ILLINOIS FARM DRAINAGE LAW

For farm owners, drainage commissioners, and all others interested in farm drainage matters

By H. W. HANNAH

Circular 751

UNIVERSITY OF ILLINOIS - COLLEGE OF AGRICULTURE
EXTENSION SERVICE IN AGRICULTURE AND HOME ECONOMICS
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In 1955 a new drainage code was adopted in Illinois. This code eliminates the distinction between "levee" districts and "farm drainage" districts and makes other substantial changes in the law. This revision of Circular 660 is intended to incorporate the changes made necessary by the new code that became effective January 1, 1956, and to expunge material that the code has made obsolete.
Illinois

FARM DRAINAGE LAW

By H. W. Hannah, Professor of Agricultural Law and member of the Illinois bar

This CIRCULAR on Illinois farm drainage law is designed chiefly for farm owners and drainage commissioners, although it is hoped that it may also be useful to others professionally concerned with farm drainage. Its purpose is first to explain our Illinois drainage law so that farmers and drainage commissioners can understand it and its application; and second, to make clear the legal implications in drainage situations so that competent legal aid can be obtained before a situation becomes controversial.

It is not a handbook on the organization of drainage districts and the legal procedures involved in their organization. These matters are complicated and call for competent legal help.

Part I

RULES OF DRAINAGE IN ILLINOIS

LAWS OF NATURAL DRAINAGE

Basic law recognizes natural differences in level of lands. The basic principle of the law of natural drainage is that a landowner takes whatever advantages or inconveniences of drainage nature placed upon his land. What these advantages or inconveniences are depends ultimately on the level of the owner's land in relation to the land around it.

1 The author makes grateful acknowledgment to Norman G. P. Krausz, Associate Professor of Agricultural Law, who prepared the "Guide to Drainage Code" that appears in the Appendix and in other ways helped in preparing the original manuscript, and to Donald V. Dobbins, formerly chairman of the Drainage Section, Illinois State Bar Association, who read the original manuscript and made many helpful suggestions.
The Illinois Supreme Court adopted the law of natural drainage before the Legislature enacted any laws governing drainage. (The law of natural drainage derives from the Roman written code and is used in many countries.) This court held that there was no other rule so equitable and easy of application.  

Using this Supreme Court decision as a basis, Illinois courts have since considered hundreds of drainage disputes. Certain interpretations and modifications of the rule have emerged from their decisions. These are discussed on pages 8-12.

The civil-law principles of natural drainage apply to all Illinois farm lands, regardless of whether they are in drainage districts. Iowa and Kentucky, like Illinois, base their drainage laws on the civil law, but Missouri, Wisconsin, and Indiana follow another legal concept known as the common-enemy rule.

A landowner must receive surface water flowing naturally from higher ground. One of the most important principles of Illinois drainage law is that the owner of land so situated that surface water naturally flows onto it from higher ground by means of natural depressions or swales is bound to receive such water. (In legal language, the lower ground is known as the servient tenement, the higher ground as the dominant tenement.)

This rule means that the owner of a farm which is lower than an adjoining one must take the water that flows naturally to his land or arrange for its drainage. Likewise, unless a city has adopted a system of artificial drainage, the owner of a lot which is lower than an adjoining lot must receive the water coming from the higher lot. It also

1 "As water must flow, and some rule in regard to it must be established where land is held under the artificial titles created by human law, there can clearly be no other rule at once so equitable and so easy of application as that which enforces natural laws. There is no surprise or hardship in this, for each successive owner takes whatever advantages or inconvenience nature has stamped upon his land." Gormley v. Sanford (1869), 52 Illinois 158, p. 162.

2 According to some writers, there are two other concepts of drainage law in operation in the United States besides the civil-law concept; one is known as the "common-enemy" rule, the other as the "reasonable-use" rule. Theoretically the common-enemy rule gives a landowner an unrestricted right to deal with surface water coming to his land. But actually the courts which follow this concept have developed many limitations on his right to dispose of surface waters. The reasonable-use concept gives a landowner the right to deal with surface water, but his right depends on the degree of his need and the damage his neighbor would suffer from his ditching, tiling, or other drainage operations. The courts which follow this rule may arrive at conclusions just as unreasonable as any arrived at by courts which follow either of the other two rules.

It is perhaps accurate to say that the present soundness and usability of the drainage doctrine in a particular state depend at least as much on the insight and wisdom of key personnel on the bench and in the legal profession as on any rule which might have been adopted.
means that a railroad or a highway embankment must be built with enough openings to take care of water that would naturally flow across the right of way in a state of nature.

The rule is qualified in one important way: the surface water must drain off in a natural depression or channel. A landowner is under no duty to receive water which does not flow in a defined channel; that is, diffused water. The courts have held, however, that an owner's right to natural drainage is the same whether the water flows in a watercourse or only at certain times in a depression or channel.

A landowner may collect surface water, discharge it, and hasten its flow to lower ground. If the law had limited the right of the owner of higher-lying ground to draining it just as it had been drained in a state of nature, the law would have been of little real advantage. The cultivation and improvement of land necessarily make changes in the amount of water drained off and in the speed of its flow. The law, however, did not so limit the rights of a landowner.

In an early case the court held that in the interest of good husbandry a landowner could drain his ponds or collect surface water that would naturally be held in pools and hasten its flow by digging artificial ditches. But he could do this only if the water was discharged on lower land at the place where it would have flowed if the ponds or pools had been filled with dirt and the water forced out into natural channels of drainage. (This decision was brought about when a man who had a pond on his farm proposed to cut through the rim of the pond and let the water flow through natural channels to lower land. The owner of the lower land tried to prohibit, in legal terms to enjoin, the action.)

This decision means that all lands lying within a natural basin may be drained into the watercourse (whether a stream or a mere depression) which drains that basin, and that the owners of the lower lands cannot object to the flowage being thus increased. The water can be carried by artificial ditches or by tile lines but either must drain only the natural basin, and the water must enter the lower land at the point it would have entered it in a state of nature. The courts have also held that the substitution of tile for surface drainage does not amount to an abandonment by the owner of his natural drainage rights.

In one case that reached the courts the natural course of drainage through land that drained onto the right of way of a railroad was an “oxbow loop.” The water entered the farmer’s land in times of rain from a rocky gorge and carried sand and debris which were deposited on his land at the end of a long meander. The landowner proposed to cut a ditch straight through the loop and discharge the water on the railroad’s right of way at the same point where the loop had dis-
charged the water. The effect of the short cut was to hasten greatly the speed of the flow against the railroad embankment and to cast sand and debris on it. The court held that the actual damage occasioned the railroad was no ground for an injunction against the owner of the higher ground, and that he had a right to eliminate the oxbow.

It seems clear then that by common law in this state owners of lower ground, including highway authorities and railroad companies as well as private property owners, are under a legal duty to receive all waters coming from higher land through natural channels. Furthermore, the owner of the higher ground has a legal right, in the interests of good husbandry, to accelerate the flow in such natural channels by tiling or by digging artificial ditches on his own land to carry off the water more quickly.

This legal right is, however, limited. The owner of higher ground cannot cut through a natural divide and divert water into the lower land that never could have reached it in a state of nature. Apparently the right to drain a natural basin onto lower land by artificial means is not qualified by the fact that the accelerated flow actually injures the owner of the lower land.

Although there appear to be no Illinois decisions considering the question, it is probable that this right to accelerate the flow of artificial ditches or tile is limited to the requirements of good husbandry. If it were done wantonly, with the purpose of injuring the owner of the lower ground, then it is possible that by analogy to the spite-wall and spite-fence cases a court of equity might enjoin the acts of the owner of the higher ground. Also, adjoining owners can probably get damages resulting from negligence in the construction of artificial drains. Terminating a tile line next to the division fence without properly boxing it to minimize the washing of the lower land is an example of such negligence.

A landowner may drain surface waters into watercourses. The owner of higher ground can drain his land, within a natural basin, into a natural watercourse flowing through his land. As a practical matter, the owner’s right to drain into a stream is not often questioned, because if a creek has ample banks, draining into it does no actual harm. But even if such drainage does actual damage to the owners of lower-lying ground, the owner of the higher ground has a legal right to drain into the stream so long as he does not cut through a natural divide but simply hastens the flow of water from the basin into the creek which drains it. Within the meaning of this rule, overflow waters from a creek or small stream are surface waters. And the owners of lower land are bound to receive and care for such overflow water. The courts have also held that the owner of a stream bank has the right to improve it.
A landowner has no right to obstruct the flow of surface water.
The owner of lower land obviously has no right to build a dam, levee,
or other artificial structure that will interfere with the drainage of higher land, according to the civil law as it is applied in Illinois.

On the other hand, the owner of higher land cannot compel the owner of lower ground to remove natural obstructions, such as shrubs, weeds, brushwood, cornstalks, or other crop residues, that may accumulate and impair natural drainage.

One of the reasons for drainage districts is that there is no way to make others remedy such a situation. Of course, owners may and many times do cooperate with one another in such matters, either informally or through mutually binding agreements.

Whether an agreement or contract altering the natural drainage on farm land is binding depends on the sufficiency of the agreement. When a farm on which artificial drains have been constructed is sold to several separate owners, the new owners acquire mutual easements.

Easements of drainage or of obstruction. When a landowner is harmed by another owner and fails to enforce his rights, the harmful practice may itself become a right, generally known as an easement. (An easement is any acquired right to cross or to use another's property.) For example, if an owner of higher ground fails to take action when the owner of lower land dams or obstructs the flow of surface water, the owner of the lower ground may acquire a right to maintain the dam by what is known as prescriptive, adverse, or long-continued use. The period of use recognized in Illinois is twenty years. Likewise, the owner of lower land may acquire a right to have no surface water drain on his land from higher ground when the water has been diverted from the lower ground for the prescriptive period.

By this same process the owner of higher ground may acquire the right to change the place where his surface water enters lower ground, to enter lower ground and clear out a channel, or to maintain other artificial conditions not permitted under the rules of natural drainage.

Whether an owner has acquired such a right is a mixed question of fact and of law, not easily determined. It should also be pointed out that any right to drainage acquired in such a manner may be less desirable than drainage through a natural channel. In theory the holder of an easement is strictly limited to the benefits he had while he was acquiring the easement; whereas an owner's drainage through a natural depression or channel may be materially improved within interpretations placed by the Illinois courts on the civil-law rule.

Drainage easements cannot be acquired against the public — a highway or school district, for example.

Summary of the rules of natural drainage. 1. A landowner has the right to do certain things to improve the drainage on his land.
He can: (a) widen, deepen, and clean natural depressions that carry his surface water; (b) straighten out channels on his own property and accelerate the movement of surface water, so long as he does not change the natural point of entry on lower land; (c) drain ponds or standing water in the direction that they overflow; (d) tile his property to expedite the flow of water so long as he does not change the point of entry on lower land, bring in water from another watershed, or connect his tile to the tile of other owners without consent; (e) fill up ponds or low places where water may stand, and force water out into natural drainage channels; (f) expedite the flow of surface waters through natural lines of drainage by either open or closed drains, into a watercourse or stream; (g) construct grass waterways, check dams, terraces, or other soil conservation structures, so long as his drainage waters still come within the rules explained above and in the discussion of the "Statutory Enlargement of the Rules of Natural Drainage" below.

2. Public highway authorities have the same rights as private owners. They may, in addition, change the natural drainage when the change is necessary in the public interest and when compensation is made for any property thus taken or damaged.

3. There are some things a landowner must not do to the lands that surround him. He must not: (a) dam or obstruct a natural channel so that the escape of surface water from higher land is retarded or so that the channel is shifted; (b) divert water to lands that do not naturally receive his drainage; (c) change the point of entry of surface water on lower land; (d) bring in water from another watershed that would not have flowed across lower land in a state of nature; (e) pollute any waters that pass from his land through the property of others — whether surface or underground waters, streams, or diffused waters; (f) connect tile with other owners' tile lines or with highway tile lines without consent; (g) dam up or impound large bodies of water which escape and cause serious damage to owners of lower lands, even though such waters may escape through natural channels; (h) accelerate the flow of water needlessly or with malicious intent to the material damage of the owner of lower land, even though the flow is accelerated through natural channels.

STATUTORY ENLARGEMENT OF RULES OF NATURAL DRAINAGE

If two farms are on the same flat level, a landowner, according to the rules of natural drainage, has no right to cast water on adjoining land or to dig a ditch through adjoining land, even though both farms may be rendered useless for lack of drainage. Likewise, the prohibi-
tion against cutting through slight ridges and divides often makes cultivation of swampy land difficult.

Neither does the law of natural drainage give a landowner who has natural drainage any right to go on another's land to open up a channel to drain off his lands when the drainways have become choked or clogged or when the fall is so slight that surface waters are not drained away fast enough to allow the land to be cultivated.

Where lands are valuable for cultivation and the country depends largely on agriculture, public welfare demands that adequate systems of drainage be provided. It is the main purpose of the drainage statutes of the state to make it possible for lands to be improved for agriculture and sanitation by draining off the surface waters where the natural or common-law drainage rights are inadequate.

Two early laws enlarged an owner's right to improve his drainage beyond the point permitted by the court's interpretation of the civil-law rule. The first, a part of the Agricultural Drainage Act (1885), consisted of seven sections under the general heading "Rights of Drainage." The second (1889) concerned drains constructed by mutual license or agreement. Neither act altered a landowner's rights or duties on his own land. The substance and much of the procedure under both these laws have been preserved in the Drainage Code. Both laws are important because they offer a means, apart from district organization, whereby a landowner can, to a limited extent, improve or maintain his drainage across the lands of others.

**Right to extend drain across land of others.** The Drainage Code does three things. First, it codifies the rules of natural drainage. The Illinois courts have assumed that codification of the civil-law rules has not in any way altered the rules as they are interpreted and used.

Second, this law provides that an owner may extend his drains across the land of others when such extension is necessary to perfect his drainage and when such extension meets certain conditions imposed by law. It also sets up the procedure whereby he may secure such drainage.

The procedure is predicated upon the following conditions: (a) refusal of other owners to consent; (b) the assumption that the owner seeking to extend his drainage will do so at his own expense; (c) the necessity of such an extension to obtain a proper outlet; (d) the water carried by such drain will empty into a natural watercourse, highway ditch, or other outlet which the owner has a right to use; (e) the consent of the commissioners if a highway drain is to be used; (f) the

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1 The codification section reads: "Land may be drained in the general course of natural drainage by either open or covered drains. When such a drain is entirely upon the land of the owner constructing the drain, he shall not be liable in damages therefor."
extension, if constructed, will be an ample and properly made covered drain; (g) payment of damages incurred by owners across whose property the extension is constructed; (h) the filing of a bond for not less than $100, with approved security, covering costs and damages; (i) the filing of a plat, showing the course of the proposed construction and where it will discharge.

The procedure is initiated in county court, by summons. If the court finds for the plaintiff (the owner seeking to extend his drainage) and if all conditions in the law are met, the owner can proceed to construct his drain. He must first, however, pay the judgment and costs. He may abandon the construction of the drain even after judgment in his favor, but he must pay the costs of the trial. If he abandons construction, he cannot commence suit for the same purpose within five years following the judgment.

Third, the law places on the owner who builds such a drain and upon his heirs and assigns the duty of keeping it in good repair so that it will not injure the property through which it passes. To meet this obligation, the builder or his heirs and assigns have the privilege of entering the lands of others at any time it becomes necessary. The law provides triple damages for willful damage to the servient (lower) land.

**Drains constructed by mutual license or agreement.** The second early law that enlarged a landowner’s drainage rights legalized drains constructed by mutual license, consent, or agreement. Since in each instance there is a question of fact as to whether the drain is one for the mutual benefit of all the lands interested in it, the code states that it shall be deemed a drain for mutual benefit when

a ditch, covered drain or levee is, or has been, constructed by mutual license, consent or agreement, either separately or jointly, by the owners of adjoining lands so as to make a continuous line across the lands of such owners, or when the owner of adjoining land is permitted to connect a ditch, covered drain or levee with another already so constructed, or when the owner of lower land connects a ditch or covered drain to a ditch or covered drain constructed by the owner or owners of upperlands, or when the owner of land protected by a levee has contributed to the cost of the construction, enlargement or reconstruction of a levee upon other land . . .

The courts, interpreting these provisions, have added the following rules: (a) this act has no relation to or bearing on ditches authorized by the drainage acts; (b) a writing is not essential to proving consent or agreement; (c) licenses revoked before this act took effect will not be revived by it (what constitutes a revocation is not always clear); (d) the act is intended to enlarge the natural rights of drainage between adjoining landowners and to protect the drains involved; (e) highways and highway commissioners are included in the act in
the same way as are landowners; (f) owners have a right to have such a mutual system maintained as it was originally established; (g) drains which come under this act create a perpetual easement on the premises involved; (h) the act applies to existing drains and to drains constructed in the future, providing the elements necessary to constitute mutuality, agreement, or consent are present; (i) the rules of natural drainage are not affected except insofar as the mutual drain itself enlarges or alters those rights as between the particular owners involved.

Once a mutual drain is determined to exist, three laws become applicable: (a) one party to the drain cannot legally authorize connection by an outside owner unless all parties to the drain consent; (b) none of the interested parties can close a drain or interfere with the flow of water through it without the consent of all parties; (c) an interested party may, at his own expense, enter the lands of others to repair the drain.

Appropriate action can be taken to enforce these three laws. To enforce the first law, a bill in chancery can be maintained to compel a disconnection or the closing of the unlawful connection and damages can be collected. To enforce the second and third, an injunction can be sought to compel removal of the obstruction or to prevent interference with one entering the lands of others to make repairs at his own expense.

In the absence of an agreement for maintenance, the alternatives which an owner in a mutual drain may have are either to pay for the work himself or petition for the organization of a district by user. (For a discussion of the organization of districts by user, see page 19.) It may be true, of course, that the extent of the mutual agreement includes upkeep and maintenance on the drain, or it may be that such right has accrued by prescriptive use. Only the particular facts in each case can be relied upon to determine if either of these conditions exists.

Summary of statutory enlargements. The statutory enlargements of the civil-law rules of natural drainage may aid a particular landowner in these ways (these are additions to the rights the civil-law rules give him): he may (a) extend a natural drain across the property of others when such is necessary to secure a proper outlet, but when doing this he must follow the procedure and meet the conditions outlined in the statute; (b) connect to a drain along the highway with the consent of the highway commissioners; (c) prevent owners of lower ground from interfering with the flow of water through a natural drain, or from destroying or impairing such drains.

In addition to these specific statutory enlargements of the civil-law rules, an owner may create rights by contract or by prescriptive use.
But in spite of enlargement by court interpretation, statutes, and contracts between owners, and the acquisition of rights by prescriptive use, thousands of Illinois landowners would have remained comparatively helpless with regard to securing adequate drainage or flood control had not comprehensive drainage district laws been provided by the legislature. The rest of this circular deals with these laws.

**Part II**

**ILLINOIS LAWS ON DRAINAGE Districts**

Natural drainage rules do not adequately meet the needs of landowners in many parts of the state, particularly in the flat prairie areas and in river bottoms, where both drainage and flood protection are needed.

To cover the inadequacies of the natural drainage rules and give landowners a means of securing proper drainage, the legislature in 1879 passed two laws, the Levee Act and the Farm Drainage Act. These laws provided for drainage districts based on a system of assessments which permitted districts to include only lands benefited. This principle was not changed by the Drainage Code which went into effect on January 1, 1956.

The courts hold that if a man has adequate drainage under natural-drainage rules, he is not benefited by a drainage district (except for sanitary benefits which are negligible) and his land cannot be included in a drainage district against his wish. (For a discussion of the rules of natural drainage, see Part I of this circular.) In other words, before a drainage district can get jurisdiction over a man's land, it must appear that he has imperfect natural drainage. The mere fact that the ditches of a drainage district carry off water that originates on his land does not mean, in a legal sense, that he is benefited by the drainage district. If it appears that the water would naturally have flowed off the land, or could legally have been made to flow off it by artificial ditches, then he has adequate drainage and cannot be taxed simply because that water, after it leaves his land, finds its way to the ditches of a drainage district.

Thus a drainage district has no jurisdiction over land sought to be included in it unless the district benefits the land.

The primary purpose of the Drainage Code is to provide landowners with a legal entity or organization which can be used to force unwilling owners into the district and to secure adequate drainage or flood protection for the lands lying within such an entity.
In 1937 the Illinois Tax Commission made a survey of Illinois drainage districts. At that time there were 1,541 districts comprising a total of 5,454,000 acres. From 1925 until the time the survey was made, only 468, or slightly more than 30 percent, of these districts had been active.

As a result of court interpretation, important principles have been established which influence the organization and operation of all drainage districts. These principles, resulting from judicial consideration of the constitutional provision on drainage, are listed below and must be kept in mind throughout succeeding sections dealing with the details of organization and operation.

1. Assessments can be levied only against land which is benefited.

2. Assessments on land cannot exceed the benefits which the land will receive.

3. Drainage districts are public corporations charged with specific governmental functions and, if necessary, may acquire rights in land by instituting eminent domain proceedings and paying just compensation to the owner.

4. Assessments are not limited to land alone but may be levied against improvements, providing there are benefits.

5. "Benefits," or the estimated value of the proposed drainage works to a particular property, are not limited to "agricultural or sanitary" benefits, but may include other kinds, such as those occurring to a railroad or manufacturing concern. Therefore assessments may be levied against such property.

6. A landowner is entitled to a hearing on the question of benefits before he can be compelled to pay drainage assessments.

7. Drainage districts are dependent solely upon statute, and these statutes must be fulfilled to make their organization legal.

Organization of Districts

Steps from initial action to court's finding for petitioners. 1. The adult landowners in the proposed district initiate organization by petition. The petition must be filed in the county court of the county in which most of the proposed district lies. It must be signed by a

The constitution of 1870 contained a provision authorizing the General Assembly to pass laws permitting landowners or occupants to construct drains and ditches for agricultural and sanitary purposes across the lands of others. In an early decision the Illinois Supreme Court held that the constitutional provision on drainage did not authorize special assessments. In 1878 this provision of the constitution was amended (the first amendment) to provide that districts could levy special assessments on property benefited through the exercise of its power to "... construct and maintain levees, drains and ditches, and to keep in repair all drains, ditches and levees heretofore constructed under the laws of this state. . . ." Thus districts were able to finance their operations.
**Circular No. 751**

majority of the landowners who own *one-third* of the land in the proposed district, or by *one-third* of the landowners who own a majority of the land in the proposed district.

A smaller number of landowners may also petition for organization. The petition must be signed by at least one-tenth of the adult owners who own at least one-fifth of the land. It must be filed with the county court of the county in which most of the proposed district lies. A referendum is then used.

Any petition must include: (a) the name of the proposed district; (b) a statement showing the necessity of the district; (c) a description of the proposed work; (d) a general description of the lands that would be affected and the names of the owners; (e) a description of the boundaries and approximate number of acres; and (f) a request for the organization of the district and appointment of commissioners.

By court ruling, owners may sign the petition at any time prior to the time the court takes action on the petition. But after the court’s action, a petitioner may withdraw his name from the petition only if a majority of the other petitioners consent or when he can show he was fraudulently induced to sign it.

Petitions must be carefully prepared. Failure to state correctly and logically what is needed, the omission of material requirements, the inclusion of territory already in another district, and other irregularities will render a petition ineffective. Legal assistance in its preparation is indispensable.

2. The county clerk must publish notice of the filing of the petition and of a hearing on the petition. The first publication must be made at least two weeks prior to the hearing. He must publish a copy of the notice once a week for three successive weeks in one or more newspapers published in the county from which most of the district will be formed.

The clerk is also required, within four days after the first publication, to mail notices to nonresident landowners (as listed in an affidavit accompanying the petition). Nonresident in this case means residing outside the county or counties included. The notice must state: (a) in what court the petition is filed; (b) the boundaries and name of the proposed district; and (c) the time and place of the hearing. Resident landowners are not entitled to a notice addressed to them personally.

3. After a petition is filed and notice of a hearing published, the county court hears the petition. The court may adjourn the hearing from time to time and permit amendment. During this time any party affected may appear and contest the necessity or utility of all or any part of the proposed work. Both contestants and petitioners may offer any competent evidence in this regard.
4. After petition, notice, and hearing, the court determines: (a) whether the petition has been signed by the requisite number of persons owning the required amount of land; and (b) whether the petition meets other requirements of the law. If the court finds against either (a) or (b), the petition is dismissed at the cost of the petitioners.

5. The court appoints three commissioners after it finds for the petitioners. Before they enter upon their duties, the commissioners must subscribe to and file an oath.

2. The commissioners must organize for the conduct of business. One must be elected chairman and one may be elected secretary. A majority of the commissioners constitutes a quorum. When actually engaged in district business, they are entitled to eight dollars a day and necessary travel expenses.

3. The commissioners must examine the land and determine the following things: (a) whether the proposed project is feasible, and if not, what would be feasible; (b) the probable cost; (c) the probable annual cost of upkeep; (d) what lands will be injured and the probable aggregate amount of damage; (e) what lands will be benefited and whether the aggregate amount of benefits will equal or exceed the cost of construction; and (f) whether the proposed district embraces all lands that will be damaged or benefited; if it does not, they must report additional lands that will be affected. The commissioners, unless excused by the court, must employ an engineer to go upon lands in the proposed district and make examinations, plans, plats, and surveys.

4. The commissioners must prepare a report for the court on the things listed in Step 3. They must make this report on a date the court set at the time it appointed them. Their report must show: (a) whether the proposed levees or ditches will be sufficient to protect the land permanently from overflow or to drain it; (b) the probable annual expense; (c) what lands will be benefited and the aggregate amount of such benefits; (d) whether aggregate benefits will equal or exceed annual costs; (e) whether the proposed district embraces all the lands benefited, and if not, what additional lands will be benefited. The commissioners are not confined to the plan in the petition but may alter it to secure maximum benefits and minimum damages. And they may extend or contract the proposed boundaries, so long as the petition still fulfills the original requirements as to number of signers and acreage. The court may continue hearings for the period permitted by law.

5. The court sets and publishes a date for a hearing after the commissioners’ report is filed. At the hearing all persons may appear and contest the confirmation of the report, show that it should be modified, or that additional work should be undertaken. Any compe-
tent evidence may be introduced to support the contentions which are made.

6. The court may do one of five things after the hearing: (a) confirm the report and enter the prescribed order declaring the district organized; (b) modify the report and confirm it; (c) order the commissioners to review and correct the report before it is confirmed; (d) refer the report for amendment and adjourn the hearing; or (e) find that the district should not be organized.

Steps temporary commissioners or their successors must take if district is approved. 1. The commissioners must attempt, by voluntary agreement, to acquire the necessary rights of way and releases of damages. If certain owners will not agree, the law provides that after payment or tender of the amount allowed in eminent domain proceedings the commissioners may go upon the lands for the purpose of constructing and maintaining the proposed work. Any person who willfully prevents or prohibits such entry may be fined $25 to $100 a day for each day's hindrance.

When additional ditches or works are necessary, the commissioners must again proceed as far as they can by voluntary agreement. If the owners and commissioners cannot agree, the value of the land and the damages may be ascertained and paid in the manner prescribed by law under eminent domain procedure.

2. The commissioners must make out an assessment roll against each tract of land in accordance with benefits assessed against the tract. The roll must contain, in proper columns, the names of the owners, a description of the premises, the acres in each tract, the benefits and damages assessed against each tract, and the compensation to be paid for land taken.

3. The assessment roll made by the commissioners is filed with the county clerk and a hearing date set and published. A jury is impaneled if requested. Objections may be made by any interested party. The jury then examines the land of anyone who asks for examination and ascertains benefits and damages. The jury then reaches a verdict and transmits it to the county court.

Commissioners or other interested parties may appeal to the Supreme Court from a judgment of the county court on assessments.

A new assessment may be made when the original is annulled for any irregularity in procedure. The fact that an assessment on one or more tracts of land is void or that tracts have been omitted through error does not void the assessment on other tracts. Provision is made in the law for validating such void or omitted assessments.

When the works of a drainage district benefit the road or railroad of any corporation, or the streets and alleys of any municipal corporation, such corporations must be included in the assessment roll.
The county court is vested with authority to extend the time of paying assessments, to divide assessments into more or fewer installments than was originally provided, and to refund bonds issued by the district. By following the procedure established by law, a landowner may petition to be relieved of an assessment.

Subject to the approval of the court, the commissioners may convey real estate belonging to the district to secure a loan or may negotiate a loan with the federal government or any of its agencies.

4. Commissioners must publish notice of assessment and may order payment in installments. They may designate the amount of the installments and the dates for payment. They must publish notice of the assessment for two weeks.

If the commissioners make no order to pay in installments, the whole amount becomes due thirty days after approval or confirmation of the assessment. The assessment becomes a lien upon the land assessed. Assessments draw interest which may be collected and enforced as part of the assessment. If payable in installments, interest may be at the rate of 6 percent payable annually.

A landowner who pays one installment on a tract cannot object to paying the remaining installments on the same tract. Also, after an assessment has been confirmed, the organization or jurisdiction of the district cannot be attacked.

5. The county treasurer acts as treasurer of the district and has the following duties: (a) to keep proper books of account for all money received and disbursed; (b) to pay out money only on order; (c) to preserve a file of all orders for the payment of money; (d) to pay bonds or interest coupons which are lawful obligations of the district when they are due without an order; and (e) to turn over all books and properties of the office to his successor.

The treasurer is not required to post a separate bond as treasurer of the district. However, a special treasurer, if he is asked for and approved by the county court, must give bond.

The treasurer may ask the commissioners to pick a bank or banks or other depository for district funds. No bank not a member of the Federal Deposit Insurance Corporation can qualify unless it furnishes the commissioners with its last two sworn statements of assets and liabilities and with all statements of resources and liabilities which it is required to furnish to the auditor of public accounts or to the comptroller of currency.

6. The district collector (if other than the county collector) must make out a list of delinquent assessments and turn it over to the county collector. Assessments, installments, or annual benefits not paid by the due date become delinquent. A list of them must be in the hands of the county collector not later than September 8 following the
time they become delinquent. The collector transfers the list to his
tax books.

If payment is not made on or before the annual sale of lands for
nonpayment of taxes, the land may be sold. The law provides for the
appointment of a receiver when, after a foreclosure sale, assessments
are still delinquent. Also, the commissioners may purchase land fore­
closed upon for drainage district assessments.

It is further provided that when an annual benefit or maintenance
tax remains unpaid, the commissioners may apply to any court of
competent jurisdiction for the appointment of a receiver of the rents
and income until the tax, penalties, interests, costs, and expenses of
the receivership are satisfied. The receiver is authorized to receive
delinquent payments and, as evidence of payment, to present the
county collector with a memorandum on or before the day of the sale.
A commissioner or other officer of a district may be appointed
receiver.

Other things that commissioners may do. Commissioners may also
levy assessments for repair, maintenance, or completion of district
work. If an assessment for keeping the works of a drainage district in
repair is not included in the original petition, or if the amount as­
sessed becomes insufficient, the commissioners may levy an assess­
ment for this purpose or increase the original assessment. (This
assessment is known as an annual maintenance assessment.) To levy
it, the commissioners follow the same procedure as that for levying
original or additional assessments. An "additional" assessment is one
levied to complete the work when the original assessment was insuf­
cient. In districts which levy an annual maintenance assessment,
the commissioners may maintain an emergency fund equal to the total
of one year's annual maintenance assessment.

When the works of a district are endangered or need emergency
repairs and sufficient annual benefits are not available, the commis­
sioners may incur indebtedness in excess of uncollected assessments
and funds on hand.

An assessment may be divided when the ownership of land is
divided.

Important Rules Laid Down by the Courts

Many controversies have arisen over the organization of drainage
districts. Illinois courts have, as a result, developed certain rules.
Among the more important ones are these:

1. Signatures may be withdrawn or added to a petition at any
time prior to the time the court takes action on the petition. After that
time, however, a signature may be withdrawn only with the consent
of the majority of the other petitioners, or upon showing that it was
secured through fraud or misrepresentation.
2. The preliminary order of the county court must contain a definite statement of the findings that the court made on the questions which by law it must consider.

3. An order is ineffective if the court does not acquire jurisdiction by following the statutory requirements in detail, or if material errors or omissions in the petition remain uncorrected.

4. A drainage district cannot be organized to correspond with the boundaries of a township or other political unit unless such a unit constitutes a natural watershed and contains lands that can be efficiently connected by a continuous line of ditches or drains. Such a situation is unlikely.

**Organization of Outlet, Mutual, and User Districts**

**Organization of outlet districts** follows usual procedure. Outlet districts must benefit land already in two or more drainage districts as well as land not in such districts. Their purpose is to deepen and widen the natural outlets for collected waters, not to construct original drainage or levee works.

**Organization of mutual drainage districts.** When all the landowners in an area sign a mutual agreement, and when this agreement has been acknowledged by a notary public or any one authorized by law to administer oaths and has been recorded in the drainage record, a district is formed. The original commissioners may be appointed by the county judge upon the request of the owners or they may be designated by agreement. Succeeding commissioners are appointed by the county court as in other districts.

The mutual agreement may cover these points or it may cover fewer or additional ones: location and character of work to be done, adjustment of damage, amount of assessment to be levied, assessment against each tract, and how the work shall be done.

When no contract for construction is awarded by a mutual district or when the county court feels it was organized to prevent the inclusion of its lands in a district by petition, the lands in the mutual district may be included in a district by petition.

**Organization of user districts.** When two or more property owners have connecting artificial drains which were at one time established by mutual agreement between the owners, and when the present owners cannot agree on the repair or maintenance of the system, any one of

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1 A prominent drainage lawyer, commenting on this item, remarked, "I know of several districts organized about forty years ago by mutual agreement where assessments were limited to definite amounts of money, adequate then but completely inadequate today, with the result that those lands cannot now be adequately drained without expensive dissolution or reorganization proceedings."
such owners may petition the court to have the lands thus connected organized as a drainage district. If the facts support the petition, the court proceeds with organization as in any other district.

**Appointment of Commissioners**

The affairs of a drainage district are conducted by drainage commissioners. The success with which any district operates is dependent, therefore, in large part on the ability and interest of the commissioners and upon their willingness to become well informed about their jobs.

Commissioners are appointed by the county judge on the first Tuesday in September for three-year terms, their terms being staggered so that one of the three is named annually.

The law provides, however, that the court shall appoint only such persons as are petitioned for by the landowners owning more than one-half the land in the district. But if such a petition is not on file one week before the first Tuesday of September, the judge must use his own discretion and appoint some suitable person.

After the original construction work is completed, the judge may, upon petition by a majority of the landowners, dispense with two commissioners and appoint only one for a three-year term. The court will again appoint three commissioners when it appears that additional work is needed, provided one or more landowners petition for such appointment.

In mutual districts the petitioners may select the first three commissioners to be approved by the county judge. After the appointment of these first commissioners, the procedure is the same as in other districts. In outlet and user districts the procedure is the same as in other districts.

In drainage districts organized prior to January 1, 1956, the effective date of the Drainage Code, and in which commissioners were elected, commissioners shall continue to be elected, unless landowners in those districts choose the appointive method.

**Powers and Duties of Commissioners**

Generally speaking, commissioners have the power and authority to do and the duty of doing all things necessary for the accomplishment of the purposes of the law. Their powers and duties, however, are specifically prescribed by law and are strictly construed. These powers and duties are: (a) to go upon the land, employ necessary assistance, and adopt a plan or system of drainage; (b) to obtain the necessary lands and right of way by agreement or, if necessary, by eminent domain proceedings; (c) in the corporate name of the district, to enter into contracts, sue and be sued, plead and be impleaded, and
do "all such acts and things as may be necessary for the accomplish­
ment of the purposes of this act"; (d) to compromise suits and con­
troversies and employ necessary agents and attorneys; (e) to carry
out specific provisions of the law relative to making various types of
assessments, employing a treasurer, employing other assistance, an­
nexing lands, borrowing funds, enforcing payment of assessments, and
consolidating and dissolving districts; (f) to let contracts for the
surveying, laying, constructing, repairing, altering, enlarging, cleaning,
protecting, and maintaining of any drain, ditch, levee, or other work;
to let contracts by bid if the work to be done is the construction of the
principal work and the cost is more than $1,000; (g) to borrow money,
without court authority, up to 90 percent of assessments unpaid at the
time for the payment of any authorized debts or construction; (h) to
widen, straighten, deepen, or enlarge any ditch or watercourse, and
to remove driftwood and rubbish whether the ditch is in, outside of,
or below the district; (i) to cause railroad companies to construct,
rebuild, or enlarge bridges or culverts when necessary; (j) to make
annual or more frequent reports as required by the county court,
including an annual financial report; (k) to conduct meetings in the
county or counties in which the district is located; (l) to use public
highways for the purposes of work to be done; (m) to keep the works
of the district in operation and repair; (n) to sell or lease any land
owned by the district; (o) to own and operate necessary machinery
and equipment; (p) to construct access roads and level spoil banks;
(q) to abandon works no longer useful to the district; and (r) to
contract with other public agencies, including the federal govern­
ment.

The court may, for good cause, remove any commissioner appointed
by it and may fill all vacancies. Also, the law provides for a penalty
and removal from office of a commissioner who refuses or neglects to
discharge the duties imposed on him by law.

Also, upon petition to the court, either by the commissioner or a
landowner, the court may determine the duty of the commissioners
toward such landowner.

Annexing and Detaching Lands From Districts

Annexing land. Aside from land added to one district by consol­
idation of two or more districts, land can be added to a district in
one of two ways: (a) a landowner may voluntarily connect with a
district's drains; his action is deemed an application for annexation
and the commissioners may then take action to have his land added
to the district and subject his land to assessment; (b) the commis­
ioners or landowner involved may petition the county court for
annexation.

Any district which has as its objective the protecting of lands from
overflow and which constructs levees or pumping plants may include
any lands benefited. Part or all of such lands may be in other districts and still be included if the districts they are in do not have levees or pumping plants.

Detaching land. Lands may be detached from a district when such lands are contiguous to the district and are not and cannot presently be benefited by the system of drainage carried on. The steps in making the disconnection are commenced by petition to the county court, either by the commissioners or landowners in the area within the district seeking detachment. A detachment order does not in itself operate to abate assessments previously levied. Also, lands may be detached from one district and added to another, and detachment may be had for lands in a municipal corporation exercising drainage powers.

Consolidation of Districts

Any two or more drainage districts whose drainage or levee systems are connected may consolidate and organize as a single district. The following steps are required: (a) a petition to the clerk of the county in which the majority of the land is situated, signed by at least one-tenth of the landowners who own at least one-fifth of the land in the proposed consolidated area (the petition must contain certain statements required by the law); (b) the clerk must give notice of a hearing; (c) the court must hold a hearing; (d) if the petition is not signed by a majority of the adult owners, a referendum must be held; (e) the court issues an order either dissolving the former districts and consolidating them into a single district or denying the petition.

The court appoints three commissioners for the consolidated district. Prior obligations or indebtedness of a former district must be paid from its funds or from assessments made in the debtor district. Consolidation does not affect the organization and operation of sub-districts.

Abandoning and Dissolving Districts

Abandoning districts. Before a contract for the construction of drainage works is made, all or any portion of the proposed works may be abandoned upon petition of two-thirds of the adult landowners who own two-thirds of the area. The county court conducts a hearing, which may be continued if necessary, and determines if any portion of the work should be abandoned. In its order the court provides for any abatement of assessments or for refunds which may result from the abandonment.

Dissolving districts. Districts or subdistricts may be dissolved at any time by order of the county court under the following conditions: (a) at least three-fourths of the adult landowners who own not less than three-fourths of the area must petition the court; (b) the clerk
Illinois Farm Drainage Law

of the court must give notice of a hearing and the court hold one; (c) there must be no contracts which will be impaired and the district must be free from debt; and (d) the costs of dissolving the district must be advanced by the petitioners.

Any real or personal property belonging to the dissolved district must be sold by the commissioners on order from the county court. Proceeds after costs and indebtedness are rebated to the owners.

Drainage Record

The county clerk, who acts as clerk of districts in his county, is required to keep for each district a book known as the Drainage Record. It must be open for public inspection by those interested and must contain among other entries the following: (a) a brief memorandum of all transactions concerning the district; (b) a record of the issuance of bonds, of contracts that have been let, of orders on the treasurer, materials and tools purchased, of warrants to the treasurer for the service of commissioners, and of sums paid for work done.

Owners’ and Districts’ Rights and Duties Concerning Ditches and Drains

As a result of statutes, decisions, and the application of common-law rules, certain principles can be stated concerning an owner’s and a district’s rights and duties with respect to ditches and drains.

An owner has the right to use the water in a ditch, fish or trap in it, take ice from it, cross it, and move his implements along its banks so long as he does not impair the functioning of the ditch or break down its banks.

An owner may connect with the drains of a district, providing the type of connection is approved by the commissioners.

A district has the right: (a) to enjoin (prohibit or restrain by court order) pollution of a ditch; (b) to subject the land of anyone who connects his drains to those of the district to the jurisdiction of the district; (c) to have any person fined who wrongfully or purposefully “fills up, cuts, injures, destroys or in any manner impairs the usefulness of any drain.” (If the injury is to a levee and causes flooding, the person shall be deemed guilty of a felony, and besides being fined may be imprisoned for a term of one to five years. The commissioners can also recover damages to their work from him.)

Illinois courts have decided that a district is not required to fence its ditches or rights of way. It is also not required to construct farm bridges across its ditches, but the cost of a bridge may be considered in determining damages to particular property.

1 This also applies to farm drainage districts organized since June 28, 1919.
OTHER LEGAL PROVISIONS AFFECTING DRAINAGE DISTRICTS

**New assessments.** When an assessment for the support of a drainage district fails or is invalid because of a defect that does not affect its merits, a new assessment may be made.

**Connecting with facilities of adjoining districts or other municipal corporations exercising drainage powers.** Any drainage district organized under law in Illinois can connect its levees, ditches, or drains with the levees, ditches, or drains of any adjoining district or other municipal corporation exercising drainage powers. Commissioners must enter a contract apportioning the costs, and petition the county court for approval of the contract. The court then holds a hearing at which interested parties can appear. In the absence of such a contract, the court can still determine the amount of annual benefit which any adjoining district receives from the work of another district, and may order the district receiving the benefit to collect the proper amount and pay it to the other district.

**Issuing bonds.** Commissioners may issue bonds for their districts. They are authorized to borrow up to 90 percent of an unpaid levy or assessment and secure the payment of the loan by notes or bonds. Amounts in excess of 90 percent may be borrowed for good cause shown. The law contains specific provisions on the issuance, recording, and registration of bonds.

By following the procedure specified in the law, bonds may be refunded and the payment of assessments extended.

**Districts organized prior to January 1, 1956.** The commissioners in districts organized prior to January 1, 1956, the effective date of the Drainage Code, must file a report with the county court by January 1, 1957, after which they become subject to the provisions of the code.

**Cooperation with other public agencies.** Commissioners are required to cooperate with other districts and with local, state, and federal agencies in the exchange of information pertaining to drainage.

**SUBDISTRICTS ARE ADMINISTRATIVE UNITS**

Subdistricts are administrative units or subdivisions of a main district. They are not independent corporations. Their function is to provide for a drainage district within a drainage district. They are a means of securing minute and particular drainage for particular areas
within a district, using main ditches constructed by the entire district as outlets.

The accounts and records of assessments of subdistricts are kept separate from the records and accounts of main districts, and as administrative units they are entirely independent of the main district.

If any drainage district contains lands in particular localities in need of more minute and complete drainage, such localities can be organized into subdistricts either on petition of the same majorities required for the organization of main districts or on petition of the commissioners of the main district to the county court. The petition is followed by notice to all landowners in the proposed subdistrict and a hearing in the county court similar to the hearing for a district. After a subdistrict is organized, assessments are levied as in the main district. Subdistricts have the power to annex lands which connect with its ditches or which are benefited by the work of the subdistrict. Provision is also made for a subdistrict within a subdistrict. A subdistrict within a subdistrict is called a minor subdistrict and drains a particular independent area within the subdistrict. The commissioners of the main district are always ex-officio commissioners of the subdistrict.

**SOME DATA ON DRAINAGE-DISTRICT FINANCE**

To help those who may be charged with planning drainage-district financing, the following statement and data are taken from the Illinois Tax Commission's survey entitled, *Drainage District Organization and Finance 1879-1937*, published in 1941.

Drainage districts in Illinois are not regarded as taxing units since they lack the essential power of such units, namely authority to levy taxes. Their areas seldom, if ever, coincide with those of other governmental units. They derive their revenue from special assessments levied with the approval of the county or circuit court to whose jurisdiction they are subject in all their actions.

The plight of drainage districts in Illinois has been so acute since the depression following 1929 as to bring their financial problems well to the front. Almost one-third of all district bonds outstanding in 1937 were in default. Since 1930 many of these districts have found their landowners unable to meet annual assessments. Necessary repairs have long been neglected. . . . In the seven year period, 1930-1937, the total financing by drainage districts was only slightly more than the total for the single year 1929.

It is significant that more than half of all drainage districts in Illinois contain 2,000 acres or less. Only one-fifth contain as many as
5,000 acres and only 22 districts, or less than 2 percent, are as large as a congressional township.

The variation in cost between types of districts and between districts of the same kind in the same locality is illustrated to some extent in Tables 1 and 2.

Table 1. — Drainage Costs in Adjoining Districts in Selected Illinois Counties

<table>
<thead>
<tr>
<th>County</th>
<th>Number of acres</th>
<th>Number of years covered</th>
<th>Total construction costs and annual benefit assessments</th>
<th>Cost per acre per year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Champaign</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>District A</td>
<td>8,945</td>
<td>20</td>
<td>$70,810</td>
<td>$.396</td>
</tr>
<tr>
<td>District B</td>
<td>19,848</td>
<td>20</td>
<td>57,668</td>
<td>$.145</td>
</tr>
<tr>
<td>Fayette</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>District A</td>
<td>5,735</td>
<td>22</td>
<td>27,281</td>
<td>$.149</td>
</tr>
<tr>
<td>District B</td>
<td>4,023</td>
<td>22</td>
<td>30,730</td>
<td>$.238</td>
</tr>
<tr>
<td>Fulton</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>District A</td>
<td>3,115</td>
<td>24</td>
<td>376,701</td>
<td>$.505</td>
</tr>
<tr>
<td>District B</td>
<td>5,307</td>
<td>24</td>
<td>691,914</td>
<td>$.436</td>
</tr>
<tr>
<td>Lee</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>District A</td>
<td>1,563</td>
<td>15</td>
<td>7,020</td>
<td>$.294</td>
</tr>
<tr>
<td>District B</td>
<td>2,124</td>
<td>15</td>
<td>20,300</td>
<td>$.637</td>
</tr>
<tr>
<td>Monroe</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>District A</td>
<td>13,500</td>
<td>57</td>
<td>282,050</td>
<td>$.387</td>
</tr>
<tr>
<td>District B</td>
<td>19,700</td>
<td>57</td>
<td>96,221</td>
<td>$.258</td>
</tr>
<tr>
<td>State (all districts)</td>
<td>454,000</td>
<td>70</td>
<td>72,760,000</td>
<td>$.191</td>
</tr>
</tbody>
</table>


Table 2. — Drainage Costs of Different Types of Districts, and Proportion of Assessments Levied as Annual Benefits, 1879-1937

<table>
<thead>
<tr>
<th>Types of districts</th>
<th>Number of districts</th>
<th>Multiply dollars and acres by 1000</th>
<th>Cost per acre</th>
<th>Percent that annual benefit levies are of total levies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Levee and outlet</td>
<td>526</td>
<td>2,714 $45,521 $10,692 $36,123 $20.68</td>
<td>18.9</td>
<td></td>
</tr>
<tr>
<td>Special drainage</td>
<td>78</td>
<td>637 $7,231 $1,731 $5,490 $4.10</td>
<td>19.5</td>
<td></td>
</tr>
<tr>
<td>Union</td>
<td>327</td>
<td>815 $1,798 $171 $596 $3.64</td>
<td>5.8</td>
<td></td>
</tr>
<tr>
<td>Township and user</td>
<td>515</td>
<td>1,682 $4,001 $205 $396 $3.89</td>
<td>4.9</td>
<td></td>
</tr>
<tr>
<td>Mutual</td>
<td>95</td>
<td>206 $448 $32 $480 $2.33</td>
<td>6.7</td>
<td></td>
</tr>
<tr>
<td>State (all districts)</td>
<td>1,541</td>
<td>5,454 $59,999 $12,761 $72,760 $13.34</td>
<td>17.5</td>
<td></td>
</tr>
</tbody>
</table>

* For source of data see footnote to Table 1.
APPENDIX

GUIDE TO DRAINAGE CODE

(Numbers in parentheses refer to sections of Chapter 42,
Illinois Revised Statutes, 1955)

(Initial Action — Court’s Finding)
Petition is signed by landowners. No time limit. (3-3)
Petition is presented to county court. No time limit. (3-3)
County clerk gives notice of a hearing by publishing in a newspaper. This notice must be given three weeks before the hearing. (3-6)
County court holds a hearing on the petition on day designated in the notice and finds either for or against the petitioners. (3-7)

(Temporary Commissioners — Organization Confirmed)
Court appoints three commissioners after it approves the petition. (3-9)
Commissioners take an oath and elect a chairman before they enter upon their duties. (3-10, 11, 12)
Commissioners examine the land to be drained. They make this examination immediately after their appointment. (3-13)
Commissioners have a survey made, draw a plan, and make a report to the court. They make this report on the date the court set at the time it appointed the commissioners. (3-14, 15)
Court fixes date for hearing on commissioners’ report. (3-17)
Court holds hearing on commissioners’ report on date set by court.

If additional land is to be included in the district, notice must be given. (3-19, 20, 21, 22)

Court confirms order declaring district organized after all objections are in and hearing is completed. (3-23)

Court’s order of confirmation may be appealed to Supreme Court, as are ordinary appeals. (3-25)

Districts may be formed by referendum when a petition signed by at least one-tenth of the adult owners owning at least one-fifth of the land is presented to the county court. (3-26)

Mutual districts may be organized. (3-31)
Outlet districts may be organized. (3-28, 29, 30)
User districts may be organized. (3-27)

Any two or more contiguous drainage districts may consolidate. A petition for consolidation must be filed in the county court. Notice must be given, followed by a hearing. (9-1)

Upon consolidation, court appoints new commissioners, who serve until second Monday of the following September. (9-6)

(Completion of Organization)
Commissioners acquire rights of way and releases of damages after
the court confirms the organization order. (4-17)

Commissioners make out an assessment roll. No time limit. (5-3)

Commissioners fix time for hearing on benefits. Notice must be published in a newspaper and posted. (5-6)

Commissioners hold hearing (before a jury if one is requested) on the designated date. (5-8)

Court renders a verdict on all cases heard before the jury. (5-12, 13)

Commissioners assess annual assessments for repair and maintenance. (5-19, 20)

Commissioners may create an emergency fund. (4-25)

Commissioners may order the tax paid in installments at such times as are convenient to accomplish the proposed work. (5-17)

Owners must pay tax assessments within thirty days unless payments are deferred or commissioners allow payment by installments. (5-17)

Tax assessment is a lien on the land until paid. Commissioners must file tax list with recorder of deeds before lien is effective. (5-17)

Commissioners may borrow money on the annual benefits becoming due when it is necessary to protect drains, ditches, or levees. (6-5)

Commissioners make annual report to court on condition of ditches and on the estimate of expense for the next year. (4-32)

Court clerk is clerk for district. (4-35)

Court treasurer is district treasurer. (4-36)

County collector is district collector. (4-37)

Collector gives notice that payment is due. (5-23)

Collector makes out list of delinquent assessments and returns it to county court. (5-24)

Commissioners file bill in circuit court to enforce payment by foreclosure of lien if assessment is not paid or collected on or before the annual tax sale. (5-25)

Landowners may redeem property from any sale due to foreclosure of the tax lien within two years from date of sale. The purchaser at a foreclosure sale must notify owner of the fact of sale not less than three months before expiration of period of redemption. (5-25)

Commissioners may purchase land at a foreclosure or tax sale. (5-25)

Commissioners file a petition in county or circuit court for appointment of a receiver to collect annual benefits or maintenance tax. (5-26)

Commissioners designate a bank for deposit of funds collected by treasurer when he requests them to designate it. A new depository may be named at any time, but money must remain in a designated bank until ten days after a new depository is named. (6-14)

(Other Provisions)

Commissioners make contracts for construction, repair, and altering. If cost of construction is to be over $1,000, commissioners must advertise for bids. (6-1)

Commissioners may petition county court for additional assessment to repair, enlarge, or strengthen any levee. Landowners may petition commissioners for such additional assessment. Notice must be given and a hearing held as required. (5-1)

Commissioners may borrow up to 90 percent of the unpaid assessments. They may borrow over 90 percent
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Court may extend time for payment of assessments or installments, or increase the number of installments whenever it determines that such action is for the best interest of all parties concerned. Court action is initiated by petition to commissioners or by commissioners' motion to the court. (5-17)

Commissioners may obtain a loan from the federal government or any other agency, or may mortgage the realty of the district if the court approves their action. (4-27)

Commissioners must pay landowners damages for right of way when damages amount to more than benefits assessed against the land. (5-12)

Commissioners may hold meetings whenever necessary in county where district is located. (4-12)

Petition to abandon a district may be made to the court by two-thirds of the landowners who own two-thirds of the land in the area. They must petition before any contract is made for construction. (10-1)

Court holds hearing on petition. Notice must be given. (10-1)

Petition to abandon a portion of the works may be made to the court in the same manner as for abandoning the whole works. (10-2)

A district may be dissolved by petition to the court by three-fourths of the landowners owning at least three-fourths of the land. (10-5)

Commissioners may petition court for change in plans at any time. (4-16)

Commissioners may enter upon lands at any time for construction, maintenance, and repair of drainage works. The only restriction is that their purposes be proper ones. (4-14)

Commissioners may enter upon lands outside district to construct drains when such drains are necessary to protect the district. (4-14)

Landowners outside the district may connect to district drains and thereby become included in the district. (8-2)

Commissioners may enlarge the district. Lands must be assessed, notice given, and other procedures followed in the same way as if lands had been included in the original district. (8-3)

Commissioners or owner may petition court to detach lands from district when such lands are not benefited. (8-8)

Majority of landowners affected may petition commissioners to form a subdistrict. Commissioners make a special report to court and the clerk gives notice of a hearing. (7-2)

Commissioners may petition court to form a subdistrict. (7-2)

Court appoints commissioners on first Tuesday in September. (4-1)

REFERENCES


Illinois Revised Statutes 1949, Chapter 42: Levee Act, sections 1-75; Farm Drainage Act, sections 82-166; other drainage laws, sections 76-76.6 and 166.1-246b.2.


DEFINITIONS

Abatement — as used in the drainage acts, a reduction in assessments. An abatement is caused by a change in plans or by some other condition which makes the total original assessment unnecessary.

Annulment — a cancellation of some previous action or a declaration that it is of no legal effect.

Basin — a natural depression which holds water and out of which water cannot flow without artificial aid.

Canvass — to examine officially, count, and determine the vote at an election.

Civil law — a written code of laws that originated in Rome and that is used in many countries. It is to be distinguished from English common law, which is based on statutes and court decisions. (Louisiana is the only state under civil law, though Illinois and some other states have adopted natural drainage rules like those in the civil law.)

Codification — the rearrangement under one general title and in one place of all the laws on a particular subject.

Condemnation — a legal proceeding to secure land for a public purpose upon payment of the land’s reasonable value. Condemnation proceedings are used when the owner will not voluntarily convey title. Eminent domain proceedings are condemnation proceedings.

Contiguous — adjacent or touching.

Continuance — legal action by a court or other legal body to keep a cause open until a future date.

Ditch — an artificially constructed open drain or a natural drain which has been artificially improved.

Dominant land or tenement — property so situated that its owners have rights on adjacent property, such as a right of way or a right of natural drainage. The adjacent land is called the servient land or tenement.

Drain — includes ditch and any water course or conduit, whether open, covered, or enclosed, natural or artificial, or partly natural and partly artificial, by which waters coming or falling upon lands are carried away.

Drainage structures — those structures other than drains, levees, and pumping plants which are intended to promote or aid drainage. Such structures may be independent from other drainage work or may be a part of or incidental to such work. The term includes, but is not restricted to,
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catchbasins, bulkheads, spillways, flumes, drop-boxes, pipe outlets, junction boxes, and structures, the primary purpose of which is to prevent the erosion of soil into a district drain.

**Drainage system** — the system by which lands are drained, or protected from overflow, or both, and includes drains, drainage structures, levees, and pumping plants.

**Easement** — any acquired right to cross or to use another’s property.

**Eminent domain** — see *condemnation*.

**Ex-officio** — by virtue of an office. An ex-officio member of a board or a commission is a member because he holds a given office, not because he was regularly appointed or elected to the board or commission. For instance, the Governor of Illinois is an ex-officio member of a number of boards and commissions.

**Injunction** — a legal writ or command issued by a court and directed to a particular person or corporation, requiring that the person or corporation stop certain actions.

**Landowner or owner** — the owner of real property; includes an owner of an undivided interest, a life tenant, a remainderman, and a trustee under an active trust, but does not include a mortgagee, a trustee under a trust deed in the nature of a mortgage, a lien holder, or a lessee.

**Lien** — a legal claim against particular property for services rendered the property. A drainage assessment is a legal claim against the assessed property.

**Mutual drainage** — drainage agreed to and of benefit to all persons involved. See “Mutual Districts,” page 19, and “Drains by Mutual License,” page 10.

**Non-resident** — a person residing outside the county or counties in which the district or any portion thereof is situated.

**Quorum** — a majority of those entitled to act. An official board cannot do business unless a quorum is present.

**Receiver** — a person designated by law to take charge of a business or property and make accountings pending settlement of the unpaid obligations which brought about the receivership.

**Registered professional engineer** — a professional engineer registered under the provisions of “The Illinois Professional Engineering Act” and any act amendatory thereof.

**Riparian owner** — one who owns land adjacent to a stream.

**Riparian rights** — rights growing out of the ownership of land adjacent to a stream.

**Servient land or tenement** — see *dominant land or tenement*.

**Spite walls and spite fences** — structures erected to interfere with the vision and air of an adjacent property owner. An owner may sometimes enjoin the erection of these structures if he can prove a malicious state of mind on the part of the builder.
Tenement—land, real estate; generally used, however, to describe real estate having permanent improvements.

User—denotes that a particular person or persons have made continuous use of a roadway, drain, or other artificial structure for some minimum period of time. A user drainage district is one organized to contain land drained by connected artificial drains that have been so used.
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