

~~Letter No. 06-94~~
~~Drain Assessments~~

May 10,



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RACHAEL EUBANKS
STATE TREASURER

NUMBERED LETTER 1994-06 (Revised)

~~TO: County Drain Commissioners and County Road Commissions~~

~~FROM: Richard L. Baldermann, CPA~~
~~Administrator~~

~~Local Audit~~ **Issued By:** Community Engagement and Finance
Division (CEFD)

RE: Bureau of Local Government and School Services

Effective Date: May 10, 1994 (Revised DRAFT DATE)

1994-06 Drain Assessments to County-at-Large for Benefit of Highways

Intended Audience: County Drain Commissioners and County Road Commissions

Summary: For your information and guidance, following is a copy of a letter addressing the requirements necessary for compliance with the provisions of PA 327 of 1972. -(MCL 247.664a)¹

Please

April 29, 1994

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Ms. XXXXX X. XXXXXX, Clerk
XXXXXX County Road Commission
3536 XXXX US-XX
XXXXXX, Michigan XXXXX

Dear Ms XXXXXX:

In your letter of April 21, 1994, you ask what are the requirements for paying 50% of the county-at-large drain assessments from county road funds and who computes the assessment.

The authority for paying 50% of the drainage benefits to county roads was granted by PA 327 of 1972, that added section 14a to PA 51 of 1951. (MCL 247.664a) Prior to Act 327 of 1972, the assessment for drainage benefits to county roads was paid from the county general fund. The use of county road funds for paying the drainage assessments was prohibited as stated in the following Opinions of the Attorney General:

<u>Opinion Number</u>	<u>Year</u>	<u>Page</u>
-		
<u>4247</u>	<u>1963-64</u>	<u>253</u>
<u>1577</u>	<u>1952-54</u>	<u>35</u>
<u>0-3142</u>	<u>1945-46</u>	<u>251</u>
<u>0-1537</u>	<u>1943-44</u>	<u>581</u>
<u>-----</u>	<u>1926-28</u>	<u>636</u>

Excerpts from PA 327 of 1972 that authorizes the use of county road funds are:

Expenditures of county road commission funds to pay the cost of drain assessments under Public Act 40 of 1956 imposed after the effective date of rules promulgated under this section, shall be made only if all apportionments of benefits of any nature or kind determined or made for the drainage of county roads or state highways are made in accordance with rules jointly promulgated by the department of state highways and the department of agriculture.

Fifty percent of the cost of a drain assessment against the county for the drainage of county roads shall be paid by the county road commission from county road funds.

Section 151 of the Drain Code, PA 40 of 1956 (MCL 280.151) was not amended and reads in part: Such percent so apportioned when finally approved shall be assessed against such townships, cities and villages and against the county-at-large by reason of the improvements of the highways within the drainage district.

Our reading of these statutory sections and the Opinions of the Attorney General indicates that the drainage benefit to county roads remains against the county. However, assessments issued after the rules were promulgated by the department of state highway and the department of agriculture and only when the assessments were computed in accordance with the promulgated rules may fifty percent be paid from county road funds.

A careful reading of PA 327 of 1972 that specifies that road funds may be expended only if all apportionments of benefits of any nature or kind determined or made for the drainage of county roads are made in accordance with rules jointly promulgated would indicate that road funds may be expended only if the assessment to the county was computed in accordance with the promulgated rules. Representatives from the Michigan Department of Transportation (MDOT) state that is not a true meaning of the statute. They believe and authorize the expenditure of 50% of the cost from county road funds for 50% of the benefit computed in compliance with the promulgated rules. This is true even when the assessment against the county for benefits to county roads exceeds the benefits computed within the guidelines of the promulgated rules.

To illustrate: The drain commissioner assessed the county \$100,000 for the benefit to county roads. A verification of the computation of benefits using the guidelines of the promulgated rules indicates benefits to county roads at \$90,000. MDOT will allow an expenditure of \$45,000 from county road funds. (50% of \$90,000) They will not allow an expenditure of 50% of the \$100,000.

It is our belief that the county drain commissioner shall compute the assessment that must be verified by the road commission prior to the day of review of the percent of drain benefits and the payment of 50% from the county road fund.

Public Act 327 of 1972 and Rule R 280.4 (3) requires the notification of and the assessment be pursuant to PA 40 of 1956. (Drain Code--MCL 280.1 et seq.) Section 151 of the Drain Code, MCL 280.151 states in part: He (drain commissioner) shall apportion the percent of the cost of construction of such drain which any highway then under the control of the county or district road commissioners, shall be liable to pay by reason of benefits therefore, and as the means of improving such highway.

Authorizing or requiring any person, including governmental agencies, to compute his or her assessment, we believe, would be a violation of the Drain Code and that person assuming the duties of the drain commissioner.

This memo addresses our views in answering your question. As our office is not authorized to issue legal opinions, we recommend you consult your legal counsel if a legal interpretation or opinion is needed. If we may be of further assistance, call (517) 373-3227 or write our office ~~if you have any questions~~ at Michigan Department of Treasury, Local Audit and Finance Division, P.O. Box 30728, Lansing, Michigan 48909-8228 or email our office at TreasLocalGov@michigan.gov.

ⁱ May 10, 1994 – Original letter (Revised DRAFT DATE) – This numbered letter was updated with formatting changes and the addition of the referred to letter, no major content edits.