

**DRAINS:  
HIGHWAYS:  
COUNTY ROAD COMMISSION FUNDS:**

**Drain apportionments against county for benefits to county highways must be paid by county at large and funds under control of county road commission cannot be used to pay county drain assessment.**

No. 4247

November 26, 1963.

Mr. John L. Schwendener  
Prosecuting Attorney  
Kalamazoo County  
Kalamazoo, Michigan

You have requested an opinion in behalf of the Board of County Road Commissioners of Kalamazoo County as to this problem:

"May a county road commission contribute any funds under its control to the payment of a drain assessment levied against the county at large?"

Information submitted by you indicates that the Kalamazoo County Drain Commissioner has made an assessment for the Portage Consolidated Drain No. 1 in which Kalamazoo County is charged 26% of the costs of the drain. The Kalamazoo County Road Commission is desirous of contributing a portion of the county assessment from its Motor Vehicle Highway Funds and the balance from a fund as supplied yearly by the Board of Supervisors for maintenance on secondary roads.

Attorney General Opinions in 1928 (O.A.G. 1927-28, p. 636, February 9, 1928), in 1945 (O.A.G. 1945-46, No. 0-3142, p. 251, March 1, 1945) and 1952 (O.A.G. 1952-54, No. 1577, p. 35, September 3, 1952) have held consistently that a county drain commissioner's assessments against a county are payable by the county at large and may not be paid from county road funds.

There has been no change in the drain laws which would affect these opinions.

Section 151 of the Drain Code of 1956, as amended, (Section 151, Act 40, P.A. 1956, as amended; M.S.A. § 11.1151) expressly provides that the drain commissioner *shall* make an apportionment of cost of the drain; that the apportionment against the county *shall* be based upon benefits to highways under the control of the county road commission; that the per cent so apportioned *shall* be assessed "against the county at large by reason of the improvement of the highways within the drainage district"; and, that the board of supervisors "*shall* make provision by proper assessment of the amounts apportioned against any highway under the control of the county and district highway commissioners".

Thus, the Drain Code in clear and unambiguous language makes it mandatory for county drain assessments to be paid by assessment against the county at large. In so doing, it recognizes that benefits to county roads form the basis for the apportionment against the county. It would be contrary to the Drain Code for these mandates to be disregarded.

Accordingly, it is my opinion that the above Attorney General Opinions are correct and assessment against the county for Portage Consolidated Drain No. 1 must be paid by the county at large and cannot be paid by county road commission funds.

FRANK J. KELLEY,  
*Attorney General.*

631127.1

**SCHOOLS:** Consolidation of school district under tenure.

**TEACHERS' TENURE:** Effect upon consolidation of school district under tenure.

Where a school district subject to the tenure of teachers' act votes to consolidate with another school district not under tenure, the consolidated school district is not subject to the provisions of Act 4, P.A. 1937, Extra Session, until its school electors vote to adopt the provisions of the act.

No. 4253

November 27, 1963.

Honorable William D. Ford  
State Senator  
22212 Goddard Road  
Taylor, Michigan

You have requested my opinion on the following question:

Where school district A and school district B, by approval of their school electors, vote to become consolidated as one school district, and the school electors of school district B had prior to such consolidation voted to come under the provisions of the tenure of teachers' act, does the tenure of teachers' act apply to such consolidated school district without approval of its school electors?

Act 4, P.A. 1937 (Extra Session), as last amended by Act 242, P.A. 1963, being C.L. 1948 § 38.71 et seq.; M.S.A. 1959 Rev. Vol. § 15.1971 et seq., is known as the Tenure of Teachers' Act. Article VIII, Sec. 1 of the act provides as follows:

"This act shall apply to such school districts of the state in which the qualified electors thereof, by a majority vote of the electors voting thereon, shall adopt the provisions of this act: Provided, That any time after the adoption of this act by any school district, it shall cease to be in effect in said district if at any election called for that purpose, a majority of the electors in said district voting thereon, vote that the act shall no longer be in effect in said district. The question may be submitted at any general or special election in any such school district, and shall be governed by the laws of this state with respect to the submission of special questions in school districts."

Thus, the Tenure of Teachers' Act does not become effective in a school district until its qualified electors by a majority vote of the electors voting thereon adopt the provisions of the act.