) the fund from which the cost of such repairs are to be paid. As to part (b) there is no doubt but that the Drainage Board may pay the cost of proper minor repairs from the General Drain Improvement Fund if the maintenance fund for the legal drain involved has not yet been established. Such a contingency is provided for both in the section creating the General Drain Fund § 407; Burns § 27-2159, and in § 305, Burns § 27-2401 authorizing the use of the maintenance fund.

Part (a) of question one concerning the authority of the County Surveyor is more difficult to answer. The purpose of the enactment of the Code was to establish an orderly and systematic procedure for providing adequate drainage in the State of Indiana.

Section 109 of the Code, Burns § 27-2010, provides that the surveyor shall classify all legal drains in the county and that he will submit a report showing the classification and suggesting order of priority for action by the board. The board then consults with the surveyor and establishes a long range plan for the creation of an adequate drainage system within the county.

The plan includes the approximate date the individual legal drains are to be referred back to the surveyor for his detailed report on that drain. Section 401 of the Act, Burns § 27-2153, describes the report to be prepared by the surveyor for those drains classified as being in need of periodic maintenance, and the following section provides the procedure to be followed by the board for establishing assessments on the basis of that report. Section 702 of the Act, Burns § 27-2402, provides that after the assessments have been established the county auditor shall set up the maintenance fund. The appropriate sections have been set out earlier in this opinion.

The various provisions of the Drainage Code clearly demonstrate that the Legislature realized both that it is impossible to establish a maintenance schedule for all legal drains simul-

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taneously and that certain drains should have such a schedule established before other drains.

Therefore, insofar as the question inquires as to the power of the Drainage Board to authorize the surveyor to make a certain type of repair on all drains whether or not the drain has been incorporated into the maintenance procedure, the answer must be in the negative. It is the board itself and not the surveyor who determines the order in which maintenance programs are to be established.

However, the board can authorize the surveyor to proceed to make those minor repairs which are included in a maintenance schedule on drains which have been incorporated into the maintenance system, for the reasons stated in O.A.G. No. 20, 1966.

The second question reads as follows:

- “2. If the answer to question (1) is in the affirmative can the drainage board give the surveyor blanket authorization to have such repairs made on any legal drain as the need arises or must there be a specific action by the board on each legal drain before minor repairs may be made?”

Insofar as the answer to question one was in the affirmative, that answer also answers this question. The board must take the appropriate action to incorporate a legal drain into the maintenance system before maintenance work, including minor repairs is to be performed. After the surveyor submits his maintenance report, including his estimate of the annual cost of maintaining the drain, the board may proceed to determine to place the maintenance of that legal drain under the surveyor or to let contracts to accomplish the maintenance work.

It would then be the responsibility of the surveyor or the contractor, to make all the minor repairs necessary to maintain the drain in a working condition.

The third question reads as follows:

- “3. Also, if the answer to question (1) is in the affirmative, what are the dollar limits to the cost of each such minor repair?”

The Drainage Code contains no provisions concerning the amount of money that may be spent annually in maintaining a legal drain. Presumably, any "minor repair" whose cost is sufficiently great as to cause doubt concerning the authority of the board to effect such a repair would be a project so large as to be properly classified as reconstruction. Section 704 of the Act, Burns § 27-2404, does provide a formula setting the limit on the amount that can be spent for the reconstruction of a drain.

If the maintenance work on a drain is to be performed by a contractor the dollar amount of the contract will determine the procedure that must be followed in awarding the contract. Section 705 of the Act, Burns § 27-2405, provides that if the amount of the contract is to be over two thousand dollars (\$2,000), the board must solicit bids through a newspaper advertisement, while bids for contracts for a lesser amount may be solicited by mailing invitations to no less than three interested bidders.

The fourth question reads as follows :

- "4. Also, if the answer to question (1) is affirmative, can these minor repairs be contracted for on the basis of informal bids? Can employees of the county in the surveyor's office make such repairs?"

Both parts of the above question, have been answered herein and by O.A.G. No. 20, 1966.

However, there is an implication in this question, and to a certain extent in the first question, which should be considered. I would state the question as follows :

"Can the county drainage board place the responsibility for making certain minor repairs on all drains entirely on the surveyor and vest the surveyor with the power to contract with third parties to perform such work?"

The answer must be in the negative. The procedure for awarding contracts set out in §§ 704 through 707 of the Act, Burns §§ 27-2404 through 27-2407, consistently assigns the duty and responsibility to the Drainage Board. There is no

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basis to conclude that the power to contract for repairs can be delegated by the Board.

The fifth question reads as follows :

“5. Assuming bids for minor repairs may be invited as outlined in Section 705 of the Drainage Code, can a Drainage Board solicit unit price bids for minor repairs on legal drains and thereafter contract for such necessary repairs to be made on each legal drain on the basis of such unit price bids?”

I would restate this question as follows :

“Can the drainage board let bids on the maintenance for a given legal drain and then use some measure of that bid, such as cost per foot, as the price for which contracts on other legal drains will be let without readvertising or bidding for contracts for maintenance work on such other drains?”

If this restatement of the question is correct, then the answer must be in the negative. The purpose for a competitive bid statute is to assure that the work will be done at the lowest price and under the best terms and conditions possible and to avoid collusion and favoritism in the public interest. This purpose can be fulfilled only if such bidding procedures are closely followed. The lowest and best bid for one drain may not be the lowest and best bid that would be received on a different drain. Furthermore, § 705 of the Act, Burns § 27-2405 clearly states :

“(a) *Whenever* the board is ready to let contracts for an improvement it *shall* publish . . .” (Emphasis added.)

The sixth question reads as follows :

“6. May a Drainage Board have minor repairs made by only entering into a simple type contract, such as a written letter, and without requiring a bid bond or a performance bond?”

The answer to the sixth question is also in the negative.

As was pointed out in the earlier answers, any time the board determines that maintenance work should be done by contract with third parties the board must solicit bids from interested bidders. Section 705 of the Act, Burns § 27-2405, specifically provides:

“(c) Each bidder shall deposit with his bid a certified check made payable to the board in the sum of five per cent [5%] of the bid, or a bond payable to the board with sufficient sureties conditioned upon the bidder’s executing a contract in accordance with his bid if accepted by the board and providing for the forfeiture of five per cent [5%] of the amount of the bid upon his failure to do so.”

Section 706 of the Act, Burns § 27-2406, provides, in part:

“(b) Upon execution of the contract the successful bidder shall give a bond, in amount fixed by the board but not less than the amount of the bid, payable to the board, with a corporate surety licensed to do business in the state of Indiana . . .”

The next section of the Act specifically sets out certain provisions which must be contained in the contract.

In view of the provisions contained in these sections of the Drainage Code I must conclude that all contracts are to be formal contracts supported by bond.

The seventh question reads as follows:

“7. If the answer to question (1) is in the negative, what are the applicable provisions in the Indiana Drainage Code and the circumstances, if any, whereby a County Drainage Board may authorize minor repairs to be made to a drain prior to the time that a maintenance fund is established, and without the burden of advertising for bids and the letting of contracts?”

I believe that the answer to the above question is contained in the answers to the previous questions.

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The eighth question reads as follows:

- “8. Can the County Commissioners, when functioning as a County Drainage Board with respect to legal drains pursuant to the provisions of the Indiana Drainage Code, Chapter 305, Acts of 1965, exercise the rights and powers of county commissioners with respect to public works pursuant to the provisions of Burns Indiana Statutes Annotated, Section 53-108, when such rights and powers are not in conflict with express provisions of the Indiana Drainage Code?”

The County Commissioners do not function as the County Drainage Board. The County Drainage Board is an agency separate and distinct from other county agencies. The powers and duties of the County Drainage Board are specifically set out by statute. While the membership of the County Drainage Board is in most instances limited to persons who are county commissioners, when those persons assemble as the County Drainage Board they are not assembling as the Board of County Commissioners.

Acts 1947, ch. 306, § 1, as last amended by Acts 1961, ch. 121, § 1, the same being Burns IND. STAT. ANN., § 53-108 is concerned with the awarding of contracts for public works and the authority of the various agencies involved to perform some or all of the public improvement itself. This is a general statute applicable to all public contracts. The provisions of the Drainage Code are specific provisions applicable only to drainage improvements. It is a principle of statutory construction that when a general statute and a specific statute treat with the same subject matter, the specific statute is controlling. The Drainage Code provisions relating to the letting of contracts and the performance of work by the Drainage Board must be followed. Therefore, it is my opinion that the answer to the question must be in the negative.

The next three questions were premised upon an affirmative answer to question eight and therefore, need not be considered further.

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Subsequent to submitting the opinion request containing the above questions a further request posing the following additional question was submitted:

“Does the County Drainage Board have jurisdiction over a legal tile drain which was constructed pursuant to a drainage statute of the State of Indiana which was repealed by the Indiana Drainage Code, and which drain lies partially within municipal corporate limits but was not constructed by the municipality?”

Acts 1965, ch. 305, § 501, the same being Burns IND. STAT. ANN., § 27-2201 provides:

“Each legal drain in the county shall be under the jurisdiction of the board and subject to the provisions of this act, except and to the extent as hereafter provided in this article.”

The following five sections specify the drains that are exempt from the jurisdiction of the board. In general terms those five exceptions are:

1. drains located within a conservancy district under certain specified conditions;
2. private and mutual drains (such drains are defined in § 102 of the Act, Burns § 27-2002, and are basically drains established by the consent of the owners of the land through which such drains run and not pursuant to any drainage statute);
3. drains constructed by a city or incorporated town under certain conditions;
4. drains to be in the future constructed by a city or incorporated town under certain conditions;
5. drains under the jurisdiction of a drain maintenance and repair district insofar as maintenance is concerned.

The drain described in the question would be under the jurisdiction of the County Drainage Board unless it came within the exemptions above. The applicable County Board

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must make individual determinations based upon all the facts and the application of § 501.

In conclusion, the recodification of the drainage laws of Indiana by The Indiana Drainage Code must be liberally construed if it is to accomplish the worthwhile purpose for which it was enacted. I have dealt in considerable detail in answering the questions posed herein and in the preceding opinion in the hope that they will insure uniformity of interpretation throughout the state in implementing this important statute.

OFFICIAL OPINION NO. 22

October 6, 1966

PUBLIC EMPLOYEES—Right to Grievance Procedure —Conditions for Co-Operation Adopted by Trustees of Indiana University.

Opinion Requested by Hon. Patrick Chavis, State Senator.

You have advised me that the Trustees of Indiana University at their July 7-10, 1966, meeting adopted "Conditions for Cooperation between Employee Organizations and the Administration of Indiana University" (hereinafter referred to as "Conditions for Cooperation"). A copy of said document was attached to your letter and is set out as Appendix A to this opinion.

You also stated that two Attorney General's Opinions, 1949 O.A.G. 184, No. 51 and 1944 O.A.G. 224, No. 55, cast doubt upon the authority of any governmental agency or political subdivision thereof in Indiana to enter into any type of collective bargaining with its employees. You then asked my Official Opinion as to whether the Trustees of Indiana University and other Indiana public officials at the state and local levels