ILLINOIS UNIVERSITY--
ALL-UNIVERSITY COMMITTEE ON COMMUNITY PROBLEMS

SUMMARY OF ILLINOIS LAWS RELATING TO DRAINAGE AND FLOOD CONTROL.
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Summary of Illinois Laws Relating to Drainage and Flood Control

All-University Committee on Community Problems

University of Illinois, Urbana, September, 1959
THE ALL-UNIVERSITY COMMITTEE ON COMMUNITY PROBLEMS

The primary responsibility of a University is to contribute to the sum total of human knowledge through research into the unknown and to make known its accumulated knowledge through teaching.

The University of Illinois has always stood ready to make available the results of its research and teaching programs to the citizens of Illinois. The College of Agriculture, the College of Education, the Extension Division, several Schools, Bureaus, Institutes, and individual departments have carried the University into all corners of the State. The results of this work have brought substantial benefit to all of the people of Illinois.

In an attempt to serve the State still more effectively, President David D. Henry in February 1957 appointed an All-University Committee on Community Problems. Realizing that many of the issues facing local, regional, state-wide, and even multi-state groups could be best approached through the work and ideas of several fields of knowledge, President Henry asked the cooperation of all of the 40 or more units of the University that conduct teaching, research, extension activities which, combined, bear on virtually all aspects of man's efforts to find a better life. The University Committee on Community Problems acts as a central agency to which communities can send requests for advice and can be assured that the problem will be considered by every University unit that has a capability in matters pertaining to that problem.

In this way the Committee assists and supports existing units in their work and gives the citizens of all the State a means of communication, which they may use if they desire, between themselves and their University.

Problems of community development are studied by the cooperating University units within the All-University Committee. Advice, plans, and recommendations are furnished which provide guidance for self-betterment programs. In some aspects of community work, the University has extension workers to go into communities for research and teaching. Within the limits of time and facilities available for this work, requests from communities and groups within the State are welcomed for consideration by the All-University Committee on Community Problems and its member units.
INTRODUCTION

Problems of drainage and flooding in areas of changing land use usually from agriculture to residential that may be termed “rurban” have been noted frequently in recent years.

Complaints and requests for assistance from farm land owners to the Agricultural Extension Service were examined by University of Illinois staff. Observations frequently indicated that although damages to agricultural land are found, the greater and more lasting damages are being suffered by the home owners in the new suburbs. Failure to recognize such problems, lack of adequate drainage facilities and even more important, lack of zoning or other controls can only result in having more inadequately drained agricultural areas near cities from being built into additional problems.

A drainage committee in the College of Agriculture made some studies in 1958 and recommended that this problem be considered by the All-University Committee on Community Problems. Later in the same year a sub-committee on Drainage and Flooding Problems in “Rurban” areas was set up under the All-University Committee on Community Problems.

The first major undertaking of this sub-committee has been to authorize a study of governmental units having powers directly related to such drainage and flooding problems. This research was done by Mr. Kenneth Ritz, a senior in the law school under the direction of N. P. G. Krausz, professor of Agricultural Law and a member of the Sub-Committee.

Members of the Sub-Committee are:

A. T. Anderson, Associate Professor of Agricultural Economics
V. T. Chow, Professor of Hydraulic Engineering
G. E. Ekblaw, Geologist, State Geological Survey
R. S. Engelbrecht, Professor of Sanitary Engineering
B. A. Jones, Associate Professor of Agricultural Engineering
N. P. G. Krausz, Professor of Agricultural Law
P. H. Lewis, Assistant Professor of Community Planning
W. F. Purnell, Associate Professor of Soils
H. J. Shaughnessy, Head Public Health Department,
College of Medicine, Chicago, Ill.

Ralph C. Hay
Chairman
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PART I. GOVERNMENTAL UNITS HAVING POWERS
DIRECTLY RELATING TO DRAINAGE AND FLOOD CONTROL

A - SOIL CONSERVATION DISTRICT

In the Illinois act establishing soil conservation districts, it is declared to be the policy of the legislature to provide for the conservation of the soil and soil resources, the control and prevention of soil erosion, and the prevention of erosion, floodwater and sediment damages, in order to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife and forests, protect the tax base, and protect and promote the health, safety, and general welfare of the people.

In order to coordinate the individual soil conservation districts, a State Soil Conservation District Advisory Board has been established. The advisory board is charged with the duties, among others, to assist and inform the directors of the soil conservation districts, to coordinate the activities of the individual districts, to seek assistance and cooperation of the federal government and the other state agencies, and to disseminate information throughout the state concerning the formation of soil conservation districts.

Any 25 or more owners of land lying within the limits of the territory proposed to be organized into a district who own at least ten percent of the land, by area, within such proposed district may file a petition with the Department of Agriculture asking that a soil conservation district be organized in the territory described in the petition.

\[1/\] G. 5, s 106 - 130
All references are to the Illinois Revised Statutes, 1959 edition; unless otherwise noted.
Within 30 days after filing of the petition, a public hearing must be held to determine the feasibility of establishing a conservation district in the proposed area. A referendum is necessary unless 55 percent of the landowners within the proposed district have signed the petition for organization. The district, when organized, is a public corporation.

The governing body of the district consists of five directors, who are owners or occupiers of lands within the district. The directors are empowered to conduct surveys, investigations, research, and to develop comprehensive plans for the conservation of soil resources and for the control and prevention of erosion and floodwater and sediment damages, to carry out preventative and control measures, to furnish aid, financial or otherwise, to any government agency or private party in carrying on erosion and flood control, to acquire and improve properties for the purposes of the district (includes power to condemn), to make available to landowners agricultural and engineering machinery to assist them in erosion and flood control, to construct, improve, and operate necessary structures, to administer any erosion project undertaken by the federal government within the district, to sue and be sued in the name of the district, and to require contributions or agreements with respect to land as a condition to the extending of any benefits to private property.

One of the most important provisions of the act deals with the promulgation of land-use regulations. The directors of a district have authority to formulate regulations governing the use of land within the district in the interest of conserving soil and soil resources and preventing and controlling erosion, floodwater, and sediment damages. Any such regulation proposed by the directors may not be adopted unless three-fourths of the land-
owners approve in a referendum.

A method of supervision and enforcement of the land-use regulations is set up in the act. The directors have the authority to go upon the lands to determine whether the land-use regulations are being observed. Also, the directors may provide by ordinance that any landowner who sustains damages from the violation of the regulations by any other landowner may recover such damages. Where the directors find that a particular landowner is violating the regulations, they may file a petition in the Circuit Court to compel compliance.

B - SOIL CONSERVATION SUBDISTRICT2/

Subdistricts were authorized as a sponsoring agency for a new federal project, aid for watershed protection and flood prevention activities.

The most logical agency seemed to be our soil conservation districts, since they were already working with soil erosion problems and had objectives similar to those of the new federal law. But soil conservation districts would not qualify because they were not wealthy and had no taxing power.

If the project was to be adopted in the rural areas, it therefore appeared necessary either to give these districts the power to tax or to form an entirely new agency with taxing power. The solution was passage in 1955 of a subdistrict law allowing soil conservation districts to form subdistricts within watershed areas -- with the power to levy a tax in the subdistrict. The maximum tax rate in Illinois is 12 1/2 cents per $100 valuation.

2/ C. 5, s 131b-138.1.
This money may be spent for developing and executing plans and programs relating to any phase of flood prevention, flood control or erosion control and for preventing or reducing damage from erosion, flood waters and sediment. Federal funds are available if the subdistrict contribution is large enough (over half of the costs are expected to be paid from local funds) and if certain requirements are met, such as (1) furnishing the land and (2) obtaining from landowners of half of the land an agreement to carry out a soil conservation program.

To form a subdistrict, these steps are necessary:
1. A petition must be signed by a majority of the landowners who own a majority of the land, and then filed with the district directors.
2. Within 30 days after receiving the petition, the directors hold a hearing at which land may be added or excluded.
3. The directors give notice and hold an election in the proposed subdistrict within 30 days after the hearing.
4. If approved by majority vote, the directors file a certificate of organization with the county clerk and Department of Agriculture.

The governing body of the subdistrict consists of the directors of the soil conservation district in which the subdistrict is formed. If the subdistrict falls within more than one district, the directors of all such districts act as a joint governing body.

C - DRAINAGE DISTRICT 3/

"Drainage districts may be formed to construct, maintain or repair drains or levees or to engage in other drainage or levee work for agricultural, sanitary or mining purposes." The area to be included within the district does not have to conform to any pre-existing political boundaries,

3/ C. 42, ss 3-1 to 5-31
and may cover more than one county.

"The primary purpose of the Drainage Code is to provide landowners with a legal entity or organization (a drainage district) 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." 4/

Drainage districts are based on a system of assessments which permit districts to include only lands benefited by the organization of a drainage district. Thus, a person's land may not be included, against his will, in a drainage district and hence become liable for assessments, unless it can be shown that his property will be materially benefited by the inclusion.

"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." 5/

Generally speaking, the commissioners of a drainage district have broad comprehensive powers in regard to constructing and maintaining drains and levees. 6/

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5/ Note 4, supra. See also Commissioners of Sangamon & Drummer Drainage Dist. v. Houston, 284 Ill. 406 (1918).
6/ See Hannah, Illinois Farm Drainage Law, at page 20 for a detailed listing of the powers of the commissioner.
A drainage district may be organized by filing in the county court a petition signed by a majority of the landowners who own one-third of the land within 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. In the event that this alternative method of petitioning is used, a referendum must be held.\textsuperscript{7/}

D - \underline{SURFACE WATER PROTECTION DISTRICT}\textsuperscript{8/}

These districts are established to provide protection from damage to lives and property caused by surface water, and the district has the power to build structures to effectuate such purposes. These structures may include sewers, drains, ditches, levees, etc. In addition the board of trustees of the district may enact ordinances to provide protection from surface water damage. The maximum statutory tax rate is .125 percent. With referendum, it is .25 percent.

Fifty or more of the legal voters living within the limits of a proposed surface water district, or a majority thereof if less than one hundred, may petition the county court of the county which contains all or the largest portion of the proposed district to cause the question to be submitted to the legal voters of such proposed district, whether such proposed territory shall be organized as a surface water protection district.

The district may not cover an area larger than two counties. It is not necessary that the boundaries of the district conform with the boundaries of any pre-existing political unit. However, if the boundaries of the district are coterminous with the boundaries of a city, village, or town, or include a city, village, or town that is authorized to provide surface water protection,

\textsuperscript{7/} For a good outline of the steps to be followed in organizing a drainage district, see Hannah, \underline{Illinois Farm Drainage Law}, note 25, \textit{supra}, pages 13-19.
\textsuperscript{8/} C. 42, ss 448-471.
such city, etc., must stop exercising such powers as conflict with the powers to be exercised by the district in regard to surface water protection within one year after organization of the district. So, it seems that a municipality and a surface water protection district can never exercise concurrent jurisdiction in regard to surface water protection.

This statute would appear to be useful in solving the problem of flooded subdivisions.

**E - RIVER CONSERVANCY DISTRICT**\(^9/\)

Such a district may be established where the uniform control of a river system or a portion thereof is desirable. A district is granted broad comprehensive powers as to flood control, drainage, irrigation, conservation, preservation of water levels, sanitation, etc. In addition, the statutes list more specific powers, including the authority to construct dams, levees, and bridges.

Any plans adopted by the district must be submitted for approval to the Department of Public Works and the Sanitary Water Board.

In order to raise revenue, the act provides that the district may levy a direct annual tax for principal and interest on bonds, a tax up to .083 percent for general purposes (.166 percent with referendum), and special assessments. In no case shall any property be assessed more than it will be benefited by the improvement for which it was assessed.

\(^9/\) C. 42, ss 383-404.
One percent or more of the legal voters living within the limits of the proposed river conservancy district may petition the county judge of the county which contains all or the largest portion of the proposed district to cause to be submitted to the voters of the proposed district the question whether such proposed district shall be organized as a river conservancy district. After a public hearing, the final question of whether the river conservancy district shall be formed is decided by a majority of the voters of the proposed district.

F - SANITARY DISTRICT

1. Sanitary district containing municipalities. Chapter 42 contains a number of acts that provide for the establishment and administration of a sanitary district. However, all but two deal with special situations that will merely be mentioned later. The first of the two main acts concerns sanitary districts containing one or more municipalities.

The district may cover more than one county, and does not have to conform to any pre-existing political boundaries.

The board of trustees of the district has the power to provide for sewage disposal and drainage, which includes the power to construct drains, sewers, laterals, pumps, and pumping stations.

Any 100 voters, living within the limits of the proposed sanitary district, may petition the county judge of the county in which the proposed district, or the major portion thereof is located, to cause to be submitted to the voters of such proposed district the question whether such proposed territory shall be organized as a sanitary district. After notice and public hearing, the sanitary district will be formed if a majority of the voters approve. The maximum tax rate is .083 percent. With referendum, it is .166 percent.

2. Sanitary district outside of municipalities. Such district must

10/ C. 42, ss 299-319j.
11/ C. 42, ss 412-443n.
be contained within one county and must be outside the limits of any municipality.

The board of trustees of the district has the power to provide for sewage disposal and drainage facilities.

In order to raise revenue, the district may levy a direct annual tax for principal and interest on bonds, a tax up to .25 percent for general purposes (.50 percent with referendum), and special assessments. But in no case shall any property be assessed more than it will be benefited by the improvement for which the assessment is levied. In addition, the district may collect from producers of industrial waste fair additional construction, maintenance, and operating costs over and above those covered by normal taxes.

Any 20 percent of the legal voters living within the limits of the proposed sanitary district may petition the county judge to cause to be submitted to the voters of the proposed sanitary district the question whether such proposed territory shall be organized as a sanitary district. After notice and public hearing, the sanitary district will be formed if a majority of the voters approve.

3. Miscellaneous sanitary districts. The following sanitary districts are merely listed because they are not general in scope, but rather apply to special situations: (a) sanitary districts composed of contiguous territory, within the limits of two counties, having within its limits two or more incorporated cities or villages, and an aggregate population of not less than 3,500 inhabitants, that is so situated as to be subject to overflow from any river or tributary thereof; (b) sanitary districts for towns receiving their

\underline{\text{12/}} \text{ ss 247-274.}
water supply from Lake Michigan\textsuperscript{13}/; and (c) the Chicago sanitary district.\textsuperscript{14}/

\textbf{G - CITIES AND VILLAGES\textsuperscript{15}/}

The corporate authorities of municipalities have the power, for drainage purposes, to construct and maintain drains, ditches, levees, dikes, pumping works, and machinery, and to acquire the necessary land and machinery therefore, and in this manner to provide for draining any portion of the land within their corporate limits, by special assessment upon the property benefited thereby, or by general taxation, or both. Flood hazards may be lessened or avoided by prescribing appropriate rules and regulations for the construction and alteration of buildings and structures.\textsuperscript{16}/

Municipalities subject to overflow and wholly or partially surrounded by levees may, to prevent overflow, divide the municipality into improvement districts, and may fix the grade of public grounds within the improvement districts at any height necessary to give surface drainage from each improvement district to the river which causes the overflow, and may require low lots within an improvement district to be filled in such manner as to prevent them from becoming a nuisance.\textsuperscript{17}/ This work shall be done by special assessment or special taxation of contiguous property.\textsuperscript{18}/

A municipality has the power to construct or acquire a sewage system either within or without its corporate limits.\textsuperscript{19}/ Any watercourse that flows through its boundaries may be rechanneled.\textsuperscript{20}/ Also, whenever a stream of water terminates within the boundaries of a municipality or is non-navigable,
or the United States has abandoned jurisdiction over it, a municipality may fill in such stream for street purposes.\textsuperscript{21/}

H - STATE AGENCIES

1. Department of Public Works and Buildings.\textsuperscript{22/} The Department has authority to make examinations, surveys and plans for the construction of works for flood control, for improvement of land drainage and for conservation of water flow, in rivers, waters and watersheds. However, before any expenditures can be made for such improvements, authorization is needed from the General Assembly.

To carry out these plans, the Department may enter into cooperative agreements with the United States Government and with local governments in Illinois.

2. State Water Resources and Flood Control Board.\textsuperscript{23/} The board acts for the state, subject to the approval of the Governor, in matters concerning any project for the improvement of navigation, flood control or any other purpose carried on by the federal government on any of the rivers, waters or watershed of Illinois.

\textsuperscript{21/} s 85-3.  
\textsuperscript{22/} C. 127, s 49; C. 19, s 126b.  
\textsuperscript{23/} C. 127, s 200.3.
### Summary Table

**Governmental Units Having Powers Directly Relating to Drainage and Flood Control**  
(excluding state agencies)

<table>
<thead>
<tr>
<th>Power to</th>
<th>Soil Conservation Districts</th>
<th>Subdistricts</th>
<th>Drainage Districts</th>
<th>Surface Water Protection Districts</th>
<th>River Conservancy Districts</th>
<th>Sanitary Districts</th>
<th>Cities and Villages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construct surveys, investigation, and research, and develop comprehensive plans for the purpose of carrying out the objective for which the unit was organized</td>
<td>X</td>
<td>X</td>
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<td>X</td>
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<tr>
<td>Enter into agreements with private persons or environmental agencies in carrying out the objectives of the act</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>Carry out preventative and control measures in regard to flood control</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
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<td>X</td>
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<tr>
<td>Enact and enforce ordinances for protection from surface water damage</td>
<td>X</td>
<td></td>
<td>X</td>
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<td>X</td>
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<tr>
<td>Enact and enforce land-use regulations</td>
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<td>X</td>
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<td>X</td>
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<td>Provide for sewage disposal</td>
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<td>X</td>
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<td>X</td>
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<tr>
<td>Construct and repair drains and levees</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<td>X</td>
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<td>Construct bridges</td>
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<td>X</td>
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<tr>
<td>Erect or construct structures necessary for the purposes of the act</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>Deepen, or change the course of any watercourse available to occupier of land machinery for the prevention of floodwater damage</td>
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<td>Introduce a police force to prevent pollution</td>
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<td>X</td>
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<td>X</td>
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<tr>
<td>Eject property by eminent domain</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>Require contributions in money, service or materials condition to performing services</td>
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<td></td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
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<tr>
<td>Assessments</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
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<td>X</td>
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<tr>
<td>Assess a direct annual tax</td>
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<td></td>
<td>X</td>
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<td>X</td>
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<tr>
<td>Issue bonds</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
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PART II. FLOOD AND DRAINAGE CONTROL THROUGH THE USE OF PLANNING COMMISSIONS, PLAT APPROVAL AND ZONING

Since most drainage and flood problems could have been prevented had proper measures been taken initially in the development of an area, the role of PLANNING COMMISSIONS appears to be particularly important. Although these commissions have no coercive power to enforce their plans, they can greatly influence and guide the thinking of officials who do have the power to adopt plans.

When a municipality or a county decides to take preventative steps in combating drainage and flood problems, certain legal tools are available to accomplish the task. Contained herein are brief summaries of two laws, plat control and zoning, the basic means by which the aims of a municipality or county in regard to land use may be accomplished.

Of the two, PLAT CONTROL is the more direct weapon in that a person who desires to develop a subdivision is not allowed to record a plat of his land unless there has been compliance with the applicable ordinances. Although it is questionable whether plat approval can deny the use of a low area to commercial development, it can require sufficient improvements for drainage and flood waters.

ZONING plays an indirect but important role in dealing with drainage and flood control problems. Zoning can facilitate adequate water flow and drainage and secure safety from floods by (1) regulations against residential invasion below the flood line, (2) setting aside adequate areas for parks, basins and other public improvements, (3) preventing overcrowding and rapid run-offs, and (4) protecting against conflicting uses.
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<th>Agency</th>
<th>Municipal 24/</th>
<th>Regional 26/</th>
<th>Northeastern Illinois metropolitan area 27/</th>
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<td>Geographic area</td>
<td>Municipalities of less than 500,000: The whole area of the municipality plus contiguous territory within 1 1/2 miles of the corporate limits that is not included in any municipality. 25/</td>
<td>From a portion of one county up to, theoretically, an unlimited number of counties.</td>
<td>Six neighboring counties; Lake, McHenry, Kane, DuPage, Will and Cook.</td>
</tr>
<tr>
<td>Chicago and other municipalities within a 30-mile radius of Chicago: The plan can encompass a part of such a municipality up to the whole area of the municipality plus contiguous territory within 1 1/2 miles of the corporate limits that is not included in any other municipality.</td>
<td></td>
<td></td>
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<tr>
<td>Creation</td>
<td>Statute merely states that municipalities have the power to create a commission without describing the procedure. 28/</td>
<td>The county board, by a resolution of record is empowered to define the boundaries of the region and to create the commission.</td>
<td>By statutory enactment.</td>
</tr>
</tbody>
</table>

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24/ C. 24, ss 53-1 to 53-3.
25/ Since no reference is made in s 53-2(1) as to adoption of a plan in “whole or in separate ... parts” (emphasis added), as it is in s 53-2(2), it is assumed that if a plan is for a municipality other than one contemplated by s 53-2(2), the plan must be adopted as a whole.
26/ C. 34, ss 152a to 152d.3.
27/ C. 34, ss 351-389.
28/ The mayor and the president of the board of local improvements are ex-officio members of the commission. If there is a zoning commission, it may be designated as the Plan Commission, in the discretion of the corporate authorities.
<table>
<thead>
<tr>
<th>Composition</th>
<th>Indeterminate number of members.</th>
<th>Indeterminate number of members. Method of appointment is determined by the county board.</th>
<th>Nineteen members, variously appointed by the counties, the Mayor of Chicago and the Governor.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duties</td>
<td>None specifically set out by statute.</td>
<td>Encouragement of cooperation among the political subdivisions in matters concerning the regional plan. Counties in northeastern Illinois: Must submit plan to northeastern Illinois Planning Commission for approval.</td>
<td>Cooperation with other units of government. Numerous other duties are specifically imposed by the statute, but are primarily concerned with administrative functions of the commission, rather than the planning function.</td>
</tr>
<tr>
<td>Powers</td>
<td>Broad general powers to develop a comprehensive plan.</td>
<td>Broad general powers to develop a comprehensive plan.</td>
<td>Broad general powers to develop a comprehensive plan.</td>
</tr>
<tr>
<td>Enforcement</td>
<td>No enforcement powers. The plan is advisory only. However, if a plan is adopted, no plat of any subdivision may be recorded unless it conforms to plan.</td>
<td>No enforcement powers. The plan is advisory only.²⁹/²⁹</td>
<td>No enforcement powers. The plan is advisory only.</td>
</tr>
<tr>
<td>Public Hearing</td>
<td>Apparently none is necessary prior to the adoption of the plan.</td>
<td>No provision as to public hearing.</td>
<td>Before adoption of a segment of, or the entire comprehensive plan, a public hearing is required.</td>
</tr>
</tbody>
</table>

²⁹/²⁹ See s 25.09. The county board is given the power to approve plots of subdivision.
B - PLAT APPROVAL

1. Municipal

Where no Municipal Plan Commission has been set up pursuant to C. 24, s 53-1, the statute that will be relied upon by a municipality to exercise control over the platting of land is C. 24, s 1-7.

Under this statute, the municipal authorities may provide by ordinance that a plat of land located within the municipal boundaries must be submitted for approval to designated municipal authorities. If such an ordinance is enacted, a plat may not be recorded until approved.

Under this statute, a city may enforce its ordinances by refusing to approve a plat of land that does not conform to them. Thus, a city may indirectly enforce its zoning ordinances relating to set-back lines, height of buildings, density of use, etc., through the medium of plat control.

Illinois case law\(^{30/}\) has established that the duty of the municipal authorities to approve plats is ministerial, and not discretionary. No discretion is vested in the municipal authorities to refuse approval of a plat which conforms to the municipal ordinances and C. 109 of the Illinois Revised Statutes, the Platting Act. And where the municipality has no ordinances that are relevant, the owner of the land to be platted need only comply with the requirements of the Platting Act.

Where a Municipal Plan Commission has been set up pursuant to C. 24, s 53-1, a municipality will have additional statutory authority with which to control the platting of land.

\(^{30/}\) People ex rel. Thistlewood v. Village of Mounds, 122 Ill. App. 448 (1905); People ex rel. Tilden v. Massiem, 279 Ill. 312 (1917).
Under s 53-3, a plat of land within the municipal boundaries, or within contiguous territory which is not more than one and one-half miles beyond the corporate limits of the municipality may not be recorded unless the plat provides for "streets, alleys, and public grounds in conformity with the applicable requirements of the official plan." A recent Illinois Supreme Court decision has established that it is proper for a municipality to require curbs, gutters, and storm water drainage under the above statutory language.

Note that under s 1-7, no jurisdiction over contiguous territory is granted to the municipality as is granted under s 53-3. The Illinois Supreme Court has said that the City Plan Commission Act (C. 24, s 53-1 et. seq.) together with the Plat Act (C. 109), and the Recorder's Act (C. 115) show a clear legislative intent to grant to municipalities adopting an official plan exclusive jurisdiction over the subdivision of land within territory contiguous to the municipality which is not more than one and one-half miles beyond the corporate limits of the municipality. Thus, even though a county has adopted subdivision regulations, contiguous lands within one and one-half miles of a city having a Plan Commission are subject to the exclusive jurisdiction of the city.

2. County

By C. 34, s 25.09, the county board is empowered to prescribe by resolution, reasonable rules and regulations governing the "location, width, and course of streets, highways and storm or floodwater run-off channels and basins, and the provision of necessary public grounds for schools, parks,

31/ Petterson v. The City of Naperville, 9 Ill. 2d 233 (1956).
32/ Petterson v. The City of Naperville, 9 Ill. 2d 233 (1956).
33/ But note C. 34, s 152j. Where the county proposes to zone land lying within one and one-half miles of a municipality, and the municipality protests, the county board may override this protest by the municipality by a three-fourths vote of all its members. It is submitted that the instant case is authority for a "counterattack" by the municipality to oust the county of jurisdiction that it has assumed over the protest of the municipality.
or playgrounds" in any plat of land not within the boundaries of any city, village, or town. The above rules and regulations may include requirements with respect to water supply, sewage collection and treatment, street drainage, and street surfacing. If any plat does not conform to such rules and regulations, it cannot be recorded.

C. 115, s 13 is applicable to both municipal and county plat control. It provides that a recorder who records an unapproved plat may be fined $200.00.

C - ZONING

In Illinois, the power to zone has been delegated by the General Assembly to the individual municipalities and counties. These are the only authorities in Illinois that possess the right to enact zoning ordinances.

1. Municipal zoning

The Municipal Zoning Commission is specifically authorized by statute to:

a - Regulate and limit the height and bulk of buildings.

b - Establish set-back lines on or along any street, parkway or storm or flood-water run-off channel or basin.

c - Regulate the intensity of use of lot areas, and determine the area of open spaces within and surrounding such buildings.

d - Classify, regulate and restrict the location of trades and industries and the location of buildings designed for specified industrial, businesses, residential and other uses.

e - Divide the municipality into districts as may be deemed best suited to promote the public welfare.

f - Fix building standards.

34/ C. 24, s 73-1 et seq.
35/ C. 34, s 152i et seq.
g - Prohibit uses incompatible with the character of the district.

h - Prevent perpetuation of nonconforming uses.

2. County zoning

The County Zoning Commission is specifically authorized by statute to:

a - Regulate and restrict the location and intensity of use of buildings, structures and land for trade, industry, residence and other uses.

b - Establish set-back lines on or along any street, parkway or storm or flood-water run-off channel or basin, outside of city limits.

c - Divide unincorporated areas into districts according to intensity and use.

d - Prohibit the introduction of nonconforming uses and prohibit maintenance of nonconforming uses.

The County Zoning Act does not seek to regulate agricultural uses, the only provision applicable to farming being the set-back line provision. Additional authority provided by the 1959 General Assembly to establish set-back lines along channels and basins should help immeasurably to control excess waters, by checking construction in low areas, by allowing percolation in adequate open areas (such as parks and forests) rather than rapid run-off in urbanized areas, and by offering protection against conflicting uses (i.e., flood water reservoir vs. lake and recreation).

3. Comment on the validity of zoning ordinances

In order for a zoning ordinance to be valid, it must be a proper

36/ C. 34, s 152i
exercise of the police power, since it imposes a restriction on the use of private property. It was decided in the landmark Illinois case of *Aurora v. Burns* 37/, that zoning *qua* zoning was such a proper exercise of the police power if the zoning ordinance was *reasonable*. Thus, the test of whether a zoning ordinance is valid or not, is whether it is reasonable in relation to the general public welfare.

The trend of the Illinois Supreme Court is toward greater liberality in holding zoning ordinances to be reasonable, thus validating them. In 1947, Richard F. Babcock, an author of numerous articles on zoning, reported: 38/ "On the record the Supreme Court of Illinois has not been sympathetic to municipal zoning as it has been practiced in Illinois." By 1954, conditions had changed. "The greater proportion of zoning ordinances are now being held valid, and the tendency shown in the . . . cases seem to indicate a growing friendliness of the court toward zoning." 39/ From January 1954 to May 1957, the Illinois Supreme Court upheld the zoning ordinances in 23 of 30 cases. 40/

A zoning ordinance that may be valid in and of itself may be invalid as applied to a particular piece of property: A zoning ordinance may not restrict property to a use for which it is totally unsuited because this would amount to confiscation. 41/ Again, a dispute may center around whether a particular piece of property has been placed in the proper zone rather than whether the use classifications of the zoning ordinance are themselves valid. 42/

Since a decision in the above situations must necessarily turn on the facts of

37/ 319 Ill. 84, 149 N.E. 784 (1925).
41/ See, 2700, Irving Park Bldg. Corp. v. Chicago, 395 Ill. 138, 69 N.E. 2d 827 (1946), and cases cited therein.
42/ See, e.g., DuPage County v. Holkier, 1 Ill. 2d 491, 115 N.E. 2d 635 (1953); Hannifin Corp. v. Berwyn, 1 Ill. 2d 28, 115 N.E. 2d 315 (1953).
each individual case as it arises, it would be profitless to discuss such Illinois decisions that have involved challenges to the map of a zoning ordinance rather than the text. Instead, this paper will illustrate how broad general policies of land use may be effected by use of the zoning power.

4. Comments on the use of zoning

"The establishment of single-family residence districts, multiple residence districts, retail business areas, light industrial areas, and heavy manufacturing areas is almost universal in all cities which have adopted zoning ordinances. Counties add farming areas to the usual districts." 43/ The number of these districts and the uses permitted in each are determined by the municipality or county establishing the zoning ordinance, subject, of course, to the requirement of reasonableness.

a. Residential

There is no doubt that restriction of an area to exclusive residential use is valid. However, a problem arises as to the validity of a zoning ordinance that permits other uses in addition to residential uses in a particular area.

In a 1938 case 44/, an ordinance was held invalid because it permitted hospitals, farms, hotels, and rooming houses in the residential districts. However, in line with the trend toward greater liberality in regard to zoning, a 1947 case 45/ upheld an ordinance permitting practically these same uses in a residential district.

A common zoning provision is the establishment of separate districts for single-family dwellings and multiple-family dwellings. The validity of such a provision was upheld by the Illinois Supreme Court in 1949. 46/

43/ 1954 Ill. L. F. 177.
45/ Springfield v. Vancil, 398 Ill. 575, 76 N.E. 2d 471.
b. Nonresidential

While there is no doubt that a district may be zoned for exclusive residential purposes, there has been, so far, no Illinois case passing upon the validity of an ordinance dedicating a particular district to exclusive non-residential use. However, it is believed that such an ordinance would be held valid if attacked.\(^{47}\)

Whether a community can totally exclude a particular lawful business or industry has not as yet been directly passed upon by the Illinois courts. Dictum from a 1951 Illinois Supreme Court decision\(^{48}\) indicates that such an attempt would be unconstitutional. However, a New Jersey case allowed a municipality to wholly exclude industry from its boundaries.\(^{49}\)

Although there has as yet been no occasion to test the validity of such a classification, it is believed that manufacturing and industrial districts may be classified by degree of noise, dirt, smoke, and sewage pollution caused by the particular operations, instead of in terms of products.\(^{50}\)

c. Agricultural

A county may dedicate certain areas to be used exclusively for farming.\(^{51}\)

Conservation of resources

A conservative view has developed in Illinois concerning the constitutionality of land-use restrictions dealing with other than urban type problems. The cases resulting from open-cut coal mining illustrate this trend.

In 1949, Knox County adopted an ordinance which excluded strip mining from all but one use district. In *Midland Electric Coal Corp. v. Knox County*\(^{52}\) the ordinance was held to be unreasonable and hence unconstitutional, despite the fact that six percent of the county’s land was to be stripped.

\(^{47}\) 1954 Ill. L. F. 205.
\(^{48}\) Trust Co. of Chicago v. Skokie, 408 Ill. 397, 97 N.E. 2d 310.
\(^{49}\) Duffson Concrete Products, Inc. v. Borough of Crushill, 1 N.J. 509, 64 A. 2d 347 (1949).
\(^{50}\) 1954 Ill. L. F. 207.
\(^{52}\) 1 Ill. 2d 200, 115 N.E. 2d 275 (1953).
PART III. USE OF COVENANTS, CONDITIONS AND NUISANCE

A - COVENANTS AND CONDITIONS

The developer of property has two basic tools which he himself may employ to control the future use of the land: covenants and conditions. Of the two, covenants are the more widespread and effectively used.

Since covenants and conditions in plats and deeds may be inserted only by private parties, and since the doctrine of nuisance is a remedy which may be invoked only after damage has occurred, these devices are generally remedial on a small scale and therefore not the best solution to drainage and flood problems.

1. Conditions

Two difficulties with the use of conditions as an effective tool for land-use control are (1) the limited life of conditions and (2) the hostile attitude of the courts toward conditions.

1. In Illinois, the duration of possibilities of reverter and rights of re-entry for conditions broken are limited by statute to 50 years from the date of creation. This provision was held to be constitutional notwithstanding the fact that it applies to conditions created before the enactment of the statute. It may also be noted that such conditions are neither alienable nor devisable.

2. Since forfeitures are not favored by the courts, a condition will be construed as a fee on a condition subsequent rather than a determinable

53/ C. 30, s 37e.
54/ Trustees of Schools of Township No. 1 v. Botdorf, 6 Ill. 2d 486, 130 N.E. 2d 111 (1955).
55/ C. 30, s 37b.
fee and a restriction on the use of land will be construed as a covenant rather than a condition whenever possible.

2. Covenants

By means of restrictive covenants, the use of land may be controlled to an extent beyond that permitted by the zoning power. While zoning ordinances, in order to be valid, must be reasonable in relation to the public health, safety, and welfare, no such restriction is fastened to the regulation of land use by means of restrictive covenants. But although a restrictive covenant does not have to promote the public health, safety and welfare, it may not be contrary to public policy.

Restrictive covenants commonly enforced include covenants limiting the use of land to residential purposes, covenants establishing building lines; covenants prohibiting the erection of commercial or industrial buildings, covenants prohibiting subdividing, covenants prohibiting the erection of more than one home on each lot, and covenants limiting or otherwise establishing the size of buildings to be erected.

It would be easier, perhaps, to discuss what cannot be done with covenants, than what can. It has been stated that restrictive covenants are valid so long as they are not against public policy and do not materially impair

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56/ Affirmative action is required on the part of the holders of the right of re-entry for condition broken in order to terminate the grantee's interest, while no such affirmative action is required on the part of the holder of a possibility of reverter.

57/ If a restriction is interpreted as a covenant, no forfeiture will result, but rather the grantee will be liable for pecuniary damages.

58/ Housing Authority of Gallatin County v. Church of God, 401 Ill. 100, 81 N.E. 2d 500 (1948).


60/ O'Neil v. Wolf, 338 Ill. 508, 17a N.E. 669 (1930).


63/ Ibid.

the beneficial enjoyment of the estate. It must also be added that the restrictive covenant may not violate a provision of the State or Federal Constitution. Thus, because of the Fourteenth Amendment to the Federal Constitution, so called racial covenants are unenforceable.

Many times a private restrictive covenant and a zoning ordinance will apply to the same piece of property. If they differ in degree, the stricter will control, because they are separate and independent of one another. If the zoning ordinance and the private restrictive covenant conflict, the covenant is extinguished to the extent to which the observance of it is rendered unlawful by the ordinance.

In setting up a development scheme that is to be implemented by the use of private covenants, it is wise to provide that the covenants should exist for a specified period, usually about 25 years, with a provision for automatic renewal at the expiration of the period unless a certain percentage of the property owners object. Such a provision will provide an “escape hatch” in case the covenants should outlive their usefulness, due to change in the character of the area.

B - NUISANCE

While formerly the doctrine of nuisance was the primary means by which the use of land could be controlled, the doctrine of nuisance has been relegated to an inferior position with the advent of zoning.

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65/ 1955 Ill. L. F. 711.
There are four reasons why the doctrine of nuisance is the inferior tool for controlling the use of land. The first of these is the elusiveness and indefiniteness of the court standards applied to abate a nuisance in comparison to the studies, surveys, and expert determination of city planners which, after incorporation in an ordinance, will be uniformly applied in all cases. The second reason arises from the fact that as a general rule nuisance comes in only after the harm is done; it is not a preventive measure. An enjoined on a lot in the middle of a residential section does not do either the factory owner or the residents much good. The third reason really grows out of the second. If a municipality desires to attract some industry, it must provide some assurance that its location will not be subsequently condemned as a nuisance. Finally, the concept of nuisance alone cannot fully protect residential areas; a commercial use must substantially interfere with the rights of the surrounding landowners before the question of nuisance is ever raised.
GENERAL COMMENT

It is evident that there is no dearth of governmental agencies which may exert a direct, effective influence upon the drainage and flood control problems which are confronting Illinois property owners. Whether or not these agencies are exercising jurisdiction in regard to these problems is another matter.

One of the objectives of a committee studying water problems might be to make officials of local governmental units cognizant of the potentiality for remedying or preventing drainage and flood control problems by existing agencies or by one that might be created, such as a drainage district.

Another concern of such a committee might be to determine what new controls are needed. For example, rivers and streams cross many political boundaries but the laws in this report indicate that present possible solutions are on a local basis in most of the state. The Northeastern Illinois Metropolitan Area Planning Commission and permissible regional planning commissions are exceptions but their functions do not extend beyond planning and advising. Perhaps watershed authorities extending beyond boundaries of units and districts could exercise restrictive powers in land settlement.

One cannot escape the conclusion that the problem of drainage and flood control is inextricably enmeshed with the broader problem of how land should be utilized to best serve the ends of society, a problem that can only become more acute because of our increasing population and urbanization.