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**HIGHWAYS:** State Highway Commissioner.

**DRAIN CODE:** Assessment against State Highway Department — re-assessment against cities and villages.

An assessment against the state, under the Drain Code of 1956, on the basis of benefit to a state trunkline highway, may not be reassessed by the state highway commissioner against cities and villages, on a population basis, under Section 1c, Act 51, P.A. of 1951, as amended.

No. 4338

January 15, 1965.

Mr. Howard E. Hill  
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Your recent letter states:

“Often contracts for ‘opening, widening, and improving, including construction and reconstruction’ of state trunkline highways include, as part of the project, the construction of drains. Incorporated cities and villages, pursuant to Section 1(c), Act 51, Public Acts of 1951, as amended, depending upon the population, participate in the cost of the total project including the cost of the construction of such drains.

“In the case of drain projects, ordered constructed under the provisions of the Drain Code, assessments are made by the drain commissioners against the highway department and also against the municipalities involved. Heretofore, the highway department has not requested any of the municipalities to participate in the highway department’s portion of these assessments (which relate to the highway) under the formula of Section 1(c) of said Act 51.

“Your opinion is requested as follows:

“(1) When drainage construction projects which also involve highway projects are ordered constructed by drain commissioners who, because of the highway involved, assesses all or part of the cost of the drainage project to the state, are the described municipalities required to participate in the State Highway Department’s portion of the assessment on the terms set forth in said Section 1(c)?

“(2) If the answer to question 1 is yes, should the participation be retroactive in respect of all assessments heretofore made by drain commissioners against the department?”

The questions posed involve Act 51 P.A. 1951, as amended<sup>1</sup> which, among other things, sets up and establishes the Motor Vehicle Highway Fund, and Act 40 P.A. 1956, as amended,<sup>2</sup> being the Drain Code of 1956.

Section 1a of Act 51 P.A. 1951 reads in part:

“All state trunk line highways now or hereafter established as provided by law, shall be constructed, maintained and improved in ac-

<sup>1</sup> C.L.S. 1961 § 247.651 et seq.; M.S.A. 1958 Rev. Vol. § 9.1097(1) et seq.

<sup>2</sup> C.L.S. 1961 §280.1 et seq.; M.S.A. 1960 Rev. Vol. § 11.1001 et seq.

cordance with the provisions of this act under the direction, supervision and control of the state highway commissioner. \* \* \*<sup>3</sup>

Section 1c of said Act provides that:

"The state highway department shall bear the cost of opening, widening and improving, including construction and reconstruction, in accordance with standards and specifications of the department, all state trunk line highways, subject to the following provisions:

"(a) Incorporated cities and villages shall participate with the state highway department in the cost of opening, widening and improving, including construction and reconstruction of state trunk line highways within cities and villages \* \* \* according to the following schedule subject to the definition of population as provided in section 13 of this act:"<sup>4</sup>

Thus, state trunkline highway projects running through cities and villages are under the jurisdiction of the state highway commissioner pursuant to Sections 1a and 1c of Act 51 P.A. 1951, and the cost of such projects are to be shared by cities and villages in accordance with the act.

Section 2b of Chapter V of Act 283 P.A. 1909, as amended,<sup>5</sup> confers authority upon the state highway commissioner to construct drains when necessary for the construction or improvement of any highway under his jurisdiction. It follows that the state highway commissioner may exercise the jurisdiction conferred upon him under Section 2b, supra, in a state trunkline highway project running through a city or village and the city or village is required to bear a proportionate part of the cost of such state trunkline highway project including the drain as provided by law.

Your first question refers to drains constructed by drain commissioners which in the course of the drainage project may also involve state trunkline highways. The authority of the drain commissioner is found in the provisions of the Drain Code of 1956.<sup>6</sup>

Where the drain commissioner undertakes to construct a county drain he assesses the cost thereof under the authority of Section 262 of the Drain Code of 1956.<sup>7</sup> The drain commissioner may assess a portion of the cost of a county drain against the state highway commissioner for benefits to any state trunkline highway, as authorized in Section 262. The drain taxes assessed against counties, cities, townships and villages pursuant to Section 262 may be spread under the authority conferred by Section 263 of the Drain Code.<sup>8</sup> Section 263 confers no authority on the state highway commissioner to pass on or reassess to cities or villages the amount of the assessment made for benefits to state trunkline highways.

<sup>3</sup> C.L.S. 1961 § 247.651a; M.S.A. 1958 Rev. Vol. § 9.1097(1a).

<sup>4</sup> C.L.S. 1961 § 247.651c; M.S.A. 1958 Rev. Vol. § 9.1097(1c).

<sup>5</sup> C.L. 1948 § 225.2b; M.S.A. 1958 Rev. Vol. § 9.204.

<sup>6</sup> Act 40 P.A. 1956, as amended.

C.L.S. 1961 § 280.1 et seq.; M.S.A. 1960 Rev. Vol. § 11.1001 et seq.

<sup>7</sup> Sec. 262 of the Drain Code was last amended by Act 82 P.A. 1963; M.S.A. 1963 Cum. Supp. § 11.1262.

<sup>8</sup> C.L.S. 1961 § 280.263; M.S.A. 1960 Rev. Vol. § 11.1263.

In addition to county drains, the drain commissioner may establish intra-county drains under the authority of Chapter 20 of the Drain Code.<sup>9</sup> The cost of drains constructed under authority of Chapter 20, as amended, of the Drain Code are assessed against public corporations as there defined which expressly includes the State of Michigan. Under Section 474, as last amended by Act 215 P.A. 1963, of the Drain Code, being a part of Chapter 20, supra, the assessment, if any, against the state shall be certified to the state highway commissioner and paid from state highway funds. Apportionment against the state for the cost of drains under Chapter 20 of the Drain Code are based upon benefits to the state for drainage of state highways and to the extent that the state highway contributes to the need for the drain, all as provided in Chapter 20, Section 468, as last amended by Act 215 P.A. 1963.

The construction of intercounty drains with the cost to be assessed wholly against public corporations is provided for in Chapter 21 of the Drain Code of 1956, as amended by Act 215 P.A. 1963.<sup>10</sup> Apportionment against the state for the cost of drains under Chapter 21 of the Drain Code are based upon benefits to the state for drainage of state highways and to the extent that the state highway contributes to the need for the drain, all as provided in Chapter 21, Section 520, as last amended by Act 215 P.A. 1963. The assessment against the state shall be certified to the state highway commissioner and paid from state highway funds as set forth in Section 526. Assessments against other public corporations including cities and villages are to be levied and collected as other taxes as set forth in Section 526. There is no provision in law for the state highway commissioner to seek contributions from other governmental units to help pay for the assessments against the state for benefits to state highways. The assessments against the state under Chapters 20 and 21 are directed to be paid from the state highway fund.

Act 51 P.A. 1951, supra, has no application to drainage assessments under the Drain Code of 1956 since they are based upon or related to the cost of the construction, maintenance and improvements made by the drain commissioner or the drainage board.

Therefore, it is the opinion of the Attorney General in answer to your first question that when drainage projects which involve state trunkline highways are ordered to be constructed by the county drain commissioner or by a drainage board, assessments against the state for benefits to state highways are to be paid by the state. There is no authority for the state highway commissioner to require participation in such assessments by cities or villages.

Your second question need not be answered in light of the response to your first question.

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*Attorney General.*

<sup>9</sup> C.L.S. 1961 § 280.461 et seq.; M.S.A. 1960 Rev. Vol. § 11.1461 et seq.

<sup>10</sup> C.L.S. 1961 § 280.511 et seq.; M.S.A. 1960 Rev. Vol. § 11.1511 et seq.