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IOWA HIGHWAY RESEARCH BOARD

# IOWA DRAINAGE LAWS

(Annotated)

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by

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Prepared by the

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in cooperation with

IOWA STATE HIGHWAY COMMISSION

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## FOREWORD

In the preparation of this compilation of drainage laws of Iowa, an attempt has been made to include those sections of the Code to which reference is frequently required by the State Highway Commission, Boards of Supervisors and County Engineers in the conduct of highway and road administration as it is affected by the Iowa drainage laws.

Of necessity some Code provisions which have a bearing on the principal subject were omitted.

Enactments of the 56th General Assembly which modify existing code sections have been included as part of the regular text of the Code sections included in this publication. THE USER IS CAUTIONED THAT THESE CODE SECTIONS, AS MODIFIED BY THE 56th GENERAL ASSEMBLY, ARE NOT A PART OF THE 1954 CODE OF IOWA AND ARE OFFICIAL ONLY INSOFAR AS THEY ARE PRINTED IN THE OFFICIAL PUBLICATION **ACTS OF THE 56TH GENERAL ASSEMBLY.**

**SINCE THE 57TH GENERAL ASSEMBLY IS IN SESSION DURING THE PRINTING OF THIS PUBLICATION, ENACTMENTS OF THAT BODY WHICH AMEND OR REPEAL SECTIONS SET OUT HEREIN ARE INCLUDED IN THE BACK OF THIS VOLUME ON THE PINK-COLORED PAPER. THE USER IS CAUTIONED IN USING THIS VOLUME TO REFER TO THE TABLE OF SECTIONS REPEALED OR AMENDED, ON THE PINK-COLORED PAPER AT THE BACK OF THIS VOLUME.**

This publication is offered with the hope and belief that it will prove to be of value and assistance to those concerned with the problems of administering a highway, road and drainage system.

Norman A. Erbe
Daniel T. Flores

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## IOWA CONSTITUTION

### ARTICLE 1, SECTION 18

**Taking of private property for public use—just compensation—damages—laws relating to drains, ditches and levees —drainage districts.**

**Sec. 18.** Private property shall not be taken for public use without just compensation first being made, or secured to be made to the owner thereof, as soon as the damages shall be assessed by a jury, who shall not take into consideration any advantages that may result to said owner on account of the improvement for which it is taken.

The general assembly, however, may pass laws permitting the owners of lands to construct drains, ditches, and levees for agricultural, sanitary or mining purposes across the lands of others, and provide for the organization of drainage districts, vest the proper authorities with 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 the state, by special assessments upon the property benefited thereby. The general assembly may provide by law for the condemnation of such real estate as shall be necessary for the construction and maintenance of such drains, ditches and levees, and prescribe the method of making such condemnation. Amended 1908.

#### Cross References

Bridges, interstate, cities, see §§383.7, 383.18, 383.25
Cemeteries, township trustees, power, see §359.28.
Coal mine drainage, see §§465.1–465.29, 468.1–468.9
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**1. Construction and application.**

Provisions of section a limitation on its exercise and should be liberally interpreted.
Liddick v. City of Council Bluffs, 1942, 232 Iowa 197, 5 N.W.2d 361.

Restriction or charge for use of navigable streams or lakes is a "taking" within this section.
Witke v. State Conservation Commission, 1953, 244 Iowa 261, 56 N.W.2d 582.

Should be broadly and liberally construed.
Anderlik v. Iowa State Highway Commission, 1949, 240 Iowa 919, 38 N.W.2d 605.

Applies equally within or without municipal corporate limits. Id.

**2. Drains and drainage, 1908 amendment, construction and application.**

Organization of sanitary districts under Section 358.1 not unconstitutional.
Walker v. Sears, 1954, 61 N.W.2d 729.

Same rules apply for levee and drainage districts.
Harris v. Board of Trustees of Green Bay Levee & Drainage Dist. No. 2, Lee County, 1953, 244 Iowa 1169, 59 N.W.2d 234.

Where improvement caused intermittent overflow, damage was a "taking."
Lage v. Pottawattamie County, 1942, 232 Iowa 944, 5 N.W.2d 161.

Failure to notify or assess does not invalidate proceedings for improvement of drainage ditch.
Board of Supervisors Pottawattamie County v. Board of Supervisors Harrison County, 1932, 214 Iowa 655, 241 N.W. 14, motion denied, 54 S. Ct. 47, appeal dismissed, 54 S. Ct. 125, 290 U. S. 595 78 L. Ed. 523.

Notice of establishment of drainage district not subject to attack where notice not required.
Chicago & N. W. R. Co. v. Board of Supervisors Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified on other grounds, 182 Iowa 60, 165 N.W. 390.

Organization of drainage district regulated by character of public use.

Hatcher v. Board of Supervisors of Green County, 1914, 165 Iowa 197, 145 N.W. 12.

Separate official organization for each drainage district and vote on officers by people affected not required. Id. Nothing for Supreme Court to consider where assessment equitably apportioned based on benefits.

Farley Drainage Dist. No. 7, v. Hamilton County, 1908, 140 Iowa 339, 118 N.W. 432.

**3. Power of State or legislature generally.**

Power of eminent domain inherent in sovereign and not dependent on constitutional grant.

Reter v. Davenport, R. I. & N. W. Ry. Co., 1952, 243 Iowa 1112, 54 N.W.2d 863, 35 A. L. R.2d 1306.

Power of legislature over roads and streets "plenary," but must pay just compensation.

Liddick v. Council Bluffs, 1942, 232 Iowa 197, 5 N.W.2d 361.

Legislature may take private property only (1) forfeiture for crime, (2) public use under eminent domain, (3) police power, (4) taxing power.

Hanson v. Vernon, 1869, 27 Iowa 28, 1 Am. Rep. 215.

Legislature may authorize use of city streets held in fee by city by railroad without compensation.

City of Clinton v. Cedar Rapids etc. R. Co., 1868, 24 Iowa 455.

**4. Distinction between eminent domain and other powers.**

There may be a "'taking" without actual invasion or physical appropriation.

Lage v. Pottawattamie County, 1942, 232 Iowa 944, 5 N.W.2d 161.

Municipal enlarging of boundaries not a "taking."

Wertz v. Ottumwa, 1926, 201 Iowa 947, 208 N.W. 511.

Ordinance prohibiting rebuilding frame house with certain materials not a "taking."

City of Shenandoah v. Replogle, 1924, 198 Iowa 423, 199 N.W. 418.

Zoning ordinance prohibiting business operation not a "taking."

City v. Des Moines v. Manhattan Oil Co., 1921, 193 Iowa 1096, 184 N.W. 823, 23 A. L. R. 1322.

Proper exercise of governmental power not directly encroaching on private property not a "taking."

Higgins v. Board of Supervisors Dickinson County, 1920, 188 Iowa 448, 176 N.W. 268.

Imposing liability for support of insane on relatives not a "taking."
Guthrie County v. Conrad, 1907, 133 Iowa 171, 110 N.W. 454.

Judgment for violation of liquor law a lien not a "taking."
Polk County v. Hierb, 1873, 37 Iowa 361.

Maximum fees for defense of person criminally indicted not a "taking."
Samuels v. Dubuque County, 1862, 13 Iowa 536.

Act authorizing city to extend corporate limits without owners consent unconstitutional.
Morford v. Unger, 1859, 8 Iowa 82, 8 Clarke 82.

**5. Police power generally, distinguished from eminent domain.**

Ordinance regulating storage of inflammable liquid not "taking."
Cecil v. Toenjes, 1930, 210 Iowa 407, 228 N.W. 874.

This section not designed to limit police power.
City of Des Moines v. Manhattan Oil Co., 1921, 193 Iowa 1096, 184 N.W. 823, 23 A. L. R. 1322.

Organization of land into drainage districts justified under police power.
Hatcher v. Board of Supervisors Greene County, 1914, 165 Iowa 197, 145 N.W. 12.

**6. Animals, regulations as to, distinguished from eminent domain.**

Where conflicting evidence of reliability of bovine tests, not a "taking."
Panther v. Dept. of Agriculture of Iowa, 1931, 211 Iowa 868, 234 N.W. 560.

**7. Game and fish regulations, distinguished from eminent domain.**

Section 109.14 declaring a dam without a fishway a nuisance not a "taking."
State v. Meek, 1900, 112 Iowa 338, 84 N.W. 3, 51 L. R. A. 414, 84 Am. St. Rep. 342.

**8. Drains and drainage, regulations as to, distinguished from eminent domain.**

Crossing of R. R. right of way and requirement that railway bridge without compensation not a "taking."
Chicago etc. Co. v. Board of Supervisors Appanoose County, Iowa, C. C. 1908, 170 F. 665, affirmed, 182 F. 291, 104 C. C. A. 573, 31 L. R. A., N. S., 1117, and 182 F. 301, 104 C. C. A. 583.

Failure to notify land owners of drainage assessment rendered tax against owner who had notice void.
Smith v. Peterson, 1904, 123 Iowa 672, 99 N.W. 552.

Abating of dam without fishway not a "taking."
State v. Beardsley, 1899, 108 Iowa 396, 79 N.W. 138.

**9. Schools, regulations respecting, distinguished from eminent domain.**

Organization of school district not a "taking."
Thie v. Consolidated etc. School Dist. of Mediapolis, 1924, 197 Iowa 344, 197 N.W.75.

Condemnation of land for school construction not a violation.
Munn v. Independent School Dist. of Jefferson, 1920, 188 Iowa 757, 176 N.W. 811.

Consolidation of all land in city into one school district not "taking."
State v. Grefe, 1908, 139 Iowa 18, 117 N.W. 13.

**10. Streets and highways, regulations as to, distinguished from eminent domain.**

Vacating an alley not a "taking."
Hubbell v. City of Des Moines, 1915, 173 Iowa 55, 154 N.W. 337.

Act of 1866 providing for taking of private property for private roads unconstitutional.
Ch. J. Bankhead v. Brown, 1868, 25 Iowa 540.

**11. Taxation and licensing, distinguished from eminent domain.**

Taxation of Missouri River. R. R. Bridge by city unconstitutional.
Arnd v. Union Pac. R. Co., 1903, 120 F. 912, 57 C. C. A. 184.

General advantages and protection afforded by government sufficient benefit to grant power to tax.
Dickinson v. Porter, 1948, 31 N.W.2d 110.

Blue sky law section 502.1 constitutional.
State v. Soeder, 1933, 216 Iowa 815, 249 N.W. 412.

Denial of applicant's permit to sell cigarettes not unconstitutional.
Ford Hopkins Co. v. Iowa City, 1933, 216 Iowa 1286, 248 N.W. 668.

Distribution of auto license fees to counties without returning exact amount collected not a "taking."
McLeland v. Marshall County, 1924, 199 Iowa 1232, 201 N.W. 401, modified on other grounds, 199 Iowa 1232, 203 N.W. 1.

Act authorizing city to levy tax for benefit of private toll bridge not unconstitutional.
Pritchard v. Magoun, 1899, 109 Iowa 364, 80 N.W. 512, 46 L. R. A. 381.

Tax of moneys and credits not unconstitutional.
Hutchinson v. Board of Equalization City of Oskaloosa, 1885, 66 Iowa 35, 23 N.W. 249.

Laws 1870 permitting municipal taxation to aid railroads not unconstitutional.
Stewart v. Board of Supervisors Polk County, 1870, 30 Iowa 9, 1 Am. Rep. 238, followed in Bonnifield v. Bidwell, 1871, 32 Iowa 149.

Enlargement of municipal boundaries may be "taking."
Langworthy v. City of Dubuque, 1864, 16 Iowa 271.

Enlargement of municipal boundaries without owners' consent a "taking."
Morford v. Unger, 1859, 8 Iowa 82, 8 Clarke 82.

**12. Waters and water courses, regulations as to distinguished from eminent domain.**

Where public structure results in flooding of private property there is a "taking."
Lage v. Pottawattamie County, 1942, 232 Iowa 944, 5 N.W.2d 161.

Littoral owner not entitled to compensation where public dock to be erected on public shore.
Peck v. Alfred Olsen Const. Co., 1932, 216 Iowa 519, 245 N.W. 131, 89 A. L. R. 1147.

Discharge of sewer by city upon private lands a "taking."
Beers v. Town of Gilmore City, 1924, 197 Iowa 7, 196 N.W. 602.

Erection of levee and assessment of cost not a "taking."
Richman v. Board of Supervisors Muscatine County, 1889, 77 Iowa 513, 42 N.W. 422, 4 L. R. A. 445, 14 Am. St. Rep. 308.

**13. Delegation of power.**

Condemnation right delegable to railroads because use is public.
Reter v. Davenport etc. Ry. Co., 1952, 243 Iowa 1112, 54 N.W.2d 863, 35 A. L. R.2d 1306.

Proper delegation of right of eminent domain in legislature.
Sisson v. Board of Supervisors Buena Vista County, 1905, 128 Iowa 442, 104 N.W. 454, 70 L. R. A. 440.

When eminent domain delegated to city it has same power as state.
Bennett v. Marion, 1898, 106 Iowa 628, 76 N.W. 844.

Off street parking a "public use" though resulting special benefit to private individuals.
Ermels v. Webster City, 71 N.W.2d 911.

**14. Public use or purpose.**

Courts decide "public use" when constitutionality of legislative grants questioned.
Reter v. Davenport etc. Co., 1952, 243 Iowa 1112, 54 N.W.2d 863.

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Presumption in favor of legislative declaration of public use. Id.

Condemner may not reserve to condemnee rights inconsistent with public use.
DePenning v. Iowa etc. Co., 1948, 33 N.W.2d 503, 5 A. L. R.2d 716.

Right of special charter city to condemn must be exercised for public purpose.
Heinz v. Davenport, 1941, 230 Iowa 7, 296 N.W. 783.

Right to condemn by city must be exercised for public use.
Carroll v. Cedar Falls, 1935, 221 Iowa 277, 261 N.W. 652.

Board of railroad commissioners order must comply with public use.
Ferguson v. Illinois etc. Co., 1926, 202 Iowa 508, 210 N.W. 604, 54 A. L. R. 1.

"Substantial benefit" does not necessarily constitute public use. Id.
"Public use" means public possesses certain rights to use and emjoyment of property. Id.
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Wertz v. Ottumwa, 1926, 201 Iowa 947, 208 N.W. 511.

Use by entire community not required.
Sisson v. Board of Supervisors Buena Vista County, 1905, 128 Iowa 442, 104 N.W. 454, 70 L. R. A. 440.

Right to condemn for railroad right of way is a public one.
Stewart v. Board of Supervisors Polk County, 1870, 30 Iowa 9, 1 Am. Rep. 238.
Section prohibits taking of private property for private use.
Bankhead v. Brown, 1868, 25 Iowa 540.

**15. Extent of use or benefit, public use.**

Use by public agency is "public use" regardless of lack of right of individuals to use it.
Merrit v. Peet, 1946, 237 Iowa 1200, 24 N.W.2d 757.

If a use is public its extent is immaterial upon right of eminent domain.
Dubuque etc. Co. v. Ft. Dodge etc. Co., 1910, 146 Iowa 666, 125 N.W. 672.

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Sisson v. Board of Supervisors Buena Vista County, 1905, 128 Iowa 442, 104 N.W. 454, 70 L. R. A. 440.

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Field v. Des Moines, 1874, 39 Iowa 575, 28 Am. Rep. 46.

**17. Particular uses or purposes.**

Condemnation by power company for power line granted easement only, not a fee.
DePenning v. Iowa etc. Co., 1948, 239 Iowa 950, 33 N.W. 2d 503, 5 A. L. R.2d 716.

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Carroll v. Cedar Falls, 1935, 221 Iowa 277, 261 N.W. 652.

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Ferguson v. Illinois etc. Co., 1926, 202 Iowa 508, 210 N.W. 604, 54 A. L. R. 1.

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Creston Waterworks Co. v. McGrath, 1893, 89 Iowa 502, 56 N.W. 680.

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**18. Streets and highways, particular uses or purposes.**

Land owner has private property right in highway which, when destroyed, is a taking.
Schiefelbein v. U. S., C. C. A. 1942, 124 F.2d 945.

Vacation of public street without assessing damages not a "taking." Landowner may sue for consequential damages.
Hubbell v. Des Moines, 1915, 173 Iowa 55, 154 N.W. 337.

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McCann v. Clarke, 1910, 149 Iowa 13, 127 N.W. 1011, 36 L. R. A., N. S., 1115.

Laws 1874 not unconstitutional in authorizing road to quarry for stone.
Phillips v. Watson, 1884, 63 Iowa 28, 18 N.W. 659.

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Reusch v. Chicago etc. Co., 1882, 57 Iowa 687, 11 N.W. 647.

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Ermels v. Webster City, 71 N.W.2d 911.

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Probable use by public of spur track sufficient for "public use."
Dubuque etc. Co. v. Fort Dodge etc. Co., 1910, 146 Iowa 666, 125 N.W. 672.

Right of way for mine railroad a public way.
Morrison v. Thistle Coal Co., 1903, 119 Iowa 705, 94 N.W. 507.

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Reusch v. Chicago etc. Co., 1882, 57 Iowa 687, 11 N.W. 647.

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Noll v. Dubuque etc. Co., 1871, 32 Iowa 66.

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Assessments for drainage not invalid.
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O. A. G. 1916, p. 59.

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Caldwell v. Ottumwa, 1924, 198 Iowa 666, 200 N.W. 336.

**23. Public property, property subject to appropriation.**

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Ferguson v. Illinois etc. Co., 1926, 202 Iowa 508, 210 N.W. 604, 54 A. L. R. 1.

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Minneapolis etc. Co. v. Chicago etc. Co., 1902, 116 Iowa 681, 88 N.W. 1082.

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Diamond etc. Steamers v. Davenport, 1901, 114 Iowa 432, 87 N.W. 399, 54 L. R. A. 859.

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Ferguson v. Illinois etc. Co., 1926, 202 Iowa 508, 210 N.W. 604, 54 A. L. R. 1.

Condemnation not authorized for private road.
Richards v. Wolf, 1891, 82 Iowa 358, 47 N.W. 1044, 31 Am. St. Rep. 501.

Laying of drains for benefit of individuals not public use.
Fleming v. Hull, 1887, 73 Iowa 598, 35 N.W. 673.

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Ermels vs. Webster City, 71 N.W.2d 911.

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Bankhead v. Brown, 1868, 25 Iowa 540.

Courts will not inquire into necessity or propriety of taking.
Reter v. Davenport etc. Co., 1952, 243 Iowa 1112, 54 N.W.2d 863, 35 A. L. R.2d 1306.

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Renwich v. Davenport etc. Co., 1878, 49 Iowa 664, affirmed, 102 U. S. 180, 266 L. Ed. 51.

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Barney v. Keokuk, 1876, 94 U. S. 324, 24 L. Ed. 224.

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Goodman v. U. S., C. C. A., 1940, 113 F.2d 914.

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Board of Park Commissioners Des Moines v. Diamond Ice Co., 1905, 130 Iowa 603, 105 N.W. 203, 3 L. R. A., N. S. 1103, 8 Ann. Cas. 28.

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Liddick v. Council Bluffs, 1942, 232 Iowa 197, 5 N.W.2d 361.

Compensation must be made for taking of public property.
State ex rel. Board of R.R. Com'rs. of State of Iowa v. Stanolind Pipe Line Co., 1933, 216 Iowa 436, 249 N.W. 366, certiorari denied, 54 S.Ct. 120, 290 U. S. 684, 78 L. Ed. 589.

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Draker v. Iowa Electric Co., 1921, 191 Iowa 1376, 182 N.W. 896.

Right of access is a compensable property right.
Hubbell v. Des Moines, 1918, 183 Iowa 715, 167 N.W. 619.

Vacated street occupied by street railway does not require compensation.
Tomlin v. Cedar Rapids etc. Co., 1909, 141 Iowa 599, 120 N.W. 93, 22 L. R. A., N. S., 530.

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Kucheman v. C. C. etc. Ry. Co., 1877, 46 Iowa 366.

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Sisson v. Board of Supervisors Buena Vista County, 1905, 128 Iowa 442, 104 N.W. 454, 70 L. R. A. 440.

**67. Payment—time of payment.**

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DePenning v. Iowa etc. Co., 1948, 239 Iowa 950, 33 N.W.2d 503, 5 A. L. R.2d 716.

Ascertainment and payment of amount prior to taking not required.
U. S. v. 1.997,66 Acres of Land, More or Less, in Polk County, Iowa, C. C. A. 1943, 137 F.2d. 8.

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Liddick v. Council Bluffs, 1942, 232 Iowa 197, 5 N.W.2d 361.

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Brown v. Davis County, 1923, 196 Iowa 1341, 195 N.W. 363.

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Western Newspaper Union v. Des Moines, 1913, 157 Iowa 685, 140 N.W. 367.

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Drady v. Des Moines etc. Co., 1881, 57 Iowa 393, 10 N.W. 754.

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City of Clinton v. Cedar Rapids, etc. Co., 1868, 24 Iowa 455.

Failure to compensate entitles owner to injunction.
Dinwiddie v. Roberts, 1848, 1 G. Greene 363.

**70. Change of grade of street or highway, necessity of compensation.**

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Western Newspaper Union v. Des Moines, 1913, 157 Iowa 685, 140 N.W. 367.

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Anderlik v. Iowa State Highway Commission, 1949, 240 Iowa 919, 38 N.W.2d 605.

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Liddick v. Council Bluffs, 1942, 232 Iowa 197, 5 N.W.2d 361.

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**72. Vacation of streets or highways, necessity of compensation.**

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Schiefelbein v. U. S., C. C. A. 1942, 124 F.2d 945.

Vacation of street or alley without prior assessment of damages authorized.
Louden v. Starr, 1915, 171 Iowa 528, 154 N.W. 331.

Compensation for vacating street is required where access destroyed.
Sutton v. Mentzer, 1912, 154 Iowa 1, 134 N.W. 108.
Ridgway v. Osceola, 1908, 139 Iowa 590, 117 N.W. 974.

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Railroads authorized to occupy streets without compensation.
Barney v. Keokuk, 1876, 94 U. S. 324, 24 L. Ed. 224.

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Wulke v. Chicago etc. Co., 1920, 189 Iowa 722, 178 N.W. 1009.

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White v. Wabash etc. Co., 1884, 64 Iowa 281, 20 N.W. 436.

Unauthorized erection of building not a bar to recover for taking.
Renwick v. Davenport etc. Co., 1878, 49 Iowa 664, affirmed, 102 U. S. 180, 26 L. Ed. 51.

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Hubbell v. Des Moines, 1918, 183 Iowa 715, 167 N.W. 619.

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U. S. v. Foster, C. C. A. 1943, 131 F.2d 3, certiorari denied, 63 S.Ct. 760, 318 U. S. 767, 87 L. Ed. 1138.
U. S. v. Buescher, C. C. A. 1943, 131 F.2d 3, certiorari denied, 63 S.Ct. 760, and 318 U. S. 767, 87 L. Ed. 1138.

Most advantageous use must be reasonably probable and such as to affect present market value. Id.

Contiguous tracts used for different purposes by single owner considered as separate tracts.
Hoeft v. State, 1936, 221 Iowa 694, 266 N.W. 571, 104 A. L. R. 1008.

Peculiar adaptability for purpose for which sought may be shown by owner.
Tracy v. Mt. Pleasant, 1914, 165 Iowa 435, 146 N.W. 78.

Jury may consider prospective location of depot on railway condemnation.
Snouffer v. Chicago etc. Co., 1898, 105 Iowa 681, 75 N.W. 501.

**107. Property not taken, amount of compensation.**

Damages do not include unlawful acts of condemner which may result.
Fleming v. Chicago etc. Co., 1872, 34 Iowa 353.
King v. Iowa Midland R. Co., 1872, 34 Iowa 458.

Denial of damages not warranted where landowner refused to permit removal of buildings.
Kemmerer v. Iowa State Highway Commission, 1932, 214 Iowa 136, 241 N.W. 693.

Damages include present or future matters which proximately affect market value.
Kukkuk v. Des Moines, 1922, 193 Iowa 444, 187 N.W. 209.

Damages include damage to entire tract if occupied as a whole even though only part taken.
Haggard v. Independent School Dist. of Algona, 1901, 113 Iowa 486, 85 N.W. 777.

Value immediately before and immediately after taking less benefits proper measure in city sewer condemnation.
Bennett v. Marion, 1898, 106 Iowa 628, 76 N.W. 844.

**108. Value of land, property not taken, amount of compensation.**

Effect of proper use of land taken on balance of tract proper to consider in assessing damages.
Kukkuk v. Des Moines, 1922, 193 Iowa 444, 187 N.W. 209.

Market value before and after condemnation is actual price it may be sold to willing buyer.
Watters v. Platt, 1918, 167 Wis. 470, 168 N.W. 808.

Damage may include damage to entire tract even though only partial taking.
Haggard v. Independent School Dist. of Algona, 1901, 113 Iowa 486, 85 N.W. 777.

Value of whole tract prior to taking and value of remainder after taking proper measure.
Bennett v. Marion, 1898, 106 Iowa 628, 76 N.W. 844.

Premises after taking with damages assessed should equal in value premises prior to taking.
Henry v. Dubuque etc. Co., 1855, 2 Iowa 288, 2 Clarke 288.

**109. Injuries to property not taken, amount of compensation.**

Damages for flooded land is difference in value before and after flooding.
Wapsipinicon Power Co. v. Waterhouse, 1918, 186 Iowa 524, 167 N.W. 623.

Where soil taken in condemnation damages not restricted to value of soil taken.
Parott v. Chicago etc. Co., 1905, 127 Iowa 419, 103 N.W. 352.

Owner entitled to consequential damages for proximity of school.
Haggard v. Independent School Dist. of Algona, 1901, 113 Iowa 486, 85 N.W. 777.

Quality and condition of building and its loss of use proper to consider where building destroyed.
Freeland v. Muscatine, 1859, 9 Iowa 461, followed in Kahn v. Muscatine, 9 Iowa 461.

**110. Diminution in value of land not taken, amount of compensation.**

Landowner entitled to reimbursement for difference in fair and reasonable market value before and after.
Harris v. Board of Trustees of Green Bay etc. Dist. No. 2, Lee County, 1953, 244 Iowa 1169, 59 N.W.2d 234.

Difference between fair and reasonable market value before and after taking proper.
Gregory v. Kirkman Consol. etc. Dist., 1922, 193 Iowa 579, 187 N.W. 553.

Damages not allowed for improper construction of improvement.
Richardson v. Centerville, 1908, 137 Iowa 253, 114 N.W. 1071.

Owner entitled to damages to entire lot when used as a whole but only half lot taken.
Haggard v. Independent etc. Dist. of Algona, 1901, 113 Iowa 486, 85 N.W. 777.

Immediate and not remote consequences considered.
Fleming v. Chicago etc. Co., 1872, 34 Iowa 353.

All circumstances that immediately depreciate value of premises considered and none others.
Henry v. Dubuque etc. Co., 1856, 2 Iowa 288, 2 Clarke 288.

Fair market value of premises before and after disregarding benefits the test.

Sater v. Burlington etc. Co., 1855, 1 Iowa 386, 1 Clarke 386.

**111. Easements or rights of way, amount of compensation.**

Damages need not necessarily equal amount required to construct another.

Gear v. C. C. & D. R. Co., 1874, 39 Iowa 23.

**112. Railroads, property not taken, amount of compensation.**

Damages are fair value of whole tract before and after appropriation.

Henry v. Dubuque etc. Co., 1855, 2 Iowa 288, 2 Clarke, 288.

Ham v. Wisconsin, etc. Co., 1883, 61 Iowa 716, 17 N.W. 157.

Proper for jury to consider duty of railroad to construct crossing.

Lough v. Minneapolis etc. Co., 1902, 116 Iowa 31, 89 N.W. 77.

Proper to instruct that measure of damages fair market value before taking where whole lot taken.

Hollingsworth v. Des Moines etc. Co., 1884, 63 Iowa 443, 19 N.W. 325.

Negligence in construction not to be considered but damage to remaining lot may be.

Cummins v. Des Moines etc. Co., 1884, 63 Iowa 397, 19 N.W. 268.

Obstruction of view and interfering with privacy proper to be considered.

Ham v. Wisconsin etc. Ry. Co. 1883, 61 Iowa 716, 17 N.W. 157.

Where railway through entire farm instruction on value of separate tracts error.

Winklemans v. Des Moines etc. Co., 1883, 62 Iowa 11, 17 N.W. 82.

Value is in then condition and not as in city lots if not so laid out.

Everett v. Union Pac. etc. Co., 1882, 59 Iowa 243, 13 N.W. 109.

Depreciation in market value of entire farm proper and not restricted to value of governmental subdivisions.

Hartshorn v. Burlington etc. Co., 1879, 52 Iowa 613, 3 N.W. 648.

Adjacent landowner to street used by railway may recover all damages proximately resulting from its use.

Kucheman v. C. C. etc. Co., 1877, 46 Iowa 366.

Where negligent construction, only proper construction is to be considered in assessing damages.
Cadle v. Muscatine etc. Co., 1876, 44 Iowa 11.

Owner entitled only to compensation for appropriation.
Gear v. C. C. etc. Co., 1874, 39 Iowa 23.

Enhanced value because of improvement not considered.
Henry v. Dubuque etc. Co., 1858, 5 Iowa (Cole Ed.) 576.

**113. Streets and highways, amount of damages.**

Damage may be greater to farm than value per acre when attached to farm.
Luthi v. Iowa State Highway Commission, 1938, 224 Iowa 678, 276 N.W. 586.

Fair and reasonable market value before and after condemnation the measure of damages.
Kemmerer v. Iowa State Highway Commission, 1932, 214 Iowa 136, 241 N.W. 693.
Randall v. Iowa State Highway Commission, 1932, 214 Iowa 1, 214 N.W. 685.

Damage to be considered as a whole—not separate items.
Dean v. State, 1930, 211 Iowa 143, 233 N.W. 36.

Measure is value immediately before and immediately after without considering benefits.
Beal v. Iowa State Highway Commission, 1930, 209 Iowa 1308, 230 N.W. 302.

Jury should not award sum of specific items but rather damage as a whole.
Kosters v. Sioux County, 1923, 195 Iowa 214, 191 N.W. 993.

Area of land taken for street compared with entire tract not true measure.
Kukkuk v. Des Moines, 1922, 193 Iowa 444, 187 N.W. 209.

Measure where street cut down where no grade established is value before and after.
Richardson v. Webster City, 1900, 111 Iowa 427, 82 N.W. 920.

Depreciation in market value true measure where embankments constructed.
Nicks v. Chicago etc. Co., 1891, 84 Iowa 27, 50 N.W. 222.

Amount expended for fences not measure of recovery.
Bland v. Hixenbaugh, 1874, 39 Iowa 532.

If damages for new road located over vacated old road are less than damages for old road owner is entitled to nothing.
Jewett v. Israel, 1872, 35 Iowa 261.

**114. Expenses necessitated by taking in general, amount of compensation.**

Where grade change increases value of property owner not entitled to compensation for inconvenience.
Meyer v. Burlington, 1880, 52 Iowa 560, 3 N.W. 558.

Recovery for fences not amount expended therefore but is amount reasonable and proper.
Bland v. Hixenbaugh, 1874, 39 Iowa 532.

**115. Benefits, deduction or set-off of, amount of compensation.**

Benefits not considered where strip taken for highway.
Stoner v. Iowa State Highway Commission, 1939, 227 Iowa 115, 287 N.W. 269.

Benefits not considered where land taken for school purposes.
Gregory v. Kirkman etc. School Dist., 1922, 193 Iowa 579, 187 N.W. 553.
Haggard v. Independent School Dist. Algona, 1901, 113 Iowa 486, 85 N.W. 777.

Benefits not considered where land taken for drain.
Gish v. Castner etc. Co., 1908, 137 Iowa 711, 115 N.W. 474.

All benefits and advantages are excluded.
Britton v. Des Moines etc. Co., 1882, 59 Iowa 540, 13 N.W. 710.

Benefits excluded because enjoyed by all the public.
Meyer v. Burlington, 1879, 52 Iowa 560, 3 N.W. 558.

Appreciation in value because of improvement not considered.
Koestenbader v. Peirce, 1875, 41 Iowa 204.

Benefits because of erection of fences not considered.
Bland v. Hixenbaugh, 1874, 39 Iowa 532.

Jury charge to disregard benefits not erroneous.
Brooks v. Davenport etc. Co., 1873, 37 Iowa 99.

Drainage and improvement of land not to be considered.
Frederick v. Shane, 1871, 32 Iowa 254.

Advantages arising out of improvement not considered.
Israel v. Jewett, 1870, 29 Iowa 475.
Deaton v. Polk County, 1859, 9 Iowa 594.
Sater v. Burlington & Mt. P. etc. Co., 1855, 1 Iowa 386, 1 Clarke, 386.

**116. General or special benefits, deduction or set-off, amount of compensation.**

Benefits excluded mean road itself as well as use made of it.
Frederick v. Shane, 1871. 32 Iowa 254.

**117. Limited estates or interests in property, amount of compensation.**

Leasehold entitled to compensation.
Korf v. Fleming, 1948, 32 N.W.2d 85.

Tenant's recovery is value of unexpired term less rent reserved.
Des Moines etc. Laundry v. Des Moines, 1924, 199 Iowa 1082, 198 N.W. 486, 34 A. L. R. 1517.

Where lessee not permitted to connect to viaduct, error to show grant of right to do so.
Western Newspaper Union v. Des Moines, 1913, 157 Iowa 685, 140 N.W. 367.

Error to show whether leasehold listed for taxation. Id.
Lessee entitled to value of annual use before and after taking.
Werthman v. Mason City etc. Co., 1905, 128 Iowa 135, 103 N.W. 135.
Renwick v. Davenport etc. Co., 1878, 49 Iowa 664, affirmed, 102 U. S. 180, 26 L. Ed. 51.

**118. Interest, amount of compensation.**

Acceptance of award by one tenant does not preclude recovery by another tenant.
Ruppert v. Chicago etc. Co., 1876, 43 Iowa 490.

Interest allowed from date of possession.
Beal v. Iowa State Highway Commission, 1930, 209 Iowa 1308, 230 N.W. 302.

Interest allowed from date of possession if evidence of that date.
Quinn v. Iowa etc. Co., 1906, 131 Iowa 680, 109 N.W. 209

Interest from first date of month following possession proper.
Lough v. Minneapolis etc. Co., 1902, 116 Iowa 31, 89 N.W. 77.

**119. Inadequate or excessive compensation.**

Fair value of property basis even though less than owner's investment.
Foster v. U. S., C. C. A. 1945, 145 F.2d 873.

$2,000 not excessive for 1.2 acres including trees which are part of landscaping plan.

Stoner v. Iowa State Highway Commission, 1939, 227 Iowa 115, 287 N.W. 269.

$1,020 for easement 100 feet wide over 34 acres not excessive when evidence in conflict.

Evans v. Iowa etc. Co. of Delaware, 1928, 205 Iowa 283, 218 N.W. 66.

$3,875 not excessive for 3.9 acres where cattle pass inadequate.

Kosters v. Sioux County, 1923, 195 Iowa 214, 191 N.W. 993.

## IV. REMEDIES AND PROCEDURE

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**141. Nature and form of proceeding.**

Determination of damages is civil in nature and removable to federal court where other requisites exist.

Kirby v. Chicago etc. Co., C. C. 1901, 106 F. 551.

Myers v. Chicago etc. Co., 1902, 118 Iowa 312, 91 N.W. 1076.

Taking without compensation subjects taking to action in ejectment.

Daniels v. Chicago etc. Co., 1872, 35 Iowa 129, 14 Am. Rep. 490.

Failure to follow remedy provided waives right to resist road opening.
Dunlap v. Pulley, 1870, 28 Iowa 469.

Owner only entitled to compensation in manner prescribed by law.
Connoly v. Griswold, 1858, 7 Iowa 416, 7 Clarke 416.

**142. Persons entitled to maintain proceedings for compensation of damages.**

Damages cannot be recovered by one who sustains same damages as general public.
Ellsworth v. Chickasaw County, 1875, 40 Iowa 571.
Brady v. Shinkle, 1875, 40 Iowa 576.

**143. Injunction.**

Question of right to condemn by special charter city can be raised on appeal, not injunction.
Heinz v. Davenport, 1941, 230 Iowa 7, 296 N.W. 783.

Injunction proper against corporation attempting to evade constitutional requirement.
Scott v. Price Bros. Co., 1927, 207 Iowa 191, 217 N.W. 75.

**144. Mandamus.**

Mandamus proper to compel condemnation.
Anderlik v. Iowa State Highway Commission, 1949, 240 Iowa 919, 38 N.W.2d 605.
Baird v. Johnston, 1941, 230 Iowa 161, 297 N.W. 315.

**145. Jury trial.**

Owner entitled to jury trial on appeal.
Kirby v. Chicago etc. Co., C. C. 1901, 106 F. 551.

Not violation of due process to refuse jury trial.
In re Bradley, 1899, 108 Iowa 476, 79 N.W. 280.

Owner entitled to jury trial on appeal without moving to set aside proceedings.
Sigafoos v. Talbot, 1863, 25 Iowa 214.

Owner entitled to jury trial on appeal.
O. A. G. 1930, p. 59.

**146. Jury questions.**

Question of damages for jury.
Stoner v. Iowa State Highway Commission, 1939, 227 Iowa 115, 287 N.W. 269.

Where access made more difficult jury question on damages.
Nalon v. Sioux City, 1933, 216 Iowa 1041, 250 N.W. 166.

Removal of lateral support, question of damages for jury.
Hathaway v. Sioux City, 1953, 244 Iowa 508, 57 N.W.2d 228,

**147. Pleading.**

Where alternative relief asked damages for taking proper.
Birk v. Jones County, 1936, 221 Iowa 794, 226 N.W. 553.

Owner may controvert necessity of taking by answering application for condemnation.
Bennett v. Marion, 1898, 106 Iowa 628, 76 N.W. 844.

**148. Evidence—admissibility of evidence.**

Present or near future wants of community is basis for admission of value testimony.
U. S. v. Foster, C. C. A. 1942, 131 F.2d 3, certiorari denied, 63 S.Ct. 760, 318 U. S. 767, 87 L. Ed. 1138.
U. S. v. Buescher, C. C. A. 1942, 131 F.2d 3, certiorari denied, 63 S.Ct. 760, 318 U. S. 767, 87 L. Ed, 1138.

Testimony of value for industry improper where no use other than farm shown. Id.

Disturbing of peace, quiet and privacy by stopping of passers-by admissible.
Stoner v. Iowa State Highway, 1939, 227 Iowa 115, 287 N.W. 269.

Obstruction to access a taking where fence erected across highway.
Graham v. Sioux City, 1935, 219 Iowa 594, 258 N.W. 902.

Undesirable points after taking as well as good points prior to taking may be shown.
Randell v. Iowa State Highway Commission, 1932, 214 Iowa 1, 241 N.W. 685.

Testimony of viaducts in other city improper where conditions not the same.
Western Newspaper Union v. Des Moines, 1913, 157 Iowa 685, 140 N.W. 367.

Witnesses not limited to present use but may testify as to reasonable probable future use.
Lough v. Minneapolis etc. Co., 1902, 116 Iowa 31, 89 N.W. 77.

Sale of land similiarly situated where differences pointed out admissible.
Town of Cherokee v. Sioux City etc. Co., 1880, 52 Iowa 279, 3 N.W. 42.

**149. Presumptions and burden of proof.**

Under 28 U.S.C.A., sec. 41(20) Burden on owner to show flooding a permanent condition.
Goodman v. U. S., C. C. A. 1940, 113 F.2d 914.

Unusual changes not presumed contemplated when land acquired from abutters.
Liddick v. Council Bluffs, 1942, 232 Iowa 197, 5 N.W.2d 361.

Absent allegation and proof no presumption vacation of alley hostile to abutters.
Hubbell v. Des Moines, 1919, 183 Iowa 715, 167 N.W. 619.

**150. Weight and sufficiency of evidence.**

Must show total lack of public use to enjoin condemnation.
Heinz v. Davenport, 1941, 230 Iowa 7, 296 N.W. 783.

**151. Instructions and interrogatories.**

Instruction that mere colorable compliance not enough is not objectionable.
Wilson v. Fleming, 1948, 31 N.W.2d 393, motion denied, 32 N.W.2d 798.

Where no claim of unlawful use, instruction that use is lawful properly refused.
Cutler v. State, 1938, 224 Iowa 686, 278 N.W. 327.

"Just compensation" defined as sum as would make landowner whole not prejudicial.
Witt v. State 1937, 223 Iowa 156, 272 N.W. 419.

Right of owner to remain in undisturbed possession and value before and after proper.
Maxwell v. Iowa State Highway Commission, 1937, 223 Iowa 159, 271 N.W. 883, 118 A. L. R. 862.

Term "value" not prejudicial where other instructions refer to fair and reasonable market value.
Hoeft v. State, 1936, 221 Iowa 694, 266 N.W. 571, 104 A. L. R. 1008.

Fixing of damages without regard to crossing proper.
Lough v. Minneapolis etc. Co., 1902, 116 Iowa 31, 89 N.W. 77.

Fair market value of land condemned and difference in value before and after erroneous as confusing.
Bennett v. Marion, 1898, 106 Iowa 628, 76 N.W. 844.

In change of street grade cost of restoring property less benefits erroneous.
Stewart v. Council Bluffs, 1891, 84 Iowa 61, 50 N.W. 219.

Submission of interrogatories on value of separate parcels properly refused.
Winklemans v. Des Moines etc. Co., 1883, 62 Iowa 11, 17 N.W. 82.

**152. Setting aside verdict and new trial.**

Court has same power over verdict in condemnation as in other cases.
Campbell v. Iowa State Highway Commission, 1936, 222 Iowa 544, 269 N.W. 20.
Verdict which is inadequate, excessive or result of passion or prejudice may be set aside. Id.
Reopening case tried without jury for material testimony not error.
Fair v. Ida County, 1927, 204 Iowa 1046, 216 N.W. 952.

**153. Conclusiveness and effect of award or judgment.**

Assessing tribunal presumed to consider all foreseeable uses affecting value.
Liddick v. Council Bluffs, 1942, 232 Iowa 197, 5 N.W.2d 361.
Damages are assessed once and for all and include all injuries.
Lage v. Pottawattamie County, 1942, 232 Iowa 944, 5 N.W.2d 161.
Judgment fixing block boundaries not res judicata against abutting property owner.
Long v. Wilson, 1903, 119 Iowa 267, 93 N.W. 282, 60 L. R. A. 720, 97 Am. St. Rep. 315.

**154. Award or judgment, effect.**

Where road established and order of non-assessment of damages, none need be paid.
McCrory v. Griswold, 1858, 7 Iowa 248, 7 Clarke 248.
Connolly v. Griswold, 1858, 7 Iowa 416, 7 Clarke 416.
Compensation paid only where fixed by jury.
Connolly v. Griswold, 1858, 7 Iowa 416, 7 Clarke 416.

**155. Amendment of award or judgment.**

Where amount of interest merely matter of computation, court could add.
Beal v. Iowa State Highway Commission, 1930, 209 Iowa 1308, 230 N.W. 302.

**156. Costs, fees and expenses.**

Where owner appealed, motion to require government to print record at its expense properly denied.
Goodman v. U. S., C. C. A. 1940, 113 F.2d 914.

Attorney fees and expenses not within "just compensation."

Welton v. Iowa State Highway Commission, 1930, 211 Iowa 625, 233 N.W. 876.

Attorney fees not included in "just compensation."

Iowa Electric Co. v. Scott, 1928, 206 Iowa 1217, 220 N.W. 333.

Attorney fees not to be taxed except where expressly authorized.

Nichol v. Neighbour, 1926, 202 Iowa 406, 210 N.W. 281.

**157. Review.**

In absence of evidence of permanent flooding of land petition properly dismissed.

Goodman v. U. S., C. C. A. 1940, 113 F.2d 914.

Manner of construction properly excluded where testimony amply disclosed it to jury.

Stoner v. Iowa State Highway Commission, 1930, 227 Iowa 115, 287 N.W. 269.

Verdict not upset where conflicting evidence. Id.

Question of value after condemnation omitting reference to exclusion of benefits no cause for complaint by condemner.

Moran v. Iowa State Highway Commission, 1937, 223 Iowa 936, 274 N.W. 59.

Award of $4,680 for 15.71 acres from tract of 310 acres purchased by owner nine months prior to condemnation for $6,500 grossly excessive.

Campbell v. Iowa State Highway Commission, 1936, 222 Iowa 544, 269 N.W. 20.

Discretion of city council as to public purpose interfered with only if abused.

Bennett v. Marion, 1898, 106 Iowa 628, 76 N.W. 844.

Instruction by county judge to condemnation jury not disturbed where no prejudice shown.

City of Des Moines v. Layman, 1866, 21 Iowa 153.

# CHAPTER 24

## LOCAL BUDGET LAW

24.1 Short title.
24.2 Definition of terms.
24.3 Requirements of local budget.
24.4 Time of filing estimates.
24.5 Estimates itemized.
24.6 Emergency fund—levy.
24.7 Supplemental estimates.
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24.9 Filing estimates—notice of hearing—amendments
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24.29 Review by and powers of board.
24.30 Rules of procedure—record.
24.31 Decision certified to county.
24.32 Appropriation for expenses.

**24.1 Short title.** This chapter shall be known as the "Local Budget Law." [C24, 27, 31, 35, 39,§368; C46, 50, 54,§24.1]

**1. Validity.**
Acts 1923, 24 Ex.Sess. (40 G.A.) ch. 4, invalid for insufficiency of title.
Chicago etc. Ry. Co. v. Streepy, 1929, 207 Iowa 851, 224 N.W. 41.

**2. Construction and application.**
City park board certificate to city council must comply with Local Budget Law.
Board of Park Com'rs of City of Marshalltown v. City of Marshalltown, 1953, 244 Iowa 844, 58 N.W.2d 394.

Local budget law does not affect collection of taxes on omitted property.
O. A. G. 1938, p. 603.

Local budget law not applicable to appropriation by board of supervisors to farm aid association.
O. A. G. 1938, p. 145.

This chapter applicable to county superintendent.
O. A. G. 1938, p. 19.

**3. Curative statutes.**

Curative statute validating tax levy not local or special law.
Chicago etc. Ry. Co. v. Rosenbaum, 1930, 212 Iowa 227, 231 N.W. 646.

**4. Purpose.**

Purpose of law that taxpayer shall pay less money.
Dyer v. City of Des Moines, 1941, 230 Iowa 1246, 300 N.W. 562.

**24.2 Definition of terms.** As used in this chapter and unless otherwise required by the context:

1. The word "municipality" shall mean the county, city, town, school district, and all other public bodies or corporations that have power to levy or certify a tax or sum of money to be collected by taxation, but shall not include any drainage district, township, or road district.

2. The words "levying board" shall mean board of supervisors of the county and any other public body or corporation that has the power to levy a tax.

3. The words "certifying board" shall mean any public body which has the power or duty to certify any tax to be levied or sum of money to be collected by taxation.

4. The words "fiscal year" shall mean the year ending on the thirtieth day of June, and any other period of twelve months constituting a fiscal period, and ending at any other time, except in the case of school districts it shall be the period of twelve months beginning on the first day of July of the current calendar year. As amended Acts 1955 (56 G.A.) ch. 56, §1.

5. The word "tax" shall mean any general or special tax levied against persons, property, or business, for public purposes as provided by law, but shall not include any special assessment nor any tax certified or levied by township trustees.

6. The words "state board" shall mean the state appeal board as created by section 24.25 [C24, 27, 31, 39,§369; C46, 50, 54, §24.2]

Referred to in §441.5 Budget.

**1. Construction and application.**

County board of education is a "certifying board" for taxation purposes.
O. A. G. 1948, p. 219.

Term "municipality" includes board of supervisors.
Chicago etc. Ry. Co. v. Streepy, 1931, 211 Iowa 1334, 236 N.W. 24.

Local budget law not applicable to appropriation by board of supervisors to farm aid association.
O. A. G. 1938, p. 145.

School district a "municipality" within §24.2.
O. A. G. 1938, p. 96.

Hospital board a certifying board and board of supervisors resolution not required.
O. A. G. 1930, p. 320.

Governmental subdivisions not specifically included in section not required to comply.
O. A. G. 1925, 1926, p. 386.

Sidewalk or snow-removal assessment constitutes a "special assessment" within this section.
O. A. G. 1923, 1924, p. 87.

**2. School districts.**

School township not divided into subdistricts bound by this section.
O. A. G. 1925, 1926, p. 49.

**3. Drainage districts.**

Supervisors could not transfer funds from general fund to drainage fund.
O. A. G. 1925, 1926, p. 428.

Supervisors, acting on drainage matters, not required to comply with contract and bond provisions of budget law.
O. A. G. 1925, 1926, p. 386.

**24.3 Requirements of local budget.** No municipality shall certify or levy in any year any tax on property subject to taxation unless and until the following estimates have been made, filed, and considered, as hereinafter provided:

1. The amount of income thereof for the several funds from sources other than taxation.

2. The amount proposed to be raised by taxation.

3. The amount proposed to be expended in each and every fund and for each and every general purpose during the fiscal year next ensuing, which in the case of school districts shall be the period of twelve months beginning on the first day of July of the current calendar year. As amended Acts 1955 (56 G.A.) ch. 56, §2.

4. A comparison of such amounts so proposed to be expended with the amounts expended for like purposes for the two preceding years. [C24, 27, 31, 35, 39,§370; C46, 50, 54, §24.3; 55 GA, ch 53,§§2, 3; 56 GA, ch 56,§2]

Referred to in 24.9 Filing estimates—notice of hearing—amendments.

**1. Construction and application.**

Municipality must show amount to be collected from sources other than taxation.

Dyer v. City of Des Moines, 1941, 230 Iowa 1246, 300 N.W. 562.

Local budget law not applicable to appropriation by supervisors to farm aid association.

O. A. G. 1938, p. 145.

Funds collected cannot be applied to payment of claims filed in preceding year.

O. A. G. 1938, p. 21.

Tax levy authorized by §24.6 supplements other levy and should be used for emergency.

O. A. G. 1925, 1926, p. 37.

Condemnation proceeding expenditure within meaning of budget law.

O. A. G. 1925, 1926, p. 95.

**2. Purpose.**

Purpose of law is to provide check on excessive tax levies.

O. A. G. 1942, p. 107.

**3. Board of county supervisors.**

Discretionary powers of supervisors cannot be delegated to budget director.

O. A. G. 1948, p. 166.

Removal grounds insufficient where no intentional wrongdoing or careless indifference.

State ex rel. Dwyer v. Sullivan, 1941, 230 Iowa 945, 299 N.W. 411.

**4. Insurance premiums.**

Workmens compensation insurance premiums payable only from general fund.

O. A. G. 1940, p. 82.

**5. Revolving fund.**

Municipal revolving fund need not be included in city budget estimate.

O. A. G. 1942, p. 107.

**6. School budgets.**

Purchase of school buses financed by general fund, pro-

vided budget estimate not exceeded.
O. A. G. 1948, p. 5.

1934 budget estimate need not include cash on hand and anticipated 1934 tax collections.
Lowden v. Woods, 1939, 226 Iowa 425, 284 N.W. 155.

**7. Special assessments.**

Legal provisions for levying special assessments should be complied with.
O. A. G. 1923, 1924, p. 79.

**8. Motor vehicle testing stations.**

For annotations see I.C.A.

**9. Relief funds.**

For annotations see I.C.A.

**10. Local board, powers of.**

For annotations see I.C.A.

**24.4 Time of filing estimates.** All such estimates and any other estimates required by law shall be made and filed a sufficient length of time in advance of any regular or special meeting of the certifying board or levying board, as the case may be, at which tax levies are authorized to be made to permit publication, discussion, and consideration thereof and acton thereon as hereinafter provided. [C24, 27, 31, 35, 39,§371; C46, 50, 54,§24.4]

Referred to in §24.9 Filing estimates—notice of hearing—amendments.

**1. Constructon and application.**

Budget law apprises taxpayer in advance of money to be raised and purpose.
Dyer v. City of Des Moines, 1941, 230 Iowa 1246, 300 N.W. 562.

**24.5 Estimates itemized.** The estimates herein required shall be fully itemized and classified so as to show each particular class of proposed expenditure, showing under separate heads the amount required in such manner and form as shall be prescribed by the state board. [C24, 27, 31, 35, 39,§372; C46, 50, 54,§24.5]

Referred to in §24.9 Filing estimates—notice of hearing—amendments.

**1. Construction and application.**

Budget law apprises taxpayer in advance of money to be raised and purpose.
Dyer v. City of Des Moines, 1941, 230 Iowa 1246, 300 N.W. 562.

**2. Increase of expenditures.**

Budget law precludes city by ordinance from increasing amount to be expended.

Clark v. City of Des Moines, 1936, 222 Iowa 317, 267 N.W. 97.

**3. Emergency fund.**

Emergency fund limited to assessments published.

O. A. G. 1925, 1926, p. 112.

**4. Motor vehicle testing station.**

For annotations see I.C.A.

**5. Stamped warrants.**

Stamped warrants draw interest from date of presentation and are paid in order of stamping.

O. A. G. 1934, p. 435.

**24.6 Emergency fund—levy.** Each municipality as defined herein, may include in the estimate herein required, an estimate for an emergency fund. Each such municipality shall have power to assess and levy a tax for such emergency fund at a rate not to exceed one mill upon the taxable property of the municipality, provided that no such emergency tax levy shall be made until such municipality shall have first petitioned the state board to make such levy and received its approval thereof. Transfers of moneys may be made from the emergency fund to any other fund of the municipality for the purpose of meeting deficiencies in any such fund arising from any cause, provided, however, that no such transfer shall be made except upon the written approval of the state board, and then only when such approval is requested by a two-thirds vote of the governing body of said municipality. [C24, 27, 31, 35, 39,§373; C46, 50, 54,§24.6]

Referred to in §24.9, Filing estimates—notice of hearing—amendments, and 24.14, tax limited.

**1. Validity.**

Acts 1923, 24 Ex. Sess. (40 G.A.) ch. 4 invalid because title insufficient.

Chicago etc. Ry. Co. v. Streepy, 1929, 207 Iowa 851, 224 N.W. 41.

**2. Construction and application.**

Term "municipality" includes board of supervisors.

Chicago, etc. Ry. Co. v. Streepy, 1931, 211 Iowa 1334, 236 N.W. 24.

Emergency is unforeseen circumstance calling for immediate action or remedy.

O. A. G. 1925, 1926, p. 444.

**3. Emergency fund in general.**

Emergency fund an indebtedness within constitutional limitation.

Brunk v. City of Des Moines, 1940, 228 Iowa 287, 291 N.W. 395, 134 A. L. R. 1391.

**4. Establishment of emergency fund.**

Establishment of emergency fund is discretionary and subject to approval of state board.

Mathewson v. City of Shenandoah, 1943, 233 Iowa 1368, 11 N.W.2d 571.

Emergency fund based only on estimate submitted.

O. A. G. 1925, 1926, p. 89.

**5. Levy of emergency tax.**

One-mill emergency tax not available to augment schoolhouse construction tax.

O. A. G. 1948, p. 237.

Refusal to levy emergency tax not abuse of discretion.

Mathewson v. City of Shenandoah, 1943, 233 Iowa 1368, 11 N.W.2d 571.

Timely tender of regular tax payment does not impose interest charge on total amount.

Chicago etc. R. Co. v. Slate, 1932, 213 Iowa 1294, 241 N.W. 392.

Amount to be raised for emergency subject only to statutes and constitution.

O. A. G. 1925, 1926, p. 112.

**6. Mandamus to compel levy.**

Mandamus not available to compel levy for continuing deficit.

Mathewson v. City of Shenandoah, 1943, 233 Iowa 1368, 11 N.W.2d 571.

**7. Use of emergency fund.**

Emergency fund available to replace bridges destroyed by floods.

O. A. G. 1928, p. 36.

Use of fund limited to pay for unforeseen emergencies.

O. A. G. 1925, 1926, p. 444.

Gasoline tax fund available for statutory purposes without regard to budget law.

O. A. G. 1925, 1926, p. 247.

Emergency tax supplements other levies and should be used for prescribed purposes.

O. A. G. 1925, 1926, p. 37.

**8. Transfer of funds.**

For annotations see I.C.A.

**9. School Districts.**

For annotations see I.C.A.

**10. Validating Acts.**

For annotations see I.C.A.

**24.7 Supplemental estimates.** Supplemental estimates for particular funds may be made for levies of taxes for future years when the same are authorized by law. Such estimates may be considered, and levies made therefor at any time by filing the same, and upon giving notice in the manner required in section 24.9. Such estimates and levies shall not be considered as within the provisions of section 24.8. [C27, 31, 35,§373-al; C39,§373.1; C46, 50, 54,§24.7]

Referred to in §24.9 Filing estimates—notice of hearing—amendments.

**1. Construction and application.**

Publication of levies affects supplemental levies to extent that they shall be included in levies of all subdivisions.

O. A. G. 1949, p. 4.

Expenditures for activities authorized by board may be included in local budget.

O. A. G. 1938, p. 134.

**2. Supplemental estimates.**

Supplemental estimates may be made at any time.

O. A. G. 1949, p. 4.

Supervisors not required to levy where supplemental levy referred to future years.

O. A. G. 1932, p. 33.

**24.8 Estimated tax collections.** The amount of the difference between the receipts estimated from all sources other than taxation and the estimated expenditures for all purposes, including the estimates for emergency expenditures, shall be the estimated amount to be raised by taxation upon the assessable property within the municipality for the next ensuing fiscal year. The estimate shall show the number of dollars of taxation for each thousand dollars of assessed value of all property that is assessed. [C24, 27, 31, 35, 39,§374; C46, 50, 54,§24.8]

Referred to in §24.7 Supplemental estimates, and 24.9 Filing estimates—notice of hearing—amendments.

**1. Construction and application.**

Statutory tax estimates and levies not the subject of supplemental estimates.

O. A. G. 1949, p. 4.

Existence of balance on hand not ground for protest as to amount of taxes due.
O. A. G. 1936, p. 231.

Expenditures for activities authorized by board may be included in local budget.
O. A. G. 1938, p. 134.

**24.9 Filing estimates—notice of hearing—amendments.** Each municipality shall file with the secretary or clerk thereof the estimates required to be made in sections 24.3 to 24.8, inclusive, at least twenty days before the date fixed by law for certifying the same to the levying board and shall forthwith fix a date for a hearing thereon, and shall publish such estimates and any annual levies previously authorized as provided in section 76.2, with a notice of the time when and the place where such hearing shall be held at least ten days before the hearing. Provided that in rural independent districts, school townships, and municipalities of less than two hundred population such estimates and the notice of hearing thereon shall be posted in three public places in the district in lieu of publication.

For a county, such publication shall be in the official newspapers thereof.

For any other municipality such publication shall be in a newspaper published therein, if any, if not, then in a newspaper of general circulation therein.

Budget estimates adopted and certified in accordance with this chapter may be amended and increased as the need arises to permit appropriation and expenditure during the fiscal year covered by such budget of unexpended cash balances on hand at the close of the preceding fiscal year and which cash balances had not been estimated and appropriated for expenditure during the fiscal year of the budget sought to be amended, and also to permit appropriation and expenditure during the fiscal year covered by such budget of amounts of cash anticipated to be available during such year from sources other than taxation and which had not been estimated and appropriated for expenditure during the fiscal year of the budget sought to be amended. Such amendments to budget estimates may be considered and adopted at any time during the fiscal year covered by the budget sought to be amended, by filing such amendments and upon publishing the same and giving notice of the public hearing thereon in the manner required in this section. Within twenty days of the decision or order of the certifying or levying board, such proposed amendment of the budget shall be subject to protest, hearing on such protest, appeal to the state appeal board and review by such body, all in accordance with the provisions of sections 24.26 to 24.31, inclusive, so far as applicable. Amendments to budget estimates

adopted or issued under the provisions of this section shall not be considered as within the provisions of section 24.14. [C24, 27, 31, 35, 39,§376; C46, 50, 54,§24.9; 55 GA, ch 53,§1]

Referred to in §24.7 Supplemental estimates.

**1. Construction and application.**

Publication of levies affects supplemental levies to extent that they shall be included in levies of all subdivisions.

O. A. G. 1949, p. 4.

Budget law gives taxpayer right to advance knowledge of amount of taxes and purpose for which raised.

Dyer v. City of Des Moines, 1941, 230 Iowa 1246, 300 N.W. 562.

Funds collected for 1937 could not be used for claims arising in 1936.

O. A. G. 1938, p. 21.

**2. Filing of estimates.**

Supplemental estimates permitted if auditor has time to prepare books.

O. A. G. 1949, p. 4.

Municipality must file estimates not less than 20 days before day for certification.

O. A. G. 1925, 1926, p. 116.

Consolidated tax levy authorized.

O. A. G. 1925, 1926, p. 193.

**3. Motor vehicle testing station.**

For annotations see I.C.A.

**4. Schools.**

For annotations see I.C.A.

**5. Waiver and estoppel.**

For annotations see I.C.A.

**6. Revision of budget.**

After adoption of budget, board may revise but same procedure must be followed.

O. A. G. 1932, p. 115.

Reduction of estimate renders republication unnecessary.

O. A. G. 1932, p. 262.

**24.10 Levies void.** The verified proof of the publication of such notice shall be filed in the office of the county auditor and preserved by him. No levy shall be valid unless and until such notice is published and filed. [C24, 27, 31, 35, 39, §376; C46, 50, 54,§24.10]

**24.11 Meeting for review.** The certifying board or the levying board, as the case may be, shall meet at the time

and place designated in said notice, at which meeting any person who would be subject to such tax levy, shall be heard in favor of or against the same or any part thereof. [C24, 27, 31, 35, 39,§377; C46, 50, 54,§24.11]

Referred to in §24.26 Protest to budget.

**1. Construction and application.**

Budget law gives taxpayer right to know in advance amount of taxes and purpose.

Dyer v. City of Des Moines, 1941, 230 Iowa 1246, 300 N.W. 562.

Budget director is ex officio member of tax levying and certifying body.

State v. Manning, 1935, 220 Iowa 525, 259 N.W. 213.

**2. Waiver and estoppel.**

For annotations see I.C.A.

**24.12 Record by certifying board.** After the hearing has been concluded, the certifying board shall enter of record its decision in the manner and form prescribed by the state board and shall certify the same to the levying board, which board shall enter upon the current assessment and tax roll the amount of taxes which it finds shall be levied for the ensuing fiscal year in each municipality for which it makes the tax levy. [C24, 27, 31, 35, 39,§378; C46, 50, 54,§24.12]

**1. Construction and application.**

Under budget law, school boards not required to include cash on hand in preparing budget.

Lowden v. Woods, 1939, 226 Iowa 425, 284 N.W. 155.

**24.13 Procedure by levying board.** Any board which has the power to levy a tax without the same first being certified to it, shall follow the same procedure for hearings as is hereinbefore required of certifying boards. [C24, 27, 31, 35, 39,§379; C46, 50, 54,§24.13]

**24.14 Tax limited.** No greater tax than that so entered upon the record shall be levied or collected for the municipality proposing such tax for the purpose or purposes indicated; and thereafter no greater expenditure of public money shall be made for any specific purpose than the amount estimated and appropriated therefor, except as provided in sections 24.6, 24.15 and subsection 4 of section 343.11. All budgets set up in accordance with the statutes shall take such funds (allocations made by sections 123.50 and 324.63) into account, and all such funds, regardless of their source, shall be considered in preparing the budget, all as is provided in this chapter. (C24, 27, 31, 35, 39,§380; C46, 50, 54,§24.14]

Referred to in §24.9 Filing estimates—notice of hearing—amendments.

**1. Contruction and application.**

Statutory increase in salaries authorized amendment of current budgets.
O. A. G. 1948, p. 55.

"So entered" refers to preceding sections of statute.
Clark v. City of Des Moines, 1936, 222 Iowa 317, 267 N.W. 97.

Adjustment of teachers' contract permitted to extent of excess over budget requirements.
O. A. G. 1946, p. 224.

Receipts additional to estimate may not be used
O. A. G. 1940, p. 392.

Claims for 1936 not chargeable to 1937 collections.
O. A. G. 1938, p. 21.

Legislature intended in passing this section to put municipality on cash basis.
O. A. G. 1928, p. 336.

"Expenditure" includes disbursements, amount contracted to be paid and claims against bridge fund.
O. A. G. 1925, 1926, p. 373.

Provisions of this section are mandatory.
O. A. G. 1925, 1926, p. 74.

Payment for land condemned limited by amount levied and collected.
O. A. G. 1925, 1926, p. 72.

**2. Contracts.**

Where levy of bridge tax has been made, board may contract for expenditure of such funds.
O. A. G. 1925, 1926, p. 373.

**3. Expenditures.**

Board authorized to issue warrants for repair of flood destroyed bridge with subsequent bonds and tax levy for their payment.
O. A. G. 1948, p. 47.

City precluded from raising amount to be expended by ordinance.
Clark v. City of Des Moines, 1936, 222 Iowa 317, 267 N.W. 97.

Board of supervisors may not authorize expenditures which exceed appropriation.
O. A. G. 1938, p. 19.

**4. Insurance premiums.**

Workmen's compensation insurance premiums payable from General Fund.
O. A. G. 1940, p. 82.

**5. School warrants.**
For annotations see I.C.A.

**6. Special Funds.**
For annotations see I.C.A.

**7. Emergency funds.**
For annotations see I.C.A.

**8. Soldiers' relief funds.**
For annotations see I.C.A.

**9. Transfer of funds.**
For annotations see I.C.A.

**10. Levy of taxes.**
No tax may be levied after September meeting without full compliance with statute.
O. A. G. 1925, 1926, p. 468.

**11. Anticipation of taxes.**
Independent school district could anticipate taxes and issue warrants.
O. A. G. 1940, p. 242.

**24.15 Further tax limitation.** No tax shall be levied by any municipality in excess of the estimates published, except such taxes as are approved by a vote of the people, but in no case shall any tax levy be in excess of any limitation imposed thereon now or hereafter by the constitution and laws of the state. [C24, 27, 31, 35, 39,§381; C46, 50, 54,§24.15]

Referred to in §24.14 **Tax limited.**
Tax limit, Constitution, Art. XI,§3; ch 407.

**1. Construction and application.**
Where soldiers' relief funds exhausted, transfer authorized as in section 24.22.
O. A. G. 1953, p. 60.

Hearing and time therefor not applicable to levies authorized by electorate after September levy.
O. A. G. 1949, p. 4.

This section and section 24.6 must be read together.
O. A. G. 1925, 1926, p. 112.

Provisions of this section are mandatory.
O. A. G. 1925, 1926, p. 74.

**2. School warrants.**
For annotations see I.C.A.

**3. Emergency fund levy.**
Tax levy authorized by section 24.6 supplemental and should be used only in emergency.
O. A. G. 1925, 1926, p. 37.

**4. Special funds.**

For annotations see I.C.A.

**24.16 Expenses—how paid.** The cost of publishing the notices and estimates required by this chapter, and the actual and necessary expenses of preparing the budget shall be paid out of the general funds of each municipality, respectively. [C24, 27, 31, 35, 39,§382; C46, 50, 54,§24.16]

**24.17 Budgets certified.** The local budgets of the various municipalities shall be certified by the chairman of the certifying board or the levying board, as the case may be, in duplicate to the county auditor not later than the fifteenth day of August each year on blanks prescribed by the state board, and according to rules and instructions which shall be furnished all certifying and levying boards in printed form by said state board.

One copy of said budget shall be retained on file in his office by the county auditor, and the other shall be certified by him to the state board. [C24, 27, 31, 35, 39,§383; C46, 50, 54,§24.17]

**1. Filing of estimates.**

Estimates must be filed and hearing held at least 20 days prior to date fixed for levy.

O. A. G. 1925, 1926, p. 116.

**2. Publication and hearing on estimates.**

School districts not required to publish estimate and hold hearing subsequent to July 1st.

O. A. G. 1925, 1926, p. 116.

**3. Increase of amount to be expended.**

City may not increase by ordinance amount which might be expended.

Clark v. City of Des Moines, 1936, 222 Iowa 317, 267 N.W. 97.

**4. Use of tax proceeds.**

Proceeds of taxes collected by absorbed district should be used for purpose for which collected.

O. A. G. 1936, p. 264.

**24.18 Summary of budget.** Before forwarding copies of local budgets to the state board, the county auditor shall prepare a summary of each budget, showing the condition of the various funds for the fiscal year, including the budgets adopted as herein provided. Said summary shall be printed as a part of the anunal financial report of the county auditor, and one copy shall be certified by him to the state board. [C24, 27, 31, 35, 39,§384; C46, 50, 54,§24.18]

**24.19 Levying board to spread tax.** At the time required by law the levying board shall spread the tax rates necessary to produce the amount required for the various funds of the municipality as certified by the certifying board, for the next succeeding year, as shown in the approved budget in the manner provided by law. One copy of said rates shall be certified to the state board. [C24, 27, 31, 35, 39,§385; C46, 50, 54,§24.19]

**1. Construction and application.**

Continuing levy year to year not authorized; new levy must be made each year.
O. A. G. 1946, p. 59.

Adjustment of teachers' contract allowed to extent of excess over budget requirement.
O. A. G. 1946, p. 224.

**24.20 Tax rates final.** The several tax rates and levies of the municipalities thus determined and certified in the manner provided in the preceding sections, except such as are authorized by a vote of the people, shall stand as the tax rates and levies of said municipality for the ensuing year for the purposes set out in the budget. [C24, 27, 31, 35, 39, §386; C46, 50, 54,§24.20]

**1. Construction and application.**

Hearing and time therefor not applicable to levies authorized by electorate after September levy.
O. A. G. 1949, p. 4.

**24.21 Transfer of inactive funds.** Subject to the provisions of any law relating to municipalities, when the necessity for maintaining any fund of the municipality has ceased to exist, and a balance remains in said fund, the certifying board or levying board, as the case may be, shall so declare by resolution, and upon such declaration, such balance shall forthwith be transferred to the fund or funds of the municipality designated by such board, unless other provisions have been made in creating such fund in which such balance remains. [C24, 27, 31, 35, 39,§387; C46, 50, 54,§24.21; 54 GA, ch 159,§26]

**1. Construction and application.**

School district could transfer inactive school house fund to general fund.
O. A. G. 1938, p. 96.

Municipalities may transfer without authority of electorate.
O. A. G. 1923, 1924, p. 81.

Township not a municipality under this section.
O. A. G. 1925, 1926, p. 64.

**2. Transfer of funds.**

Transfer authorized by city council resolution and approval of budget director.
O. A. G. 1932, p. 3.

Transfer from poor fund to hospital fund to erect a nurses' home unauthorized without vote.
O. A. G. 1928, p. 210.

Transfer from road fund to building fund for erection of township hall unauthorized without vote.
O. A. G. 1925, 1926, p. 471.

City may transfer funds so long as law complied with.
O. A. G. 1925, 1926, p. 377.

Transfer not authorized where need still existed.
O. A. G. 1925, 1926, p. 172.

Counties must comply with law in force at time budget law enacted.
O. A. G. 1923, 1924, p. 81.

**3. Investment of surplus.**

City not authorized to invest a dead fund.
O. A. G. 1928, p. 441.

**4. Revocation of grant of authority.**

Funds on hand during year of levy may be used until end of designated time.
O. A. G. 1934, p. 264.

**24.22 Transfer of active funds—poor fund.** Upon the approval of the state board, it shall be lawful to make temporary or permanent transfers of money from one fund of the municipality to another fund thereof; but in no event shall there be transferred for any purpose any of the funds collected and received for the construction and maintenance of secondary roads. The certifying board or levying board, as the case may be, shall provide that money temporarily transferred shall be returned to the fund from which it was transferred within such time and upon such conditions as the state board shall determine, provided that it shall not be necessary to return to the emergency fund, or to any other fund no longer required, any money transferred therefrom to any other fund. No transfer shall be made to a poor fund unless there is a shortage in said fund after the maximum permissible levy has been made for said fund. [C24, 27, 31, 35, 39,§388; C46, 50, 54,§24.22]

Analogous provisions, §252.43 Poor tax, and §309.15 Transfer generally.

**1. Validity.**

Provisions of this section and section 24.24 not unconstitutional.
State v. Manning, 1935, 220 Iowa 525, 259 N.W. 213.

**2. Construction and application.**

Entire act must be considered in interpretation.
State v. Manning, 1935, 220 Iowa 525, 259 N.W. 213.

Group accident and health premiums not payable from district funds or by withholding from wages.
O. A. G. 1940, p. 179.

Township not a municipality and thus not under provisions of this chapter.
O. A. G. 1925, 1926, p. 64.

In transfer of funds, municipalities must comply with this law.
O. A. G. 1923, 1924, p. 81.

**3. Transfer in general.**

Exhausted Soldiers' Relief funds may be supplemented by transfer.
O. A. G. 1953, p. 60.

Transfer of funds between county and board of education prohibited.
O. A. G. 1948, p. 219.

Transfer of fire insurance loss proceeds can be made to building fund following consent by state board.
O. A. G. 1938, p. 721.

No authority in Soldiers' Relief Commission to transfer Soldiers' Relief Fund to County Poor Fund.
O. A. G. 1934, p. 708.

Misappropriated drainage funds should be collected from officers who misappropriated funds.
O. A. G. 1934, p. 142.

Temporary transfer permitted if levying board provides for reimbursement.
O. A. G. 1928, p. 336.

Transfer of poor fund to hospital fund to erect nurses' home not authorized.
O. A. G. 1928, p. 210.

Temporary transfer of road funds for construction of authorized township hall permissible.
O. A. G. 1925, 1926, p. 471.

Compliance with law as to transfer avoids penalty provided in section 404.24.
O. A. G. 1925, 1926, p. 377.

Transfer not authorized where no provision for levy.
O. A. G. 1925, 1926, p. 230.

**4. Approval of transfer.**

Comptroller my authorize transfer and specify conditions therefor.
O. A. G. 1936, p. 654.

Budget law merely added a condition to existing law.
O. A. G. 1923, 1924, p. 81.

**5. General fund, transfer from.**

Transfer of surplus in general fund to school house fund does not require approval.
O. A. G. 1938, p. 167.

Transfer from general fund to school house fund is a permanent transfer.
O. A. G. 1928, P. 106.

Supervisors cannot transfer from general fund to drainage fund.
O. A. G. 1925, 1926, p. 428.

**6. County insane fund.**

For annotations see I.C.A.

**7. Fire apparatus fund.**

For annotations see I.C.A.

**8. Emergency fund.**

For annotations see I.C.A.

**9. Improvement fund.**

For annotations see I.C.A.

**10. Secondary road funds.**

Transfer of road funds prohibited and should not be diverted to other purposes.
O. A. G. 1940, p. 392.

Transfer of road funds limited to provisions of section 309.15.
O. A. G. 1940, p. 157.

No reference by this section to section 309.15.
O. A. G. 1936, p. 276.

**11. Special assessments, money raised by.**

Money raised by special assessment not subject to transfer.
O. A. G. 1923, 1924, p. 81.

**12. Violations.**

Mayor and city commissioners knowingly making transfer subject to removal.
State v. Manning, 1935, 220 Iowa 525, 259 N.W. 213.

**24.23 Supervisory power of state board.** The state board shall exercise general supervision over the certifying boards and levying boards of all municipalities with respect to budgets and shall prescribe for them all necessary rules, instructions, forms, and schedules. The best methods of accountancy and statistical statements shall be used in com-

piling and tabulating all data required by this chapter. [C24, 27, 31, 35, 39,§389; C46, 50, 54,§24.23]

**1. Construction and application.**

Transfer from road fund to construction of township hall permitted only if hall and levy authorized by voters.

O. A. G. 1925, 1926, p. 471.

**24.24 Violations.** Failure on the part of any public official to perform any of the duties prescribed in chapters 22, 23, and 24, and sections 8.39 and 11.1 to 11.5, inclusive, shall constitute a misdemeanor, and shall be sufficient ground for removal from office. [C24, 27, 31, 35, 39,§390; C46, 50, 54, §24.24]

Punishment, §687.7.

**1. Validity.**

This section not unconstitutional.

State v. Manning, 1935, 220 Iowa 525, 259 N.W. 213.

**2. Construction and application.**

Knowing and willful maladministration of funds subjects officers to removal and personal liability.

O. A. G. 1948, p. 224.

Entire act must be considered in construction.

State v. Manning, 1935, 220 Iowa 525, 259 N.W. 213.

Adjustment of teachers' contract authorized to extent of excess.

O. A. G. 1946, p. 224.

**3. Increase of expenditures.**

City may not increase estimate by ordinance.

Clark v. City of Des Moines, 1936, 222 Iowa 317, 267 N.W. 97.

**4. Removal from office.**

Issuance of highway-commission approved anticipatory certificates furnished no ground for removal.

Dwyer v. Sullivan, 1941, 230 Iowa 945, 299 N.W. 411.

**24.25 State appeal board.** There is hereby created to administer this act* a state board to be known as the state appeal board, which state board shall consist of the

1. Comptroller,
2. Auditor of state, and
3. Treasurer of state

each of whom shall personally serve as a member of the state board during his tenure of office. At its first meeting, which shall be held within thirty days after July 4, 1937, and at each annual meeting held thereafter, the state board

shall organize by the election, from their own number, of a chairman and a vice-chairman; and by appointing a secretary. Two members of the state board shall constitute a quorum for the transaction of any business. The state board may, from time to time, as such services are required, appoint one or more competent and specially qualified persons as deputies, to appear and act for it at initial hearings as hereinafter provided. The annual meeting of the state board shall be held on the second Tuesday of January in each year. Each deputy appointed by the state board shall be entitled to receive the amount of his traveling and other necessary expenses actually incurred while engaged in the performance of his official duties as hereinafter set out. Such expenses to be audited and approved by the state board and proper receipts filed therefor. [C39,§390.1; C46, 50, 54,§24.25]

Referred to in §24.2 Definition of terms.
*47GA, ch 91.

1. **Construction and application.**

Taxpayer has right to know in advance tax askings and purpose for which expended.

Dyer v. City of Des Moines, 1941, 230 Iowa 1246, 300 N.W. 562.

**24.26 Protest to budget.** Not later than the first Tuesday in September, a number of persons in any municipality equal to one-fourth of one percent of those voting for the office of governor at the last general election in said municipality, but in no event less than ten, who are affected by any proposed budget, expenditure or tax levy, or by any item thereof, may appeal from any decision of the certifying board or the levying board, as the case may be, by filing with the county auditor of the county in which such municipal corporation is located, a written protest setting forth their objections to such budget, expenditure or tax levy, or to one or more items thereof, and the grounds for such objections; provided that at least three of such persons shall have appeared and made objection, either general or specific, as provided by section 24.11. Upon the filing of any such protest, the county auditor shall immediately prepare a true and complete copy of said written protest, together with the budget, proposed tax levy or expenditure to which objections are made, and shall transmit the same forthwith to the state board, and shall also send a copy of such protest to the certifying board or to the levying board, as the case may be. [C39,§390.2; C46, 50, 54,§24.26]

Referred to in §24.9 Filing estimates—notice of hearing—amendments.

**24.27 Hearing on protest.** The state board, within a reasonable time, shall fix a date for an initial hearing on such protest and shall designate a deputy to hold such hearing,

which shall be held in the county or in one of the counties in which such municipality is located. Notice of the time and place of such hearing shall be given by registered mail to the chief executive officer of the municipality and to the first ten property owners whose names appear upon such protest, at least five days before the date fixed for such hearing. At all such hearings, the burden shall be upon the objectors with reference to any proposed item in the budget which was included in the budget of the previous year and which such objectors propose should be reduced or excluded; but the burden shall be upon the certifying board or the levying board, as the case may be, to show that any new item in the budget, or any increase in any item thereof, is necessary, reasonable, and in the interests of the public welfare. [C39,§390.3; C46, 50, 54,§24.27]

Referred to in §24.9 Filing estimates—notice of hearing—amendments.

**24.28 Appeal.** The deputy designated to hear any particular appeal shall attend in person and conduct such hearing in accordance with the procedure prescribed in section 24.27, and shall promptly report the proceedings had at such hearing, which report shall become a part of the permanent record of the state board. At the request of either party, or on his own motion, the deputy shall employ a stenographer to report the proceedings, in which event the stenographic notes shall be filed with the report. Either party desiring to have a transcript of such notes presented to the state board with the deputy's report, may have the same made at his initial expense, such expense to eventually follow the result. [C39,§390.4; C46, 50, 54,§24.28]

Referred to in §24.9 Filing estimates—notice of hearing—amendments.

**24.29 Review by and powers of board.** It shall be the duty of the state board to review and finally pass upon all proposed budget expenditures, tax levies and tax assessments from which appeal is taken and it shall have power and authority to approve, disapprove, or reduce all such proposed budgets, expenditures, and tax levies so submitted to it upon appeal, as herein provided; but in no event may it increase such budget, expenditure, tax levies or assessments or any item contained therein. Said state board shall have authority to adopt rules and regulations not inconsistent with the provisions of this chapter, to employ necessary assistants, authorize such expenditures, require such reports, make such investigations, and take such other action as it deems necessary to promptly hear and determine all such appeals; provided, however, that all persons so employed shall be selected from persons then regularly employed in some one of the offices of the members of said state board. [C39,§390.5; C46, 50, 54,§24.29]

Referred to in §24.9.

**1. Construction and application.**

Independent school district subordinate to State Appeal Board.

Independent School Dist. of Cedar Rapids, Linn County, v. State Appeal Board, 1941, 230 Iowa 924, 299 N.W. 440.

**2. Judicial review.**

Appeal is the remedy from State Appeal Board rather than certiorari.

State Appeal Board v. District Court of Pottawattamie County, 1938, 225 Iowa 296, 280 N.W. 525.

Certiorari not the proper remedy.

Independent School Dist. of Cedar Rapids, Linn County, v. State Appeal Board, 1941, 230 Iowa 924, 299 N.W. 440.

**24.30 Rules of procedure—record.** The manner in which objections shall be presented, and the conduct of hearings and appeals, shall be simple and informal and in accordance with the rules prescribed by the state board for promptly determining the merits of all objections so filed, whether or not such rules conform to technical rules of procedure. Such record shall be kept of all proceedings, as the rules of the state board shall require. [C39,§390.6; C46, 50, 54, §24.30]

Referred to in §24.9 Filing estimates—notice of hearing—amendments.

**24.31 Decision certified to county.** After a hearing upon such appeal, the state board shall certify its decision with respect thereto to the county auditor, and such decision shall be final. The county auditor shall make up his records in accordance with such decision and the levying board shall make its levy in accordance therewith. Upon receipt of such decision, the county auditor shall immediately notify both parties thereof, whereupon the certifying board shall correct its records accordingly, if necessary. Final disposition of all such appeals shall be made by the state board on or before October 15 of each year. [C39,§390.7; C46, 50, 54, §24.31]

Referred to in §24.9 Filing estimates—notice of hearing—amendments.

**1. Construction and application.**

Delay of a few days will not invalidate appeal board's action.

Woodbury County Taxpayers Conference v. Carr, 1939, 226 Iowa 204, 284 N.W. 122.

**2. Mandamus.**

Allegations admitted by motion to dismiss answer.

Woodbury County Taxpayers Conference v. Carr, 1939, 226 Iowa 204, 284 N.W. 122.

**3. Certiorari.**

Decision of State Appeal Board final and not subject to attack by certiorari.

Independent School Dist. of Cedar Rapids, Linn County, v. State Appeal Board, 1941, 230 Iowa 924, 299 N.W. 440.

Place of trial of action should be presented to Supreme Court by appeal.

State Appeal Board v. Dist. Court of Pottawattamie County, 1938, 225 Iowa 296, 280 N.W. 525.

**24.32 Appropriation for expenses.** For the purpose of carrying out the provisions of this act,* there is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of five thousand dollars, or so much thereof as is necessary, for each annual period. [C39,§390.8; C46, 50, 54,§24.32]

Omnibus repeal, 47GA, ch 91,§5.
*47GA, ch 91.

# CHAPTER 72

## DUTIES RELATIVE TO PUBLIC CONTRACTS

72.1 Unauthorized contracts.
72.2 Executive council may authorize indebtedness.
72.3 Divulging contents of sealed bids.
72.4 Penalty.

**72.1 Unauthorized contracts.** Officers empowered to expend, or direct the expenditure of, public money of the state shall not make any contract for any purpose which contemplates an expenditure of such money in excess of that authorized by law. [R60,§2181; C73,§127; C97,§185, 186; C24, 27, 31, 35 39,§1168; C46, 50, 54,§72.1]

Analogous provision, §343.10

**1. Evasion of limitations.**

Limitation on maximum amount may not be circumvented by splitting contracts.
O. A. G. 1928, p. 163.

**2. Securities.**

Where public body has outstanding securities up to the legal limit, they may not be refunded by sale of refunding securities, but may be done by exchange of refunding securities for those outstanding where holders will surrender them for the refunding securities.
O. A. G. 1936, p. 10.

**72.2 Executive council may authorize indebtedness.** Nothing herein contained shall prevent the incurring of an indebtedness on account of support funds for state institutions, upon the prior written direction of the executive council, specifying the items and amount of such indebtedness to be increased, and the necessity therefor. [C97,§186; C24, 27, 31, 35, 39,§1169; C46, 50, 54,§72.2]

**1. Construction and application.**

Bills for demurrage charges should be sworn to, indorsed by officer in charge of state institution, and passed on by board of control, prior to payment.
O. A. G. 1906, p. 70.

**72.3 Divulging contents of sealed bids.** No public officer or deputy thereof, if any, shall directly or indirectly or in any manner whatsoever, at any other time or in any other manner than as provided by law, open any sealed bid or convey or divulge to any person any part of the contents of a sealed bid, on any proposed contract concerning which a sealed bid is required or permitted by law. [S13,§1279-a; C24, 27, 31, 35, 39,§1170; C46, 50, 54,§72.3]

**72.4 Penalty.** A violation of the provisions of section 72.3 shall, in addition to criminal liability, render the violator liable, personally and on his bond, if any, to liquidated damages in the sum of one thousand dollars for each violation, to inure to and be collected by the state, county, city, town, school district, or other municipal corporation of which the violator is an officer or deputy. [S13,§1279-a; C24, 27, 31, 35, 39,§1171; C46, 50, 54,§72.4]

# CHAPTER 74

## PUBLIC WARRANTS NOT PAID FOR WANT OF FUNDS

74.1 Applicability.
74.2 Indorsement and interest.
74.3 Record of warrants.
74.4 Assignment of warrant.
74.5 Call for payment.
74.6 Mailing notice—terminating interest.
74.7 Indorsement of interest.

**74.1 Applicability.** This chapter shall apply to all warrants which are legally drawn on a public treasury, including the treasury of a city acting under special charter, and which, when presented for payment, are not paid for want of funds. [C35,§1171-f1; C39,§1171.11; C46, 50, 54,§74.1]

**1. Construction and application.**

Supervisors could repair flood-destroyed bridges and issue bonds and levy tax when debt therefrom reached $5,000.
O. A. G. 1948, p. 47.

Purchase of school buses authorized from general fund subject to budget estimate.
O. A. G. 1948, p. 5.

Interest payable from date of stamping of warrant and payment.
O. A. G. 1934, p. 426.

Holder of drainage assessment must look to assessments for payment.
O. A. G. 1932, p. 232.

**74.2 Indorsement and interest.** When any such warrant is presented for payment and not paid for want of funds, or only partially paid, the treasurer shall indorse the fact thereon, with the date of presentation, and sign said indorsement, and thereafter said warrant or the balance due thereon, shall draw interest at four percent per annum on state and county warrants, and four percent per annum on city, drainage, and school warrants, unless the treasurer arranges for the sale of said warrant at par at a lower rate of interest. [C51,§§65, 153; R60,§§86, 361; C73,§§78, 328, 1748; C97,§§104, 483, 660, 2768; S13,§§104, 483; C24, 27, 31,§§135, 4318, 5160, 5645, 7496; C35,§1171-f2; C39,§1171.12; C46, 50, 54, §74.2]

Change in interest rate not applicable to outstanding bonds, 49GA, ch 263, section 7.

**1. Construction and application.**

County treasurer may arrange with holder of warrant for lower interest rate.
O. A. G. 1948, p. 82.

Interest rate limit is 6 percent though order calls for greater rate.
Austin v. District Tp. of Colony, 1879, 51 Iowa 102, 49 N.W. 1051.

Nothing but actual tender will suspend accumulation of interest.
Rooney v. Dubuque County, 1876, 44 Iowa 128.

County order draws interest from date of presentment, special fund order is subject to creation of fund.
Brown v. Johnson County Com'rs, 1848, 1 G. Green, 486.

Holding of unpaid warrants as cash on hand by treasurer subject to bond sale is illegal.
O. A. G. 1944, p. 54.

Treasurer may sell unpaid warrants at par if lower interest rate can be secured.
O. A. G. 1938, p. 437.

County warrants not negotiable instruments.
O. A. G. 1938, p. 288.

Indorsement "not paid for want of funds" proper where lack of funds due to delinquent tax collection.
O. A. G. 1932, p. 265.

Warrants not invalidated where poor fund exhausted and "not paid" indorsement by treasurer.
O. A. G. 1932, p. 260.

Interest not due for day stamped and day paid.
O. A. G. 1932, p. 215.

Drainage warrant dated and registered in 1923, presented in 1931, entitled to compound interest.
O. A. G. 1932, p. 139.

Issuance of warrants against funds in insolvent bank marked "not paid" entitles interest at statutory rate.
O. A. G. 1928, p. 100.

Interest on drainage warrants payable annually and should be compounded if over one year past due.
O. A. G. 1922, p. 243.

County cannot agree to pay more than interest to banking house.
O. A. G. 1910-20, p. 667.

School directors cannot incur indebtedness for which no authority.
O. A. G. 1919-20, p. 586.

**2. Nature of warrant.**

Assignee of county warrant acquires only such interest as held by assignor.
O. A. G. 1938, p. 228.

If agreement silent as to entitlement to interest, apportionment of interest not authorized.
O. A. G. 1934, p. 444.

**3. Want of funds, indorsement.**

Where road funds exhausted, warrants could be issued to pay for road construction.
O. A. G. 1932, p. 252.

Holder of drainage warrants unpaid need not annually present them to treasurer.
O. A. G. 1922, p. 243.

State treasurer not authorized to demand indorsement when not paid for lack of funds.
O. A. G. 1898, p. 184.

**4. Interest.**

Interest rate fixed by law in effect at time warrants stamped.
O. A. G. 1944, p. 37.

Warrants draw interest from date they are stamped "No funds".
O. A. G. 1934, p. 91.

Where money in closed banks, interest runs from date of stamping "not paid".
O. A. G. 1932, p. 275.

**74.3 Record of warrants.** The treasury shall keep a record of all warrants so indorsed, which record shall show the number and amount, the date of presentation, and the name and post-office address of the holder, of each warrant. [C51, §§66, 153, R60,§§87, 361; C73,§§79, 328; C97,§§105, 483, 660; S13,§483; C24, 27, 31, §§136, 5160, 5646, 7496; C35,§1171-f3; C39,§1171.13; C46, 50, 54, §74.3]

**74.4 Assignment of warrant.** When any warrant shall be assigned or transferred after being so indorsed, the assignee or transferee shall be under duty, for his own protection, to notify the treasurer in writing of such assignment or transfer and of his post-office address. Upon receiving such notification, the treasurer shall correct the aforesaid record accordingly. [C24, 27, 31,§7497; C35,§1171-f4; C39,§1171.14; C46, 50, 54, §74.4]

**1. Construction and application.**

Where assignor guaranteed warrants "genuine and regularly issued," assignor liable to assignee if faulty.
Smeltzer v. White, 1875, 92 U. S. 390, 23 L.Ed. 508.

Prima facie case that warrant issued to and assigned by payee prior to injunction.
McCormick v. Grundy County, 1868, 24 Iowa 382.

**2. Interest of assignee.**

Remote assignee of drainage warrant has no equitable interest as against prior assignees.
Simmons v. Tatham, 1935, 219 Iowa 1407, 261 N.W. 434.

County warrant not negotiable.
Clark v. Polk County, 1865, 19 Iowa 248.

Assignee of county warrant acquired only interest of assignor.
O. A. G. 1938, p. 228.

**74.5 Call for payment.** When the treasurer has funds on hand in the fund on which such warrants are drawn, sufficient to pay a warrant, he shall, by notice posted at his office and in a place readily accessible to the public, call said warrant or warrants for payment, giving the number thereof. Said warrants shall be paid in the order of presentation. [C51,§§66, 153; R60,§§87, 361; C73,§§79, 328; C97, §§105, 484, 660; C24, 27, 31,§§136, 5161, 5647, 7496; C35,§1171-f5; C39, §1171.15; C46, 50, 54, §74.5]

**1. Construction and application.**

This section does not preclude limitations running.
Bodman v. Johnson County, 1901, 115 Iowa 296, 88 N.W. 331.

Treasurer with funds on hand has duty to issue call for outstanding warrants.
O. A. G. 1932, p. 139.

**74.6 Mailing notice—terminating interest.** In addition to the posting aforesaid, the treasurer shall mail to each holder of a warrant, in accordance with the aforesaid record, a notice of his readiness to pay said warrant, describing it by number and amount, and note the date of such mailing on the record aforesaid. On the expiration of thirty days from the date of said mailing, interest on said warrant shall cease irrespective of the posting aforesaid. [C51,§§66, 153; R60, §§87, 361; C73,§§79, 328; C97,§§105, 484, 660; C24, 27, 31,§§136, 5161, 5647, 7496, 7498; C35,§1171-f6; C39,§1171.16; C46, 50, 54, §74.6]

**74.7 Indorsement of interest.** When a warrant which legally draws interest is paid, the treasurer shall indorse upon it the date of payment, and the amount of interest allowed. [C51,§153; R60,§361; C73,§328; C97,§§484, 660; C24, 27, 31,§§5161, 5646, 5648, 7496; C35,§1171-f7; C39, §1171.17; C46, 50, 54,§74.7]

**Analogous section, §452.2 Interest on warrants.**

**1. Construction and application.**

Indorsement of treasurer competent evidence of fact stated.
Clark v. Polk County, 1865, 19 Iowa 248.

# CHAPTER 75

## AUTHORIZATION AND SALE OF PUBLIC BONDS

75.1 Bonds—election—vote required.
75.2 Notice of sale.
75.3 Sealed and open bids.
75.4 Rejection of bids.
75.5 Selling price.
75.6 Commission and expense.
75.7. Penalty.
75.8 Sale of state bonds.
75.9 Exchange of bonds.

**75.1 Bonds—election—vote required.** When a proposition to authorize an issuance of bonds by a county, township, school district, city or town, or by any local board or commission, is submitted to the electors, such proposition shall not be deemed carried or adopted, anything in the statutes to the contrary notwithstanding, unless the vote in favor of such authorization is equal to at least sixty percent of the total vote cast for and against said proposition at said election. [C31, 35,§1171-d4; C39, §1171.18; C46, 50, 54§75.1]

**1. Validity.**

This section does not violate Constitution.
Waugh v. Shirer, 1933, 216 Iowa, 468, 249 N.W. 246.

**2. Repeal.**

This section repealed by implication prior section.
Waugh v. Shirer, 1933, 216 Iowa 468, 249 N.W. 246.

**3. Construction and application.**

County road bond election controlled by this section.
Waugh v. Shirer, 1933, 216 Iowa 468, 249 N.W. 246.

Records held to show authority for issuance of bonds.
Clapp v. Cedar County, 1857, 5 Iowa 15, 5 Clarke 15, 68 Am.Dec. 678.

Supervisors can immediately call another election for issuance of bonds for road improvement.
O. A. G. 1932, p. 84.

**4. Curative statutes and ordinances.**

Irregularity in issuance of bonds remedied by curative act.
Gelpcke v. City of Dubuque, 1863, 68 U.S. 175, 1 Wall. 175, 17 L.Ed. 520.

**5. Election, operation and effect.**

City may not, after issuance of bonds, complain of legality of election.
Meyer v. Muscatine, 1863, 68 U.S. 384, 1 Wall. 384, 17 L.E.d. 564.

Election carried by sufficient majority in view of §397.9.
Interstate Power Co. v. Forest City, 1938, 225 Iowa 490, 281 N.W. 207.

Affirmative vote of majority voting is sufficient.
Abbott v. Iowa City, 1938, 224 Iowa 698, 277 N.W.437.

Statement as to levy of tax was sufficient.
Wells v. Boone, 1915, 171 Iowa 377, 153 N.W. 220.

Statement of proposition was misleading.
Brown v. Carl, 1900, 111 Iowa 608, 82 N.W. 1033.

County judge cannot bind county absent authority.
Casady v. Woodbury, 1862, 13 Iowa 113.

Proposition of issuance of bonds for new court house and remodeling old court house may be on same ballot.
O. A. G. 1938, p. 841.

**6. Negotiability and transfer of bonds.**

Negotiability not affected by recital.
Independent School Dist. of Ackley v. Hall, 1885, 5 S.Ct. 371, 113 U.S. 135, 28 L.Ed. 954.

Municipality which may bind itself by written obligation does not render instrument non-negotiable.
Sioux City v. Weare, 1882, 59 Iowa 95, 12 N.W. 786.

County judge may not bind county in negotiable form absent a vote by people.
Hull v. Marshall County, 1861, 12 Iowa 142.

**7. Bona fide holders.**

Where no power to execute municipal bonds, they are void.
McPherson v. Foster Bros., 1876, 43 Iowa 48, 22 Am. Rep. 215; Williamson v. City of Keokuk, 1876, 44 Iowa 88.

Finding of county judge that bonds are properly issued is conclusive.
Lynde v. Winnebago County, 1872, 83 U.S. 6, 16 Wall. 6, 21 L.Ed. 272.

Diversion of proceeds of bonds no defense by county.
Independent School Dist. of Sioux City, Iowa, v. Rew, 1901, 111 F. 1, 49 C.C.A. 198, 55 L. R. A. 364.

Municipal bonds issued without authority are absolutely void.
Williamson v. City of Keokuk, 1876, 44 Iowa 88.

Purchasers of void municipal bonds are presumed to know the law.
McPherson v. Foster Bros., 1876, 43 Iowa 48, 22 Am.Rep. 215.

Where authority to issue bonds is insufficient on their face they are void.
Chamberlain v. City of Burlington, 1866, 19 Iowa 395.

Bonds not properly authorized are void in hands of bona fide purchasers.
Hull v. Marshall County, 1861, 12 Iowa 142.

**8. Injunction.**

Question of error in refusing continuance is moot.
Strawn v. Independent School Dist. of Indianola, Warren County, 1925, 200 Iowa 357, 204 N.W. 423.

**75.2 Notice of sale.** When public bonds are offered for sale, the official or officials in charge of such bond issue shall, by advertisement published for two or more successive weeks in at least one newspaper located in the county, give notice of the time and place of sale of said bonds, the amount to be offered for sale, and any further information which may be deemed pertinent. [C24, 27, 31, 35, 39,§1172; C46, 50, 54, §75.2]

**1. Construction and application.**

Supervisors' sale of revenue bonds without compliance with §75.1 improper as to private sale.
Wickey v. Muscatine County, 1951, 242 Iowa 272, 46 N.W.2d 32.

Amendment 1933-34 Ex.Sess. not unconstitutional.
Weiss v. Incorporated Town of Woodbine, 1940, 289 N.W. 469.

Question of method of publication depends on statute.
O. A. G. 1934, p. 365.

Notice of sale of county bonds must be published unless legal indebtedness already outstanding.
O. A. G. 1932, p. 269.

This section does not apply to advertising bonds for sale of primary road bonds.
O. A. G. 1925, 1926, p. 425.

**75.3 Sealed and open bids.** Sealed bids may be received at any time prior to the calling for open bids. After the sealed bids are all filed, the official or officials shall call for open bids. After all of the open bids have been received the substance of the best open bid shall be noted in the minutes. The official or officials shall then open any sealed bids that may have been filed and they shall note in the minutes the substance of the best sealed bid. [C24, 27, 31, 35, 39, §1173; C46, 50, 54, §75.3]

**1. Construction and application.**

Notice of sale of county bonds must be published unless for legal indebtedness already outstanding.
O. A. G. 1932, p. 269.

**75.4 Rejection of bids.** Any or all bids may be rejected, and the sale may be advertised anew, in the same manner,

or the bonds or any portion thereof may thereafter be sold at private sale to any one or more of such bidders, or other persons, by popular subscription or otherwise. In case of private sales, the said bonds shall be sold upon terms not less favorable to the public than the most favorable bid made by a bona fide and responsible bidder at the last advertised sale. [C24, 27, 31, 35, 39,§1174; C46, 50, 54,§75.4]

**1. Construction and application.**

Supervisors' sale of revenue bonds without compliance with §75.1 improper as to private sale.
Wickey v. Muscatine County, 1951, 242 Iowa 272, 46 N.W.2d 32.

Question of method of publication depends on statute.
O. A. G. 1934, p. 365.

**75.5 Selling price.** No public bond shall be sold for less than par, plus accrued interest. [C24, 27, 31, 35, 39,§1175; C46, 50, 54,§75.5]

**1. Construction and application.**

Amendment 1933-34 Ex.Sess. not unconstitutional.
Weiss v. Incorporated Town of Woodbine, 1940, 228 Iowa 1, 289 N.W. 469.

Duty of supervisors to secure highest price and most favorable terms for drainage bonds.
O. A. G. 1934, p. 257.

**2. Less than par plus accrued interest.**

Transaction held no disposition of bonds at less than par.
Weiss v. Incorporated Town of Woodbine, 1941, 229 Iowa 978, 295 N.W. 873.

Determination of supervisors of source of money immaterial so long as sale for par plus interest.
O. A. G. 1934, p. 257.

**75.6 Commission and expense.** No commission shall be paid, directly or indirectly, in connection with the sale of a public bond. No expense shall be contracted or paid in connection with such sale other than the expenses incurred in advertising such bonds for sale. [C24, 27, 31, 35, 39,§1176; C46, 50, 54,§75.6]

**1. Construction and application.**

Contract to pay bonding company for services is illegal.
O. A. G. 1940, p. 346.

Compliance with this section precludes personal liability of board members.
O. A. G. 1934, p. 257.

Board has no authority to contract to pay bank for sale of drainage bonds.
O. A. G. 1923, 1924, p. 133.

School board may employ broker to sell bonds and pay from contingent fund.
O. A. G. 1916, p. 28.

**75.7 Penalty.** Any public officer who fails to perform any duty required by this chapter or who does any act prohibited by this chapter, shall be guilty of a misdemeanor. [C24, 27, 31, 35, 39,§1177; C46, 50, 54,§75.7]
Punishment, section 687.7.

**1. Construction and application.**

Determination by supervisors of source of money not required.
O. A. G. 1934, p. 257.

**75.8 Sale of state bonds.** All contracts for the sale of bonds issued by the state shall be subject to the approval of the executive council. [C24, 27, 31, 35, 39, §1178; C46, 50, 54, §75.8]

**75.9 Exchange of bonds.** Nothing in this chapter shall be deemed to prevent the exchange of bonds for legal indebtedness evidenced by bonds, warrants, or judgments as otherwise provided by law. [C24, 27, 31, 35, 39,§1179; C46, 50, 54, §75.9]

**1. Construction and application.**

Amendment 1933-34 Ex.Sess. not unconstitutional.
Weiss v. Incorporated Town of Woodbine, 1940, 228 Iowa 1, 289 N.W. 469.

Township bond not invalid merely because indebtedness exceeded.
Miller v. Nelson, 1884, 64 Iowa 458, 20 N.W. 759.

Validity of negotiable bonds cannot be questioned because of constitutional debt limit.
Sioux City & St. P. R. Co. v. Osceola County, 1879, 52 Iowa 26, 2 N.W. 593.

Acts 1872 (14 G.A.) conferred power to issue bonds.
Iowa Railroad Land Co. v. Carroll County, 1874, 39 Iowa 151.

Funding and refunding bonds must be offered at public sale.
O. A. G. 1936, p. 423.

"Exchange" means funding bonds issued to exchange for outsanding bonds, warrants or a judgment.
O. A. G. 1932, p. 269.

# CHAPTER 108

## ACQUISITION OF LANDS BY CONSERVATION COMMISSION

108.1-108.6 Omitted.
108.7 Stream control on private lands.
108.8-108.9 Omitted.

**108.7 Stream control on private lands.** Upon receiving consent in writing from the owner thereof, the state conservation commission may enter upon private lands containing waters and streams draining into state-owned lakes and streams, for any or all of the following purposes:

1. Deepening.
2. Filling.
3 Widening.
4. Contracting.
5. Improving and protecting banks.
6. Constructing spillways and discharge structures.
7. Controlling erosion on land tributary thereto.
8. Providing structures on other works conducive to the regulation of stream flow.

Any action taken by the commission under the provisions of this section shall be subject to the approval of the Iowa natural resources council. [C46, 50, 54,§108.7]

Referred to in §108.8 Jurisdiction—public access.

# CHAPTER 109

## FISH AND GAME CONSERVATION

109.1-109.14 Omitted.
109.15 Injury to dam.
109.16-109.120 Omitted.

**109.15 Injury to dam.** It shall be unlawful for any owner or his agent to remove or destroy any existing dam or alter it in a way so as to lower the water level, without having received written approval from the Iowa natural resources council. [C24, 27, 31, 35, 39,§1742; C46, 50, 54,§109.15]

**1. In general.**

State conservation director an "official" within provision of section 85.61.
Hutton v. State, 1944, 235 Iowa 52, 16 N.W.2d 18.

**2. Nuisance, abatement of.**

This section does not take away common-law right to abate nuisance.
State v. Moffett, 1848, 1 G. Greene 247.

**3. Cumulative remedies.**

Section 716.1 being cumulative, no abrogating influence on common law.
State v. Moffett, 1848, 1 G. Greene 247.

# CHAPTER 111

# CONSERVATION AND PUBLIC PARKS

111.1 Omitted.
111.2 Duties in general.
111.3 Omitted.
111.4 Construction permit—regulations.
111.5-111.17 Omitted.
111.18 Jurisdiction.
111.19-111.57 Omitted.

**111.2 Duties in general.** The commissioner shall investigate places in Iowa rich in natural history, forest reserves, archaeological specimens, and geological deposits; and the means of promoting forestry and maintaining and preserving animal and bird life and the conservation of the natural resources of the state. [C24, 27, 31, 35, 39,§1798; C46, 50, 54, §111.2]

**111.4 Construction permit—regulations.** No person, association or corporation shall build or erect any pier, wharf, sluice, piling, wall, fence, obstruction, building or erection of any kind upon or over any state-owned land or water under the jurisdiction of the commission, without first obtaining from such commission a written permit. No such permit shall be issued without approval of the Iowa natural resources council. The commission shall charge a fee of not less than ten dollars nor more than twenty-five dollars per year in the discretion of the commission for each such permit issued for any pier, wharf, sluice, piling, wall, fence, obstruction, building or erection of any kind, used for commercial purposes.

It shall be the duty of the commission to adopt and enforce rules and regulations governing and regulating the building or erection of any such pier, wharf, sluice, piling, wall, fence, obstruction, building or erection of any kind, and said commission may prohibit, restrict or order the removal thereof, when in the judgment of said commission it will be for the best interest of the public.

Any person, firm, association, or corporation violating any of the provisions of this section or any rule or regulation adopted by the commission under the authority of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not to exceed one hundred dollars or by imprisonment in the county jail not to exceed thirty days.

No person, association or corporation shall operate any commercial concession on any state owned lands or waters without first obtaining from the conservation commission a permit therefor. The commission may issue such permits

and charge appropriate fees therefor within its discretion and may cancel said permits for cause and make refunds of any equitable portion of the amount paid. [C27, 31, 35, §1799-b2; C39, §1799.1; C46, 50, 54, §111.4; 54 GA, ch 69,§3]

See Witke v. Commission, 244 Iowa 261 for construction of last paragraph.

**1. Construction and application.**

For annotations see I.C.A.

**2. Fees.**

For annotations see I.C.A.

**3. Buildings.**

For annotations see I.C.A.

**4. Dams.**

Section 1.4 authorizes federal government without consent of Iowa to acquire land for federal project.
O. A. G. 1940, p. 469.

Permit from Executive Council not required under conditions set out.
O. A. G. 1934, p. 489.

Concurrence by conservation commission not required prior to issuance of permit by Executive Council.
O. A. G. 1928, p. 272.

**5. Fences.**

For annotations see I.C.A.

**6. Pipe lines.**

For annotations see I.C.A.

**7. Wharves and piers.**

For annotations see I.C.A.

**111.18 Jurisdiction.** Jurisdiction over all meandered streams and lakes of this state and of state lands bordering thereon, not now used by some other state body for state purposes, is conferred upon the commission. The exercise of this jurisdiction shall be subject to the approval of the Iowa natural resources council in matters relating to or in any manner affecting flood control. The commission, with the approval of the executive council, may establish parts of such property into state parks, and when so established all of the provisions of this chapter relative to public parks shall apply thereto. [C24, 27, 31, 35, 39,§1812; C46, 50, 54, §111.18]

**1. Construction and application.**

Jurisdiction of state owned lands lies with legislature and may be conferred by it.
O. A. G. 1940, p. 469.

Conservation commission has full authority to make rules and regulations.
O. A. G. 1923-24, p. 56.

**2. Title of state.**

State of Iowa is owner of all meandered lakes, lake beds, and beds of meandered streams.
O. A. G. 1906, p. 361.

**3. Beds of streams and lakes.**

Littoral owner not entitled to compensation for construction of dock on shore of navigable lake.
Peck v. Alfred Olsen Const. Co., 1932, 216 Iowa 519, 245 N.W. 131, 89 A. L. R. 1147.

Littoral owners of navigable lake have no title to water or lake bed.
Wright v. City of Council Bluffs, 1905, 130 Iowa 274, 104 N.W. 492, 114 Am. St. Rep. 412.

**4. Nonnavigable waters.**

Littoral owner on nonnavigable lake owns only to water's edge.
State v. Jones, 1909, 143 Iowa 308, 122 N.W. 241, affirmed 33 S.Ct. 168, 226 U.S. 460, 57 L.Ed. 300.

Rule that riparian owner has title to center of stream does not apply in Iowa to lake or pond.
Noyes v. Board of Supervisors of Harrison County, 1897, 104 Iowa 174, 73 N.W. 480.

Riparian owner takes only to shore of lake or pond.
Noyes v. Collins, 1894, 92 Iowa 566, 61 N.W. 250, 26 L. R. A. 609, 54 Am. St. Rep. 561.

State has no right to interfere with stream flow of non-navigable or unmeandered stream.
O. A. G. 1932, p. 160.

**5. Ponds.**

Pond is body of water smaller than lake, but of appreciable area.
Munn v. Board of Supervisors of Greene County, 1913, 161 Iowa 26, 141 N.W.711.

**6. Navigable rights.**

Right of public to navigation includes right to fish, boat and skate.
McCauley v. Salmon, 1944, 234 Iowa 1020, 14 N.W.2d 715.

**7. Riparian rights.**

Riparian owner takes only to high-water mark.
State v. Thompson, 1907, 134 Iowa 25, 111 N.W. 328.

Right of riparian owner does not authorize diversion for commercial purposes.
O. A. G. 1938, p. 784.

Board of Conservation could prevent discharge of sewage.
O. A. G. 1932, p. 159.

Skunk River in Mahaska County is a non-meandered stream.
O. A. G. 1932, p. 12.

**8. Meander line.**

For annotations see I.C.A.

**9. Drainage.**

Abutting owner on meandered lake has no right to damages because of its drainage.
Higgins v. Board of Supervisors of Dickinson County, 1920, 188 Iowa 448, 176 N.W. 268.

Unless state has title or control of bed of lake, it cannot enjoin drainage by non-owner.
State v. Jones, 1909, 143 Iowa 398, 122 N.W. 241, affirmed 33 S.Ct. 168, 226 U.S. 460, 57 L.Ed. 300.

Riparian owner does not acquire title to bed of drained lake under law of accretions.
Noyes v. Collins, 1894, 92 Iowa 566, 61 N.W. 250, 26 L. R. A. 609, 54 Am.St. Rep 571.

Draining of meandered lake is an internal improvement.
O. A. G. 1909, p. 210.

The bed of meandered lake belongs to state and supervisors and board of health may not drain.
O. A. G. 1898, p. 279.

**10. Bridges**

Conservation board has power to permit highway commission to build bridge over meandered lake.
O. A. G. 1928, p. 320.

**11. Dams.**

Federal government may acquire by condemnation land for dam.
O. A. G. 1940, p. 469.

Executive council has exclusive power to issue permit for erection of dam.
O. A. G. 1928, p. 272.

Conservation Commission could require remedy of defect in dam.
O. A. G. 1923-24, p. 56.

**12. Ice.**

For annotations see I.C.A.

**13. Leases.**
For annotations see I.C.A.

**14. Sales or other disposition.**
For annotations see I.C.A.

**15. Regulations.**
For annotations see I.C.A.

**16. Police jurisdiction.**
For annotations see I.C.A.

# CHAPTER 112

## DAMS AND SPILLWAYS

112.1 Resolution of necessity.
112.2 Expert plan.
112.3 Hearing—damages.
112.4 Adoption of plan.
112.5 Appraisal of damages.
112.6 Filing appraisement.
112.7 Damages determined.
112.8 Appeal—bond.
112.9 Final determination and costs.
112.10 Tentative plan.

Dams,
Fishways, see §109.14.
Injury to, see §109.14.
Definitions, see §109.1.
Milldams and races, see §469.1 et seq.
Soil conservation, protection of dams, see §160.2.

**112.1 Resolution of necessity.** Whenever, in the opinion of the state conservation commission, it is necessary and desirable for it to erect a dam or spillway across a stream or at the outlet of a lake, or to alter or reconstruct an existing dam or spillway, so as to increase or decrease its permanent height, or to permanently affect the water level above the structure, it shall proceed with said project by first adopting a resolution of necessity to be placed upon its records, in which it shall describe in a general way the work contemplated. [C24, 27, 31,§1826; C35,§1827-e1; C39, §1828.24; C46, 50, 54,§112.1]

**1. Construction and application.**

Fish and game commission had right as against riparian owners, to reconstruct dam due to time dam had been maintained.
O. A. G. 1934, p. 468.

Conservation Board had right to reasonable use of stream, in erecting state park dam.
O. A. G. 1934, p. 288.

**112.2 Expert plan.** The commission, upon receipt of a report and plan prepared by a competent civil engineer, showing the work contemplated, the effect on the water level, and probable cost and such other facts and recommendations as may be deemed material, may approve said plan which shall be considered a tentative plan only, for the project [C24, 27, 31,§1826; C35,§1828-e2; C39,§1828.25; C46, 50, 54,§112.2]

**112.3 Hearing—damages.** After said approval the commission, if it wishes to proceed further with the project,

shall, with the consent of the Iowa natural resources council, fix a date of hearing not less than two weeks from date of approval of the plan. Notice of the day, hour and place of hearing, relative to proposed work, shall be provided by publication at least once a week for two consecutive weeks in some newspaper of general circulation published in the county where the project is located, or in the county or counties where the water elevations are affected, under the tentative plan approved. The last of such publication or publications shall not be less than five days prior to the day set for hearing. Any claim by any persons whomsoever, for damages which may be caused by said project shall be filed with the commission at or prior to the time of the hearing provided herein. [C24, 27, 31,§1826; C35,§1828-e3; C39, §1828.26; C46, 50, 54,§112.3]

**1. Validity**

Section meets requirements of due process of law.
O. A. G. 1940, p. 79.

**2. Construction and application.**

In determining rights of owners where in building dam, water downstream would be temporarily diminished, it was a question of reasonable use of water.
O. A. G. 1934, p. 288.

**3. Notice**

Requirements of due process met by notice provided in this section.
O. A. G 1940, p. 79.

**112.4 Adoption of plan.** If, at the time of the hearing, the commission shall find that the improvement would be conducive to the public convenience, welfare, benefit or utility, and the cost thereof is not excessive, and no claim shall have been filed for damages, it may adopt the tentative plan as final or may modify the plan, provided said modification will not, to any greater extent than the tentative plan, materially and adversely affect the interests of littoral or riparian owners. [C24, 27, 31,§1826; C35,§1828-e4; C39, §1828.27; C46, 50, 54,§112.4]

**112.5 Appraisal of damages.** If, at the time of the hearing, the claims for damages shall have been filed, further proceedings shall be continued to an adjourned, regular or special session, the date and place of which shall be fixed at the time of adjournment and of which all interested parties shall take notice, and the commission shall have the damages appraised by three appraisers to be appointed by the chief justice of the supreme court. One of these appraisers shall be a registered civil engineer resident of the

state and two shall be freeholders of the state, who shall not be interested in nor related to any person affected by the proposed project. [C24, 27, 31,§1826; C35,§1828-e5; C39, §1828.28; C46, 50, 54,§112.5]

**112.6 Filing appraisement.** The appraisers appointed to determine the damages caused by the proposed project shall view the premises and determine and fix the amount of damages to which each claimant is entitled and shall, at least three days before the date fixed by the commission to hear and determine the same, file with the secretary of the commission reports in writing showing the amount of damages sustained by each claimant. Should good cause for delay exist, the commission may postpone the time of final action on the project. [C24, 27, 31,§1826; C35,§1828-e6; C39, §1828.29; C46, 50, 54,§112.6]

**112.7 Damages determined.** At the time fixed for hearing and after receipt of the report of the appraisers, the commission shall examine said report, both for and against each claim for damages and compensation and shall determine the amount of damages and compensation due each claimant and may affirm, increase or diminish the amount awarded by the appraisers. After such action, the commission may thereupon adopt a final plan for the project, and proceed with its construction, or it may dismiss the entire proceedings. [C24, 27, 31,§1826; C35,§1828-e7; C39,§1828.30; C46, 50, 54,§112.7]

LAW REVIEW COMMENTARIES

Navigable streams, rights acquired by state in new high water mark established by permanent dam constructed by state. May 1937, 22 Iowa Law Review 772.

**112.8 Appeal—bond.** Appeals from orders or actions of the commission fixing the amount of compensation awarded or damages sustained by any claimant shall be treated as ordinary proceedings. All other appeals shall be triable in equity. The court may, in its discretion, order the consolidation for trial of two or more of such equitable cases. All appeals shall be taken within twenty days after date of final action or order of the commission from which such appeal is taken, by filing with the secretary of the commission a notice of appeal designating the court to which the appeal is taken, the order or action appealed from and stating that the appeal will come on for hearing at the next succeeding term of the court and designating such term. This notice shall be accompanied by an appeal bond with sureties to be approved by the clerk of the district court conditioned to pay all costs adjudged against the appellant. [C24, 27, 31,§1826; C35,§1828-e8; C39,§1828.31; C46, 50, 54,§112.8]

**112.9 Final determination and costs.** The amount of damages or compensation found by the court shall be entered of record. Unless the result on the appeal is more favorable to the appellant than the action of the commission, all costs of the appeal shall be taxed to the appellant, but if more favorable, the cost shall be taxed to the appellees. All damages assessed and all costs occasioned under this chapter shall be paid from the funds of the commission. [C24, 27, 31,§1826; C35,§1828-e9; C39,§1828.32; C46, 50, 54,§112.9]

**112.10 Tentative plan.** If, at the time of hearing on the tentative plan, no objectors appear and no claim for damages or compensation shall have been filed, or if proper waivers giving consent to the construction of the proposed improvement have been obtained from all parties affected then the commission may adopt the tentative plan as final and proceed with the work proposed. [C24, 27, 31,§1826; C35,§1828-e10; C39,§1828.33; C46, 50, 54,§112.10]

# CHAPTER 306

## CHANGES IN ROADS, STREAMS, OR DRY RUNS

**306.21 Changes for safety, economy, and utility.** Boards of supervisors on their own motion may change the course of any part of any secondary road or stream, watercourse, or dry run, within any county in order to avoid the construction and maintenance of bridges, or to avoid grades, or railroad crossings, or to straighten any secondary road, or to cut off dangerous corners, turns, or intersections on the highway, or to widen any secondary road above statutory width, or for the purpose of preventing the encroachment of a stream, watercourse, or dry run upon such highway. [C97,§427; SS15,§1527-r1; C24, 27, 31, 35, 39,§4607; C46,§306.48; C50, 54,§306.21]

Finality of appraisement in condemnation proceedings, §472.17.

**1. Construction and application.**

Presumption that notice was given of board of supervisors intent to vacate a road.
Paul v. Mead, 1943, 234 Iowa 1, 11 N.W.2d 706.

No notice necessary if abutter appears and files claim for damages.
Furgason v. Woodbury County, 1931, 212 Iowa 814, 237 N.W. 214.

Despite this statute a road cannot be constructed through an orchard or ornamental ground without consent of the owner.
Hoover v. Highway Commission, 1928, 207 Iowa 56, 222 N.W. 438.

This statute does not require abandonment of any road, however, notice to abutter is required if it is to be abandoned.
Polk v. Irwin, 1921, 190 Iowa 1340, 181 N.W. 689.

Application of power to abandon.
O. A. G. 1938, p. 808.

This statute does not govern power of abandonment of roads.
O. A. G. 1938, p. 677.

**2. Diverting waters.**

Evidence held to support injunction.
Schwab v. Behrendt, 1944, 234 Iowa 1068, 13 N.W.2d 692.

County liable for damage resulting from cutting down banks of drainage ditch in improving highway.
Lage v. Pottawattamie County, 1942, 232 Iowa 944, 5 N.W.2d 161.

Doctrine of estoppel by laches.
Thomas v. Cedar Falls, 1937, 223 Iowa 229, 272 N.W. 79.

Where grader ditch along road was used for drainage for 10 years and supervisors desired to return water to natural course they could do so.
Schwartz v. Wapello County, 1929, 208 Iowa 1229, 227 N.W. 91.

Where, without objection abutter permitted grade to be established for twelve years held to have consented.
Geneser v. Healey, 1904, 124 Iowa 310, 100 N.W. 66.

When diverted channel may be held to be natural channel.
Mier v. Kroft, 1899, 80 N.W. 521.

Road supervisors liable for diversion of stream by negligent construction of crossing thereover.
McCord v. High, 1868, 24 Iowa 336.

Where well dried up due to diversion of stream county not liable if change accomplished according to law.
O. A. G. 1932, p. 140.

**3. Changing course of highway.**

What constitutes lawful change in course.
Harding v. Board, 1931, 213 Iowa 560, 237 N.W. 625, and Jenkins v. Highway Commission, 1928, 205 Iowa 523, 218 N.W. 258.

Road changed to avoid bridging a stream need not be constructed on immediate bank of stream.
Stahr v. Carter, 1902, 116 Iowa 380, 90 N.W. 64.

Board has no authority to summarily relocate road to location shown by plats where road has been open and used, even though it may not be on location originally ordered.
O. A. G. 1932, p. 68.

**4. Widening highway.**

This section confers jurisdiction to widen roads.
Carstons v. Keating, 1930, 210 Iowa 1326, 230 N.W. 432.
O. A. G. 1919-20, p. 270.
O. A. G. 1919-20, p. 261.

**5. Proceedings for change.**

Filing of a claim for land taken on relocation does not bar subsequent condemnation proceeding.
Brown v. Davis County, 1923, 196 Iowa 1341, 195 N.W. 363.

Petition for establishment or relocation need not follow statutory language as long as it follows statutory form in substance and discloses action desired.
Polk v. Irwin, 1921, 190 Iowa 1340, 181 N.W. 689.

Final order of board of supervisors stating conditions suspends taking of effect of order till compliance.
State v. Kinney, 1874, 39 Iowa 226.

**6. Actions for damages.**

Pleading.
Valentine v. Board, 1928, 206 Iowa 840, 221 N.W. 517.
Polk v. Fremont County, 1924, 197 Iowa 755, 197 N.W. 893.

Release of water trapped by road which was improperly discontinued.
Martin v. Schwertley, 1912, 155 Iowa 347, 136 N.W. 218.

**306.22 Appraisers.** If the board is unable, by agreement with the owner, to acquire the necessary right of way to effect such change, three freeholders shall be selected to appraise the damages consequent on the taking of the right of way. The board of supervisors shall select one of said appraisers. The owner or owners of the land sought to be taken shall select one of said appraisers. The two appraisers so selected shall choose the third appraiser. In case the owners do not exercise their said right or in case they are unable to agree as to an appraiser, or in case their appointee fails to appear and qualify, the said board of supervisors shall appoint two appraisers and said two appointees shall choose the third appraiser.

If the two appraisers selected shall fail within ten days to select a third, or the third appraiser so selected shall fail to serve, then the board of supervisors shall select the third appraiser. [SS15,§§1527-r1, -r2; C24, 27, 31, 35, 39,§4610; C46, 50,§306.51; C54,§306.22]

Referred to in §306.13
Establishment or vacation of road, form of notice, see §306.23
Form of notice in condemnation proceeding, see §472.9

**1. Construction and application.**

Procedure under chapters 471, 472, necessary to condemn land to provide material for improvement of highway.
O. A. G. 1953, p. 84.

Count for mandamus to appraise damages for highway change properly stricken where cause of action for damages has not been abandoned.
Valentine v. Board, 1928, 206 Iowa 840, 221 N.W. 517.

Statutory remedy of land owner for damages in relocation and alteration held adequate.
Brown v. Davis County, 196 Iowa 1341, 195 N.W. 363.

Board not authorized to fix damages at less than appraisal in absence of statute.

Daniel v. Clarke County, 1922, 194 Iowa 601, 190 N.W. 25.

**2. Appointment of appraisers.**

Appraisers must be residents of county, but their property need not be located in county where the proceedings are had.

O. A. G. 1928, p. 42.

Board of supervisors may appoint appraisers when for any reason those originally vested with such authority fail to appoint them.

O. A. G. 1923-24, p. 204.

**306.23 Notice.** The county auditor shall cause the following notice to be served on the individual owner of each tract or parcel of land to be taken for such right of way, as shown by the transfer books in the office of such county auditor, and upon each person owning or holding a mortgage, or lease, upon such land as shown by the county records, and upon the actual occupant of such land if other than the owner thereof:

To whom it may concern: Notice is given that the board of supervisors of ..... county, Iowa, propose to condemn for road purposes the following described real estate in said county: (Here describe the right of way, and the tract or tracts from which such right of way will be taken.) The damages caused by said condemnation will be assessed by three appraisers. Notice is hereby given that the owner or owners of said real estate may, on or before the ..... day of ..... appoint one of said appraisers and that in case such right be not exercised, or if exercised and the said appointee fails to appear and qualify, the said three appraisers will be otherwise appointed as provided by law. All parties interested are further notified that said three appraisers will, when duly appointed, proceed to appraise said damages, will report said appraisement to the said board of supervisors and that said latter board will pass thereon as provided by law, and that at all such times and places you may be present if you be so minded. You are further notified that at said hearing before the said supervisors you may file objections to the use of said land for road purposes and that all such objections not so made will be deemed waived.

.....

County Auditor.

[SS15,§§1527-r2, -r3, -r6; C24, 27, 31, 35, 39,§4611; C46, 50, §306.52; C54,§306.23]

Referred to in §306.13
Sale of unused right of way, §306.16
Form of notice of sale, §306.17
Form of notice in condemnation proceeding, §472.9

**1. Construction and application.**

Defendant not estopped to claim board had jurisdiction, where defendant predicated motion to dismiss plaintiff's former appeal on lack of jurisdiction of board.
Witham v. Union Co., 1926, 202 Iowa 557, 210 N.W. 535.

Consideration by board of claim filed after required ten day period waives failure to file timely notice.
Witham v. Union Co., 1924, 198 Iowa 359, 196 N.W. 605.

**2. Failure to serve notice.**

Owner, on whom no notice was served and who did not enter an appearance, held not bound by condemnation proceedings.
Gibson v. Union Co., 1929, 208 Iowa 314, 223 N.W. 111.

Letter informing board of supervisors that owner claimed board had no authority to proceed not voluntary appearance since owner not served with notice. Id.

**3. Sufficiency of notice.**

Notice held insufficient.
Witham v. Union Co., 1924, 198 Iowa 359, 196 N.W. 605.

**4. Evidence of notice.**

Presumption that proper notice was given.
Paul v. Mead, 1943, 234 Iowa 1, 11 N.W.2d 706.

Extrinsic evidence admissible to show notice where sufficiency is challenged.
Butterfield v. Pollick, 1876, 45 Iowa 257.

**306.24 Service of notice.** Owners, occupants, and mortgagees of record who are residents of the county shall be personally served in the manner in which and for the time original notices in the district court are required to be served.

Owners and mortgagees of record who do not reside in the county and owners and mortgagees of record who do reside in the county when the officer returns that they cannot be found in the county, shall be served by publishing the notice in one of the official newspapers of the county, once each week for two weeks, and also by mailing by registered mail a copy of such notice to such owner and mortgagee of record addressed to his last known address, and the county auditor shall furnish to the board of supervisors his affidavit that such notice has been sent, which affidavit shall be conclusive evidence of the mailing of such notice.

Personal service outside the county but within the state shall take the place of service by publication.

No service need be had on one who has exercised his right

to select an appraiser. [SS15,§§1527-r2,-r3; C24, 27, 31, 35, 39,§4612; C46, 50,§306.53; C54,§306.24]

Referred to in §306.13
Notice of viewing land to be condemned, §472.8
Time and manner of service, R.C.P. 53 and 56(a)

**306.25 Qualification and assessment.** Upon the appointment of three appraisers, the county auditor shall cause them to appear before him and to take oath that they will faithfully and impartially assess the damages claimed. Said appraisers shall forthwith proceed to the assessment of said damages and make written report thereof to the board of supervisors. [SS15,§1527-r2; C24, 27, 31, 35, 39,§4613; C46, 50, §306.54; C54,§306.25]

Referred to in §306.13
Qualification of condemnation commissioners, §472.7

**1. Construction and application.**

Fact that road viewers were duly sworn can be shown by official certificate of the testimony of officer who administered the oath.

Dollarhide v. Muscatine County, 1848, 1 Greene 158.

Agreement need only be reached by two of three appraisers.

O. A. G. 1923-24, p. 200.

**306.26 Hearing—adjournment.** The board shall proceed to a hearing on the objections or assessment of damages of any owner, mortgagee of record, and the actual occupant of such land if any of whom it has acquired jurisdiction, or if there be owners, mortgagee of record, and the actual occupant of such land if any over whom jurisdiction has not been acquired, the board may adjourn such hearing until a date when jurisdiction will be complete as to all owners. [SS15,§§1527-r3; C24, 27, 31, 35, 39,§4614; C46, 50,§306.55; C54, §306.26]

Referred to in §306.13

**1. Construction and application.**

Board not authorized to fix damages at lesser sum than appraisal.

Daniel v. Clarke County, 1922, 194 Iowa 601, 190 N.W. 25.

**306.27 Hearing on objections.** The board shall, at the final hearing, first pass on the objections to the proposed change. If objections be sustained the proceedings shall be dismissed unless the board finds that the objections may be avoided by a change of plans, and to this end an adjournment may be ordered, if necessary, in order to secure service on additional parties. [SS15,§1527-r3; C24, 27, 31, 35, 39,§4615; C46, 50, §306.56; C54,§306.27]

See §306.20 Payment of damages.
Referred to in §306.13

**1. Construction and application.**

Filing of claims for land taken on relocation does not bar subsequent condemnation proceeding.

Brown v. Davis County, 1923, 196 Iowa 1341, 195 N.W. 363.

**306.28 Hearing on claims for damages.** When objections to the proposed change are overruled, the board shall proceed to determine the damages to be awarded to each claimant. If the damages finally awarded are, in the opinion of the board, excessive, the proceedings shall be dismissed; if not excessive, the board may, by proper order, establish such proposed change. [SS15,§1527-r3; C24, 27, 31, 35, 39, §4616; C46, 50,§306.57; C54,§306.28]

**Referred to in §306.13**

**1. Construction and application.**

Where relocation was on owner's same land, damages not restricted to amount exceeding damage from old highway when the land reverts.

Burgess v. Bremer County, 1920, 189 Iowa 168, 178 N.W. 389.

**2. Modification of award of damages.**

Reduction of appraisement in effect a rejection by board of supervisors of appraisement.

Burrow v. Woodbury County, 1925, 200 Iowa 787, 205 N.W. 460.

There must be statutory authority for board to reduce appraisement.

Daniel v. Clarke County, 1922, 194 Iowa 601, 190 N.W. 25.

**306.29 Appeals.** Claimants for damages may appeal to the district court from the award of damages in the manner and time for taking appeals from the orders establishing highways generally. [C97,§428; SS15,§1527-r3; C24, 27, 31, 35, 39,§4617; C46, 50,§306.58; C54§306.29]

**Referred to in §306.13**
**Appeal in condemnation proceeding, §472.18, 472.19**

**1. Construction and application.**

Where larger amount than that appraised was awarded on appeal no attorneys' fees could be recovered.

Nichol v. Neighbour, 1926, 202 Iowa 406, 210 N.W. 281.

Owner, from whom no land is taken, but who was an abutter on road vacated has no right of appeal from refusal of the board of supervisors to allow his claim for damages.

O. A. G. 1923-24, p. 211.

**2. Proceeding for review.**

Where petition on appeal failed to designate action ap-

pealed from and plaintiff was not a party to original proceeding his appeal properly dismissed.

Gibson v. Union Co., 1929, 208 Iowa 314, 223 N.W. 111.

Procedure on appeal in a proceeding to relocate a road governed by this chapter.

Nichol v. Neighbour, 1926, 202 Iowa 406, 210 N.W. 281.

Plaintiff need not file bond before he can appeal award of damages.

O. A. G. 1923-1924, p. 180.

**3. Decision on review.**

Discretion of trial court.

Polk v. Irwin, 1921, 190 Iowa 1340, 181 N.W. 689.

**306.30 Damages on appeal—rescission of order.** If the damages as finally determined on appeal be, in the opinion of the board, excessive, the board may rescind its order establishing such change. [SS15,§1527-r3; C24, 27, 31, 35, 39, §4618; C46, 50,§306.59; C54,§306.30]

Referred to in §306.13
Reduction of damages in condemnation proceeding, §472.24

**306.31 Tender of damages.** No appeal from an award of damages shall delay the prosecution of the work when the amount of the award is tendered in writing to the claimant and such tender is kept good. An order to the auditor to issue warrants to claimants, for damages shall constitute a valid tender, if funds are available to promptly meet such warrants. Acceptance of the amount of such tender bars an appeal. Should possession of the condemned premises be taken pending appeal and the final award be not paid, the county shall be liable for all damages caused, during such possession. [SS15,§1527-r3; C24, 27, 31, 35, 39,§4620; C46, 50, §306.61; C54,§306.31]

Referred to in §306.13
Taking possession of condemned land, §472.25

**1. Construction and application.**

Count for mandamus to appraise damage due to road change properly stricken where count in damages was not abandoned.

Valentine v. Board, 1928, 206 Iowa 840, 221 N.W. 517.

When auditor issues warrants in favor of claimants board has right to order construction forces to enter and improve.

O. A. G. 1923-24, p. 206.

**2. Warrants.**

Board of supervisors could order auditor to issue warrants to each claimant for amount of damages.

O. A. G. 1918, p. 504.

# CHAPTER 308

## PARK AND INSTITUTIONAL ROADS

**308.5 Improvement by city or county.** When a city, town, or county shall drain, oil, pave, or hard surface a road which extends through or abuts upon lands owned by the state, the state, through the executive council, shall pay such portion of the cost of making said improvement through or along such lands as would be legally assessable against said lands were said lands privately owned, which amount shall be determined by said council, or board. When payments are to be made by the state executive council they shall be from any funds of the state not otherwise appropriated. [S13,§170-k; C24, 27, 31, 35, 39,§4634; C46, 50, 54,§308.5]

**1. Construction and application.**

Board of social welfare could pay out of its funds certain special assessments.
O. A. G. 1938, p. 794.

**2. State lands.**

This section not applicable to state owned lakes.
O. A. G. 1936, p. 78.

Where state is abutting owner on improved roads inside city or town executive council must pay state's portion of cost of improvement.
O. A. G. 1932, p. 126.

Term "abut" referring to assessment of property for state or road improvements does not include adjacent property.
O. A. G. 1925–26, p. 498.

**3. Improvements imposing liability.**

Improvements on roads or streets abutting state property.
O. A. G. 1928, p. 373.

Improvements draining road abutting state lands.
O. A. G. 1925–26, p. 318.

Board of conservation authorized to pay levy by board of supervisors for road maintenance in state parks.
O. A. G. 1925–26, p. 195.

# CHAPTER 309

## SECONDARY ROADS

**309.10 General pledge.** The balance of said secondary road construction fund shall be used for any or all of the following purposes at the option of the board of supervisors:

1. The payment of the cost of constructing the roads embraced in the existing county trunk road system.

2. The payment of the outstanding county road bonds of the county authorized and issued under chapter 316,* to the extent heretofore pledged.

3. The payment of legally outstanding bridge or road bonds of the county (not including primary road bonds), when construction work on the county trunk system of the county is complete.

4. The discharge of any legal obligation or contract which, under the provisions of this chapter, is required to be taken over and assumed by the county.

5. The payment of all or any part of special drainage assessments which may have been, or may hereafter be, levied on account of benefits to secondary roads.

6. The payment of the cost of constructing local county roads and expenditures pertaining thereto, but only when the construction work on the county trunk roads has been fully completed, and when the board deems it inadvisable to make additions to said trunk roads.

7. The payment of county road bonds authorized under chapter 242, code of 1924, or 1927, prior to July 4, 1929.

8. The payment of the cost in the establishment, construction, reconstruction, surfacing, resurfacing, grading, construction of bridges and culverts, the elimination, protection, or improvement of bridges and culverts, the elimination, protection, or improvement of railroad crossings, the acquiring of additional right of way and all other expenses incurred in the construction, reconstruction or improvement of secondary or farm-to-market roads in said county. [C24, §§4635, 4795, 4797, 4800; C27, §§4635, 4795, 4795-b1; 4797, 4800; C31, 35,§4644-c10; C39,§4644.10; C46, 50, 54,§309.10]

9. The payment of all or part of the cost of construction of bridges in cities and towns having a population of eight thousand (8,000) or less and all or part of the cost of construction of roads located within an incorporated town, of less than four hundred (400) population, which lead to state parks. [56GA, ch 149,§1]

See §306.1 Classification of highways, §306.2 Definition of road systems.
*Repealed by 53GA, ch 130, §1.
Township representatives on board of approval paid from construction fund, §309.31.

**1. Construction and application.**

Farm-to-market road funds not needed to match federal aid may be expended for general secondary road purposes subject to approval of highway commission.
O. A. G. 1942, p. 5.

Availability of the 65 per cent of secondary road fund for local county roads only after county trunk roads have been completed.
O. A. G. 1936, p. 483.

Required that prior to issue of warrants for repair of washed out bridge supervisors should adopt resolution.
O. A. G. 1936, p. 212.

Obligation of township on roads county required to assume to be paid out of 65 per cent of secondary road construction.
O. A. G. 1932, p. 28.

Use of funds for new and old culverts to be from separate funds.
O. A. G. 1930, p. 200.

Secondary road construction fund except gasoline license fee cannot be pledged for secondary road bonds.
O. A. G. 1930, p. 155.

Payment of damages due to establishment of township road from general county fund.
O. A. G. 1928, p. 72.

Chapter 149, 56GA has no relationship to right of cities and towns to contract with county on construction and maintenance of bridges.
O. A. G. 1955, August 25.

**2. Prior laws, construction of.**

Davis v. Laughlin, 1910, 147 Iowa 478, 124 N.W. 876.
Nolan v. Reed, 1908, 139 Iowa 68, 117 N.W. 25.
Slutts v. Dana, 1908, 138 Iowa 244, 115 N.W. 1115.
Harrison County v. Ogden, 1906, 133 Iowa 9, 110 N.W. 32.

**3. Levy of taxes under prior laws.**

Keokuk v. Kennedy 1912, 156 Iowa 680, 137 N.W. 914.

**4. Bridges.**

Cost of replacing unsafe bridge, from 35 per cent fund under §309.9 unless bridge was over drainage ditch.
O. A. G. 1938, p. 445.

**5. Roads or streets in city or town.**

Supervisors could not pave road in city or town which was continuation of trunk or local county road system.
O. A. G. 1938, p. 27.

**See §314.5**

**6. Drainage assessments.**

May be paid from secondary road construction fund or maintenance fund.
O. A. G. 1930, p. 169.

**7. Road machinery.**

Payment for may be made from secondary road construction or maintenance fund.
O. A. G. 1930, p. 237.

**8. Workmen's compensation, payment of premiums.**

May not be paid out of road or bridge fund.
O. A. G. 1928, p. 353.

**9. Approval of plan.**

Required by highway commission for expenditure of 65 per cent of secondary road construction fund on local roads.
O. A. G. 1938, p. 793.

**10. Liability of counties.**

Decision prior to 1913 held not controlling.
Post v. Davis County, 1922, 196 Iowa 183, 191 N.W. 129, rehearing overruled, 196 Iowa 183, 194 N.W. 245.

**309.11 Optional maintenance levies.** The board of supervisors may, annually, at the September session of the board, levy, for secondary road maintenance purposes, the following taxes:

1. A tax of not to exceed two mills on the dollar on all taxable property in the county, except on property within cities and towns which control their own bridge levies.

2. A tax of not to exceed eight mills on the dollar on all taxable property in the county, except on property within cities and towns. Provided, that no county shall be required, as a condition precedent to being eligible to receive farm-to-market road funds on an equlization basis, to levy in excess of five mills. [C24, 27, §§4635, 4795; C31, 35, §4644-c11; C39,§4644.11; C46, 50, 54,§309.11]

**1. Validity.**

Carlton v. Grimes, 1946, 237 Iowa 912, 23 N.W.2d 883.

**2. Construction and application.**

Property in city controlling own bridge levy, exempt from levy for secondary road construction.
O. A. G., 1954, p. 156.

Agricultural lands in city or town subject to levy if city does not control its own bridge levy.
O. A. G. 1932, p. 59.

Township could purchase road machinery.
O. A. G. 1919-20, p. 683.
Supervisors could not levy road tax within cities or towns.
O. A. G. 1898, p. 49.
O. A. G. 1955, August 25.

**3. Drainage assessments.**
May be paid out of secondary road construction or maintenance fund.
O. A. G. 1930, p. 169.

**4. Exceptions.**
Cities and towns controlling own bridge levies.
O. A. G., 1953, p. 50.

**309.12 Secondary road maintenance fund.** The secondary road maintenance fund shall consist of:

1. All funds derived from the aforesaid maintenance levies.

2. All funds allotted to the county from the state tax on motor vehicle carriers, and shall be used and employed as herein provided. [C24, 27,§4635, 4797; C31, 35,§4644-c13; C39, §4644.12; C46, 50, 54,§309.12]

**1. Construction and application.**
Drainage assessments payable out of secondary road construction or maintenance fund.
O. A. G. 1930, p. 169.

**2. Bridges and culverts, repairs.**
Required that prior to issue of warrants for repair of washed out bridge supervisors should adopt resolution.
O. A. G. 1936, p. 212.

**3. Transfer of funds.**
Section 309.15 governs transfer of funds.
O. A. G. 1940, p. 157.

**309.13 Pledge of maintenance fund.** The secondary road maintenance fund is hereby pledged:

1. To the payment of the cost of maintaining the secondary roads according to their needs.

2. To the payment of the cost of bridge repairs, culvert material, machinery, tools and other equipment.

3. To the payment of all or any part of special drainage assessments which may have been, or which may hereafter be, levied on account of benefits to secondary roads.

4. To the payment of all cost of maintenance of secondary roads improved under the provisions of chapter 311 after such secondary road has been improved by oiling, graveling or other suitable surfacing. [C24, 27,§§4635, 4797, 4798, 4800; C31, 35,§4644-c14; C39,§4644.13; C46, 50, 54,§309.13]

5. To the payment of all or part of the cost of maintaining bridges in cities and towns having a population of eight thousand (8,000) or less and all or part of the cost of construction of roads located within an incorporated town, of less than four hundred (400) population, which lead to state parks. [56GA, ch. 149,§2]

**1. Construction and application.**

Use of maintenance funds by county for employee benefits authorized.
O. A. G., 1949, p. 78.

Budgeting of fund for specified uses authorized.
O. A. G. 1938, p. 640.

No division of fund in this statute between local and trunk roads.
O. A. G. 1936, p. 212.

Fairness in apportioning funds for township roads required.
O. A. G. 1930, p. 228.

Public roads outside corporation must be maintained by county if dedicated to and accepted by public.
O. A. G. 1955, March 3.

**2. Private lanes.**

Supervisors could not authorize grading despite offer to pay.
O. A. G. 1938, p. 837.

Farm home lanes not part of secondary road system.
O. A. G. 1955, January 26.

**3. Bridge repairs.**

New bridge must be built from construction funds.
O. A. G. 1932, p. 98.

**4. Culverts, material for.**

Funds used for new and old culverts to be from separate funds.
O. A. G. 1930, p. 200.

**5. Road machinery.**

County estopped to assert lack of authority to purchase.
Harrison County v. Ogden, 1907, 133 Iowa 9, 110 N.W. 32.

Townships may purchase road machinery.
O. A. G. 1919-20, p. 683.

**6. Buildings for machinery.**

Cost of rebuilding where destroyed by fire should be out of general fund.

O. A. G. 1930, p. 76.

Secondary road fund may be used to construct garages, sheds for equipment but must be submitted to electors.

O. A. G. 1949, p. 41.

**7. Drainage assessments.**

Payable from secondary road maintenance and construction fund.

O. A. G. 1930, p. 169.

**8. Prior laws, construction.**

Nolan v. Reed, 1908, 139 Iowa 68, 117 N.W. 25.

# CHAPTER 310

## FARM TO MARKET ROADS

**310.4 Use of fund.** Said farm-to-market road fund is hereby appropriated for and shall be used in the establishment, construction, reconstruction or improvement of the farm-to-market road system, including the drainage, grading, surfacing, construction of bridges and culverts, the elimination, protection, or improvement of railroad crossings, the acquiring of additional right of way and all other expenses incurred in the construction, reconstruction or improvement of said farm-to-market road system under this chapter. [C39, §4686.04; C46, 50, 54,§310.4]

# CHAPTER 314

## GENERAL ADMINISTRATIVE PROVISIONS FOR HIGHWAYS

**314.7 Trees—ingress or egress—drainage.** Officers, employees, and contractors in charge of improvement or maintenance work on any highway shall not cut down or injure any tree growing by the wayside which does not materially obstruct the highway, or tile drains, or interfere with the improvement or maintenance of the road, and which stands in front of any town lot, farmyard orchard or feed lot, or any ground reserved for any public use. Nor shall they destroy or injure reasonble ingress or egress to any property, or turn the natural drainage of the surface water to the injury of adjoining owners. It shall be their duty to use strict diligence in draining the surface water from the public road in its natural channel. To this end they may enter upon the adjoining lands for the purpose of removing from such natural channel obstructions that impede the flow of such water. [C24, 27,§4791; C31, 35,§4644-c46; C39,§4644.44; C46,§309.44; C50, §308A.16; C54,§314.7]

See §§318.1, 318.2

**1. Construction and application.**

Test of whether reasonable ingress and egress has been destroyed based on length of time used.

Perkins v. Palo Alto County, 1953, 245 Iowa 310, 60 N.W.2d 562.

**2. Drainage.**

Digging of extension ditch along roadside authorized when volume of water not increased.

Morrow v. Harrison County, 1954, 245 Iowa 725, 64 N.W.2d 52.

Acquiescence of land owner to existence of roadside ditch converts it into natural water course.

Perkins v. Palo Alto County, 1953, 245 Iowa 310, 60 N.W.2d 562.

**314.8 Government markers preserved.** Whenever it may become necessary in grading the highways to make a cut which will disturb, or fill which will cover up, a government or other established corner or land monument, it shall be the duty of the engineer to establish permanent witness corners or monuments, and make a record of the same, which shall show the distance and direction the witness corner is from the corner disturbed or covered up. When said construction work is completed the engineer shall permanently re-establish said corner or monument. A failure to perform said duties shall subject the engineer to a fine of not less than ten dollars nor more than fifty dollars to

be collected on his bond. [S13,§1527-s7; C24, 27, 31, 35, 39, §4656; C46,§309.62; C50,§308A.17; C54,§314.8]

**314.9 Prospecting for gravel.** The board or commission in control of any highway or highway system, or the engineer or any other person employed by said board or commission, may, after written notice to the owner and to the occupant, enter upon private land and make surveys, borings and excavations thereon, for the purpose of determining whether gravel or other material exists on said land of suitable quality and in sufficient quantity, to warrant the purchase or condemnation of said land or part thereof and roadway thereto to secure such material for the improvement or maintenance of such highway or highway system. Any damage caused by such entry, survey, borings and excavations shall be determined by agreement or in the manner provided for the award of damages in condemnation of land for highway purposes. No such prospecting shall be done within twenty rods of the dwelling house or buildings on said land without written consent of the owner. [C27, 31, 35,§4658-a1; C39,§4658.1; C46,§309.65; C50,§308A.18; C54,§314.9]

**314.10 State line highways.** The board or commission in control of any highway or bridge bordering on or crossing a state line is authorized to confer and agree with the board or official of such border state, or sub-division of such state, having control of such highway or bridge relative to the interstate connection, the plans for the improvement, and maintenance, the division of work and the apportionment of cost of such highway or bridge. [S13,§1570-a; SS15,§1527-s3; C24, 27, 31, 35, 39,§4663; C46,§309.72; C50,§308A.19; C54,§314.10]

**314.11 Use of bridges by utility companies.** Telephone, telegraph, electric transmission and pipe lines may be permitted to use any highway bridge on or across a state line on such terms and conditions as the boards, commissions, or officials jointly constructing, maintaining or operating such bridge may jointly determine. No discrimination shall be made in the use of such bridge as between such utilities. Joint use of telephone, telegraph, electric transmission or pipe lines may not be required. No grant to any public utility to use such bridge shall in any way interfere with the use of such bridge by the public for highway purposes. [S13, §424-e; C24, 27, 31, 35, 39,§4683; C46,§309.90; C50,§308A.20; C54, §314.11]

# CHAPTER 331

## BOARD OF SUPERVISORS

331.1 Number of members.
331.2 Number increased by vote.
331.3 Number reduced by vote.
331.4 Petition in certain counties.
331.5 Vote in certain counties.
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331.7 Election of new members.
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331.22 Compensation of supervisors.
331.23 Maximum session pay.
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331.25 Counties with five supervisors.
331.26 Counties with three supervisors.
331.27 Numbering new districts.
331.28 Terms of new members.

**331.1 Number of members.** The board of supervisors in each county shall consist of three persons, except where the number has been or may hereafter be increased in the manner provided by this chapter. They shall be qualified electors, and be elected by the qualified voters of their respective counties, and shall hold their office for three years. [R60, §303; C73,§§294, 299; C97,§410; SS15,§410; C24, 27, 31, 35, 39,§5106; C46, 50, 54,§331.1]

For annotations see I.C.A.

**331.2 Number increased by vote.** When petitioned to do so by one-tenth of the qualified electors of said county, the board of supervisors shall submit to the qualified electors of the county, at any regular election, one of the following propositions as may be requested in said petition, or the board may, on its own motion, by resolution, submit either of said propositions:

1. Shall the proposition to increase the number of supervisors to five be adopted?

2. Shall the proposition to increase the number of supervisors to seven be adopted?

If the majority of the votes cast shall be for the proposition so submitted, then at the next general election the requisite additional supervisors shall be elected, and one-half of the additional supervisors shall hold office for three years and one-half for two years.

The length of term for which any person is a candidate and the time when the term begins shall be indicated on the ballot. [R60, §303; C73,§§294, 299; C97,§410; §§15, §410; C24, 27, 31, 35, 39,§5107; C46, 50, 54,§331.2]

For annotations see I.C.A.

**331.3 Number reduced by vote.** In any county where the number of supervisors has been increased to five or seven, the board of supervisors, on the petition of one-tenth of the qualified electors of the county, shall submit to the qualified voters of the county, at any regular election, one of the following propositions, as the same may be requested in such petition:

1. Shall the proposition to reduce the number of supervisors to five be adopted?

2. Shall the proposition to reduce the number of supervisors to three be adopted?

If the majority of the votes cast shall be for the decrease, then the number of supervisors shall be reduced to the number indicated by such vote. [C73,§299; C97,§410; SS15, §410; C24, 27, 31, 35, 39,§5108; C46, 50, 54,§331.3]

For annotations see I.C.A.

**331.4 Petition in certain counties.** In counties where there is a city operating under the commission form of government, with a population of more than seventy-five thousand people, the petition shall contain ten percent of the qualified electors residing in the county and outside of the city, and then ten percent of the qualified electors residing in the city. [C35,§5108-e1; C39,§5108.1; C46, 50, 54, §331.4]

For annotations see I.C.A.

**331.5 Vote in certain counties.** When the proposition is voted upon, the qualified electors residing in the county and outside of the city, shall vote separately upon the proposition, and there shall be cast a majority vote of such electors outside of the city, and a majority vote of the qualified electors of the city, before such change shall be effective. [C35,§5108-e2; C39,§5108.2; C46, 50, 54,§331.5]

For annotations see I.C.A.

**331.6 When reduction takes effect.** If the proposition to reduce the number of members of the board carries, the

board shall consist of the same number of members as at the time the proposition to reduce was submitted, until the second secular day in January following the next general election, at which time the terms of all members of the board shall expire. [C73,§299; C97,§410; SS15,§410; C24, 27, 31, 39,§5109; C46, 50, 54,§331.6]

For annotations see I.C.A.

**331.7 Election of new members.** At the next general election following the one at which the proposition to reduce the number of members of the board was carried there shall be elected the number of members required by such proposition.

Where such proposition reduces the board to five members, two persons shall be elected as members of the board for two years, two for three years, and one for four years.

In counties where the proposition reduces the board to three members, one person shall be elected as member of the board for two years, one for three years, and one for four years.

The length of term for which any person is a candidate and the time when the term begins shall be indicated on the ballot. [SS15,§410; C24, 27, 31, 35, 39,§5110; C46, 50, 54,§331.7]

For annotations see I.C.A.

**331.8 Supervisor districts.** The board of supervisors may, or shall, when petitioned by ten percent of the number of qualified electors having voted in the last previous general election for governor, at its regular meeting in January in any even-numbered year, divide its county by townships into a number of supervisor districts corresponding to the number of supervisors in such county; or, at such regular meeting, it may abolish such supervisor districts, and provide for electing supervisors for the county at large, except that when districted following petition the districts cannot be abolished except by petition of one-tenth of the qualified electors of the said county and submission of the question to the qualified electors of the county at the next general election. [C97,§416; S13,§416; C24, 27, 31, 35, 39,§5111; C46, 50,§331.8; 54 GA, ch 135,§2,C54,§331.8]

Referred to in §331.11 Redistricting—term of office.

For annotations see I.C.A.

**331.9 How formed.** Such districts shall be as nearly equal in population as possible, except that after the year 1950, in the division of counties now having five supervisors, and made up originally of sixteen Congressional townships with a county seat having a population over six thousand shall be divided into four districts containing four Congressional townships each the borders of which are contiguous except the area within the limits of the county seat,

which shall comprise a fifth district, and shall each embrace townships as nearly contiguous as practicable, each of which said districts shall be entitled to one member of such board, to be elected by the electors of said district. [C97,§417; C24, 27, 31, 35, 39,§5112; C46, 50,§331.9; 54 GA, ch 135,§3; 55 GA, ch 150§1; C54,§331.9]

Referred to in §331.11 Redistricting—term of office.

For annotations see I.C.A.

**331.10 One member for each district.** In case such division or any subsequent division shall be found to leave any district or districts without a member of such board of supervisors, then, at the next ensuing general election, a supervisor shall be elected by and from such district having no member of such board; and if there be two such districts or more, then the new member or members of said board shall be elected by and from the district or districts having the greater population according to the last federal census, and so on, until each of said districts shall have one member of such board. [C97,§418; C24, 27, 31, 35, 39,§5113; C46, 50, 54,§331.10]

Referred to in §331.11 Redistricting—term of office.

For annotations see I.C.A.

**331.11 Redistricting—term of office.** Any county may be redistricted, as provided by sections 331.8 to 331.10, inclusive, once in every two years, and not oftener, and nothing herein contained shall be so construed as to have the effect of lengthening or diminishing the term of office of any member of such board. [C97,§419; C24, 27, 31, 35, 39,§5114; C46, 50, 54,§331.11]

For annotations see I.C.A.

**331.12 Absence from county—vacancy.** The absence of any supervisor from the county for six months in succession shall be treated as a resignation of his office, and the board shall, at its next meeting thereafter, by resolution regularly adopted and spread upon its records, declare his seat vacant. [C73,§298; C97,§414; C24, 27, 31, 35, 39,§5115; C46, 50, 54,§331.12]

For annotations see I.C.A.

**331.13 Organization.** The board of supervisors, at its first meeting in each year, shall organize by choosing one of its members as chairman, who shall preside at all of its meetings during the year. [R60,§308; C73,§300; C97,§415; C24, 27, 31, 35, 39,§5116; C46, 50, 54,§331.13]

For annotations see I.C.A.

**331.14 Quorum.** A majority of the board of supervisors shall constitute a quorum to transact business, but should a division take place on any question when only two members

of the board are in attendance, the question shall be continued until there is a full board. [R60,§308; C73,§297; C97, §413; C24, 27, 31, 35, 39,§5117; C46, 50, 54,§331.14]

For annotations see I.C.A.

**331.15 Meetings.** The members of the board of supervisors shall meet at the county seat of their respective counties on the second secular day in January and on the first Monday in April and the second May in June, September, and November in each year, and shall hold such special meetings as are provided by law, but in the event a quorum of said board fails to appear on a day set for a regular or an adjourned meeting the auditor of said county shall adjourn said meeting from day to day until a quorum is present. [R60,§307; C73,§296; C97,§412; S13,§412; C24, 27, 31, 35, 39, §5118; C46, 50, 54,§331.15]

For annotations see I.C.A.

**331.16 Special sessions.** Special sessions of the board of supervisors shall be held only when requested by the chairman or a majority of the board, which request shall be in writing addressed to the county auditor, shall fix the date of meeting and shall specify the objects thereof, which may include the doing of any act not required by law to be done at a regular meeting. [R60,§309; C73,§301; C97,§420; C24, 27, 31, 35, 39,§5119; C46, 50, 54,§331.16]

For annotations see I.C.A.

**331.17 Notice.** The auditor shall immediately give notice in writing or by telephone to each of the supervisors personally, or by leaving notice thereof at his residence, at least six days before the date set for such meeting, stating the time and place where the meeting will be held and the objects thereof as stated in the written request. No business shall be transacted at such session, except that stated in the request and notice. [R60,§309; C73,§301; C97,§420; C24, 27, 31, 35, 39,§5120; C46, 50, 54,§331.17]

For annotations see I.C.A.

**331.18 Acts requiring majority.** No tax shall be levied, no contract for the erection of any public buildings entered into, no settlement with the county officers made, no real estate purchased or sold, no new site designated for any county buildings, no change made in the boundaries of townships, and no money appropriated to aid in the construction of highways and bridges, without a majority of the whole board of supervisors voting therefor and consenting thereto. [R60,§313; C73,§305; C97,§440; C24, 27, 31, 35, 39, §5121; C46, 50, 54,§331.18]

For annotations see I.C.A.

**331.19 Books to be kept.** The board is authorized and required to keep the following books:

1. Minute book. A book to be known as the "minute book", in which shall be recorded all orders and decisions made by it except those relating to highways and drainage districts, and in which book, or in a separate book kept for that purpose, there shall be an alphabetical index of the proceedings of said board as shown by the minutes.

2. Highway record. A book to be known as the "highway record", in which shall be recorded all proceedings and adjudications relating to the establishment, change, or discontinuance of highways.

3. Bridge book. A book to be known as the "bridge book", where a record of bridges shall be kept in a numerical order in each congressional township, commencing in section one, and numbering each bridge; give location in fractional parts of sections; name the kind of material used for substructure and superstructure; give length and cost of bridge, and, when repaired, to keep a record of repairs and charge it to the bridge; and warrants drawn in payment for erection or repairs of bridges shall indicate the number of the bridge for which issued in payment.

4. Warrant book. A book to be known as the "warrant book", in which shall be entered, in the order of its issuance, the number, date, amount, name of drawee of each warrant drawn on the treasury, and the number of warrants, as directed in relation to the minute book.

5. Claim register. A book to be known as a "claim register", in which shall be entered a minute of all claims filed for allowance of money from the county treasury. [R60, §318; C73,§308; C97,§442; C24, 27, 31, 35, 39,§5122; C46, 50, 54, §331.19]

For annotations see I.C.A.

**331.20 Claims generally.** Claims filed shall be numbered consecutively in the order of filing, and shall be entered on the claim register alphabetically, so as to show the date of filing, the number of the claim and its general nature, the name of the claimant and the action of the board thereon, stating, if allowed, the fund upon which allowance is made. A record of the allowance of claims at each session of the board shall be entered on the minute book by reference to the numbers of the claims as entered on the claim register. [C24, 27, 31, 35, 39,§5123; C46, 50, 54,§331.20]

For annotations see I.C.A.

**331.21 Unliquidated claims.** All unliquidated claims against counties and all claims for fees or compensation, except salaries fixed by statute, shall, before being audited or paid, be so itemized as to clearly show the basis of any such

claim and whether for property sold or furnished the county, or for services rendered it, or upon some other account, and shall be duly verified by the affidavit of the claimant, filed with the county auditor for presentation to the board of supervisors; and no action shall be brought against any county upon any such claim until the same has been so filed and payment thereof refused or neglected. [C73,§§2610, 3843; C97,§§1300, 3528; C24, 27, 31, 35, 39,§5124; C46, 50, 54, §331.21]

For annotations see I.C.A.

**331.22 Compensation of supervisors.** The members of the board of supervisors shall each receive ten dollars per day for each day actually in session, and ten dollars per day exclusive of mileage when not in session but employed on committee service, and seven cents for every mile traveled in going to and from the regular, special, and adjourned sessions thereof, and in going to and from the place of performing committee service.

When the board is in continuous session, mileage for only one trip in going to and from the session shall be allowed.

However, in counties now having or which may hereafter have, a population in excess of forty thousand and not more than sixty thousand with boards not exceeding five members in number, the county supervisors shall receive an annual salary of thirty-two hundred dollars; in counties now having or which may hereafter have a population in excess of sixty thousand, with boards not exceeding five members in number, these county supervisors shall receive an annual salary of thirty-six hundred dollars except in those counties now having or which may hereafter have a population in excess of sixty thousand, with boards not exceeding three members in number, these county supervisors shall each receive an annual salary of forty-six hundred dollars, and in counties now having or which may hereafter have a population in excess of one hundred fifty thousand, county supervisors shall receive an annual salary of five thousand dollars. However, in counties now having, or which may hereafter have, a population in excess of one hundred thousaid, with boards not exceeding three members in number, the county supervisors shall receive an annual salary of four thousand eight hundred dollars. These salaries shall be in full payment of all services rendered to the county by said supervisors except statutory mileage while actually engaged in the performance of official duties. [R60,§317; C73,§3791; C97,§469; S13,§469; C24, 27, 31, 35, 39,§5125; C46, 50, §311.22; 54GA, ch 136,§§1, 10; C54,§331.22]

Referred to in §331.23 Maximum session pay.
Additional provisions in re mileage, ch 79 Salaries, fees, mileage, and expenses in general.

For annotations see I.C.A.

**331.23 Maximum session pay.** Except as provided in sections 331.22 and 331.24, members of such board shall not receive compensation for a greater number of days of session service each year than specified in the following schedule.

In counties having a population of:

1. Ten thousand or less, thirty days.

2. More than ten thousand and less than twenty-three thousand, forty-five days.

3. Twenty-three thousand and less than forty thousand, fifty-five days.

4. Forty thousand and less than sixty thousand, sixty-five days.

5. Sixty thousand and less than eighty thousand, seventy-five days.

6. Eighty thousand and less than ninety thousand, ninety days.

7. Ninety thousand and over, one hundred days. [R60, §317; C73,§3791; C97,§469; S13,§469; C24, 27, 31, 35, 39,§5126; C46, 50,§331.23; 54GA, ch 136,§2, C54,§331.23]

For annotations see I.C.A.

**331.24 Drainage session pay.** The time spent by the board of supervisors as a ditch or drainage board and in considering drainage matters as a single board, or jointly with one or more other boards, shall not be counted in computing the number of days which any board has been in session, but the members of the board shall be entitled to compensation at the same rate for the time spent in ditch and drainage matters, except the drainage of highways, in addition to the compensation allowed as hereinbefore set forth, but in no case shall said board be allowed more than fifty days additional time in any year for time spent in drainage matters.

If on the same day, the board considers matters involving two or more drainage districts, their per diem shall be equitably apportioned by them among such districts.

If on the same day the board acts both as a county board and also for the purpose of considering drainage matters, the board shall be paid for one day only, and from the general fund or drainage fund as the board may order. [S13, §469; C24, 27, 31, 35, 39,§ 5127; C46, 50, 54,§331.24]

Referred to in §331.23 Maximum session pay.

**1. Construction and application.**

Fees of board and other costs should be paid from general funds.

O. A. G. 1919-20, p. 259.

Members of board should be paid for services in drainage matters from drainage fund.

O. A. G. 1913-14, p. 168.

**331.25 Counties with five supervisors.**

1. In all counties, having twenty-four townships and having five board members elected at large, the board of supervisors at its regular meeting in January, in any even-numbered year may divide its county by townships into a number of supervisor districts corresponding to the number of supervisors in such county.

2. Such districts shall be as nearly equal in population as practicable and shall each embrace townships as nearly contiguous as practicable, each of which said districts shall be entitled to one member of said board to be elected by the electors of the entire county.

3. In case such division or any subsequent division does leave any district or districts without a member of such board of supervisors, then at the next ensuing general election, a supervisor shall be elected from such district having no member of such board by the electors of the entire county; and if there be two such districts or more, then the new member or members of said board shall be elected by the electors of the entire county from the district or districts having the greater population according to the last federal census, and so on, until each of said districts shall have one member of such board.

4. No member elected from such new district shall serve until a vacancy occurs in such old district having two members. [54 GA, ch 135,§1; C54,§331.25]

For annotations see I.C.A.

**331.26 Counties with three supervisors.** In any county having three members of the board of supervisors elected at large, the board of supervisors, the county auditor and the clerk of the district court at the time provided for the regular meeting of the board in January in any even-numbered year may divide its county into three supervisor districts corresponding to the number of miles of road in such county. Such districts shall be as nearly equal in miles of road as practicable and shall embrace a territory as compact as is practicable considering the miles of road and the location of the roads in such districts. In the laying out of such districts corporation boundaries shall not necessarily be considered as district boundaries wherein the division board set up by this section feels the purpose of the section will be best served by not following such corporation boundaries. Each of said districts shall be entitled to one member residing therein on said board to be elected at large by the electors of the entire county. [54GA, ch 135,§4; C54, §331.26]

For annotations see I.C.A.

**331.27 Numbering new districts.** In setting out such districts the division board shall number such districts one, two and three. Should there be a district in which no supervisors live such district shall be district number one. Should there be two districts wherein no supervisors live they shall be numbers one and two. At the next general election following the setting up of such districts there shall be a supervisor elected in each of said districts wherein no supervisor lives and no supervisor shall be elected in a district in which there is a holdover supervisor. [54GA, ch 135,§5; C54,§331.27]

For annotations see I.C.A.

**331.28 Terms of new members.** No supervisor so elected shall serve until there is a vacancy in such district having more than one member and such vacancy shall be for the same term as the supervisor elect in such district was elected to fill. [54GA, ch 135,§6; C54,§331.28]

For annotations see I.C.A.

# CHAPTER 346

## COUNTY BONDS

**346.20 County not to become stockholder.** No county shall, in its corporate capacity, or by its supervisors or officers, directly or indirectly, subscribe for stock, or become interested as a partner, shareholder, or otherwise, in any banking institution, plank road, turnpike, railway, or work of internal improvement; nor shall it issue any bonds, bills of credit, scrip, or other evidence of indebtedness, for any such purposes; and all such evidences of indebtedness for said purposes are hereby declared void, and no assignment of the same shall give them validity; but this section shall not be so construed as to prevent counties from lawfully erecting their necessary public buildings and bridges, laying off highways, streets, alleys and public grounds, or other local works in which such counties may be interested. [R60, §§ 1345, 1346; C73,§§553, 554; C97,§594; C24, 27, 31, 35, 39,§5294; C46, 50, 54,§346.20]

Referred to in §346.22

# CHAPTER 357

## BENEFITED WATER DISTRICTS

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**357.1 Petition.** The board of supervisors of any county shall, on the petition of twenty-five percent of the resident property owners in any proposed benefited water district, grant a hearing relative to the establishment of such proposed water district; such petition shall set out the following and any other pertinent facts:

1. The need of a public water supply.

2. The approximate district to be served.

3. The approximate number of families in the district.

4. The proposed source of supply.

5. The type of service desired, whether domestic only or for fire protection and other uses.

The board of supervisors may, at its option, require a bond of the petitioners as provided in section 455.10.

In case the proposed benefited water district is located wholly within the corporate limits of any city or town, only the council of the city or town shall have the authority to establish the water district, and the provisions of this chapter referring to the board of supervisors shall be applicable to the city or town council. [C24, 27, 31, 35,§5523; C39, §5526.01; C46, 50, 54,§357.1, Last paragraph added Acts 1955 (56 GA) ch 178,§1]

**1. Construction and application.**

Inadequate amended petition did not justify adding districts.

Fiesel v. Bennett, 1938, 225 Iowa 98, 280 N.W. 482.

**357.2 Territory included—publicly owned property.** The benefited water district may include part or all of any incorporated city or town, or cities and towns, together with or without surrounding territory including cemeteries and all publicly owned land. Said publicly owned property shall pay and bear its proportionate share of the cost and expense of said water system upon the same basis as privately owned property. [C39,§5526.02; C46, 50, 54,§357.2, as amended Acts 1955 (56GA), ch 178,§3]

**357.3 Scope of assessment.** The special assessment hereinafter provided for may be used to cover the costs of installing all the necessary elements of a water system, for both production and distribution. [C24, 27, 31, 35,§5522; C39, §5526.03; C46, 50, 54,§357.3)

**357.4 Public hearing.** When the board of supervisors receives a petition for the establishment of a benefited water district, a public hearing shall be held within twenty days of the presentation of the petition. Notice of such hearing shall be given by posting bills in three public places within the district, or by publication in two successive issues of any paper of general circulation within the district. The last publication or posting shall be not less than one week before the proposed hearing. [C24, 27, 31, 35,§5523; C39, §5526.04; C46, 50, 54,§357.4]

**357.5 Decision at hearing.** On the day fixed for such hearing, the board of supervisors shall by resolution establish the benefited water district or disallow the petition. For adequate reasons the board of supervisors may defer action on such petition for not to exceed ten days after the day first set for a hearing. [C24, 27, 31, 35,§5523; C39,§5526.05; C39,§5526.05; C46, 50, 54,§357.5]

**357.6 Examination by engineer.** When the board of supervisors shall have established the benefited water district, they shall appoint a competent disinterested civil engineer and instruct him to examine the proposed improvement, make preliminary designs in sufficient detail to make an accurate estimate of the cost of the proposed water system. He shall also report as to the suitability of the proposed source of water supply. [C39,§5526.06; C46, 50, 54,§357.6]

**357.7 Water source without district.** When in any proposed benefited water district, it is anticipated that the source of supply will be without the district, and not under its control, the board of supervisors shall instruct the engineer who is appointed to make the preliminary design and dummy assessment, to also obtain from the corporation or municipality which controls the proposed source of supply, a statement in writing, outlining the terms upon which water will be furnished to the district, or to the individuals within the district and on what terms in either case.

This preliminary proposal from the governing body of the source of supply shall be binding, and shall be in the nature of an option to purchase water by the district, or the individual within the same, if and when the proposed benefited water district shall have completed its construction, and is ready to use water. This proposal shall accompany and be a part of the engineer's preliminary report to the board of supervisors. [C39,§5526.07; C46, 50, 54,§357.7]

**357.8 Plat.** The said engineer shall prepare a preliminary plat showing the proper design in general outline, the size and location of the water mains, the general location of hydrants, if such are included in said petition, valves and other appurtenances, and shall show the lots and parcels of land within the proposed district as they appear on the county auditor's plat books, together with the names of the owners and the amount which it is estimated that such lot or parcel will be assessed. [C39,§5526.08; C46, 50, 54,§357.8]

**357.9 Compensation of engineer.** The compensation of such engineer on the preliminary investigation shall be determined by the board of supervisors and may be by percentage or per diem. [C39,§5526.09; C46, 50, 54,§357.9]

**357.10 Filing of report and plat.** The engineer's report, together with the dummy plat showing the tentative design and assessment, shall be filed with the county auditor within thirty days of such engineer's appointment, unless for adequate reasons it is impossible for him to do so, in which case the board of supervisors may extend the time therefor. [C39,§5526.10; C46, 50, 54,§357.10]

**357.11 Hearing on report.** On receipt of the engineer's report, the board of supervisors shall give notice in the same

manner as before, of a hearing on the engineer's tentative design and dummy plat. On the day set, or within ten days thereafter, the board of supervisors shall approve or disapprove the engineer's plan and proposed assessment. If it shall appear advisable, the board of supervisors may make changes in the design and assessment, as they appear on the dummy plat. [C39,§5526.11; C46, 50, 54,§357.11]

**357.12 Election.** When the preliminary design and assessment have been approved by the board of supervisors, a date not more than thirty days after such approval shall be set for an election within the district to determine whether or not the proposed improvement shall be constructed and to choose candidates for the offices of trustee within the district. Except that where the benefited water district is wholly within the corporate limits of a city or town, the members of the city or town council shall be the trustees, and the provisions hereinafter referring to the election and terms of trustees are not applicable. Notice of the election, including the time and place of holding the same, shall be given in the same manner as for the public hearing heretofore provided for. The vote shall be by ballot which shall state clearly the proposition to be voted upon, and any legal voter residing within the district at the time of the election shall be entitled to vote. Judges will be appointed to serve without pay, by the board of supervisors from among the qualified voters of the district who will have charge of the election. The proposition shall be deemed to have carried if a majority of those voting thereon vote in favor of the same. [C24, 27, 31, 35,§5524; C39,§5526.12; C46, 50, 54,§357.12, as amended Acts 1955 (56GA), ch 178,§2]

Referred to in §357.13 Trustees—terms.

**357.13 Trustees—terms.** At the election provided for in section 357.12, the names of the trustees shall be written by the voter on blank ballots without formal nomination and the board of supervisors shall appoint three from among the five receiving the highest number of votes as trustees for the district, one to serve for one year, one for two years, and one for three years, which trustees and their successors shall give bond in the amount the board of supervisors may require, the premium of which shall be paid by the district said trustees represent. Vacancies may thereafter be filled by election, or by appointment by the board of supervisors, at the option of the remaining trustees. The term of succeeding trustees shall be for three years. [C24, 27, 31, 35, §5524; C39,§5526.13, C46, 50, 54,§357.13]

**357.14 Bids for construction.** If the result of said election be in favor of said improvement, the board of supervisors shall instruct the engineer to complete the plans and speci-

fications, ready for receiving bids for construction of the project, which he shall do within thirty days of receiving notice to do so, unless for adequate reason the board shall extend the time.

When the completed plans and specifications are on file with the county auditor, the board of supervisors shall advertise for bids and shall cause notice to be given by publication once each week for two consecutive weeks in some newspaper published in the county wherein the improvement is to be constructed, setting forth the location and nature of the improvement and the date and place where bids will be received by the board. The last published notice to bidders shall be at least seven days before the time set for receiving bids. Bidders will be required to submit certified checks for five percent of the amount of the bid. [C24, 27, 31, 35,§5524; C39,§5526.14; C46, 50, 54,§357.14]

**357.15 Inadequate assessment.** When bids have been received, if it is apparent that the final assessment will need to be increased more than ten percent over the preliminary assessment, the board of supervisors shall, at its option, reject bids and readvertise for bids as provided herein, or reject bids and revise the dummy assessment. If the dummy assessment is revised, another election shall be held within the district in the same manner and with the same notices as the first, except that the candidates for trustee shall not be voted for. [C39,§5526.15; C46, 50, 54,§357.15]

**357.16 Second election.** If the majority of the votes cast at said special election be in favor of said improvement, the board of supervisors shall again advertise for bids in the same manner as before. If the bids at the second letting will not necessitate raising the second preliminary assessment more than ten percent, the board may let the contract to the lowest responsible bidder. [C24, 27, 31, 35,§5524; C39,§5526.16; C46, 50, 54,§357.16]

**357.17 Bond of contractor.** The successful bidder, when awarded a contract, shall be required to give an approved surety bond for one hundred percent of the contract price, guaranteeing completion of the work in accordance with the plans and specifications, and for maintenance, including backfilling, for one year after the final acceptance of the work.

If the contractor shall fail to complete the work as provided in his contract, or shall abandon the same, or fail to proceed in a reasonable manner toward its final completion, the board may proceed against the contractor and bondsman as provided in sections 455.114 and 455.115. (C39,§5526.17; C46, 50, 54,§357.17]

**357.18 Acceptance of work.** When in the opinion of the engineer in charge, the construction in any benefited water

district has been completed in accordance with the plans, specifications, and contract, he shall certify this fact to the board of supervisors, and recommend the acceptance of the work by the said board. The board of supervisors shall proceed in accordance with sections 455.111 and 455.112. [C39,§5526.18; C46, 50, 54,§357.18]

**357.19 Completing assessment.** After the final acceptance of the work by the board of supervisors, the engineer shall complete the final assessment, which shall be made on all the property within the district, whether abutting or not, for an amount approximately ten percent greater than the total cost of the project. The assessment shall be made according to benefits and shall take into consideration the location and value of the property assessed. The final assessment on any lot or parcel of land shall not exceed the final preliminary assessment by more than ten percent, and shall in no case exceed twenty-five percent of the assessed value of the property. The board of supervisors may alter an assessment to increase or decrease it within the limits outlined above, and must approve by resolution the final assessment as made.

Notwithstanding the provisions of this section the final assessment may be but not in excess of one and one-half dollars per lineal foot of abutting frontage for all unimproved property, and may be but not in excess of four dollars per lineal fot of abutting frontage for all improved property. Each parcel of improved property having a frontage of more than one hundred feet per unit of improvement shall be assessed as unimproved property on the frontage in excess of one hundred feet. For the purpose of this paragraph improved property shall be considered to be any property having one habitable dwelling or one business building thereon. [C24, 27, 31, 35,§5522; C39,§5526.19; C46, 50, 54,§357,19]

**357.20 Due date—bonds.** Assessments of less than ten dollars will come due at the first tax-paying date after the approval of the final assessment, and assessments of ten dollars or more may be paid in ten annual installments with interest at six percent on the unpaid balance. The board of supervisors shall issue bonds against the completed assessment in an amount equal to the total cost of the project, so that the amount of the assessment will be approximately ten percent greater than the amount of the bonds. [C24, 27, 31, 35,§5522; C39,§5526.20; C46, 50, 54,§357.20]

**357.21 Substance of bonds.** Each of such bonds shall be numbered, and have printed upon its face that it is a benefited water district bond, stating the county and the number of the district for which it is issued, and the date of matu-

rity; that it is in pursuance of a resolution of the board of supervisors, and that it is to be paid for only from special assessment theretofore levied and taxes levied as hereinafter provided for that purpose within the said district for which the bond is issued. The provisions of sections 455.83 and 455.86 shall govern the issuance of these bonds except that the contractor will not be paid anything on the work until its completion and final acceptance. [C39,§5526.21; C46, 50, 54,§357.21]

**357.22 Lien of assessment—tax.** When the assessment has been completed and the bonds sold and the schedule of assessment shall be turned over to the county auditor, the installments due thereon shall be collected in the same manner as ordinary taxes and shall constitute a lien on the property against which they are made. If the treasurer does not receive sufficient funds to enable him to pay the interest and retire the bonds as they become due, he shall levy a three mill annual tax on all property within the district to pay such deficiency, and the county treasurer shall apply the proceeds of such levy to the payment of the bonds and the interest on the same so long as the bonds are in arrears on either interest or principal. [C24, 27, 31, 35, §5525; C39,§5526.22; C46, 50, 54,§357.22]

**357.23 Surplus.** The board of supervisors shall be required to levy such three mill annual tax so long as the bonds are in arrears. [C39,§5526.23; C46, 50, 54,§357.23]

**357.24 Fee of engineer.** The fee for engineering services shall be fixed by the board of supervisors and he may be paid either a percentage or per diem, from proceeds of the bond sale or by cash from the contractor, if the contractor takes bonds in settlement for his work under his contract. [C39,§5526.24; C46, 50, 54,§357.24]

**357.25 Management by trustees.** After the final acceptance of the work by the board of supervisors, the management of the utility shall automatically go to the three trustees previously appointed by the board of supervisors. The trustees shall have power to levy an annual tax not to exceed one-half mill, on the district, for the maintenance of the system. This levy shall be optional with the trustees. The trustees may purchase material and employ labor to properly maintain and operate the utility. The trustees shall be allowed necessary expenses in the discharge of their duties, but shall not receive any salary. [C24, 27, 31, 35, §5526; C39,§5526.25; C46, 50, 54,§357.25]

**357.26 Duties of trustees.** It is anticipated that this law will usually be utilized to finance a distribution system

where the source of supply is without the district, and not under its control, and that individuals within the district will pay water rent to a municipality or corporation without the district. It is intended that the trustees may so operate the utility as will best serve the users, and they are expressly authorized to buy and sell water, to fix the rates to consumers and make all contracts reasonable or necessary to accomplish the purpose of this chapter and to carry on all the operations incident to maintaining and operating said utility and to the procuring and furnishing of water to the consumers therein. If the development of a source of supply is within the means of the district, the trustees may install wells, tanks, meters and any other equipment properly pertaining to operate it. [C39,§5526.26; C46, 50, 54,§357.26]

**357.27 Public property in district.** Whenever property of the state of Iowa, or any political subdivision thereof, shall be included either wholly or in part within such water district and shall own facilities which may be used as a part of such water system, the executive council, board of supervisors, city or town council, as the case may be, may permit such use of said facilities for such consideration and on such terms as may be agreed upon with the board of trustees. [C39,§5526.27; C46, 50, 54,§357.27]

**357.28 Private mains—additional assessments.** Any person or persons within any water district, who may, after the initial installation of the improvement in any such district, desire to construct additional mains, and who have been assessed on the original assessment, may with the consent of the trustees, connect such lateral mains as they desire with the original system to serve property within the district which has been assessed, provided that the entire cost thereof shall be borne by the parties so interested.

The trustees shall have power to make additional assessments on unimproved lots or parcels of land within the district when said unimproved lots or parcels are improved and ready to receive the full benefits of the district. This additional assessment shall be determined and fixed by the trustees and shall not exceed the average assessment for improved property in said districts less the original assessment on said unimproved lots or parcels. Said assessments shall be paid to the county treasurer before service pipes are laid into said improvement. The assessment shall be put in the benefited water district fund of the district of which said lots or parcels are a part and shall be used by the county treasurer for the retirement of bonds and interest. When the bonds are all retired, the trustees shall be authorized to use said fund for maintenance purposes, changing size of mains, eliminating dead ends, or extending mains for the benefit of the district. [C39,§5526.28; C46, 50, 54,§357.28]

**357.29 Subdistricts.** If the cost of the desired extensions will be as much as five thousand dollars, the interested parties may petition the board of supervisors to organize a subdistrict, and in such case the board shall proceed in the same manner as for a new district, and may take in territory not originally assessed.

The board of supervisors shall have power at any time to alter the boundaries of any district prior to the time of posting or publishing notice of the election within the district. [C24, 27, 31, 35,§5522; C39,§5526.29; C46, 50, 54,§357.29]

**357.30 Additional territory.** When the district is under the control of trustees, they are empowered to deal with parties without the district who desire to be taken into the district or to obtain water from the district and determine the amount to be assessed against said district to be taken in or connected with. The trustees shall have power in such cases to make agreements for the district, and may, with the consent of the board of supervisors, alter the district boundaries to take in additional territory. No lot or parcel of land shall be put out of a district without the consent of the owner, after it has paid any assessment to the district. [C24, 27, 31, 35,§5522; C39,§5526.30; C46, 50, 54, §357.30]

**357.31 Right of way.** The board of supervisors shall have power to condemn, in the same manner as provided for the condemnation of land, right of way through private property, sufficient for the construction and maintenance of water mains. The cost of such right of way shall constitute a part of the expense of the improvement and shall be covered by the special assessment. [C39,§5526.31; C46, 50, 54, §357.31]

**357.32 Record book.** The board of supervisors shall provide a record book which shall be in the custody of the auditor, in which shall be kept a full and complete record of the proceedings relative to water districts, so arranged and indexed, as to enable any proceedings relative to any district to be readily examined. [C24, 27, 31, 35,§5524; C39,§5526.32; C46, 50, 54,§357.32]

**357.33 Appeal procedure.** Any person aggrieved, may appeal from any final action of the board of supervisors in relation to any matter involving his rights, to the district court of the county in which the district is located. The procedure in such appeals shall be governed by the provisions of sections 455.94 to 455.109, inclusive, provided that whenever in the above sections the words "drainage district" occur, the words "benefited water district" shall be substituted. [C39,§5526.33; C46, 50, 54,§357.33]

**357.34 Conveyance of district to city or town.** Where a city or town is situated wholly or partly within a benefited water district, the board of supervisors having jurisdiction of said benefited water district, at the request of the trustees of said benefited water district, may, by proper resolution, convey unto said city or town any and all rights which said board of supervisors may have in and to said benefited water district. Said conveyance, however, shall not become effective until all existing obligations against said district have been completely and fully discharged and such conveyance accepted and confirmed by a resolution of the council of said city or town, specially passed for such purpose.

Upon acceptance, the district, including the plant and distribution system, as well as all funds and credits shall become the property of said city or town and be operated and used by it to the same extent as if acquired under chapter 397. Also, the offices of the trustees as provided in this chapter shall be abolished upon acceptance by the city or town and their duties as such shall immediately cease. [55 GA, ch 158,§1; C54,§357.34]

# CHAPTER 359

## TOWNSHIPS AND TOWNSHIP OFFICERS

359.1-359.45 Omitted.
359.46 Compensation of trustees.
359.47 Compensation of clerk.
359.48 Repealed by 52 GA, ch 240,§50.

**359.46 Compensation of trustees.** Township trustees shall receive:

1. For each day of service of eight hours necessarily engaged in official business, to be paid out of the county treasury, four dollars each. In townships embraced entirely within the limits of special charter cities, the compensation of township trustees shall be four dollars per day.

2. For each day engaged in assessing damages done by trespassing animals, one dollar each, to be paid as other costs are in such cases.

3. When acting as fence viewers, or viewing or locating any ditch or drain, or in any other case where provision is made for their payment otherwise, they shall not be paid out of such treasury, but in all such cases their fees shall be paid in the first instance by the party requiring their services, and they shall append to the report of their proceedings a statement thereof, and therein shall direct who shall pay said fees, and in what sums respectively; and the party having so advanced any such fees may have his action therefor against the party so directed to pay the same, unless within ten days after demand by the party entitled thereto, he shall be reimbursed therefor. [C51,§2548; R60, §4156; C73,§3808; C97,§590; S13,§590; C24, 27, 31, 35, 39,§5571; C46, 50, 54,§359.46]

For annotations see I.C.A.

**359.47 Compensation of clerk.** The township clerk shall receive:

1. For each day of eight hours necessarily engaged in official business, where no other compensation or mode of payment is provided, to be paid from the county treasury, four dollars.

2. For all money coming into his hands by virtue of his office, except from his predecessor in office, unless otherwise provided by law, one percent.

3. For filing each application for a drain or ditch, fifty cents.

4. For making out and certifying the papers in any appeal taken from an assessment by the trustees of damages done by trespassing animals, such additional compensation as the board of supervisors may allow. [C51,§2548; R60§§909, 911; C73,§3809; C97,§591; S13,§591; C24, 27, 31, 35, 39,§5572; C46, 50, 54,§359.47]

Compensation for handling township hall funds, §360.2.

For annotations see I.C.A.

# CHAPTER 384

## DOCKS

384.1-384.2 Omitted.
384.3 Powers and duties.
384.4 Omitted.

**384.3 Powers and duties.** The board shall have power and it shall be its duty for and in behalf of the city or town, hereinafter called the municipality, for which it is organized:

1. General plan. To prepare or cause to be prepared a comprehensive general plan for the improvement of its harbor and water front, making provision for the needs of commerce and shipping, and for the use of river-front property by others for industrial and manufacturing purposes to the extent deemed advisable in relation to the operation of established wharves and docks, and providing for the construction of such docks, basins, piers, quay walls, wharves, warehouses, tunnels, belt railway connecting with all railway lines within the municipality, and such cranes, dock apparatus, and machinery equipment as it may deem necessary for the convenient and economical accommodation and handling of watercraft of all kinds and of freight and passengers, and the free interchange of traffic between the waterway and the railways and the railways and the waterway; which plan shall be filed in the office of the board and be open to public inspection, and which may from time to time be changed, altered, or amended by the board, as the requirements of shipping and commerce and the advance of knowledge and information on the subject may suggest.

2. Purchase and condemnation of property. To purchase or acquire by condemnation or other lawful means, such personal property, lands, or rights or interest therein, including easements, as may be necessary for use in the provision and in the construction of any publicly owned harbor, water front, dock, basin, pier, slip, quay wall, wharf, warehouse, or other structure, and in the construction of a belt railway and railway switches, and appurtenances as provided for in such plan as may be adopted by the board. If the board shall deem it proper and expedient that the municipality shall acquire possession of such wharf property, lands, or rights or interests therein, including easements, and no price can be agreed upon between the board and the owner or owners thereof, the board may direct the municipal corporation attorney to take legal proceedings to acquire same for the municipality in manner as is or may be provided by the general laws of the state in the case of corporations having the right of eminent domain. The title of all lands, property, and rights acquired by the

board shall be taken in the name of the municipality it represents.

Procedure, ch 472.

3. Control of property. The board shall have exclusive charge and control of the wharf property belonging to the municipality including belt railway located in whole or in part therein, all the wharves, piers, quay walls, bulkheads, and structures thereon and waters adjacent thereto, and all the slips, basins, docks, water fronts, the structures thereon, and the appurtenances, easements, uses, reversions, and rights belonging thereto, which are now owned or possessed by the municipality, or to which the municipality is or may become entitled, or which the municipality may acquire under the provisions hereof or otherwise. The board shall have the exclusive charge and control of the building, rebuilding, alteration, repairing, operation, and leasing of said property and every part thereof, and of the cleaning, grading, filling, paving, sewering, dredging, and deepening necessary in and about the same.

Leases of such property may be made for such purposes, including industrial and manufacturing purposes, upon such terms and conditions, and for such period of time as, in the exclusive judgment of the dock board, shall be for the best interests of the city or town in the furtherance of the general plan adopted by said board.

4. Abutting property—jurisdiction and improvement. The board is hereby vested with jurisdiction and authority over that part of the streets and alleys and public grounds of the municipality which abut upon or intersect its navigable waters, lying between the harbor line and the first intersecting street measuring backward from high-water mark, to the extent only that may be necessary or requisite in carrying out the powers vested in it by this chapter; and it is hereby declared that such jurisdiction and authority shall include the right to build retaining or quay walls, docks, levees, wharves, piers, warehouses, or other constructions, including belt railway and railway switches, across and upon such streets and alleys and public grounds, and to grade, fill, and pave the same to conform to the general level of the wharf, or for suitable approaches thereto; provided that such improvements shall be paid for out of funds in the hands of the board and not by assessments against abutting property, but in case the city council deems it necessary or advisable to construct street improvements or sewers on such streets and alleys, and abutting and adjacent property will receive special benefits therefrom, such improvements or sewers may be ordered constructed by said council and the cost thereof may be assessed by said council, to the extent of such benefits, and as provided in chapter 391, upon and against all lots or parcels of real

estate, whether publicly or privately owned, as may be specially benefited thereby, provided that the plans and specifications of the city council for such improvements or sewers be first approved by the dock board.

5. Control consistent with navigation laws—collect tolls. The board is also vested with exclusive government and control of the harbor and water front consistent with the laws of the United States governing navigation, and of all wharf property, belt railway, wharves, piers, quay walls, bulkheads, docks, structures, and equipment thereon, and all the slips, basins, waters adjacent thereto, and submerged lands and appurtenances belonging to the municipality, and may make reasonable rules and regulations governing the traffic thereon and the use thereof, with the right to collect reasonable dockage, wharfage, sheddage, storage, cranage fees, and tolls thereon, as hereinafter provided.

Obedience to such rules and regulations may be enforced in the name of the city or town, by a fine not exceeding one hundred dollars, or by imprisonment not exceeding thirty days, provided the council of such city or town shall first adopt the same, in ordinance form, as ordinances of the municipality.

6. Rules and regulations—specifications—ordinances—publication. The board shall have power to make general rules and regulations for the carrying out of the plans prepared and adopted by it for the building, rebuilding, repairing, alteration, maintenance, and operation of all structures, erections, or artificial constructions upon or adjacent to the water front of the municipality, whether the same shall be done by the board or by others; and except as provided by the general rules of the board, no new structures or repairs upon or along said water front shall be undertaken, except upon application to the board and under permit by it and in accordance with the general plans of the board and in pursuance of specifications submitted to the board and approved by it upon such application. The general rules and regulations of the board, whenever adopted by it, shall be embodied in the form of ordinances and certified copies thereof shall, forthwith upon their passage, be transmitted to the clerk of the municipality who shall cause the same to be transcribed at length in a book kept for that purpose and the same shall be included in any compilation or publication of the ordinances of the municipality. Upon filing any such certified copy of any such ordinances, the said clerk shall forthwith cause the same to be published once in some newspaper of general circulation published in the municipality, or if none is there published, then in the next nearest newspaper published in this state, and the said ordinance shall be in force and effect from and after the date of said publication. Provided, however, that if the said ordinances

are included in any book or pamphlet of ordinances published by said municipality, no other publication shall be required, and they shall be in force and effect from the date said book or pamphlet is published. The said ordinances of the board shall not be considered or construed as ordinances of said municipality except as they may be adopted as ordinances of said municipality, and the provisions of the code and statutes of the state now or hereafter enacted relative to ordinances of cities and towns shall not apply to ordinances passed by said board unless express reference be made thereto in said statutes.

7. Tolls and charges—regulations. The board shall have the power to fix and regulate and from time to time to alter the tolls, fees, dockage, wharfage, cranage, sheddage, storage, and other charges for all publicly owned docks, levees, belt railway, piers, quay walls, slips, basins, wharves, and their equipment, or the use of any portion of the water front of the municipality, which charges and rates shall be collectible by the board and shall be reasonable with a view only of defraying the necessary annual expenses of the board in constructing and operating the improvements and works herein authorized; a schedule of such charges and regulations shall be enacted by the board in the form of ordinances and a certified copy thereof shall be transmitted to the clerk of the municipality in like manner as other ordinances of the board before the same shall go into or be in effect, and a copy of same shall be kept posted in a conspicuous place in the office of the board.

8. Assistants—officers—ordinances. The board shall have power to employ such assistants, employees, clerks, workmen, and laborers as may be necessary in the efficient and economical performance of the work authorized by this chapter. All officers, places, and employments in the permanent service of the board shall be provided for by ordinance duly passed by the board and the same shall be transmitted to the clerk of the municipality as provided for other ordinances of the board.

9. Construction work plans—approval—public inspection—bids—exceptions—emergencies. In the construction of docks, levees, wharves, and their appurtenances, or in contracting for the construction of any work or structures, including grading and filling lands under its control as authorized by this chapter, the board shall proceed only after full and complete plans (approved by the board) and specifications for said work have been prepared and submitted and filed with the board by its engineer for public inspection, and after public notice asking for bids for the construction of such work, based upon such plans and specifications, has been published in some newspaper of general circulation published within the municipality, or if none so published,

then in the nearest newspaper published in this state, which publication shall be made at least thirty days before the time fixed for the opening of said bids and contracting for such work; and such contract may then be made with the lowest responsible bidder therefor, unless the board deems the bids excessive or unsuitable, in which event it may proceed to readvertise for bids, or the board may do the work directly, purchasing such materials and contracting for such labor as may be necessary without further notice or proposals for bids; except that it shall make no purchase of materials in amounts exceeding five hundred dollars except by public letting upon ten days notice, published as aforesaid, specifying the materials proposed to be purchased; provided, however, that said public letting shall not be required in case no saisfactory bids are received, or in case of an emergency where the delay of advertising and public letting might cause serious loss or injury to the work. The board shall, in all cases, have the right to reject any and all bids, and may either readvertise therefor, contract with others at a figure not exceeding the lowest bidder without further advertising, or do the work directly as hereinbefore provided.

10. Tax levy—dock fund. To defray the expense of exercising the powers conferred by this chapter, or any portion of such expense in excess of the income from the aforesaid rates and charges to be collected by the board, the council of the municipality shall levy a special tax upon the taxable property in the municipality, not exceeding one-half mill* on the dollar. The board shall annually make to the council a report of the receipts and disbursements made by or on account of said board, and shall file with the council an estimate of the amounts necessary to be raised by taxation to defray the expenses of the board. The council shall at the time of levying annual taxes levy a sufficient tax not exceeding said one-half mill* to meet the said estimate and which shall be collected as other taxes and paid over to the treasurer of the municipality and by him credited to the fund to be known as the dock fund.

Referred to in §404.10(11) Municipal enterprises.
*Alternate levy, see §404.10(11) Municipal enterprises.

11. Bonds—limitation. Whenever said dock board shall deem it necessary or advisable to issue bonds for the purpose of constructing any of the works or improvements herein authorized, including grading and filling of lands under its control, or purchasing property for said purpose, the said board shall petition the council of the municipality to issue either dock bonds, as herein authorized, or revenue bonds as provided by section 394.6 stating the purpose for which said bonds are requested and thereupon the council shall issue said bonds.

If the issuance of such dock bonds would not cause the aggregate indebtedness of the municipality to exceed the constitutional debt limit and if the council does not deem it advisable to issue said bonds, the council shall submit the question of issuing said bonds to the voters of said municipality, and if the vote in favor of the issuance of said bonds is equal to at least sixty percent of the total vote cast for and against the proposition at the election, the council shall proceed to issue the bonds. The proceeds of said bonds, when issued, shall be paid to the municipal treasurer and credited to the dock fund.

Taxes for the payment of said bonds shall be levied in accordance with chapter 76 and said bonds shall be payable through the debt service fund in not more than twenty years and bear interest at a rate not exceeding five percent per annum, and shall be of such form as the city or town council shall by resolution provide, but no city or town shall become indebted in excess of five percent of the actual value of the taxable property within said city or town as shown by the last preceding state and county tax lists. The indebtedness incurred for the purpose herein provided shall not be considered an indebtedness incurred for general or ordinary purposes.

If revenue bonds are issued, said bonds shall be issued and paid as provided by chapter 394.

The provisions of this section shall be applicable to all municipal corporations regardless of form of government or manner of incorporation.

Limitation on indebtedness, §§407.1, 407.2; see also alternate levy, §404.10(11).
Vote required to authorize bonds, §75.1.

12. Funds, how disbursed—books audited. All funds collected by the dock board, or by the municipality for dock purposes from the proceeds of taxes, bonds, or otherwise, shall be deposited with the treasurer of the municipality and disbursed by him only upon warrants or orders duly signed by the president and countersigned by the secretary of the dock board and which shall state distinctly the consideration for which same are drawn, and a permanent record shall be kept by the board of all warrants or orders so drawn, showing the date, amount, consideration, and to whom payable. When paid the same shall be canceled and kept on file by the treasurer of the municipality. The books of the board shall from time to time be audited by the municipal auditor under the direction of the mayor, in such manner and at such times as he may direct or prescribe, and all of said books and records of the board shall at all times be open to public inspection.

13. Additional tax. In cities having a population of less than thirty thousand the council shall have power to levy

an additional annual special tax upon the taxable property in the municipality, of not to exceed one-half mill* on the dollar, to defray the expense of exercising the powers conferred by this chapter, or any portion of such expense in excess of the income from the rates and charges to be collected by the dock board. [S13,§741-w2; C24, 27, 31, 35, 39, §5902; C46, 50,§384.3; 54 GA, ch 165§40; 55 GA, ch 178,§1, C54,§384.3]

*Alternate levy, see §404.10(11).

For annotations see I.C.A.

# CHAPTER 391

## STREET IMPROVEMENTS, SEWERS, AND SPECIAL ASSESSMENTS

**391.68 Assignment of certificate.** Any holder of any special assessment certificate against a lot or parcel of ground, or any holder of a bond payable in whole or in part out of a special assessment against any lot or parcel of ground, or any city or town within which such lot or parcel of ground is situated, which lot or parcel of ground has been sold for taxes, either general or special, shall be entitled to an assignment of any certificate of tax sale of said property for any general taxes or special taxes thereon, upon tender to the holder or to the county auditor of the amount to which the holder of the tax sale certificate would be entitled in case of redemption. [C97,§816; S13,§§792-f, 816; C24, 27, 31, 35, 39,§6041; C46, 50, 54,§391.68]

General taxes, application of this section, see §446.21.

**1. Construction and application.**

Holder of certificates of special assessments had prior right to assignment of certificates of tax sale on tender of amount necessary to redeem.

Inter-Ocean Reinsurance Co. v. Dickey, 1937, 222 Iowa 995, 270 N.W. 29.

City levying assessments cannot protect itself by tender to holder of tax certificate and receiving assignment after certificate holder receives deed.

Means v. City of Boone, 1932, 214 Iowa 948, 241 N.W. 671.

Tax levying bodies which purchased at tax sale not prohibited from selling and assigning certificate.

O. A. G. 1938, p. 2.

Where city held certificate it had right to assignment of tax sale certificate whether or not territory was in a separate incorporated town.

O. A. G. 1936, p. 165.

Under this section person is actually purchasing tax sale certificate with privilege of later acquiring title by tax deed.

O. A. G. 1936, p. 56.

How unpaid holder of certificates may protect himself when general taxes are due.

O. A. G. 1932, p. 267.

Loss of right to assignment by permitting holder of tax sale certificate to take tax deed.

O. A. G. 1932, p. 265.

**2. Time for assignment.**

Assignment held not premature.

Fleck v. Duro, 1939, 227 Iowa 356, 288 N.W. 426.

**3. Rights of assignees.**

Reliance by assignee on statement of clerical employee of city was at his own peril.

Carleton D. Beh Co. v. City of Des Moines, 1940, 228 Iowa 895, 292 N.W. 69.

Purchaser of improvement certificate could not sue for foreclosure of assessment lien where city followed statutory method of collection.

Hawkeye Life Ins. Co. v. Valley-Des Moines Co. 1935, 220 Iowa 556, 260 N.W. 669, 105 A. L. R. 1018.

Assignee held without greater right than assignor had.

Western Asphalt Paving Corporation v. City of Marshalltown, 1927, 203 Iowa 1324, 214 N.W. 687.

**4. Redemption.**

Holder of assessment certificate—conduct required to protect special assessment lien.

Flanders v. Inter-Ocean Reinsurance Co., 1940, 228 Iowa 926, 292 N.W. 795.

Who is entitled to redeem from tax sale.

O. A. G. 1938, p. 2.

Holder of tax sale certificate to receive amount entitled in case of redemption.

O. A. G. 1930, p. 280.

Holder of assessment certificate of any city or town wherein property is located may redeem from tax sale.

O. A. G. 1928, p. 224.

**5. Amount required to be paid.**

Taxes for which property was sold and all subsequent taxes added to the tax sale.

O. A. G. 1938, p. 266.

This section permits holder of certificate to tender sum due on tax sale and become owner of tax sale certificate.

O. A. G. 1938, p. 2 .

Holder of tax sale certificate at scavenger sale entitled to receive in redemption amount bid for the property, interest and taxes paid.

O. A. G. 1936, p. 341.

Purchaser at tax sale entitled to amount he bid plus interest.

O. A. G. 1936, p. 56.

**6. Liens.**

Tax sale purchaser taking free from lien of special assessment.

O. A. G. 1932, p. 267.

**7. Injunction.**

Court could not enter decree in respect to persons having property rights in special assessments, who were not made parties.

Bennett v. Greenwalt, 1939, 226 Iowa 1113, 286 N.W. 722.

**8. Mandamus.**

Mandamus may issue to compel assignment.

Inter-Ocean Reinsurance Co. v. Dickey, 1937, 222 Iowa 995, 270 N.W. 29.

**9. Evidence.**

Defendant was not permitted to urge the fact that there was no assignment of certificate of sale in action to quiet title to lot acquired by tax deed.

Hall v. Wallace, 1940, 229 Iowa 171, 294 N.W. 283.

Evidence insufficient to warrant finding that city intended for statements of clerical employee to be relied on by assignee.

Carleton D. Beh Co. v. City of Des Moines, 1940, 228 Iowa 895, 292 N.W. 69.

# CHAPTER 395

## PROTECTION FROM FLOODS

395.1 Authorization.
395.2 Condemnation.
395.3 Petition—plat and schedule.
395.4 Resolution of necessity.
395.5 Notice—objections—amendment.
395.6 Bids—contract.
395.7 Notice—sealed proposals.
395.8 Deposit with bid.
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395.13 Appeal—waiver.
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395.15 Notice to railway companies.
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395.17 Construction by city.
395.18 Condemnation—title.
395.19 Streets extended.
395.20 Filling abandoned channel.
395.21 Assessments exceeding one-fourth value.
395.22 Levy for deficiency.
395.23 Certification to county auditor.
395.24 Assessments and levies pledged.
395.25 General obligation bonds—indebtedness—taxes.
395.26 Federal aid.
395.27 Right of way.
395.28 Division of expense.
395.29 Contributions—maintenance assumed.
395.30 Street fund may be used.
395.31 Assessments.
395.32 Levy and collection.
395.33 Contract with railroad company.
395.34 Flood control divisions.

**395.1 Authorization.** Cities and towns are hereby empowered to establish a flood control system for the protection or reclamation of property situated within the limits of such cities or towns, from floods or highwaters and to protect property in such cities from the effects of flood water, whenever the establishment of such a flood control system shall, in the judgment of the city council, or other governing body, of such city, be conducive to public convenience and welfare, and such cities and towns may in accordance with the provisions of this chapter, deepen, widen, straighten, alter, change, divert, or otherwise improve watercourses within their limits, by constructing levees, embankments, or conduits, and improve, widen and establish streets,

alleys and boulevards across and adjacent to the abandoned or new channel or conduit and provide for the payment of the cost and maintenance of such flood control activities under the terms of this chapter.

The establishment, construction and operation of a flood control system as authorized by this section is declared to be a local improvement, conferring special benefits upon property affected thereby. [SS15,§849-a; C24, 27, 31, 35, 39, §6080; C46, 50, 54,§395.1]

Referred to in §395.3 Condemnation and §395.26 Federal aid.

**1. Construction and application.**

Board of supervisors may establish drainage district wholly or partly within town.

Cordes v. Board of Sup'rs of Hamilton County, 1924, 197 Iowa 136, 196 N.W. 997.

**2. Damages, liability of cities.**

Claimant for damages for construction of dam had burden of proof to establish claim.

Wheatley v. City of Fairfield, 1936, 221 Iowa 66, 264 N.W. 906.

Claimant had burden to establish injury and proximate cause.

Whittington v. City of Bedford, 1926, 202 Iowa 442, 210 N.W. 460.

**3. Actions.**

Where recovery not sought on basis of riparian ownership, instructions based thereon are erroneous.

Hoehl v. City of Muscatine, 1881, 57 Iowa 444, 10 N.W. 830.

Fulleam v. City of Muscatine, 1881, 57 Iowa 457, 10 N.W. 837.

**395.2 Condemnation.** Cities and towns may acquire by gift, purchase or condemn, and appropriate, private property, within or without the limits of such cities and towns, including right to cross railroad right of way and property, so as not to impair the previous public use, as may be necessary to carry into effect the provisions of this chapter, and to provide an outlet for the watercourses, either natural or artificial, which may be deepened, widened, straightened, altered, changed, diverted, or otherwise improved under the provisions of this chapter, and the cost of such property shall be included in the cost of the improvement. All provisions of the law relating to the condemnation of lands for public purposes shall apply to the provisions hereof in and so far as applicable. [C27, 31, 35,§6080-b1; C39,§6080.1; C46, 50, 54, §395.2]

Referred to in §395.26 Federal aid.

**395.3 Petition—plat and schedule.** Upon the filing of a petition requesting the exercise of the powers mentioned in section 395.1, signed by one hundred resident taxpayers of the city or town, the council may, or on its own motion it may, direct the city engineer or other competent person to make necessary surveys, to prepare plans and specifications for doing the work, to furnish the council with an estimate of the cost, including an estimate of the damages to property, if any, and a map or plat showing the boundaries of the district which will be specially benefited by such improvement, and all property which will, in any way, be specially benefited by such improvement may be included within the boundaries of the district, a schedule showing, as nearly as may be, the ownership and value of each lot or parcel of land or other property therein as shown by the last assessment roll, and an estimate of the benefit to each lot or parcel of land and to any railway or street railway within such improvement district. The plans, specifications, estimates, maps, plats, and schedule so prepared shall be filed with the clerk. [S13,§849-b; C24, 27, 31, 35, 39,§6081; C46, 50, 54,§395.3]

**395.4 Resolution of necessity.** If the council upon receiving the said plans, specifications, estimates, maps, plats, and schedules, shall approve, or modify and approve, the same, it shall in a proposed resolution, of which the plat and schedule is made a part by reference, declare the necessity and advisability of such improvement, describing the same in general terms, stating the estimated cost thereof, and fixing the boundaries of the territory or district specially benefited. [S13,§849-c; C24, 27, 31, 35, 39,§6082; C46, 50, 54,§395.4]

**1. Construction and application.**

Ordering of improvement as provided by statute is condition precedent to right to condemn.

O. A. G. 1925-26, p. 245.

**395.5 Notice—objections—amendment.** The council shall cause fourteen days notice of the time when said resolution will be considered for passage to be given by two publications in some newspaper of general circulation published in the city, the last of which shall be not less than two nor more than four weeks prior to the time fixed for its consideration, at which time the owners of the property affected by such improvement may appear and make objections in writing to the contemplated improvement, to the assessment district, or to their assessments, as shown by the plat and schedule, or to the passage of such proposed resolution, at which hearing the district or the assessments may be changed, and the resolution be amended and passed, or passed as proposed. [S13,§849-c; C24, 27, 31, 35, 39,§6083; C46, 50, 54,§395.5]

**395.6 Bids—contract.** When the making of any such improvement is ordered, the council shall advertise for bids and may enter into a contract or contracts for furnishing the labor and materials for doing the work. [S13,§849-d; C24, 27, 31, 35, 39,§6084; C46, 50, 54,§395.6]

**395.7 Notice—sealed proposals.** All contracts for such improvement shall be let in the name of the city to the lowest bidder, by sealed proposals, upon giving notice for at least ten days by two publications in a newspaper published in said city, which notice shall state as nearly as practicable the extent of the work, the one or more kinds of material for which bids will be received, when the work shall be done, the terms of payment, and whether a maintenance fund shall be required, and the time the proposals will be received and acted upon. All bids may be rejected and new bids invited. [S13,§849-d; C24, 27, 31, 35, 39,§6085; C46, 50, 54,§395.7]

**395.8 Deposit with bid.** All bids must be accompanied, in a separate envelope, with a certified check payable to the order of the city treasurer, in the sum named in the notice for bids, as security that the bidder will, if his bid is accepted, enter into a contract for the doing of the work, and will give bond as required by this chapter. All such checks, where the bid has not been accepted, shall be returned to the respective bidders. [S13,§849-d; C24, 27, 31, 35, 39,§6086; C46, 50, 54,§395.8]

**395.9 Bond to maintain.** All contracts for making such improvement may contain a provision obligating the contractor and his bondsmen to keep the improvement in good repair for one year after the acceptance of the same by the city, and bond shall be so conditioned as to conform to such provision. [S13,§849-d; C24, 27, 31, 35, 39,§6087; C46, 50, 54, §395.9]

**395.10 Bond to perform.** Each contractor for such improvement, or part thereof, shall give bond to the city, with sureties to be approved by the council, for the faithful performance of the contract, and suit on such bond may be brought in the county in which the council holds its sessions. [S13,§849-d; C24, 27, 31, 35, 39,§6088; C46, 50, 54,§395.10]

**395.11 Assessment.** When the work is contracted for, the council shall assess the lands and other property included within the improvement district for such part of the cost of the improvement as shall be equal and in proportion to the benefit conferred by the improvement, but not in excess of twenty-five percent of the value of said lands and other property after the improvement shall have been made. [S13,§849-e; C24, 27, 31, 35, 39,§6089; C46, 50, 54,§395.11]

Similar provision, §391.48 Assessment—rate.

**395.12 Statutes governing.** The levy of the assessment, the filing of the certificate of assessment, the payment of interest on installments, the payment of the installments of assessment, and the sale of property for unpaid assessments shall all be in conformity with sections 391.34 to 391.37, inclusive, and 391.57 to 391.67, inclusive. [S13,§849-e; C24, 27, 31, 35, 39,§6090; C46, 50, 54,§395.12]

**395.13 Appeal—waiver.** Any person aggrieved by the action of the council in making any of the assessments herein provided for, may appeal therefrom to the district court of the county in which it is made, within twenty days of the date of the assessment, and have the right to review the action of the council in the said court, in the manner now provided by law. [C24, 27, 31, 35, 39,§0691; C46, 50, 54,§395.13]

**395.14 Objections waived.** All objections to errors, irregularities, or inequalities in the making of said special assessments, or in any of the prior proceedings or notices not made before the council at the time and in the manner herein provided, shall be waived. [C24, 27, 31, 35, 39,§6092; C46, 50, 54,§395.14]

Similar provisions, §§389.32 Objections 391.19 Additional contents, 391.56 Objections waived.

**395.15 Notice to railway companies.** If the improvement contracted for is to cross the right of way of a railroad or street railway company, the city clerk shall cause to be served upon such company, in the manner for the service of original notices, a notice in writing stating the nature of the improvement, the place where it will cross the right of way of such company, and full requirements for its complete construction across such right of way as shown by the plans, specifications, maps, and plats of the engineer, and directing such company to construct, within a time fixed by the city council, not exceeding six months from the date of the service of the notice, in such manner as not to interfere with the construction of the diverted channel, and in such manner as not to obstruct, impede, or interfere with the free flow of water, the necessary bridge, or bridges, where the diverted channel crosses the right of way. [C24, 27, 31, 35, 39,§6093; C46, 50, 54,§395.15]

**395.16 Duty to construct.** Upon receiving such notice it shall be the duty of such railroad or street railway company, to provide the necessary temporary structure to carry its tracks during the constructing of the channel, and to construct the necessary permanent bridge, or bridges, within the time specified in said notice. [C24, 27, 31, 35, 39,§6094; C46, 50, 54,§395.16]

**1. Construction and application.**
Railroad must build bridges rendered necessary by the improvement.
O. A. G. 1925-26, p. 245.

**2. Liability.**
Street railroad liable for damages from the replacement of bridge regardless of city's liability.
Hoppes v. Des Moines City Ry. Co., 1910, 147 Iowa 580, 126 N.W. 783.

**3. Actions.**
Whether damage due to unprecedented rainfall or insufficient tiles is question for jury.
Hoppes v. Des Moines City Ry. Co., 1910, 147 Iowa 580, 126 N.W. 783.

**395.17 Construction by city.** If such company shall fail, neglect, or refuse to comply with the notice within the time fixed, the temporary structure may be provided, and the bridge, or bridges, may be built, under the supervision of the engineer in charge of the channel improvement, and such railroad or street railway company, shall be liable for the cost of the construction of such structures, in addition to its liability for assessment for special benefits as other property is assessed, and the cost of such structures may be collected by the city from the company in any court having jurisdiction. [C24, 27, 31, 35, 39,§6095; C46, 50, 54,§395.17]

**395.18 Condemnation—title.** The title to all lands purchased, condemned or donated hereunder for the purposes of establishing a flood control system for the protection or reclamation of property shall be taken in the name of the city or town and if thereafter it shall be deemed advisable to sell any portion of the land purchased, condemned or otherwise acquired, the proceeds of such sale shall be placed to the credit of the flood control system and shall be applied to the cost of construction and operation of the system. Any income from any such lands, while title is held by the city or town shall be placed to the credit of the flood control system and shall be applied to the cost of the construction and operation of the system. [S13,§849-g; C24, 27, 31, 35, 39,§6096; C46, 50, 54,§395.18]
Condemnation, ch 472.

**1. Construction and application.**
Ordering of improvement as provided by statute is condition precedent to right to condemn.
O. A. G. 1925-26, p. 245.

**2. Damages.**
Damages must be paid before possession taken.
O. A. G. 1925-26, p. 245.

**395.19 Streets extended.** A street or alley intersecting the stream or old channel may be projected across it so as to make a continuous street or alley, and the expense of filling all such streets or alleys shall be included in and paid as a part of the costs of such improvements. [S13,§849-f; C24, 27, 31, 35, 39,§6097; C46, 50, 54,§395.19]

**395.20 Filling abandoned channel.** There may be included as a part of the improvement the work of filling the old channel at other places than at the intersection of the same by a street or alley and, if included, the city engineer shall be required to furnish plans and specifications, estimates, plats, and schedules, and the ownership and value of each lot or parcel of land in the old channel; and when the improvement is completed, the council shall assess the cost of such filling against the lots and land or parts of lots or land in the channel wholly or partly filled. [C24, 27, 31, 35, 39,§6098; C46, 50, 54,§395.20]

**395.21 Assessments exceeding one-fourth value.** The limitation in section 391.48, relative to twenty-five percent of the value, shall not be applicable in the assessment of the cost of said work of filling, provided, however, that such cost shall not exceed the benefits conferred on the tract so filled. [C24, 27, 31, 35, 39,§6099; C46, 50, 54,§395.21]

**395.22 Levy for deficiency.** After the contract or contracts for making such improvement have been entered into, the council shall ascertain the cost of the work, including the cost of property purchased or condemned and appropriated, and the cost of filling the old channel as ordered by the council, and the cost of surveys, plans and specifications, estimates, notices, inspection, and supervision, and the preparing of plats and schedules of assessments, and shall thereupon by resolution levy the whole of the said cost remaining, after deducting the amount of the special assessments for benefits conferred upon the lands and other property within the improvement district, at one time as a special tax. Such tax shall be levied upon all the taxable property of the city except moneys and credits, and the levy shall not exceed in the aggregate one and one-fourth mills* per year for all improvements made. [S13,§849-e; C24, 27, 31, 35, 39, §6100; C46, 50, 54,§395.22]

Referred to in §395.34 Flood control divisions and §404.8(5) Public safety fund.

*Alternate levy, see §404.8(5) Public safety fund.

**395.23 Certification to county auditor.** A certificate of such levies and of the special assessments for benefits conferred upon lands and property within the improvement district shall then be filed by the clerk with the auditor of the county or counties in which the city is located, and there-

upon such taxes and assessments shall be placed upon the tax lists. [S13,§849-e; C24, 27, 31, 35, 39,§6101; C46, 50, 54, §395.23]

**395.24 Assessments and levies pledged.** The entire cost of constructing any improvement authorized by this chapter, and any bonds or certificates issued in anticipation thereof, shall be paid out of the special taxes and special assessments authorized by this chapter; and no part of said cost, and no part of any such bonds or certificates, shall ever be a charge upon or paid out of any other fund or the proceeds of any other assessment, tax, or levy. [S13,§849-i; C24, 27, 31, 35, 39,§6102; C46, 50, 54,§395.24]

**395.25 General obligation bonds — indebtedness — taxes.** Cities and towns are hereby authorized to contract indebtedness and to issue general obligation bonds to provide funds for the payment of the cost of improvements contemplated by this chapter by following either of the following procedures:

Proceedings for the issuance of said bonds may be initiated by the governing body of the municipality without an election pursuant to notice and hearing as prescribed by section 23.12 or the governing body of the municipality may call a special election to vote upon the proposition of issuing said bonds or may submit the proposition as a special question at a regular municipal election. Notice of such election shall be given in the manner prescribed in section 37.4 and if the vote at said election in favor of the issuance of such bonds is equal to at least sixty percent of the total vote cast for and against the proposition at said election, the governing body of the municipality shall issue the bonds and make provisions for the payment thereof as hereinafter provided.

Taxes for the payment of said bonds shall be levied in accordance with chapter 76 and said bonds shall be payable through the debt service fund in not more than twenty years, and bear interest at a rate not exceeding five percent per annum, and shall be of such form as the city or town council shall by resolution provide, but no city or town shall become so indebted in an amount which, together with all other indebtedness of said municipality, shall exceed five percent of the actual value of the taxable property within said city or town as shown by the last state and county tax lists previous to incurring such indebtedness. The indebtedness incurred for the purpose herein provided shall not be considered an indebtedness incurred for general or ordinary purposes within the meaning and application of section 407.1 and shall not be charged against or counted as part of the one and one-fourth percent available for general or ordi-

nary purposes until the other three and three-fourths percent of the five percent of indebtedness permitted by statute has been exhausted.

This section shall be construed as granting additional power without limiting the power already existing in cities and towns.

The provisions of this section shall be applicable to all municipal corporations regardless of form of government or manner of incorporation. [S13,§849-j; C24, 27, 31, 35, 39,§6103; C46, 50, 54,§395.25; 54GA, ch 165,§69; 55GA, ch 187,§1; C54, §395.25]

Referred to in §395.34 Flood control divisions.
Maturity and payment, ch 76.

**395.26 Federal aid.** Cities and towns may in accordance with the provisions of this chapter accept federal aid in the doing of the acts provided in section 395.1, and may assume such portion of the cost thereof not discharged by such federal aid. They shall have power of condemnation as provided in section 395.2 [C50, 54,§395.26]

Referred to in §395.28 Division of expense.

**395.27 Right of way.** The cost of all right of way acquired by purchase or condemnation may be borne by the city or town together with any other property rights which may be required in furtherance of such projects and the work of actual construction and the cost thereof may be borne by the federal government. [C50, 54,§395.27]

Referred to in §395.28 Division of expense.

**395.28 Division of expense.** Sections 395.26 to 395.30, inclusive, contemplate that the actual direction of the project and the doing of the work in connection therewith is assumed by the federal government and that the city or town provides and assumes the cost of necessary right of way over and above such contributions in that regard as the federal government may choose to make. Under such limitation all appropriate portions of this chapter shall apply. [C50, 54,§395.28]

**395.29 Contributions—maintenance assumed.** Cities and towns in furtherance of such flood control projects may accept contributions to enable them to pay for necessary right of way. They may also enter into agreement with the federal government to maintain levees, dikes or other construction and to do all other acts required by the federal government in maintaining the work of construction when completed. [C50, 54,§395.29]

Referred to in §395.28 Division of expense.

**395.30 Street fund may be used.** The council shall have power to allocate a portion of the street fund for the pur-

chase of right of way or the maintenance of the completed flood control project. [C50,§395.30; 54GA, ch 159,§77; C54, §395.30]

Referred to in §395.28 Division of expense.

**395.31 Assessments.** Any city or town that shall establish a flood control system pursuant to this chapter may for the purpose of providing funds for the operation and maintenance thereof levy an annual special assessment against all real property in the area comprising the improvement district. Such special assessment shall be apportioned among the several lots or parcels of real property in the benefited area, in proportion to the benefit conferred. Such special assessment for the operation and maintenance of any flood control system authorized by this chapter shall be made in the same limitations as required by this chapter for the original special assessment for any such improvement. [C50, 54,§395.31]

**395.32 Levy and collection.** All special assessments for the purpose of providing funds for the operation and maintenance of a flood control system shall be levied at one time by resolution of the council on property affected thereby. The provisions of section 391.61, shall apply to the certification of such levy. The provisions of sections 391.58, 391.60, and 391.62 to 391.68, inclusive, shall apply to the collection of such assessments, provided, in the case of special assessments for maintenance and operation of any flood control system, such assessments shall be due and payable within thirty days after the certification of such levy if the amount of the assessment is ten dollars or less, and the entire amount of such assessments if in excess of ten dollars shall be due and payable at the same time and in the same manner as the March semiannual payment of ordinary taxes. The provisions of sections 404.19* and 404.21* shall apply to special assessments as provided by this section. [C50, 54, §395.32)

*Sections 404.22 and 404.23, Code 1950, repealed by 54 GA, ch 159 and §§404.19 and 404.21 enacted in lieu thereof.

**395.33 Contract with railroad company.** Any city or town may contract with any railroad company for the use of railway rights of way, and embankments, and other railroad property which can be utilized for the purpose of flood protection or control by such city, as part of its flood control system, for any period not exceeding ninety-nine years. [C50, 54,§395.33]

**395.34 Flood control divisions.** Whenever in any municipal corporation proceedings have been or shall be begun for the purpose of providing flood protection under the provisions of this chapter, the council shall have power to

divide the work into parts, sections, or districts, and determine what property would be benefited by the work or improvement in each part, section, or district; to omit parts of said work or any part, section, or district; and to contract for any part, section, or district separately and proceed therewith the same as if the entire work or improvement was contracted for, done, or made. Whenever the tax provided for in section 395.22 has not been levied beginning on the date fixed in the resolution of necessity and in the proposition submitted to a vote of the electors, and a part of the period in which such levy is authorized to be made by such vote has expired without such levy having been made, and no certificates or bonds have been issued or sold for the payment of the improvement as provided in this chapter, the council shall have the power to continue the levy provided for in section 395.22 and in the proposition theretofore submitted to a vote of the electors, for a period not exceeding twenty years, including the several years, if any, for which such tax has heretofore been levied. [S13,§1056-a41; C24, 27, 31, 39,§6574; C46, 50,§416.99; 54GA, ch 151,§37; 55GA, ch 187,§2; **C54,§395.34]**

# CHAPTER 420

## CITIES UNDER SPECIAL CHARTER

420.1-420.154 Omitted.

RIVER-FRONT AND LEVEE IMPROVEMENTS

420.155 Water-front improvement—fund.
420.156 Condemning river-front land.
420.157 Bonds.
420.158 Form of bonds.
420.159 Repealed by 54 GA, ch 165,§4.
420.160 Levee improvement commission.
420.161 Qualifications—compensation—term.
420.162 Bond.
420.163 Powers and duties.
429.164 Management, sale, or lease of land.
420.165 Grants of state lands—erection of structures.
420.166 Ferries.
420.167 Treasurer.
420.168-420.304 Omitted.

**420.155 Water-front improvement—fund.** Any city acting under special charter, which is bounded in part or divided by a river, may improve said water front by constructing retaining walls, filling, grading, paving, macadamizing, or riprapping the same and may improve and beautify its water front and the river bank and nearby uplands and made and reclaimed lands in such city; and to pay for such improvements the council of such city is empowered to levy a tax of not exceeding one-fourth mill on the dollar per annum on the taxable property thereof, the same when collected to be known as the levee improvement fund. The proceeds of such fund shall be used exclusively for said purposes. [S13,§1056-a6a, C24, 27, 31, 35, 39,§6823; C24, 50, 54,§420.155]

Referred to in §420.156 Condemning river-front land.

**1. Validity of related or prior laws.**

Authority to city of Des Moines to improve river not repugnant to 14th Amendment to Constitution.

Board of Park Com'rs. of City of Des Moines v. Diamond Ice Co., 1905, 130 Iowa 603, 105 N.W. 203, 3 L.R.A.N.S. 1103, 8 Ann. Cas. 28.

**2. Construction and application.**

Board of conservation has authority over islands in Des Moines River inside corporate limits.

O. A. G. 1930, p. 300.

**420.156 Condemning river-front land.** Any city acting under special charter shall have power to acquire, by purchase or gift, and to condemn, enter upon, and take in the manner provided by law for the taking of private property

for public use, lands and interests therein, which lands lie along or near any river dividing, or in part bounding, such city, for the purpose of regularizing or rectifying the boundaries of other lands to which such city may have, or may acquire, title, which other lands lie along or near such river or on the banks or in the bed thereof, or for the purpose of making more advantageous use of any such other lands or for the purpose of exercising any power granted by section 420.155 and further shall have power so to acquire and condemn, enter upon and take, for any of the purposes aforesaid, all riparian rights incident to ownership of any lands which lie along or near any such river and thus to bar such rights in respect to any other lands to which such city may have, or may acquire, title. Payment for any lands, interests, or rights acquired or condemned hereunder may be made out of the levee improvement fund of such city. [C39,§6823.1; C46, 50, 54,§420.156]

Eminent domain, ch 472.

**1. Judicial notice.**

Judicial notice proper that eminent domain may be used in making improvements.

Hutchins v. Hanna, 1917, 179 Iowa 912, 162 N.W. 225.

**420.157 Bonds.** In the event that the proceeds of such tax in any one year shall be insufficient to pay for the improvements of that year, or if the city council shall deem best to extend the payment over a number of years, then upon a majority vote of said council approving the same, said cities may borrow the money to make such improvements and issue the negotiable interest-bearing bonds of said city to evidence said debt; provided that the total bond that may be issued under this chapter by any one city shall not exceed one percent of the assessed value of said city. [S13,§1056-a6b; C24, 27, 31, 35, 39,§6824; C46, 50, 54,§420.157]

**420.158 Form of bonds.** Said bonds shall be in amounts provided in, and conform in substance to, the requirements of section 408.2. [S13,§1056-a6c; C24, 27, 31, 35, 39,§6825; C46, 50, 54,§420.158]

**420.159** Repealed by 54GA, ch 165,§4. See ch 372.

**420.160 Levee improvement commission.** Any city acting under special charter may establish a levee improvement commission to consist of the mayor, who shall be its chairman, and not more than four other persons to be appointed by the mayor with the approval of the city council. [S13, §1056-a6b; C24, 27, 35, 39,§6827; C46, 50, 54,§420.160]

**420.161 Qualifications — compensation — term.** The appointive members shall be residents and qualified electors of the city, and shall hold no other official position in the

city, and no member shall receive any salary for his services as a member of such commission. Their term of office shall be fixed by ordinance and shall not exceed six years. [S13, §1056-a6d; C24, 27, 31, 35, 39,§6828; C24, 50, 54,§420.161]

**420.162 Bond.** Before entering upon their office the appointive members shall each execute a bond in favor of the city in the penal sum of two thousand dollars, with approved fidelity company surety, for the faithful performance of their duties. The expense of this bond shall be paid out of the levee improvement fund. [S13,§1056-a6d; C24, 27, 31, 35, 39, §6829; C46, 50, 54,§420.162]

**420.163 Powers and duties.** The levee improvement commission shall have full charge and supervision of all improvements of the water front along any river within the corporate limits of the city. It shall have exclusive charge and control of the levee improvement fund and of all moneys derived from the sale of bonds issued by the city council for the purpose of carrying on the work of making waterfront improvements. It shall pay out of these funds only for the purposes named. [S13,§1056-a6e; C24, 27, 31, 35, 39, §6830; C46, 50, 54,§420.163]

**420.164 Management, sale, or lease of land.** Any such city which has established, or may establish, a levee improvement commission may, by ordinance, authorize said commission to manage all, or any part, of the lands owned by such city which lie along or near any such river or on the banks or in the bed thereof. If, at any time, in the judgment of said commission, any parts or parcels of the lands under its management may not advantageously be put to public use, said commission may lease the same upon such terms and conditions as it may deem to be in the public interest. If in the judgment of said commission, any parts or parcels of the lands under its management may, at any time, be sold with greater public advantage than would result from retaining the same for public use, it may certify its recommendations for disposition thereof to the city council of any such city, and such parts or parcels may thereafter be disposed of, sold and conveyed by the city by a three-fourths vote of all members of the council thereof. All moneys realized out of the lease or sale of any lands hereunder shall be paid into the levee improvement fund of such city. [C39,§6830.1; C46, 50, 54,§420.164]

**420.165 Grants of state lands—erection of structures.** With respect to any lands title to which has been or may be granted by the state to any municipal corporation of the state, acting under special charter, sections 477.3 and 477.4 shall not, after the occurrence of such grant, continue to apply, excepting only that permanent structures erected

prior to such grant under authority of said section 477.3 may continue to be used, occupied, and maintained thereunder, and excepting further only that such lands may continue to be used and occupied thereunder, to the extent only that use and occupancy of such lands shall be necessary to the use and occupancy of such structures for like purposes and in like manner as before such grant; provided that nothing herein contained shall be deemed to affect riparian rights at common law. [C46, 50, 54,§420.165]

**420.166 Ferries.** In cities under special charter which have established levee improvement commissions, all of the powers enumerated in section 368.27 in regard to ferries shall be exercised by the levee improvement commission and in addition thereto in such cities the levee improvement commission shall have the exclusive power to prescribe the character, design, and type of construction of any ferry dock or landing had or used by any ferry running to or from any landing place which is on the water front along any river within the corporate limits of said city; to prescribe the amount of license to be paid by any such ferry for the privilege of having or using any such landing place; to prescribe the terms and conditions under which any such ferry may have the right to run to and from any such landing place; to prescribe the time during which any such ferry shall operate; and to make any other reasonable provisions regarding the operation of such ferry. [C24, 27, 31, 35, 39, §6831; C46, 50,§420.166; 55GA, ch 202,§1; C54,§420.166]

**1. Special laws or charters.**

City may grant license to operate ferry.

Fanning v. Gregoire, 1853, 57 U.S. 524, 16 How. 524, 14 L.Ed. 1043.

General assembly may grant power to operate ferry.

Phillips v. Town of Bloomington, 1848, 1 G. Greene 498.

**2. Federal laws and grants.**

Appropriated landing "for public uses" may be made terminus of ferry.

U. S. ex rel. Jones v. Fanning, 1844, Morris, 348.

**420.167 Treasurer.** The city treasurer shall be the treasurer of the levee improvement commission. He shall keep the levee improvement funds and the moneys derived from the sale of bonds for water-front improvements in a separate and distinct fund from which he shall pay no money except upon the order of the levee improvement commission signed by its chairman and secretary, and countersigned by at least one other member of said levee improvement commission. [S13,§1056-a6e; C24, 27, 31, 35, 39,§6832; C46, 50, 54,§420.167]

# CHAPTER 427

## PROPERTY EXEMPT AND TAXABLE

427.1 Exemptions.
427.2 Roads and drainage rights of way.
427.3-427.15 Omitted.

**427.1 Exemptions.** The following classes of property shall not be taxed:

1. Federal and state property. The property of the United States and this state, including university, agricultural college, and school lands. The exemption herein provided shall not include any real property subject to taxation under any federal statute applicable thereto, but such exemption shall extend to and include all machinery and equipment owned exclusively by the United States or any corporate agency or instrumentality thereof without regard to the manner of the affixation of such machinery and equipment to the land or building upon or in which such property is located, until such time as the congress of the United States shall expressly authorize the taxation of such machinery and equipment.

Federal-owned lands, §1.4 et seq.
Prior assessments by the federal government legalized, see 50 GA, ch 210,§3.

2. Municipal and military property. The property of a county, township, city, town, school district or military company of the state of Iowa, when devoted to public use and not held for pecuniary profit.

3. Public grounds and cemeteries. Public grounds, including all places for the burial of the dead; and crematoriums with the land, not exceeding one acre, on which they are built and appurtenant thereto, so long as no dividends or profits are derived therefrom.

4. Fire equipment and grounds. Fire engines and all implements for extinguishing fires, and the publicly owned buildings and grounds used exclusively for keeping them and for meetings of fire companies.

5. Public securities. Bonds or certificates issued by any municipality, school district, drainage or levee district, riverfront improvement commission or county within the state of Iowa. No deduction from the assessment of the shares of stock of any bank or trust company shall be permitted because such bank or trust company holds such bonds as are exempted above.

6. Property of associations of war veterans. The property of any organization composed wholly of veterans of any war, when such property is devoted entirely to its own use and not held for pecuniary profit.

Referred to in subsection 23 Statement of objects and uses filed.

7. Property of cemetery associations. All grounds and buildings used by cemetery associations and societies for cemetery purposes.

8. Libraries and art galleries. All grounds and buildings used for public libraries, public art galleries, and libraries and art galleries owned and kept by private individuals, associations, or corporations, for public use and not for private profit.

9. Property of religious, literary, and charitable societies. All grounds and buildings used by literary, scientific, charitable, benevolent, agricultural, and religious institutions and societies solely for their appropriate objects, not exceeding three hundred twenty acres in extent and not leased or otherwise used with a view to pecuniary profit. All deeds or leases by which such property is held shall be filed for record before the property herein described shall be omitted from the assessment.

Referred to in subsection 23 Statement of objects and uses filed.

10. Personal property of institutions and students. Moneys and credits belonging exclusively to the institutions named in subsections 7, 8, and 9 and devoted solely to sustaining them, but not exceeding in amount or income the amount prescribed by their charters or articles of incorporation; and the books, papers, pictures, works of art, apparatus, and other personal property belonging to such institutions and used solely for the purposes contemplated in said subsections and the like property of students in such institutions used for their education.

11. Property of educational institutions. Real estate owned by any educational institution of this state as a part of its endowment fund, to the extent of one hundred sixty acres in any civil township. Every educational institution claiming an exemption under the provisions of this subsection shall file with the assessor not later than February 1 of the year for which such exemption is requested, a statement upon forms to be prescribed by the state tax commission, describing and locating the property upon which such exemption is claimed.

12. Homes for soldiers. The buildings, grounds, furniture, and household equipment of homes owned and operated by organizations of soldiers, sailors, or marines of any of the wars of the United States when used for a home for disabled soldiers, sailors, or marines and not operated for pecuniary profit.

13. Agricultural produce. Growing agricultural and horticultural crops and products, except commercial orchards and vineyards, and all horticultural and agricultural produce harvested by or for the person assessed within one year previous to the listing, all wool shorn from his sheep

within such time, all poultry, ten stands of bees, honey and beeswax produced during that time and remaining in the possession of the producer, all swine and sheep under nine months of age, and all other domestic animals under one year of age. As amended Acts 1955 (56 GA) ch 217,§1.

14. Rent. Obligations for rent not yet due and owned by the original payee.

15. Private libraries. Private or professional libraries to the taxable value of three hundred dollars.

16. Family equipment. Family pictures; household furniture to the taxable value of three hundred dollars, and kitchen furniture; beds and bedding requisite for each family; all wearing apparel in actual use; all food provided for the family.

The exemptions allowed in this subsection shall not apply to hotels and boarding houses, except so far as the exempted classes of property shall be for the actual use of the family managing the same.

17. Farm equipment—drays—tools. The farming utensils of any person who makes his livelihood by farming, the team, wagon, and harness of the teamster or drayman who makes his living by their use in hauling for others, and the tools of any mechanic, not in any case to exceed three hundred dollars in taxable value.

18. Government lands. Government lands entered and located, or lands purchased from this state, for the year in which the entry, location, or purchase is made.

19. Fraternal beneficiary funds. The accumulations and funds held or possessed by fraternal beneficiary associations for the purposes of paying the benefits contemplated by section 512.2, or for the payment of the expenses of such associations.

20. Capital stock of companies. The shares of capital stock of telegraph and telephone companies, freight line and equipment companies, transmission line companies as defined in section 437.1, express companies, corporations engaged in merchandising as defined in section 428.16, domestic corporations engaged in manufacturing as defined in section 428.20, and manufacturing corporations organized under the laws of other states having their main operating offices and principal factories in the state of Iowa, and corporations not organized for pecuniary profit.

Referred to in §§433.4 Assessment, 433.12 "Company" defined, and 437.1 "Company" defined.

21. Public airports. Any lands, the use of which (without charge by or compensation to the holder of the legal title thereto) has been granted to and accepted by the state or any political subdivision thereof for airport or aircraft landing area purposes.

22. Grain. Grain handled, as defined under section 428.35.

23. Statement of objects and uses filed. Every society or organization claiming an exemption under the provisions of either subsection 6 or subsection 9 of this section shall file with the assessor not later than February 1 of the year for which such exemption is requested, a statement upon forms to be prescribed by state tax commission, describing the nature of the property upon which such exemption is claimed and setting out in detail any uses and income from such property derived from such rentals, leases or other uses of such property not solely for the appropriate objects of such society or organization. The assessor, in arriving at the valuation of any property of such society or organization, shall take into consideration any uses of the property not for the appropriate objects of the organization and shall assess in the same manner as other property, all or any portion of the property involved which is leased, let or rented and is used regularly for commercial purposes for a profit to any party or individual. In any case where a portion of the property is used regularly for commercial purposes no exemption shall be allowed upon property so used and the exemption granted shall be in the proportion of the value of the property used solely for the appropriate objects of the organization, to the entire value of the property. No exemption shall be granted upon any property upon or in which persistent violations of the laws of the state of Iowa are permitted. Every claimant of an exemption shall, under oath, declare that no such violations will be knowingly permitted or have been permitted on or after January 1 of the year for which a tax exemption is requested. Claims for such exemption shall be verified under oath by the president of other responsible heads of the organization.

24. Delayed claims. In any case where no such claim for exemption has been made to the assessor prior to the time his books are completed, such claims may be filed with the local board of review or with the county auditor not later than July 1 of the year for which such exemption from taxation is claimed, and a proper assessment shall be made either by the board of review or by the county auditor, if said property is all or in part subject to taxation.

25. Mandatory denial. No exemption shall be granted upon any property which is the location of a federal retail liquor sales permit or in which federally licensed devices not lawfully permitted to operate under the laws of the state of Iowa are located.

26. Revoking exemption. Any taxpayer or any taxing district may make application to the state tax commission for revocation for any exemption, based upon alleged violations of the provisions of this chapter. The tax commission shall also have power on its own motion to set aside any exemp-

tion which has been granted upon property for which exemption is claimed under this chapter. The tax commission shall give notice by registered mail to the societies or organizations claiming an exemption upon property, exemption of which is questioned before or by the state tax commission, and any order made by the state tax commission revoking or modifying such exemption shall be subject to appeal to the district court having jurisdiction in the county in which such property is located, such appeal to be triable in equity, and to be made within twenty days after any order revoking such exemption is made by the state tax commission.

27. Tax provisions for armed forces. If any person enters any branch of the armed service of the United States in time of national emergency, all personal property used in making his livelihood, in excess of three hundred dollars in value, of such person shall be assessed but no tax shall be due if such person upon return from service, or in event of his death if his executor, administrator or next of kin, executes an affidavit to the county assessor that such property was not used in any manner during his absence, the tax as assessed thereon shall be waived and no payment shall be required.

1. [C51,§455; R60,§711; C73,§797; C97,§1304; SS15,§1304; C24, 27, 31, 35, 39,§6944; C46, 50, 54,§427.1]
2. [C51,§455; R60,§711; C73,§797; C97,§1304; SS15,§1304; C24, 27, 31, 35, 39,§6944; C46, 50, 54,§427.1]
3, 4. [C51,§455; R60,§711; C73,§797; C97,§1304; SS15, §1304; C24, 27, 31, 35, 39,§6944; C46, 50, 54,§427.1]
5. [SS15,§1304; C24, 27, 31, 35, 39,§6944; C46, 50, 54, §427.1]
6. [C24, 27, 31, 35, 39,§6944; C46, 50, 54,§427.1]
7, 8, 9, 10. [C51,§455; R60,§711; C73,§797; C97,§1304; SS15,§1304; C24, 27, 31, 35, 39,§6944; C46, 50, 54, §427.1]
11. [C97,§1304; SS15,§1304; C24, 27, 31, 35, 39,§6944; C46, 50, 54,§427.1]
12. [C24, 27, 31, 35, 39,§6944; C46, 50, 54,§427.1]
13. [C51,§455; R60,§711; C73,§797; C97,§1304; SS15,§1304; C24, 27, 31, 35, 39,§6944; C46, 50, 54,§427.1, Amended Acts 1955 (56 GA) ch 217,§1]
14. [C97,§1304; SS15,§1304; C24, 27, 31, 35, 39,§6944; C46, 50, 54,§427.1]
15, 16. [C97,§1304; SS15,§1304; C24, 27, 31, 35, 39,§6944; C46, 50, 54,§427.1]
17. [C51,§455; R60,§711; C73,§797; C97,§1304; SS15,§1304; C24 27, 31, 35, 39,§6944; C46, 50, 54,§427.1]
18. [R60,§711; C73,§6797; C97,§1304; SS15,§1304; C24, 27, 31, 35, 39,§6944; C46, 50, 54,§427.1]

19. [SS15,§1304; C24, 27, 31, 35, 39,§6944; C46, 50, 54, §427.1]
20. [C51,§§468, 469; R60,§§723, 724; C73,§§815, 816; C97, §§1318, 1319, 1323; S13,§§1330-g, 1342-g, 1346-g; SS15, §1346-s; C24, 27, 31, 35, 39,§6944; C46, 50,§427.1; 54 GA, ch 168.§1, C54,§427.1]
21. [C35, 39,§6944; C46, 50, 54,§427.1]
22. [C50, 54,§427.1]
23. [C50, 54,§427.1]
24. [C50, 54,§427.1]
25. [C50, 54,§427.1]
26. [C50, 54,§427.1]
27. [54 GA, ch 170, §1, C54,§427.1]

Referred to in §420.207 Taxation in general.
Subsection 21 of §427.1, C46, repealed by 52 GA, ch 238,§2.
Church property leased, §565.2.
U. S. Property assessments, 50 GA, ch 210,§3.

**12. Public securities.**

Bonds issued by housing agencies subject to ad valorem tax.
O. A. G. 1951, p. 50.

Fact that sections rearranged does not change meaning of sections.
Hale v. Iowa State Board of Assessment and Review, 1937, 58 S.Ct. 102, 302 U.S. 95, 82 L.Ed, 72.

Provision exempting bonds from taxation does not exempt interest from taxation.
Hale v. Iowa State Board of Assessment and Review, 1937, 223 Iowa 321, 271 N.W. 168, affirmed 58 S.Ct. 102, 302 U.S. 95, 82 L.Ed. 72.

Amount paid for U.S. bonds from assets of savings bank should be deducted from its taxable assets.
Ottumwa Sav. Bank v. City of Ottumwa, 1895, 95 Iowa 176, 63 N.W. 672.

Interest from municipal and county bonds should be included as gross income to determine business tax due.
O. A. G. 1936, p. 362.

"Certificate" relating to exemption from taxation refers to certificates of indebtedness similar to bonds or warrants.
O. A. G. 1936, p. 114.

Drainage warrants, school warrants and tax sale certificates are taxable.
O. A. G. 1925-26, p. 493.

Banks and trust companies are entitled to deduction for U.S. obligations held more than 60 days prior to assessment.
O. A. G. 1919-20, p. 344.

Provision exempting drainage bonds from taxation does not exempt warrants.
O. A. G. 1919-20, p. 322.

Private banks not required to list non-taxable securities in giving assessment.
O. A. G. 1916, p. 231.

Drainage warrants issued after 1909 exempt from taxation.
O. A. G. 1916, p. 186.

Government bonds purchased by bank in good faith may be deducted from taxable property.
O. A. G. 1910, p. 110.

**427.2 Roads and drainage rights of way.** Real estate occupied as a public road, and rights of way for established public levees and rights of way for established, open, public drainage improvements shall not be taxed. [C73,§809; C97, §1344; C24, 27, 31, 35, 39,§6945; C46, 50, 54,§427.2]

**1. Construction and application.**

Neither South Omaha bridge nor approaches thereto subject to taxation by Pottawattamie County.
O. A. G. 1938, p. 860.

Right of way drainage ditch exempted is that portion of land covered by the easement.
O. A. G. 1934, p. 299.

Land used as drainage ditch determinable from auditor's records of drainage improvements.
O. A. G. 1928, p. 200.

Drainage ditch exemption commenced with year 1927.
O. A. G. 1928, p. 192.

**2. Public roads.**

Toll bridge owned and operated by City of Dubuque Bridge Commission not exempted in view of section 427.13.
Appeal of City of Dubuque Bridge Commission, 1942, 232 Iowa 112, 5 N.W.2d 334.

Not essential that highway be established by dedication before exemption will apply.
Iowa Loan & Trust Co. v. Board of Sup'rs of Polk County, 1919, 187 Iowa 160, 174 N.W. 97, 5 A. L. R. 1532.

# CHAPTER 445

## COLLECTION OF TAXES

445.1-445.10 Omitted.
445.11 Special assessment book.
445.12 Additional data.
445.13 Entries—delivery to treasurer—informalities.
445.14 Entries on general tax list.
445.15-445.62 Omitted.

**445.11 Special assessment book.** Upon the record of the levy of any special assessment within any county coming into the hands of the county auditor, the county auditor shall, in blue or black ink, prepare in a book to be known as a special assessment book, the list of the persons owning real estate to be affected thereby, in alphabetical or numerical order, which book shall contain a description of the real estate so affected, the date of the assessment, the total amount so assessed, and the installments to be paid, together with the amounts of the respective installments if said assessment is payable in installments. [C31, 35,§7193-d1; C39,§7193.01; C46, 50, 54,§445.11]

Certification to county auditor, §§391.34, 391.61.

**1. In general.**

Absent a statute requiring bringing forward delinquent assessment, challenge not upheld.

Fisk v. City of Keokuk, 1909, 144 Iowa 187, 122 N.W. 896.

**445.12 Additional data.** Said special assessment tax list shall also contain space for showing penalties, if any, that may be incurred, a column showing payments and amounts thereof, a column showing number of receipt to be issued by the county treasurer, and a column that may be used to show the date of payment of said assessment, or any installment thereof. [C31, 35,§7193-d2; C39,§7193.02; C46, 50, 54, §445.12]

**445.13 Entries—delivery to treasurer—informalities.** Said county auditor shall make an entry upon the special assessment tax list showing what it is, for what county, and deliver it to the county treasurer on or before the thirty-first day of December, taking his receipt therefor; such list shall be a sufficient authority for the county treasurer to collect the taxes therein levied. No informality therein and no delay in delivering the same after the time above specified, shall affect the validity of any special assessment taxes, sales or other proceeding for the collection of such special assessment taxes. [C31, 35,§7193-d3; C39,§7183.03; C46, 50, 54, §445.13]

**445.14 Entries on general tax list.** The county treasurer shall each year, upon receiving the tax list referred to in section 445.10 enter in red ink upon the same, in separate columns opposite each parcel of real estate upon which the special assessment remains unpaid for any previous year, the book, page and line number of the special assessment tax list where such special assessment levy and the amount so levied may be found. [C31, 35,§7193-d4; C39,§7193.04; C46, 50, 54,§445.14]

# CHAPTER 455

## LEVEE AND DRAINAGE DISTRICTS AND IMPROVEMENTS ON PETITION OR BY MUTUAL AGREEMENT


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County not to become stockholder or otherwise in works of internal improvement, see §346.20.
Flood protection in cities, see §395.1.
Local budget law not applicable, see §24.2.
Obstructing drains or ditches, see §§716.3, 716.4.
Venue of actions on construction of contracts or for damages, see §616.9.

**455.1 Jurisdiction to establish.** The board of supervisors of any county shall have jurisdiction, power, and authority at any regular, special, or adjourned session, to establish a drainage district or districts, and to locate and establish levees, and cause to be constructed as hereinafter provided any levee, ditch, drain or watercourse, or settling basins in connection therewith, or to straighten, widen, deepen, or change any natural watercourse, in such county, whenever the same will be of public utility or conducive to the public health, convenience, or welfare. [C73,§1207; C97, §1939; S13,§1989-a1; C24, 27, 31, 35, 39,§7421; C46, 50, 54,§455.1]

Agreement, district by mutual agreement of land owners, see §455.152 et seq. District by mutual agreement—presumption.
Liberal construction required, see §455.182. Construction of drainage laws.
Nov. 1932, 18 Iowa Law Review 6.
March 1934, 19 Iowa Law Review 385, 387.

**1. Validity.**

Where landowner made no claim of improper construction, trustees had no duty to make further installations. Droegmiller v. Olson, 1950, 241 Iowa 456, 40 N.W.2d 292.

Statutes passed under "police power" of the state.
Lage v. Pottawattamie County, 1942, 232 Iowa 944, 5 N.W.2d 161.

Statute not invalid as authorizing taking of property for private purpose.
Kroon v. Jones, 1924, 198 Iowa 1270, 201 N.W. 8.

Statute not invalid as depriving owners of property without due process.
Chicago, etc. Ry. Co. v. Board of Sup'rs of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects, 182 Iowa 60, 165 N.W. 390.
Munn v. Board of Sup'rs of Greene County, 1913, 161 Iowa 26, 141 N.W. 711.

Statute not unconstitutional for failure to provide notice of part of proceedings and hearing on lands to be included.
Ross v. Board of Sup'rs of Wright County, 1905, 128 427, 104 N.W. 506, 1 L. R. A., N.S. 431.

Validity upheld.
Sisson v. Board of Sup'rs of Buena Vista County, 1905, 128 Iowa 442, 104 N.W. 454, 70 L. R. A. 440.

Construction and assessment according to benefits held valid.
Hatch, Holbrook & Co. v. Pottawattamie County, 1876, 43 Iowa 442.

**2. Prior laws, validity of.**

Failure to provide notice of proceedings to establish district invalidated entire scheme for establishment.
Smith v. Peterson, 1904, 123 Iowa 672, 99 N.W. 552.

Code 1897, §1940 held invalid.
Beebe v. Magoun, 1904, 122 Iowa 94, 97 N.W. 986, 101 Am. St. Rep. 259.

**3. Construction and application.**

Trustees of district could not be compelled to protect owner from flood waters from river which was part of drainage project although county could not divert water to injury of owner.
Droegmiller v. Olson, 1950, 241 Iowa 456, 40 N.W.2d 292.

Laws regarding establishment of drainage districts are to be liberally construed.
Flood v. Board of Sup'rs of Dallas County, 1915, 173 Iowa 224, 155 N.W. 280.
Plumer v. Board of Sup'rs of Harrison County, 1921, 191 Iowa 1022, 180 N.W. 863.
Kimball v. Board of Sup'rs of Polk County, 1921, 190 Iowa 783, 180 N.W. 988.

Law of Iowa established by decisions will be followed by the federal courts.

Chicago, etc. Ry. Co. v. Board of Appanoose County, Iowa, 1910, 182 F. 291, 104 C. C. A. 573, 31 L. R. A., N. S. 1117, affirmed 182 F. 301, 104 C. C. A. 583.

Mere irregularities not jurisdictional.

Goeppinger v. Board of Sac, Buena Vista and Calhoun Counties, 1915, 172 Iowa 30, 152 N.W. 58.

Organization of district justified under police power.

Hatcher v. Board of Greene County, 1914, 165 Iowa 197, 145 N.W. 12.

Any one of three methods of establishment could be followed.

Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

Supervisors could only order work done after petition was presented, signed by majority of residents in county and owning land adjacent to proposed improvement.

Patterson v. Baumer, 1876, 43 Iowa 477.

**4. Legislative power.**

Legislature may authorize supervisors to establish districts though no provision for appellate review of decision is provided.

Maben v. Olson, 1919, 187 Iowa 1060, 175 N.W. 512.

Competent for legislature to authorize taking of private property for drainage of agricultural lands.

Sisson v. Board of Buena Vista County, 1905, 128 Iowa 442, 104 N.W. 454, 70 L. R. A. 440.

**5. Nature of drainage district.**

Drainage district has no powers other than found in statutes.

Board of Trustees of Monona-Harrison Drainage Dist. No. 1 in Monona and Harrison Counties v. Board of Sup'rs of Monona County, Iowa, 1942, 232 Iowa 1098, 5 N.W.2d 189.

Drainage districts have characteristics all their own.

Miller v. Monona County, 1940, 229 Iowa 165, 294 N.W. 308.

Drainage district is not a corporation and cannot be sued.

Mitchell County v. Odden, 1935, 219 Iowa 793, 259 N.W. 774.

Drainage district is not a legal entity and cannot be sued.

Houghton v. Bonnicksen, 1931, 212 Iowa 902, 237 N.W. 313.

**6. Powers and duties of board.**

Powers of board of supervisors under drainage statutes limited to those expressly provided plus implied powers necessary to carry out those expressed.

Mitchell County v. Odden, 1935, 219 Iowa 793, 259 N.W. 774.

Board may not delegate duty of final acceptance of the work.

Littell v. Webster County, 1911, 152 Iowa 206, 131 N.W. 691, modified in other respects 152 Iowa 206, 132 N.W. 426.

Authority to pass on necessity of ditch, determine its public character and fix boundaries is more legislative than judicial.

Temple v. Hamilton County, 1907, 134 Iowa 706, 112 N.W. 174.

Under Code 1873, §1207 power of board not restricted to area outside cities and towns where no such authority had been conferred on cities andd towns.

Aldrich v. Paine, 1898, 106 Iowa 461, 76 N.W. 812.

Supervisors have authority to purchase mill dam and remove it as obstruction to drainage ditch.

O. A. G. 1928, p. 365.

Drainage not limited to agricultural lands.

O. A. G. 1919-20, p. 332.

**7. Disqualification of board member to act.**

Owner of land in proposed district held disqualified to act as member of board of supervisors passing on petition.

Monona County v. Gray, 1925, 200 Iowa 1133, 206 N.W. 26.

Disqualification of member of board who cast deciding vote on establishment of district when he had substantial property interest may not be avoided on theory he performed an administrative duty.

Stahl v. Board of Ringgold County, 1920, 187 Iowa 1342, 175 N.W. 772, 11 A. L. R. 185.

**8. Establishment of districts in general.**

Board of county supervisors had jurisdiction to establish river bank improvement district and fix estimates.

Dashner v. Woods Bros. Const. Co., 1928, 205 Iowa 64, 217 N.W. 464.

Jurisdiction to establish district lacking under evidence of great expense, slight immediate benefits and lack of fair assessment.

Anderson v. Board of Monona County, 1927, 203 Iowa 1023, 213 N.W. 623.

Legal establishment of district conclusive, on non appearing parties served with notice, that all lands received benefit.

Chicago, etc. Ry. Co. v. Sedgwick, 1927, 203 Iowa 726, 213 N.W. 435.

Board has wide discretion in approval or refusal to establish districts.

Thompson v. Board of Buena Vista County, 1925, 201 Iowa 1099, 206 N.W. 624.

Board had power to establish district though an increased flow would damage lands below entrance to natural outlet.

Maben v. Olson, 1919, 187 Iowa 1060, 175 N.W. 512.

Power to establish district and assess costs of improvement rests on power to tax.

Chicago, etc. Ry. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

Filing of engineer's report necessary to jurisdiction.

Simpson v. Board of Kossuth County, 1917, 180 Iowa 1330, 162 N.W. 824.

Establishment involves finding of necessity.

Hoyt v. Brown, 1912, 153 Iowa 324, 133 N.W. 905.

New district could be etstablished to utilize ditch already established.

Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

Supervisors had jurisdiction to establish drain to effect object of reclaiming swamp and overflowed lands.

Butts v. Monona County, 1896, 100 Iowa 74, 69 N.W. 284.

**9. Retards.**

Construction of retards to protect river bank held public purpose.

Kroon v. Jones, 1924, 198 Iowa 1270, 201 N.W. 8.

**10. Contracts.**

Whether contract calls for repair or original construction is not conclusively shown by cost.

Petersen v. Sorensen, 1921, 192 Iowa 471, 185 N.W. 42.

**11. Proceedings in general.**

Where ditch did not touch on land on which mortgagee had mortgage, failure to name him correctly was not jurisdictional defect.

Whisenand v. Van Clark, 1940, 227 Iowa 800, 288 N.W. 915.

Jurisdiction obtained by legislative finding that district will result in public benefit.

Christensen v. Agan, 1930, 209 Iowa 1315, 230 N.W. 800.

Proceedings for establishment are exercise of taxing power.

Chicago, etc. Ry. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

Notice of proceedings to establish district by publications constitutes due process.

Taylor v. Drainage Dist. No. 56, 1914, 167 Iowa 42, 148 N.W. 1040, L. R. A. 1916B, 1193, affirmed 37 S. Ct. 651, 244 U. S. 644, 61 L. Ed. 1368.

Boundaries of district sufficiently described by specifying all quarter sections included.

Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

Proceedings to establish district are largely legislative and not set aside except upon clear evidence.

Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

Under Acts 1884 (20 G.A.) ch. 186, §2, an application to secure drainage of lands through drains in public highway was not a proceeding in which jury was not allowed unless provided for.

In re Bradley, 1899, 108 Iowa 476, 79 N.W. 280.

**12. Petition.**

Petition as to ditch held to be for repair and reopening and not for original construction.

Petersen v. Sorensen, 1921, 192 Iowa 471, 185 N.W. 42.

Irregularities in details insufficient to void proceedings where no effect on jurisdiction.

County Drains Nos. 44, 45, v. Long, 1911, 151 Iowa 47, 130 N.W. 152.

Petition to establish districts held to not need signature of majority of residents of county.

Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

Matter of exact boundary to be determined by engineer's survey and report.

Mackay v. Hancock County, 1908, 137 Iowa 88, 114 N.W. 552.

**13. Dismissal of proceedings.**

Board could not dismiss proceedings, except for fatal defect or irregularity, without hearing on the merits.

Temple v. Hamilton County, 1907, 134 Iowa 706, 112 N.W. 174.

**14. Objections.**

Notice of further improvement of established district did not have to be given to owners therein.

Shaw v. Board of Greene County, 1923, 195 Iowa 545, 192 N.W. 525.

It was not material when objections were presented if fairly brought before board in time to guide its action.

Lewis v. Pryor Drainage Dist. 1918, 183 Iowa 236, 167 N.W. 94.

One having due notice and having appeared presenting objections has no grounds upon which to object to jurisdiction in establishment of district.

Harker v. Board of Greene County, 1917, 182 Iowa 121, 163 N.W. 233, certiorari denied 38 S. Ct. 424, 246 U. S. 673,, 62 L. Ed. 932.

Objection to apportionment of costs could not be asserted on appeal, where none was made below.

Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

Vested right in levee was subject to being taken to same extent as other land.

Wallis v. Board of Harrison County, 1911, 152 Iowa 458, 132 N.W. 850.

**15. Invalid laws, proceedings under.**

Proceedings under invalid statute deemed valid against owner who elected for his own benefit to treat the statute as valid.

Smittle v. Haag, 1908, 140 Iowa 492, 118 N.W. 869.

Where statute under which assessment was made was invalid and owner did not show reassessment should not be made, it could be reassessed under new statute.

Thompson v. Mitchell, 1907, 133 Iowa 527, 110 N.W. 901.

**16. Irregularities.**

Irregularities held not to constitute jurisdictional defect.

Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

**17. Costs.**

Though petitioners for establishment of district had given bond for costs, judgment for costs could be entered against them.

In re Bardley, 1902, 117 Iowa 472, 91 N.W. 780.

**18. Validating acts, effect of.**

Enactment cured defects and validated proceedings under prior law except those relating to assessment of benefits.

Smittle v. Haag, 1908, 140 Iowa 492, 118 N.W. 869.

Amendatory act had retroactive effect validating proceedings begun under unconstitutional statute.

Ross v. Board of Wright County, 1905, 128 Iowa 427, 104 N.W. 506, 1 L. R. A., N. S. 431.

Legislature had power to validate proceedings.

Richman v. Board of Muscatine County, 1889, 77 Iowa 513, 42 N.W. 422, 4 L. R. A. 445, 14 Am. St. Rep. 308.

**19. Assessments.**

Legislature did not intend to authorize assessments in excess of benefits though it might do so.

Kelley v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 841.

Herron v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 846.

Facts showed legal levy of assessments against lands in other districts.

Coe v. Board of Harrison County, 1941, 229 Iowa 798, 295 N.W. 151.

Where fund is insufficient to pay all outstanding warrants and all holders are not joined in suit, equity will not impress funds in hands of treasurer.

Straub v. Board, 1926, 223 Iowa 1099, 274 N.W. 84.

Board held to have had jurisdiction in approving classification of lands for assessment.

Chicago, etc. R. Co. v. Board of Monona County, 1923, 196 Iowa 447, 194 N.W. 213.

Objector could not avoid assessment on ground that his land received no benefit.

Philip Drainage Dist. v. Peterson, 1922, 192 Iowa 1094, 186 N.W. 18.

Assessments void only if proceedings were without jurisdiction, and not for irregularities.

Petersen v. Sorensen, 1921, 192 Iowa 471, 185 N.W. 42.

Deposit of payment with understanding that it was to be held subject to litigation was not voluntary payment.

Lade v. Board of Hancock County, 1918, 183 Iowa 1026, 166 N.W. 586.

**20. Benefits.**

In estimating benefits right of owner to conduct surface waters to natural watercourse must be considered.

Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

**21. Damages to property owners.**

Under Acts 1904 (30 G.A.) ch. 68, supervisors could not pay claim for damages to land outside county caused

by establishment of district within the county.
Clary v. Woodbury County, 1907, 135 Iowa 488, 113 N.W. 330.

Failure to pay damages before locating ditch was not jurisdictional.
Oliver v. Monona County, 1902, 117 Iowa 43, 90 N.W. 510.

**22. Railway, damages to.**

Construction of drains is within police power and excavation across railroad was not a taking.
Mason City etc. Ry. Co. v. Board of Wright County, 1909, 144 Iowa 10, 121 N.W. 39.

**23. Easement of drainage.**

That land is in district does not preclude landowner from asserting rights with respect to surface water that he would have had if land were not in district.
Nixon v. Welch, 1946, 238 Iowa 34, 24 N.W.2d 476, 169 A. L. R. 1141.

**24. Liability of county**

Board contracting for drainage district incurs no liability except to proceed properly to levy and to properly devote proceeds.
First Nat. Bank v. Webster County, 1927, 204 Iowa 720, 216 N.W. 8.

County was not liable for increased velocity of water at milldam due to drainage improvement.
Mills County v. Hammack, 1925, 200 Iowa 251, 202 N.W. 521.

County as such has no direct interest in drainage proceedings.
Canal Const. Co. v. Woodbury County, 1910, 146 Iowa 526, 121 N.W. 556.

County not liable in damages for unlawful act of supervisors in extending drain beyond boundary of district.
Wenck v. Carroll County, 1908, 140 Iowa 558, 118 N.W. 900.

County was not liable for negligence in construction or maintenance of ditch.
Dashner v. Mills County, 1893, 88 Iowa 401, 55 N.W. 468.

**25. Estoppel.**

Purchaser of benefited land was held estopped to question establishment of district.
Whisenand v. Van Clark, 1940, 227 Iowa 800, 288 N.W. 915.

Subcontractor not estopped to establish claim for full amount where he accepted less.
Graettinger Tile Works v. Gjellefald, 1927, 214 N.W. 579.

**26. Nuisances.**

Drainage district not a nuisance.
Miller v. Monona County, 1940, 229 Iowa 165, 294 N.W. 308.

**27. Injunction.**

Owner's suit to enjoin establishment of district on grounds of due process not within jurisdiction of federal court until adverse ruling in highest state court.
Berry v. Ringgold County, Iowa, D. C. 1930, 43 F.2d 169.

Injunction proper where board lacked jurisdiction.
Maasdam v. Kirkpatrick, 1932, 214 Iowa 1388, 243 N.W. 145.

District resulting in increased flow, damaging land below entrance to natural outlet would not be enjoined.
Maben v. Olson, 1920, 187 Iowa 1060, 175 N.W. 512.

Presumed on record that ditch was established according to plans.
Knudson v. Board of Hamilton County, 1913, 162 Iowa 97, 143 N.W. 988.

Contract for construction of ditch not enjoined on ground that work was let for extravagant price.
Wood v. Hall, 1907, 138 Iowa 308, 110 N.W. 270.

**28. Actions.**

Supervisors and drainage district are not "corporations" or "citizens" within statute relating to removal of causes.
Board of Buena Vista County, Iowa, v. Title Guaranty & Surety Co. of Scranton, Pa., D. C. 1920, 267 F. 477.

Suit for damages to land held not one arising under federal laws or constitution.
Bronson v. Boards of Emmet and Kossuth Counties, Iowa, D. C. 1916, 237 F. 212.

Distribution of fund where insufficient to pay all outstanding warrants.
Straub v. Board of Carroll County, 1937, 223 Iowa 1099, 274 N.W. 84.

**29. Mandamus.**

Having submitted to board's judgment and discretion,

owners were not entitled to mandamus to compel board to construct improvement.

Eller v. Board of Hardin County, 1929, 208 Iowa 285, 225 N.W. 375.

**30. Review.**

On appeal by railroad from assessment, drainage district had burden of proving assessments corresponded to benefits.

Illinois, etc. R. Co. v. Boyer River Drainage Dist, No. 2, Crawford County, Iowa, D. C. 84 F. Supp. 306.

Order establishing district properly reversed where it would merely result in submerging different lands.

Dean v. Fay Wright Drainage District, 1926, 200 Iowa 1162, 206 N.W. 245.

Constitutionality not argued below nor on appeal would not be considered though presented by pleadings.

Shaw v. Board of Greene County, 1923, 195 Iowa 545, 192 N.W. 525.

Objections other than jurisdictional are waived if not presented at hearing.

Bloomquist v. Board of Hardin County, 1920, 188 Iowa 994, 177 N.W. 95.

Defects prior to order of board establishing district could not be considered on appeal from assessments.

Chicago, etc. R. Co. v. Board of Hamilton County, 1918, 184 Iowa 590, 169 N.W. 103.

Objection to increased assessment could be made on appeal though no objection was made before board.

Lyon v. Board of Supervisors of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

Board could at later meeting correct minutes in proceedings to establish district to correspond to the facts.

In re Drainage Dist. No. 3 Hardin County, 1910, 146 Iowa 564, 123 N.W. 1059, followed in Bump v. Board of Supervisors of Hardin County, 123 N.W. 1065.

Inclusion of property in drainage district is an exercise of legislative power.

Chicago, etc. R. Co. v. Monona County, 1909, 144 Iowa 171, 122 N.W. 820.

Function of supervisors as to whether to establish a drainage district is legislative.

Denny v. Des Moines County, 1909, 143 Iowa 466, 121 N.W. 1066.

Right to appeal not a constitutional right.

Ross v. Board of Wright County, 1905, 128 Iowa 427, 104 N.W. 506, 1 L. R. A., N. S. 431.

Decree restraining issuance of bonds not res judicata in certiorari proceeding to review subsequent action of board as limited and defined by the decree.
Tod v. Crisman, 1904, 123 Iowa 693, 99 N.W. 686.

Prior statute construed to not imply appeals should be tried same as in appeal from location of roads.
In re Bradley, 1899, 108 Iowa 476, 79 N.W. 280.

On certiorari, record must show jurisdictional facts authorizing an act by board.
Richman v. Board of Muscatine County, 1885, 70 Iowa 627, 26 N.W. 24.

**31. Presumptions on appeal.**

Strength of presumption in favor of action of officer may vary in individual cases according to the facts.
Chicago, etc. R. Co. v. Board of Monona County, 1923, 196 Iowa 447, 194 N.W. 213.

Presumption that board acted properly in establishing district can be overcome only by clearest proof.
Maben v. Olson, 1919, 187 Iowa 1060, 175 N.W. 512.

Plat and profile held presumed to have disclosed lakes, ponds, and depressions as well as their elevations.
Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

If evidence tends to sustain finding of board that improvement will work a benefit, the Supreme Court must assume district will be of public benefit.
Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

**455.2. Presumption.** The drainage of surface waters from agricultural lands or the protection of such lands from overflow shall be presumed to be a public benefit and conducive to the public health, convenience and welfare. [S13,§1989-a1; C24, 27, 31, 35, 39, §7422; C46, 50, 54,§455.2]

**1. Validity.**

Statutes passed under "police power".
Lage v. Pottawattamie County, 1942, 232 Iowa 944, 5 N.W.2d 161.

There is no authorization of taking of private property for public use by declaring what constitutes a public use.
Sisson v. Board of Buena Vista County, 1905, 128 Iowa 442, 104 N.W. 454, 70 L. R. A. 440.

**2. Construction and application.**

Mere elevation of land above proposed ditch is not sole test of whether or not such land is benefited.
In re Drainage District No. 3 Hardin County, 1909, 146 Iowa 564, 123 N.W. 1059.

Bump v. Board of Hardin County, 1909, 123 N.W. 1065.

Organization of district justified if improvement will be conducive to public health, welfare, or utility.

Hatcher v. Board of Greene County, 1914, 165 Iowa 197, 145 N.W. 12.

Under prior laws any one of three methods could be followed.

Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

If evidence tends to sustain finding of board that improvement will work a benefit, the Supreme Court must assume district will be of public benefit.

Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

**3. Public benefit.**

Where executive council found a lake detrimental to best interests of public, it became in effect, surface water to be dealt with as such.

Higgins v. Board of Dickinson County, 1920, 188 Iowa 448, 176 N.W. 268.

Drainage of surface waters from lands thereby unfitted for agricultural purposes held public benefit.

Mittman v. Farmer, 1913, 62 Iowa 364, 142 N.W. 991, Ann. Cas. 1915 C, 1.

**4. Review.**

Where evidence shows lands will be benefited by the establishment of district, Supreme Court must assume benefits will be properly adjusted.

Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

Function of board in deciding whether to establish district is legislative.

Denny v. Des Moines County, 1909, 143 Iowa 466, 121 N.W. 1066.

**455.3 "Levee" defined—bank protection.** For the purpose of this chapter and with reference to improvements along or adjacent to the Missouri River the word "levee" shall be construed to include, in addition to its ordinary and accepted meaning, embankments, revetments, retards, or any other approved system of construction which may be deemed necessary to adequately protect the banks of any river or stream, within or adjacent to any county, from wash, cutting, or erosion. [C24, 27, 31, 35, 39,§7423; C46, 50, 54,§455.3]

**1. Construction and application.**

Plans and specifications of retard or revetment amend-

ment are different from those in ordinary drainage district project.

Dashner v. Woods Bros. Const. Co., 1928, 205 Iowa 64, 217 N.W. 464.

**2. Retards.**

Construction of retards to prevent erosion held a public purpose.

Kroon v. Jones, 1925, 198 Iowa 1270, 201 N.W. 8.

**455.4 Definition of terms.** Within the meaning of this chapter and chapter 457, the term "board" shall embrace the board of supervisors, the joint boards of supervisors in case of intercounty levee or drainage districts, and the board of trustees in case of a district under trustee management.

The term "commissioners" shall mean the men appointed and qualified to classify lands, fix percentages of benefits, apportion and assess costs and expenses in any levee or drainage district, unless otherwise specifically indicated by law.

The term "appraisers" shall mean the men appointed and qualified to ascertain the value of all land taken and the amount of damage arising from the construction of levee or drainage improvements.

The term, or terms, "engineer" or "civil engineer" shall mean a civil engineer as designated by chapter 114 or a registered professional drainage engineer or a registered professional drainage surveyor. [C24, 27, 31, 35, 39,§7424; C46, 50, 54,§455.4]

**455.5 General rule for location.** The levees, ditches, or drains herein provided for shall, so far as practicable, be surveyed and located along the general course of the natural streams and watercourses or in the general course of natural drainage of the lands of said district; but where it will be more economical or practicable such ditch or drain need not follow the course of such natural streams, watercourses, or course of natural drainage, but may straighten, shorten, or change the course of any natural stream, watercourse, or general course of drainage. [S13,§1989-a2; C24, 27, 31, 35, 39, §7425; C46, 50, 54,§455.5]

**1. Construction and application.**

Landowner could not dam up old ditch to force water along new ditch constructed by him.

Allen v. Berkheimer, 1922, 194 Iowa 871, 186 N.W. 683.

Fact that certain lands through which ditch passed had some natural drainage away from the ditch was alone not reason to reduce or set aside assessment.

Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

Plan to make district consist of two divisions draining in different directions could be adopted if burdens placed on landowners are based on cost of respective divisions.

Hatcher v. Board of Supervisors of Greene County, 1914, 165 Iowa 197, 145 N.W. 12.

Objection that return of engineer did not provide board of supervisors with necessary information held speculative and immaterial.

Lawrence v. Board of Supervisors of Page County, 1911, 151 Iowa 182, 131 N.W. 8.

Objection that drain passed through an alleged natural surface water divide, diverting natural flow, did not destroy validity of proceedings.

County Drains Nos. 44, 45, v. Long, 1911, 151 Iowa 47, 130 N.W. 152.

**2. Departure from natural watercourse.**

That drain departed from natural channel, causing excessive costs of construction could not be raised in appeal from assessment of benefits.

Sullivan v. Board of Supervisors of Palo Alto County, 1922, 193 Iowa 739, 187 N.W. 575.

**3. Modification of location.**

That effect would be to eliminate a bend in main channel of river by conducting current across a neck of land could not invalidate action of board.

Simpson v. Board of Kossuth County, 1919, 186 Iowa 1034, 171 N.W. 259, error dismissed 41 S. Ct. 376, 255 U. S. 579, 65 L. Ed. 795.

**4. Territorial extent.**

Entire area held properly included in district.

In re Drainage Dist. No. 3 Hardin County, 1909, 146 Iowa 564, 123 N.W. 1059.

Bump v. Board of Hardin County, 1909, 123 N.W. 1065.

**5. Damages to land outside county.**

Board could not pay claim for damages to land outside county caused by establishing a district within the county.

Clary v. Woodbury County, 1907, 135 Iowa 488, 113 N.W. 330.

**6. Servient estate, discharge of water upon.**

Dominant owner may not discharge on servient land a greater accumulation of water but should procure by agreement or condemnation an outlet.

O. A. G. 1916, p. 227.

**7. Acquiescence as conferring rights.**

Acquiescence for 50 years in a levee was effective to confer rights on landowners protected thereby which could not be terminated by an ex parte resolution of board.

Loveless v. Ruffcorn, 1909, 143 Iowa 221, 121 N.W. 1034.

**8. Actions.**

Prior action was not conclusive upon county in action by plaintiff to compel maintenance of culvert.

Elliott v. Woodbury Co., 1913, 162 Iowa 473, 143 N.W. 826.

**455.6 Location across railroad.** When any such ditch or drain crosses any railroad right of way, it shall when practicable be located at the place of the natural waterway across such right of way, unless said railroad company shall have provided another place in the construction of the roadbed for the flow of the water; and if located at the place provided by the railroad company, such company shall be estopped from afterwards objecting to such location on the ground that it is not at the place of the natural waterway. [S13, §1989-a2; C24, 27, 31, 35, 39,§7426; C46, 50, 54,§455.6]

**1. Construction and application.**

This section inapplicable to drain established and partially constructed prior to the passage of the statute.

Chicago, etc. R. Co. v. Board of Appanoose County, Iowa, 1910, 182 F. 291, 104 C. C. A. 573, 31 L. R. A., N. S. 1117, affirmed 182 F. 301, 104 C. C. A. 583.

**455.7 Number of petitioners required.** Two or more owners of lands named in the petition described in section 455.9, may file in the office of the county auditor a petition for the establishment of a levee or drainage district, including a district which involves only the straightening of a creek or river. If the district described in the petition is a subdistrict, one or more owners of land affected by the proposed improvement may petition for such district. [S13, §1989-a2, -a23; C24, 27, 31, 35, 39,§7427, 7428; C46,§455.7, 455.8; C50, 54, §455.7]

**1. Construction and application.**

Any of three methods for establishment of district could be followed.

Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

New plan for straightening river incorporated in completed original drainage plan held "new construction", not "repair".

Maasdam v. Kirkpatrick, 1932, 214 Iowa 1388, 243 N.W. 145.

**2. Necessity of petition.**

Necessity of petition not dispensed with by ch. 121, §1, Acts 17 G. A.

Richman v. Board of Muscatine County, 1885, 70 Iowa 627, 26 N.W. 24.

**3. Petitioners.**

That sureties were also petitioners did not make bond defective.

In re Drainage Dist. No. 3 Hardin County, 1909, 146 Iowa 564, 123 N.W. 1059 followed in Bump v. Board of Hardin County, 123 N.W. 1065.

"Adjacent owners" held to be owners of land abutting on the improvement, and not owners of all land in the congressional subdivisions through which it runs.

Wormley v. Board of Wright County, 1899, 108 Iowa 232, 78 N.W. 824.

**4. Residence of petitioners.**

Sufficient if petitioners were merely legal voters of the county.

Seibert v. Lovell, 1894, 92 Iowa 507, 61 N.W. 197.

**5. Number of petitioners.**

Requirement of 50 percent of owners of district for construction of pumping plant under Acts 1904 which amended procedure not applicable to district organized under certain acts.

Mittman v. Farmer, 1913, 162 Iowa 364, 142 N. W. 991, Ann. Cas. 1915 C, 1.

Petition filed under Code Supp. 1907, §1989-a1 et seq. need be signed by only one owner.

Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

Petition not signed by majority of residents owning land adjacent to proposed improvement as provided by Code 1873, §1208, supervisors had no jurisdiction.

Shaw v. Board, 1887, 72 Iowa 763, 34 N.W. 206.

Under Code 1873, §§1207-1216, supervisors could order work only on petition signed by majority of residents owning land adjacent to proposed improvement.

Patterson v. Baumer, 1876, 43 Iowa 477.

**6. Jurisdiction.**

Jurisdiction could not be impaired by withdrawal of some names from the petition upon the hearing before the board of supervisors.

Seibert v. Lovell, 1894, 92 Iowa 507, 61 N.W. 197.

**7. Remonstrance by signer of petition.**

Petitioner afterwards signing a remonstrance must be regarded as a remonstrant.

Richman v. Board of Muscatine County, 1885, 70 Iowa 627, 26 N.W. 24.

**8. Impeachment.**

Petition could not be impeached by testimony that names of unqualified persons were signed on the petition and that, if deducted, required number would be lacking, where witness failed to designate the names.

Butts v. Monona County, 1896, 100 Iowa 74, 69 N.W. 284.

**9. Finding and adjudication.**

Determination that petition was proper could be reviewed on appeal but not collaterally attacked.

Oliver v. Monona County, 1902, 117 Iowa 43, 90 N.W. 510.

Finding by board that petition was proper was not overcome by testimony of witness that in his opinion there were one or two less than the required signatures.

Butts v. Monona County, 1897, 100 Iowa 74, 69 N.W. 284.

Supervisors record held to not show an adjudication that proceedings were based on petition signed by majority of persons interested.

Richman v. Board of Muscatine County, 1885, 70 Iowa 627, 26 N.W. 24.

**455.8** Repealed by 53 G.A., ch 202, §2. See §455.7.

**455.9 Petition.** The petition shall set forth:

1. An intelligible description, by congressional subdivision or otherwise, of the lands suggested for inclusion in the district.

2. That said lands are subject to overflow or are too wet for cultivation or subject to erosion or flood danger.

3. That the public benefit, utility, health, convenience, or welfare will be promoted by the suggested improvement.

4. The suggested starting point, route, terminus and lateral branches of the proposed improvements. [S13,§1989-a2, -23; C24, 27, 31, 35, 39,§7429; C46, 50, 54,§455.9]

**1. Construction and application.**

Board not limited to particular improvement described in petition.

Monona County v. Gray, 1925, 200 Iowa 1133, 206 N.W. 26.

Owners having received notice of proposed district may appear and show cause against establishment.

Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

Petition is not required to designate land to be benefited with exactness.

Zinser v. Board of Buena Vista County, 1907, 137 Iowa 660, 114 N.W. 51.

Any of three provided methods could be followed.

Lyon v. Board of Supervisors of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

**2. Jurisdiction.**

Jurisdiction could not be impaired by withdrawal of some names from petition on hearing before supervisors.

Seibert v. Lovell, 1894, 92 Iowa 507, 61 N.W. 197.

Petition was foundation of jurisdiction and should be shown by the record of board.

Richman v. Board of Muscatine County, 1885, 70 Iowa 627, 26 N.W. 24.

**3. Petition, sufficiency of.**

Petition referring to and adopting descriptions of another district covering same territory was not so defective so as to render all subsequent proceedings void.

Kelley v. Drainage Dist. No. 60, Greene County, 1912, 158 Iowa 735, 138 N.W. 841.

Herron v. Drainage Dist. No. 60, Greene County, 1912, 158 Iowa 735, 138 N.W. 846.

Petition need not describe each tract, and is not defective for including lands which ought not to be included.

In re Drainage Dist. No. 3, Hardin County, 1909, 146 Iowa 564, 123 N.W. 1059.

Bump v. Board of Hardin County, 1909, 123 N.W. 1065.

Petition not fatal where land was in name of petitioner's wife, where she later filed duplicate petition and bond though prior to filing of her petition engineer had filed his return.

County Drains Nos. 44, 45, v. Long, 1911, 151 Iowa 47, 130 N.W. 152.

Determination of sufficiency of petition by board is judicial function.

Denny v. Des Moines Co., 1909, 143 Iowa 466, 121 N.W. 1066.

Under Code 1873, §§1207-1216, supervisors could order work only after petition was presented signed by

owners residing in county and owning land adjacent to the improvement.

Patterson v. Baumer, 1876, 43 Iowa 477.

**4. Remonstrances or answers to petition.**

It was not material when objections were presented if fairly brought to consideration of board in time to guide its action.

Lewis v. Pryor Drainage Dist., 1918, 183 Iowa 236, 167 N.W. 94.

**5. Preliminary expenses where petition denied.**

Entire proceeding prior to order directing the improvement was at risk of petitioners.

Carroll County v. Cuthbertson, 1907, 136 Iowa 458, 114 N.W. 17.

**6. Conclusiveness of determination.**

Determination of board that petition was proper could be reviewed on appeal of certiorari but could not be attacked collaterally.

Oliver v. Monona County, 1902, 117 Iowa 43, 90 N.W. 510.

**7. Costs.**

Costs were properly adjudged granting costs to successful party against losing party.

In re Bradley, 1902, 117 Iowa 473, 91 N.W. 780.

**455.10 Bond.** There shall be filed with the petition a bond in an amount fixed and with sureties approved by the auditor, conditioned for the payment of all costs and expenses incurred in the proceedings in case the district is not finally established. [S13,§1989-a2; C24, 27, 31, 35, 39, §7430; C46, 50, 54,§455.10]

Referred to in §357.1 Petition.

**1. Construction and application.**

Proposed construction held not repair but new construction and petition, notice and bond were necessary.

Maasdam v. Kirkpatrick, 1932, 214 Iowa 1388, 243 N.W. 145.

**2. Sufficiency of bond.**

Insufficiency of bond for drain cannot be raised after ditch has been established to invalidate establishment.

In re C. G. Hay Drainage Dist. No. 23, 1910, 146 Iowa 280, 125 N.W. 225.

That persons signing as sureties were also petitioners did not make bond defective.

Bump v. Board of Hardin County, 1909, 123 N.W. 1065.

**3. Proceedings under invalid statute.**

Where statute under which bond was filed was declared unconstitutional the bond was not sustainable.

Carroll County v. Cuthbertson, 1907, 136 Iowa 458, 114 N.W. 17.

**4. Liability of sureties.**

Bond for payment of establishment costs held conclusive as to liability of sureties thereon.

Monona County v. Gray, 1926, 200 Iowa 1133, 206 N.W. 26.

**5. Release of sureties.**

Sureties not discharged because of variance between plans of improvement proposed in petition and recommended in engineer's reports.

Monona County v. Gray, 1926, 200 Iowa 1133, 206 N.W. 26.

**6. Notice of agreement.**

Notice to disqualified member of board held not notice to county.

Monona County v. Gray, 1926, 200 Iowa 1133, 206 N.W. 26.

**7. Estoppel.**

Sureties on bond estopped to claim ignorance of fact that bond had not been signed by all petitioners.

Monona County v. Gray, 1926, 200 Iowa 1133, 206 N.W. 26.

**8. Actions.**

Where board was without jurisdiction to order construction injunction was proper.

Maasdam v. Kirkpatrick, 1932, 214 Iowa 1388, 243 N.W. 145.

Contractor given bonds in payment for work is indispensable party to suit to restrain further issuance of bonds to him, and collection of taxes for payment thereof.

Tod v. Crisman, 1904, 123 Iowa 693, 99 N.W. 686.

**9. Evidence.**

County had burden to show it took bond in good faith and without notice of alleged agreement of sureties.

Monona County v. Gray, 1926, 200 Iowa 1133, 206 N.W. 26.

**10. Review.**

In an appeal from order establishing district petitioner whose lands were affected, and who gave bond for costs

and expenses, could intervene and defend order appealed from.

Temple v. Hamilton County, 1907, 134 Iowa 706, 112 N.W. 174.

**455.11 Additional bond.** No preliminary expense shall be incurred before the establishment of such proposed improvement district by the board in excess of the amount of bond filed by the petitioners. In case it is necessary to incur any expense in addition to the amount of such bond, the board of supervisors shall require the filing of an additional bond by the petitioners and shall not proceed with the preliminary survey or authorize any additional expense until the additional bond is filed in a sufficient amount to cover such expense. [C24, 27, 31, 35, 39,§7431; C46, 50, 54, §455.11]

**455.12 Engineer—bond.** The board shall at its first session thereafter, regular, special, or adjourned, examine the petition and if it be found sufficient in form and substance, shall appoint a disinterested and competent civil engineer who shall give bond to the county for the use of the proposed levee or drainage district, if it be established, and if not established, for the use of the petitioners, in amount and with sureties to be approved by the auditor, and conditioned for the faithful and competent performance of his duties. [S13,§1989-a2; C24, 27, 31, 35, 39,§7432; C46, 50, 54,§455.12]

**1. Construction and application.**

Board not without jurisdiction because engineer serving on board of commissioners made surveys and superintended construction, and member of board owned land subject to assessment.

Chicago, etc. R. Co. v. Board of Monona County, 1923, 196 Iowa 447, 194 N.W. 213.

Board lacked authority to establish district except as planned and recommended either in original or amended plan of engineer.

Shaw v. Nelson, 1911, 150 Iowa 559, 129 N.W. 827.

**2. Appointment of engineer.**

That engineer had preconceived idea in favor of project did not necessarily show he was interested.

Wallis v. Board of Harrison County, 1911, 152 Iowa 458, 132 N.W. 850.

**3. Survey and report.**

District may not be established without finding by board that report and plat of engineer are disinterested and competent.

Hall v. Polk, 1917, 181 Iowa 828, 165 N.W. 119.

Under the statutes survey and report was prerequisite to authority of supervisors to establish district.
Hartshorn v. Wright County District Court, 1909, 142 Iowa 72, 120 N.W. 479.

**455.13 Compensation.** Any engineer employed under the provisions of this chapter shall receive such compensation per diem as shall be fixed and determined by the board of supervisors. [S13,§1989-a41; C24, 27, 31, 35, 39,§7433; C46, 50, 54,§455.13]

**1. Preliminary expense.**

Where petition for ditch was denied and the bond unenforceable due to unconstitutionality of §1940, Code 1897, petitioners were not liable for expenses incurred on petition.
Carroll County v. Cuthbertson, 1907, 136 Iowa 458, 114 N.W. 17.

Reporter appointed by commissioner to take evidence on hearing was entitled to compensation.
O. A. G. 1909, p. 84.

**2. Warrants.**

Warrants issued to pay engineer and his personal employees did not need stated thereon purpose for which issued.
O. A. G. 1919-20, p. 311.

**455.14 Discharge.** The board may at any time terminate the contract with, and discharge the engineer. [S13,§1989-a2; C24, 27, 31, 35, 39,§7434; C46, 50, 54,§455.14]

**455.15 Assistants.** Assistants may be employed by the engineer only with the approval of the board, which shall fix their compensation. [S13,§1989-a42; C24, 27, 31, 35, 39, §7435; C46, 50, 54,§455.15]

**1. Construction and application.**

Supervisors may employ help to carry out provisions of drainage law as assistants to themselves or to engineer, but board should determine who to employ and amount of compensation.
O. A. G. 1909, p. 229.

**455.16 Record of work.** The engineer shall keep an accurate record of the kind of work done by himself and each assistant, the place where done, and the time engaged therein, and shall file an itemized statement thereof with the auditor. No expenses shall be incurred by the engineer except upon authority of the board, and vouchers shall be filed with the claims therefor. [S13,§1989-a42; SS15,§1527-s21b; C24, 27, 31, 35, 39,§7436; C46, 50, 54,§455.16]

**1. Apportionment of expenses.**

Certification by engineer as to apportionment of expenses between counties was conclusive, absent fraud, as to county's proportionate share.

Warren County v. Slack, 1921, 192 Iowa 275, 182 N.W. 664.

**2. Allowance of claims.**

Alleged irregularities in allowance of claims held not to show fraud.

Monona County v. Gray, 1926, 200 Iowa 1133, 206 N.W. 26.

**3. Warrants.**

Warrants issued to pay engineer and his personal employees did not need stated thereon purpose for which issued.

O. A. G. 1919-20, p. 311.

**4. Liability of sureties.**

Records of board showing audit of claims, allowance by board and payment, held sufficient predicate for liability of sureties.

Monona County v. Gray, 1926, 200 Iowa 1133, 206 N.W. 26.

**5. Review.**

Absent fraud there is no review of action of drainage district board allowing bills.

Kemble v. Weaver, 1925, 200 Iowa 1333, 206 N.W. 83.

**455.17 Survey.** The engineer shall examine the lands described in the petition and any other lands which would be benefited by said improvement or necessary in carrying out the same.

He shall locate and survey such ditches, drains, levees, settling basins, pumping stations, and other improvements as will be necessary, practicable, and feasible in carrying out the purposes of the petition and which will be of public benefit or utility, or conducive to public health, convenience, or welfare. [S13,§1989-a2; C24, 27, 31, 35, 39,§7437; C46, 50, 54,§455.17]

Referred to in §455.19, 455.28, 460.5. Procedure to report, establishment—further investigation; survey and report.

**1. Construction and application.**

Details for small streams flowing into river and cost of ditching are matters to be worked out in permanent survey of district.

Hall v. Polk, 1917, 181 Iowa 828, 165 N.W. 119.

Any of three methods of establishment could have been followed.

Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

Survey sufficient where surveyor gave general directions therefor, set stakes and assisted in running a part of the levels.

Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

Board had no authority to establish district except as planned and recommended in original or amended plan of engineer.

Shaw v. Nelson, 1911, 150 Iowa 559, 129 N.W. 827.

Survey and report by engineer a prerequisite to authority of supervisors to establish district.

Hartshorn v. Wright County District Court, 1909, 142 Iowa 72, 120 N.W. 479.

**2. Lands to be included.**

Whether land is to be included in district is not matter of discretion with supervisors, but an issue of fact to be determined by the evidence.

Stewart v. Board of Floyd County, 1918, 183 Iowa 256, 166 N.W. 1052.

**3. Hearing.**

Owner has no constitutional right to a hearing before the engineer making preliminary report, as to whether his land should be included.

Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

**455.18 Report.** The engineer shall make full written report to the county auditor, setting forth:

1. The starting point, route, and terminus of each ditch, drain, and levee and the character and location of all other improvements.

2. A plat and profile, showing all ditches, drains, levees, settling basins, and other improvements, the course, length, and depth of each ditch, the length, size and depth of each drain, and the length, width, and height of each levee, through each tract of land, and the particular descriptions and acreage of the land required from each forty-acre tract or fraction thereof as right of way, or for settling basin or basins, together with the congressional or other description of each tract and the names of the owners thereof as shown by the transfer books in the office of the auditor.

3. The boundary of the proposed district, including therein by color or other designation other lands that will be bene-

fited or otherwise affected by the proposed improvements, together with the location, size, and elevation of all lakes, ponds, and deep depressions therein.

4. Plans for the most practicable and economic place and method for passing machinery, equipment, and material required in the construction of said improvements across any highways, railroads, and other utilities within the proposed district.

5. The probable cost of the proposed improvements, together with such other facts and recommendations as he shall deem material.

Where the proposed district contemplates as its object flood control or soil conservance the engineer shall include in his report data describing any soil conservance or flood control improvements, the nature thereof, and such other additional data as shall be prescribed by the Iowa natural resources council. [S13,§1989-a2; C24, 27, 31, 35, 39,§7438; C46, 50, 54,§455.18]

Referred to in §§455.19, 455.28, 460.5. Procedure on report; establishment—further investigation; survey and report.

**1. Construction and application.**

Strict construction of provision requiring engineer to include in report length of drain in each tract of land and acres taken from each.

Simpson v. Board of Kossuth County, 1917, 180 Iowa 1330, 162 N.W. 824.

Any of three provided methods to establish district could have been used.

Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

That engineer had preconceived idea in favor of project did not necessarily show he was interested.

Wallis v. Board of Harrison County, 1911, 152 Iowa 458, 132 N.W. 850.

Establishment of district held to be of entire improvement and not only the part covered in second report of engineer.

Lawrence v. Board of Page County, 1911, 151 Iowa 182, 131 N.W. 8.

Board held to have had no authority to establish district except as planned and recommended either in original or amended plan of engineer.

Shaw v. Nelson, 1911, 150 Iowa 559, 129 N.W. 827.

Survey and report of engineer prerequisite to authority of supervisors to establish district.

Hartshorn v. Wright County District Court, 1909, 142 Iowa 72, 120 N.W. 479.

Amount of land used for ditch, exempt from taxation may be determined from records filed with auditor.
O. A. G. 1928, p. 200.

**2. Consolidation of projects.**

Where two separate projects were consolidated into a new district it was immaterial that proceedings under which one of the districts was created were defective.
County Drains Nos. 44, 45, v. Long, 1911, 151 Iowa 47, 130 N.W. 152.

**3. Report.**

Whether engineer overestimated acreage of swamp land in district by including stream bed could be determined in the assessment of benefits.
Shaw v. Board of Greene County, 1923, 195 Iowa 545, 192 N.W. 525.

Without report and plat of engineer found by supervisors to be disinterested and competent, district may not be established.
Hall v. Polk, 1917, 181 Iowa 828, 165 N.W. 119.

Supervisors not bound to establish district till they have engineer's report showing that proposed improvement will be effective.
Harker v. Board of Greene County, 1917, 182 Iowa 121, 163 N.W. 233.

Report of engineer should be so clear that landowners will understand exactly what is to be done.
Munn v. Board of Greene County, 1913, 161 Iowa 26, 141 N.W. 711.

Preliminary report of engineer need not show levels or elevations of each tract in district nor how improvement will affect it.
Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

Where engineer's report furnished to board all information necessary to enable it to act, inaccuracies in report were not jurisdictional.
In re Drainage Dist. No. 3 Hardin County, 1910, 146 Iowa 564, 123 N.W. 1059, followed in Bump v. Board of Hardin County, 123 N.W. 1065.

Engineer was required to include return of proceedings to auditor only such land as would be affected and to state how affected.
Zinser v. Board of Sup'rs of Buena Vista County, 1907, 137 Iowa 660, 114 N.W. 51.

**4. Sufficiency of report.**

Specific plans for proposed repairs or improvement of

established district not required before taking such action.
Johnson v. Monona-Harrison Drainage Dist., 1955, 68 N.W. 2d 517.

Report of engineer held informal but sufficient.
Kelley v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 841;
Herron v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 846.

That report omitted description of each tract and names of owners not jurisdictional defect as to one appearing and resisting both establishment and assessment.
Kelley v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 841;
Herron v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 846.

Whether engineer overestimated acreage of swamp land in district by including stream could be determined in the assessment.
Shaw v. Board of Greene County, 1923, 195 Iowa 454, 192 N.W. 525.

Engineer's report on feasibility of proposed improvement held sufficiently complete to advise board on matters required by statute to be shown therein.
Schafroth v. Buena Vista County, 1917, 181 Iowa 1223, 165 N.W. 341.

Though report did not show exact boundaries of land to be appropriated it gave facts from which such lines could be determined and did not render subsequent proceedings void.
Simpson v. Board of Kossuth County, 1917, 180 Iowa 1330, 162 N.W. 824.

That report failed to include all items on question of plan and cost of drain did not go to jurisdiction of board of supervisors to assess benefits.
Hatcher v. Board of Greene County, 1914, 165 Iowa 197, 145 N.W. 12.

Where list of tracts and owners accompanying report showed plainly included land to be in district, report not objectionable on ground of failure to sufficiently define boundaries of district.
Munn v. Board of Greene County, 1913, 161 Iowa 26, 141 N.W. 711.

Return containing list of lands, described by government subdivisions with names of owners which engineer proposes to be included in district, sufficiently

defines district boundaries and was a description of each tract therein.

Lawrence v. Board of Page County, 1911, 151 Iowa 182, 131 N.W. 8.

Report held fatally defective.

Zinser v. Board of Buena Vista County, 1907, 137 Iowa 660, 114 N.W. 51.

**5. Filing of report, necessity of.**

If board had return before it, it could act though return had not then been filed with auditor.

In re Drainage Dist. No. 3 Hardin County, 1909, 146 Iowa 564, 123 N.W. 1059 followed in Bump v. Board of Hardin County, 123 N.W. 1065.

**6. Recommendations of engineer.**

Recommendations of engineer should not be set aside for slight reasons.

Chicago, etc. R. Co. v. Board of Clay County, 1925, 200 Iowa 557, 204 N.W. 311.

**7. Boundaries.**

Petition need not contain accurate description of lands affected, the matter of exact boundary to be determined on engineer's survey and report.

Mackay v. Hancock Co., 1908, 137 Iowa 88, 114 N.W. 552.

**8. Probable cost.**

Report not giving elevations and not estimating cost was not incomplete.

In re Nishnabotna River Improvement Dist. No. 2, 1910, 145 Iowa 130, 123 N.W. 769.

Refusal of supervisors to order improvement because costs and damages were greater burden than should properly be borne by land benefited was not abuse of discretion.

Zinser v. Board of Buena Vista County, 1907, 137 Iowa 660, 114 N.W. 51.

**9. Preliminary expenses.**

Where statute under which land for expenses was filed was declared unconstitutional, the bond was not sustainable.

Carroll County v. Cuthbertson, 1907, 136 Iowa 458, 114 N.W. 17.

**10. Additional work, payment for.**

That more earth than estimated in preliminary report was removed in excavating ditch is no reason why district should not pay for the work.

Monaghan v. Vanatta, 1909, 144 Iowa 119, 122 N.W. 610.

**11. Boundaries, fixing of.**

In district not including entire watershed, fixing boundaries of district at point where benefits were tangible is within legislative discretion of board.

Mittman v. Farmer, 1913, 162 Iowa 364, 142 N.W. 991, Ann. Cas. 1915C, 1.

**12. Evidence.**

Evidence held to show that there was no contemplation of placing a culvert in embankment as claimed by plaintiff.

Elliott v. Woodbury County, 1913, 162 Iowa 473, 143 N.W. 826.

**13. Review.**

On appeal held that plat and profile presumed to have shown any lakes, ponds or depressions and their elevations.

Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

Failure to have estimate of costs might be considered on appeal from order establishing district.

In re Nishnabotna River Improvement Dist. No. 2, 1910, 145 Iowa 130, 123 N.W. 769.

**455.19 Procedure on report.** Upon the filing of the report of the engineer recommending the establishment of the levee or drainage district, the board shall at its first regular, adjourned, or special meeting, examine and consider the same, and, if the plan is not approved the board may employ said engineer or another disinterested engineer to report another plan or make additional examination and surveys and file an additional report covering such matters as the board may direct. Additional surveys and reports must be made in accordance with the provisions of sections 455.17 and 455.18. At any time prior to the final adoption of the plans they may be amended, and as finally adopted by the board shall be conclusive unless the action of the board in finally adopting them shall be appealed from as hereinafter provided. (S13,§1989-a3; C24, 27, 31, 35, 39,§7439; C46, 50, 54,§455.19).

**1. Construction and application.**

Supervisors had no authority to establish district except as planned and recommended in original or amended plan of engineer.

Shaw v. Nelson, 1911, 150 Iowa 559, 129 N.W. 827.

County not liable for supervisors, auditor's and treasurer's failure to legally assess, levy and collect taxes to defray costs of improvement.

Canal Const. Co. v. Woodbury County, 1910, 146 Iowa 526, 121 N.W. 556.

**2. Report as prerequisite to establishment of district.**

District may not be established without report and plat of engineer, found by board to be disinterested and competent.

Hall v. Polk, 1917, 181 Iowa 828, 165 N.W. 119.

Survey and report of engineer is prerequisite to authority of supervisors to establish district.

Hartshorn v. Wright County District Court, 1909, 142 Iowa 72, 120 N.W. 479.

**3. Filing of report.**

Filing of report by engineer necessary for jurisdiction of board of supervisors to make order establishing drain.

Simpson v. Board of Kossuth County, 1917, 180 Iowa 1330, 162 N.W. 824.

If board had return before it, it could act though return had not yet been filed with auditor.

In re Drainage Dist. No. 3 Hardin County, 1909, 146 Iowa 564, 123 N.W. 1059, followed in Bump v. Board of Hardin County, 123 N.W. 1065.

**4. Action of board on engineer's recommendations.**

Where lands were included in engineer's original report and excluded from amended report, and it did not appear that supervisors ever passed on owner's objections, approval of amended report did not constitute a rejection of lands in question from the district.

Roewe v. Pavik, 1955, 70 N.W. 2d 845, 246 Iowa 1112.

Establishment of district held to be of entire improvement and not only the part covered in second report of engineer.

Lawrence v. Page, 1911, 151 Iowa 182, 131 N.W. 8.

**5. Meetings.**

Presumed that county supervisors acted correctly in correcting its minutes to correspond to the facts.

In re Drainage Dist. No. 3 Hardin County, 1909, 146 Iowa 564, 123 N.W. 1059.

Bump v. Board of Hardin County, 1909, 123 N.W. 1065.

**6. Establishment of district.**

Under Code Supp. 1913, supervisors could establish district only when satisfied that it contained all land to be benefited.

Wood v. Honey Creek Drainage & Levee Dist. No. 6, 1916, 180 Iowa 159, 160 N.W. 342.

In absence of appeal from order of board establishing district on the engineer's return, such order was conclusive that all lands included would be benefited.

Zinser v. Board of Buena Vista County, 1907, 137 Iowa 660, 114 N.W. 51.

**7. Evidence.**

Opinion of witness unqualified to express such opinion was entitled to no consideration except as confirmed by physical conditions described or recitals of past conditions within his observation and memory.

Hall v. Polk, 1917, 181 Iowa 828, 165 N.W. 119.

Evidence held to justify finding that ditch would be of benefit commensurate with expense to be incurred.

Henderson v. Polk, 1915, 171 Iowa 499, 153 Iowa 63.

**8. Review.**

Claim of total non-benefit may not be raised against validity of an assessment.

Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

**9. Presumptions on appeal.**

If necessary for board to examine engineer's report to adopt final resolution establishing district, it is presumed that report was returned to files or was in possession of board then, though withdrawn from files prior to adoption of resolution.

In re Drainage Dist. No. 3, Hardin County, 1909, 146 Iowa 564, 123 N.W. 1059; Bump v. Board of Sup'rs of Hardin County, 1909, 123 N.W. 1065.

**10. Failure to appeal.**

Failure to appeal waived irregularities in engineer's report.

Simpson v. Board of Kossuth County, 1917, 180 Iowa 1330, 162 N.W. 824.

**455.20 Notice of hearing.** When any plan and report of the engineer has been approved by the board, such approval shall be entered of record in its proceedings as a tentative plan only for the establishment of said improvement. Thereupon it shall enter an order fixing a date for the hearing upon the petition not less than forty days from the date of the order of approval, and directing the auditor immediately to cause notice to be given to the owner of each tract of land or lot within the proposed levee or drainage district as shown by the transfer books of the auditor's office, including railway companies having right of way in the proposed district and to each lienholder or encumbrancer of any land within the proposed district as shown by the

county records, and also to all other persons whom it may concern, and without naming individuals all actual occupants of the land in the proposed district, of the pendency and prayer of the said petition, the favorable report thereon by the engineer, and that such report may be amended before final action, the approval thereof by the board as a tentative plan, and the day and the hour set for hearing on said petition and report, and that all claims for damages except claims for land required for right of way, and all objections to the establishment of said district for any reason must be made in writing and filed in the office of the auditor at or before the time set for such hearing. [S13,§1989-a3; C24, 27, 31, 35, 39,§7440; C46, 50, 54,§455.20]

Referred to in §§455.21, 455.135 Service by publication—proof; repair.

**1. Validity of prior laws.**

Publication of notice held not deprivation of property without due process.

Johnson v. Board of Story County, 1910, 148 Iowa 539, 126 N.W. 153.

Failure to provide for notice of proceedings invalidated entire establishment of district.

Smith v. Peterson, 1904, 123 Iowa 672, 99 N.W. 552

In providing for assessment of land in vicinity while providing notice only to owners abutting the improvement there was a taking without due process.

Beebe v. Magoun, 1904, 122 Iowa 94, 97 N.W. 986, 101 Am. St. Rep. 259.

**2. Construction and application.**

Where ditch did not extend through or abut upon land on which mortgagee held mortgage, failure to state his name correctly was not a jurisdictional defect.

Whisenand v. Van Clark, 1940, 227 Iowa 800, 288 N.W. 915.

Supervisors could not order new construction at more than 10 per cent of original cost where procedure for original establishment and assessment were not followed.

Maasdam v. Kirkpatrick, 1932, 214 Iowa 1388, 243 N.W. 145.

**3. Notice.**

Owner whose land is not actually taken for new right of way for district not entitled to notice.

Board of Pottawattamie County v. Board of Harrison County, 1932, 214 Iowa 655, 241 N.W. 14, motion denied 54 S. Ct. 47, appeal dismissed 54 S. Ct. 125, 290 U. S. 595, 78 L. Ed. 523.

Railway could be brought into district only by statutory notice or voluntary appearance in establishment proceedings.

Chicago, etc. R. Co. v. Sedgwick, 1927, 203 Iowa 726, 213 N.W. 435.

Knowledge by railroad of construction of ditch could not give court jurisdiction absent proper statutory notice.

Minneapolis, etc. R. Co. v. Board of Marshall County, 1925, 198 Iowa 1288, 201 N.W. 14.

Notice of drainage proceedings during federal control duly given to railroad company need not also have been given to Director General.

Chicago, etc. R. Co. v. Board of Clinton County, 1924, 197 Iowa 1208, 198 N.W. 640.

Construction of new branch of tile held construction, not repair, and landowners were entitled to notice.

Walker v. Joint Drainage Dist. No. 2 of Osceola and Dickinson Counties, 1924, 197 Iowa 351, 197 N.W. 72.

An owner properly notified cannot resist condemnation on ground that others similarly affected did not receive notice.

Simpson v. Board of Kossuth County, 1919, 186 Iowa 1034, 171 N.W. 259, error dismissed 41 S. Ct. 376, 255 U. S. 579, 65 L. Ed. 795.

Drainage district may be constitutionally established without any notice to property owners and without according them a hearing, notice being a matter of legislative grace.

Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects, 182 Iowa 60, 165 N.W. 390.

Where statutory notice has been served on owner, the occupant of the land need not be served.

Goeppinger v. Boards of Sac, Buena Vista and Calhoun Counties, 1915, 172 Iowa 30, 152 N.W. 58.

Notice of hearing on establishment requiring claims for damages to be filed six or more days prior to hearing, not inconsistent with law providing such claims must be filed not less than five days before hearing.

Taylor v. Drainage Dist. No. 56, 1914, 167 Iowa 42, 148 N.W. 1040, L. R. A. 1916B, 1193, affirmed 37 S. Ct. 651, 244 U. S. 644, 61 L. Ed. 1368.

That auditor gave notice of establishment without express direction of supervisors prior to its examination of engineer's return was not fatal defect.

County Drains Nos. 44, 45 v. Long, 1911, 151 Iowa 47, 130 N.W. 152.

Notice should be given in name of individual owner of each tract and "to all other persons whom it may concern" including actual occupants of land in district without naming such occupants.

O. A. G. 1923-24, p. 319.

**4. Failure to give notice.**

New plan of improvement held "new construction" which board was without jurisdiction to order, where statutory petition, notice and bond were not filed.

Maasdam v. Kirkpatrick, 1932, 214 Iowa 1388, 243 N.W. 145

Under Code Supp. 1913, board could order improvement of outlet of old district without notice to landowners except those whose land was taken for additional right of way.

Shaw v. Board of Greene County, 1923, 195 Iowa 545, 192 N.W. 525.

Failure to notify one owner does not render proceedings invalid as to owners properly notified.

Ross v. Board of Wright County, 1905, 128 Iowa 427, 104 N.W. 506.

**5. Service of notice.**

Service of notice of hearing and claims for damages was not fatal where board did not approve plan recommended by engineer.

Kelley v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 841.

Herron v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 846.

**6. Publication of notice.**

Notice of proceedings to establish district and acquire right of way may be served by publication since the proceedings are in rem.

Taylor v. Drainage Dist. No. 56, 1914, 167 Iowa 42, 148 N.W. 1040, L. R. A. 1916B, 1193, affirmed 244 U. S. 644, 37 S. Ct. 651, 61 L. Ed. 1368.

**7. Sufficiency of notice.**

Where affidavit of publication of notice was sworn to by newspaper publisher before clerk of court who failed to affix seal of court, sufficient notice was shown by showing of two consecutive publications.

Whisenand v. Van Clark, 1940, 227 Iowa 800, 288 N.W. 915.

Notice addressed to city and to clerk by name and title held sufficient to sustain assessment against city.

Board of Humboldt County v. Town of Dakota City, 1922, 194 Iowa 1113, 191 N.W. 69.

Failure of notice to state that engineer's report might be amended before final action of board did not affect the notice.

Taylor v. Drainage Dist. No. 56, 1914, 167 Iowa 42, 148 N.W. 1040, L. R. A. 1916B, 1193, affirmed 37 S. Ct. 651, 244 U. S. 644, 61 L. Ed. 1368.

Notice to "Emma Forsythe Jones" whose maiden name was "Forsythe" was a sufficient notice to "Emma Jones", the middle name not being a part of the name.

Collins v. Board of Pottawattamie County, 1912, 158 Iowa 322, 138 N.W. 1095.

Decision of board that notice was sufficient could not be attacked collaterally.

Oliver v. Monona County, 1902, 117 Iowa 43, 90 N.W. 510.

**8. Validating statutes.**

Amendatory act held to have retroactive effect, validating the proceedings.

Ross v. Board of Wright County, 1905, 128 Iowa 427, 104 N.W. 506, 1 L. R. A., N. S., 431.

**9. Appearances.**

Equitable owner under contract to convey may appear in response to published notice, claim damages and resist assessment.

Johnstone v. Robertson, 1917, 179 Iowa 838, 162 N.W. 66.

Owners on receiving first notice of proposition to establish district may appear and show cause against prayer of petition.

Chicago, etc. R. Co., v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

**10. Hearing.**

Landowner who files objections and had opportunity to be heard could not later complain of minor change as to outlet not affecting his lands.

Harker v. Board of Greene County, 1917, 182 Iowa 121, 163 N.W. 233, certiorari denied 38 S. Ct. 424, 246 U. S. 673, 62 L. Ed. 932.

**11. Evidence.**

Plaintiff failed to sustain burden of proving such ownership in her mother as would have entitled her mother to notice of proceedings.

Wilcox v. Marshall County, 1941, 229 Iowa 865, 294 N.W. 907, modified in other respects 297 N.W. 640,

Drainage record containing notice showing compliance with statutory requirements and affidavit of publication were admissible where plaintiff sought to show statutory notice was not given.

Whisenand v. Van Clark, 1940, 227 Iowa 800, 288 N.W. 915.

**12. Waiver or estoppel.**

Assessment against railroad held void where notice was not served on designated agent.

Chicago, etc. R. Co. v. Sedgwick, 1926, 202 Iowa 33, 209 N.W. 456.

Participation by railroad officers in informal discussion of proposed district prior to giving of notice of hearing did not estop railroad from denying receipt of notice.

Minneapolis, etc. R. Co. v. Board of Marshall County, 1925, 198 Iowa 1288, 201 N.W. 14.

Defects in notice must be pointed out in objections filed and are waived unless so presented.

In re Lightner, 1910, 145 Iowa 95, 123 N.W. 749.

Where owner was served with notice and as subcontractor worked on improvement for compensation and paid, without objection, several installments, he was estopped from seeking relief in equity from paying remaining installments.

Thompson v. Mitchell, 1907, 133 Iowa 527, 110 N.W. 901.

Where owner received no notice but appeared and was allowed damages failure to give notice was waived .

Ross v. Board of Wright County, 1905, 128 Iowa 427, 104 N.W. 506, L. R. A., N. S., 431.

Owner who was petitioner estopped from asserting notice was insufficient.

Oliver v. Monona County, 1902, 117 Iowa 43, 90 N.W. 510.

**13. Injunction.**

Where supervisors lacked jurisdiction to order construction injunction was proper.

Maasdam v. Kirkpatrick, 1932, 214 Iowa 1388, 243 N.W. 145.

**14. Review.**

Lack of jurisdiction not cured by failure to appeal from order establishing district.

Hoyt v. Board of Carroll County, 1925, 199 Iowa 345, 202 N.W. 98.

Objections filed afternoon of date of hearing were too late though hearing was adjourned for a week.

Patch v. Boards of Osceola and Dickinson Counties, 1916, 178 Iowa 283, 159 N.W. 694.

One appearing before the board and not appealing from order establishing district cannot urge on appeal from assessment that notice was defective as to non-residents.

In re Lightner, 1909, 145 Iowa 95, 123 N.W. 749.

**455.21 Service by publication—proof.** The notice provided in section 455.20 shall be served, except as otherwise hereinafter provided, by publication thereof once each week for two consecutive weeks in some newspaper of general circulation published in the county, the last of which publications shall be not less than twenty days prior to the day set for hearing of said petition. Proof of such service shall be made by affidavit of the publisher, and be on file with the auditor at the time the hearing begins. [S13,§1989-a3; C24, 27, 31, 35, 39,§7441; C46, 50, 54,§455.21]

Referred to in §§455.135, 455.207, 457.15 Repair, form of notice, notice and service thereof—objections.

**1. Validity.**

Drainage district may be constitutionally established without notice to property owners and without according them a hearing, notice being a matter of legislative grace.

Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

Statute authorizing establishment of drainage districts on notice by publication is not unconstitutional.

Goeppinger v. Boards of Sac, Buena Vista and Calhoun Counties, 1915, 172 Iowa 30, 152 N.W. 58.

Due process of law does not require personal service of notice of proceedings to establish drainage district.

Taylor v. Drainage Dist. No. 56, 1914, 167 Iowa 42, 148 N.W. 1040, L. R. A. 1916B, 1193, affirmed 244 U. S. 644, 37 S. Ct. 651, 61 L. Ed. 1368.

In establishment of drainage districts, published notice sufficient.

Johnson v. Board of Story County, 1910, 148 Iowa 539, 126 N.W. 153.

In providing for assessment of land in vicinity while providing notice only to owners abutting the improvement there was a taking without due process.

Beebe v. Magoun, 1904, 122 Iowa 94, 97 N.W. 986, 101 Am. St. Rep. 259.

**2. Construction and application.**

Under Code Supp. 1913, personal service of notice of establishment of district not required.

Board of Humboldt County v. Incorporated Town of Dakota City, 1923, 194 Iowa 1113, 191 N.W. 69.

Fact that petition for establishment of district was published in newspaper partly owned by petitioner who made affidavit of publication did not render it insufficient.

In re Lightner, 1909, 145 Iowa 95, 123 N.W. 749.

**3. Sufficiency of notice.**

Where affidavit of publication of notice was sworn to by newspaper publisher before clerk of court who failed to affix seal of court, sufficient notice was shown by showing of two consecutive publications.

Whisenand v. Van Clark, 1940, 227 Iowa 800, 228 N.W. 915.

**4. Waiver.**

Publication of notice in newspaper partly owned by petitioner was at most defective service of notice and failure to object before board waived such.

In re Lightner, 1910, 145 Iowa 95, 123 N.W. 749.

**5. Evidence.**

Drainage record containing notice showing compliance with statutory requirement, and affidavit of publication were admissible where plaintiff sought to show statutory notice was not given.

Whisenand v. Van Clark, 1940, 227 Iowa 800, 228 N.W. 915.

**6. Review.**

Owner appealing from assessment could not question validity of notice of pendency of petition for establishment of district.

In re Lightner, 1909, 145 Iowa 95, 123 N.W. 749.

**455.22 Service on agent.** If any person, corporation, or company owning or having interest in any land or other property affected by any proposed improvement under chapters 455 and 468, inclusive, shall file with the auditor an instrument in writing designating the name and post-office address of his or its agent upon whom service of notice of said proceeding shall be made, the auditor shall, not less than twenty days prior to the date set for hearing upon said petition, send a copy of said notice by registered mail addressed to the agent so designated. Proof of such service shall be made by affidavit of the auditor filed by him in said proceeding at or before the date of the hearing upon the petition, and such service shall be in lieu of all other service of notice to such persons, corporations, or companies.

This designation when filed shall be in force for a period of five years thereafter and shall apply to all proceedings under said chapters during said period. The person, com-

pany, or corporation making such designation shall have the right to change the agent appointed therein or to amend it in any other particular. [S13,§1989-a3; C24, 27, 31, 35, 39,§7442; C46, 50, 54,§455.22]

Referred to in §§455.135, 455.207 Repair; form of notice.
Chapters 456, 463, 464 enacted after this section was enacted; chapter 458 was enacted as an amendment to chapter 457.
Similar provision §391.54.

**1. Construction and application.**

This section mandatory and jurisdictional.
Chicago, etc. R. Co. v. Sedgwick, 1927, 203 Iowa 726, 213 N.W. 435.

Failure to furnish mandatory notice as required rendered subsequent proceedings as to railroad void.
Minneapolis, etc. R. Co. v. Board of Marshall County, 1924, 198 Iowa 1288, 201 N.W. 14.

Unless non-resident leaves name and address with auditor, notice by publication is good as to him.
O. A. G. 1923-24, p. 319.

**2. Waiver or estoppel.**

Voluntary appearance and written objections of railroad at hearing on assessments was not a waiver of jurisdictional defect of failure to serve notice of establishment of district.
Chicago, etc. R. Co. v. Sedgwick, 1927, 203 Iowa 726, 213 N.W. 435.

Assessment held void where notice not served on designated agent of railroad.
Chicago, etc. Co. v. Sedgwick, 1926, 202 Iowa 33, 209 N.W. 456.

**455.23 Personal service.** In lieu of publication, personal service of said notice may be made upon any owner of land in the proposed district, or upon any lienholder or other person interested in the proposed improvement, in the manner and for the time required for service of original notices in the district court. Proof of such service shall be on file with the auditor on the date of said hearing. [S13,§1989-a3; C24, 27, 31, 35, 39,§7443; C46, 50, 54,§455.23]

Referred to in §§455.135, 455.207 Repair; form of notice.
Time and manner of service, R. C. P. 53 and 56(a).

**1. Validity of prior laws.**

In providing for assessment of land in vicinity while providing notice only to owners abutting improvement there was a taking without due process.
Beebe v. Magoun, 1904, 122 Iowa 94, 97 N.W. 986, 101 Am. St. Rep. 259.

**2. Construction and application.**

Defect in service was cured by voluntary appearance.
Hoyt v. Brown, 1911, 153 Iowa 324, 133 N.W. 905.

**3. Estoppel.**

Owner of land and petitioner estopped from asserting insufficient notice.
Oliver v. Monona County, 1902, 117 Iowa 43, 90 N.W. 510.

**455.24 Waiver of notice.** No service of notice shall be required upon any person who shall file with the auditor a statement in writing, signed by him, waiving notice, or who enters an appearance in the proceedings. The filing of a claim for damages or objections to the establishment of said district or other pleading shall be deemed an appearance. [S13,§1989-a3; C24, 27, 35, 39,§7444; C46, 50, 54,§455.24]

Referred to in §§455.135, 455.207 Repair; form of notice.

**1. Construction and application.**

Actual notice of railroad of construction of ditch was insufficient to confer jurisdiction on court where statutory notice was not given.
Minneapolis, etc. R. Co. v. Board of Marshall County, 1925, 198 Iowa 1288, 201 N.W. 14.

**2. Right to notice.**

Landowner whose land is not actually taken for new right of way is not entitled to notice.
Board of Pottawattamie County v. Board of Harrison County, 214 Iowa 655, 241 N.W. 14, motion denied 54 S. Ct. 47, appeal dismissed, 54 S. Ct. 125, 290 U. S. 595, 78 L. Ed. 523.

**3. Waiver or estoppel.**

Owner appearing before board "waived" claim of lack of jurisdiction due to defective notice.
Wilcox v. Marshall County, 1941, 229 Iowa 865, 294 N.W. 907, modified in other respects, 297 N.W. 640.

Knowledge of improvement by owner does not supersede necessity of notice.
Thompson v. Mitchell, 133 Iowa 528, 110 N.W. 901, 119 Am. St. Rep. 605.

Where notice of improvement was not served on designated agent of railroad, it was not estopped to contest assessment on ground of defective notice.
Chicago, etc. R. Co. v. Sedgwick, 1926, 202 Iowa 33, 209 N.W. 456.

**4. Appearance.**

Landowner who appeared and filed objections and had opportunity to be heard could not later complain of

minor change in outlet not directly affecting his land.
Harker v. Board of Greene County, 1917, 182 Iowa 121, 163 N.W. 233, certiorari denied 38 S. Ct. 424, 246 U. S. 673, 62 L. Ed. 932.

Defect in service cured by voluntary appearance.
Hoyt v. Brown, 1911, 153 Iowa 324, 133 N.W. 905.

Where owner appeared and procured allowance of claim for damages, objection of failure to give notice was waived.
Ross v. Board of Wright County, 1905, 128 Iowa 427, 104 N.W. 506.

**5. Review.**

One appearing before board and not appealing from order establishing district cannot urge on appeal from assessment that notice was defective as to non-residents.
In re Lightner, 1909, 145 Iowa 95, 123 N.W. 749.

**455.25 Waiver of objections and damages.** Any person, company, or corporation failing to file any claim for damages or objections to the establishment of the district at or before the time fixed for said hearing, except claims for land required for right of way, or for settling basins, shall be held to have waived all objections and claims for damages. [S13, §1989-a4; C24, 27, 31, 35, 39,§7445; C46, 50, 54,§455.25]
Referred to in §455.207. Form of notice.

**1. Validity.**

Provision that failure to file claim for damages within time fixed shall be waiver of damages is valid.
Taylor v. Drainage Dist. No. 56, 1914, 167 Iowa 42, 148 N.W. 1040, L. R. A. 1916B, 1193, affirmed 37 S. Ct. 651, 244 U. S. 644, 61 L. Ed. 1368.

**2. Construction and application.**

Under Code Supp. 1913, board could establish district only when satisfied it contained land to be benefited.
Wood v. Honey Creek Drainage & Levee Dist. No. 6, 1916, 180 Iowa 159, 160 N.W. 342.

**3. Claim for damages, necessity.**

Allowance of damages for right of way claims where no claims were filed was proper.
Shaw v. Board of Greene County, 1923, 185 Iowa 545, 192 N.W. 525.

**4. Waiver or estoppel.**

Landowner held to be estopped under facts from recovering assessments paid by him.
Wilcox v. Marshall County, 1941, 297 N.W. 640.

Where taxpayers took no legal steps to interfere with improvement they were later estopped to question validity of proceedings in suit to prevent payment of warrants issued for work.

Dashner v. Woods Co., 1928, 205 Iowa 64, 217 N.W. 464.

It could not be claimed for first time in suit to enjoin assessment that commissioners and engineer did not make survey "together."

Carpenter v. Joint Drainage Dist. No. 6, 1924, 198 Iowa 182, 197 N.W. 656, modified in other respects 198 Iowa 182, 199 N.W. 265.

Where plaintiff had sufficient notice of establishment of district and failed to claim damages in time fixed by law, denial of damages was justified.

Collins v. Board of Pottawattamie County, 1912, 158 Iowa 322, 138 N.W. 1095.

Defects in notice must be pointed out in objections filed with board or they are waived.

In re Lightner, 1910, 145 Iowa 95, 123 N.W. 749.

Owners in district not estopped to assert that contractor should not be paid for work outside improvement ordered by board.

Monaghan v. Vanatta, 1909, 144 Iowa 119, 122 N.W. 610.

One having notice of proceedings and who watched completion of the work was then estopped to question constitutionality of statute authorizing proceedings.

Mackay v. Hancock County, 1908, 137 Iowa 88, 114 N.W. 552.

Where owners permit construction without objection they cannot afterward complain of irregularities to defeat collection of the tax levied.

Patterson v. Baumer, 1876, 43 Iowa 477.

**5. Jurisdictional defects.**

Jurisdictional defects not waived by failure to appear or appeal from assessment.

Chicago, etc. R. Co. v. Sedgwick, 1927, 203 Iowa 726, 213 N.W. 435.

**6. Time for filing objections.**

Objections filed after noon of day of hearing were too late, though hearing was adjourned for one week.

Patch v. Boards of Osceola and Dickinson Counties, 1916, 178 Iowa 283, 159 N.W. 694.

**7. Objections not made before board.**

Objections not made at hearing before board are waived.

Hatcher v. Board of Greene County, 1914, 165 Iowa 197, 145 N.W. 12.

**8. Failure to file claim for damages.**

Failure to file claim for damages in proper time through ignorance, inattention or misfortune, is no ground for equitable relief.

Taylor v. Drainage Dist. No. 56, 1914, 167 Iowa 42, 148 N.W. 1040, L. R. A. 1916B, 1193, affirmed 37 S. Ct. 651, 244 U. S. 644, 61 L. Ed. 1368.

Where landowner fails to file claim as required by statute, he may not maintain suit in equity to determine damages.

Collins v. Board of Pottawattamie County, 1913, 158 Iowa 322, 138 N.W. 1095.

**9. Opportunity to be heard on objections.**

Where owner knowing of plan failed to object he is in no position to say he received no benefits.

Read v. Board of Hamilton County, 1919, 185 Iowa 718, 171 N.W. 23.

Owner who appeared and filed objections and had opportunity to be heard could not later complain of minor change in outlet not directly affecting his land.

Harker v. Board of Greene County, 1917, 182 Iowa 121, 163 N.W. 233, certiorari denied 38 S. Ct. 424, 246 U. S. 673, 62 L. Ed. 932.

Drainage district may be constitutionally established without notice to property owners and without according them a hearing, notice being a matter of legislative grace.

Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects, 182 Iowa 60, 165 N.W. 390.

**10. Burden of proof.**

Court will interfere with action of board of supervisors reluctantly and only on fairly clear showing of error.

Hall v. Polk, 1917, 181 Iowa 828, 165 N.W. 119.

**11. Review.**

On appeal on ground that assessments were erroneous and excessive, question of whether improvement was ill-advised cannot be considered.

Harriman v. Drainage Dist. No. 7-146 of Franklin and Wright Counties, 1924, 198 Iowa 1108, 199 N.W. 974.

Owner's objections not made before board on hearing on assessments are waived unless affecting jurisdiction of the board.

Bloomquist v. Board of Hardin County, 1920, 188 Iowa 994, 177 N.W. 95.

Where drainage plan was presented, published and adopted without objection it was beyond reach of condemnation on appeal from drainage assessments.
Board of Polk County v. McDonald, 1920, 188 Iowa 6, 175 N.W. 817.

Objections not urged before board of supervisors held not reviewable on appeal.
Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

Supreme Court need not consider objections to establishment not made in district court.
Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

**455.26 Adjournment for service—jurisdiction retained.** If at the date set for hearing, it shall appear that any person entitled to notice has not been properly served with notice, the board may postpone said hearing and set another time for the same not less than thirty days from said date, and notice of such hearing as hereinbefore provided shall be served on such omitted parties. By fixing such new date for hearing and the adjournment of said proceeding to said date, the board shall not lose jurisdiction of the subject matter of said proceeding nor of any parties already served with notice. [S13,§1989-a3; C24, 27, 31, 35, 39,§7446; C46, 50, 54,§455.26]

Referred to in §455.207 Form of notice.

**455.27 Hearing of petition—dismissal.** At the time set for hearing on said petition the board shall hear and determine the sufficiency of the petition in form and substance (which petition may be amended at any time before final action thereon), and all objections filed against the establishment of such district, and the board may view the premises included in the said district. If it shall find that the construction of the proposed improvement will not materially benefit said lands or would not be for the public benefit or utility nor conducive to the public health, convenience, or welfare, or that the cost thereof is excessive it shall dismiss the proceedings. [S13,§1989-a5; C24, 27, 31, 35, 39,§7447; C46, 50, 54,§455.27]

**1. Validity.**

That statute provided for hearing before engineer rather than before board did not invalidate the statute.
Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

**2. Construction and application.**

Survey and report by engineer prerequisite to authority of board to establish district.

Hartshorn v. Wright County District Court, 1909, 142 Iowa 72, 120 N.W. 479.

**3. Purposes for which drains may be established.**

Mere elevation of land above proposed ditch is not sole test for determining benefits to that land.

In re Drainage Dist. No. 3 Hardin County, 1909, 146 Iowa 564, 123 N.W. 1059; Bump v. Board of Hardin County, 1909, 123 N.W. 1065.

**4. Amendment of petition.**

Original petition could be amended by changing plan prior to action by board on the petition.

In re C. G. Hay Drainage Dist. No. 23, 1910, 146 Iowa 280, 125 N.W. 225.

**5. Dismissal of proceedings.**

Function of supervisors in deciding whether to establish district is legislative and appeal to district court from such decision properly dismissed for lack of jurisdiction.

Denny v. Des Moines County, 1909, 143 Iowa 466, 121 N.W. 1066.

In proceedings to open drain where county attorney appeared acting on orders from board to dismiss proceedings and entered disclaimer of any and all interest in the proceedings, it did not operate as a dismissal.

Temple v. Hamilton County, 1907, 134 Iowa 706, 112 N.W. 174.

**6. Rejection of portion of petition.**

That supervisors rejected that portion of petition seeking issuance of bonds to pay cost of drain did not show rejection of that portion seeking establishment of drain.

Butts v. Monona County, 1896, 100 Iowa 74, 69 N.W. 284.

**7. Objections.**

Objections filed before board are sufficient if they fairly point out the claim made.

Kimball v. Board of Polk County, 1921, 190 Iowa 783, 180 N.W. 988.

Report of engineer should show elevations of the lands, lakes, ponds, or depressions in the district and should show estimate of expenses.

In re Nishnabotna River Improvement Dist. No. 2, 1910, 145 Iowa 130, 123 N.W. 769.

**8. Evidence.**

Evidence held to show land in district would receive benefit.

Schafroth v. Buena Vista County, 1917, 181 Iowa 1223, 165 N.W. 341.

Testimony of unqualified witness was entitled to no consideration.

Hall v. Polk, 1917, 181 Iowa 828, 165 N.W. 119.

Evidence justified finding that ditch would be practicable and of benefit commensurate with expense to be incurred.

Henderson v. Board of Polk County, 1915, 171 Iowa 499, 153 N.W. 63.

**9. Hearing and determination of questions.**

One having repeated due notice of prolonged and irregular proceeding and who has appeared and presented his objections thereafter cannot question jurisdiction of the board.

Harker v. Board of Greene County, 1917, 182 Iowa 121, 163 N.W. 233, certiorari denied 38 S. Ct. 424, 246 U. S. 673, 62 L. Ed. 932.

It was not material when objections were presented if fairly brought to attention of board in time to guide its action.

Lewis v. Pryor Drainage Dist., 1918, 183 Iowa 236, 167 N.W. 94.

If board had engineer's report before it, it could act though return had not then been filed with the auditor.

In re Drainage Dist. No. 3 Hardin County, 1909, 146 Iowa 564, 123 N.W. 1059, followed in Bump v. Board of Hardin County, 123 N.W. 1065.

Order of board reciting that "all requirements of law have been fully complied with and that the ditch be declared established," involved sufficient finding of necessity.

Oliver v. Monona County, 1902, 117 Iowa 43, 90 N.W. 510.

**10. Decisions and record.**

Owners having submitted establishment of district to discretion of supervisors could not after adverse decision compel construction by mandamus.

Eller v. Board of Hardin County, 1929, 208 Iowa 285, 225 N.W. 375.

Order of board denying petition held not a refusal to establish a district.

Vinton v. Board of Mills County, 1923, 196 Iowa 329, 194 N.W. 358.

In establishment proceedings, held that no record of finding as to land being subject to overflow or too wet for cultivation is required.

Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

Board held to not have abused discretion in refusing to order the improvement.

Zinser v. Board of Buena Vista County, 1907, 137 Iowa 660, 114 N.W. 51.

**11. Irregularities.**

Proceeding not invalidated because resolution of necessity was worded in the past instead of probable future tense.

Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

Defects in giving of notice must be pointed out in objections filed with board as irregularities in proceedings are not jurisdictional and may be waived.

In re Lightner, 1910, 145 Iowa 95, 123 N.W. 749.

**12. Actions.**

Prior action was not conclusive upon county in action by plaintiff to compel maintenance of culvert.

Elliott v. Woodbury County, 1913, 162 Iowa 473, 143 N.W. 826.

**13. Review.**

Finding by board that proposed district was not conducive to public health, convenience or welfare was not reviewed.

Christensen v. Agan, 1930, 209 Iowa 1315, 230 N.W. 800.

Decision of board that it was unnecessary to abandon the existing ditch would not be interfered with.

Vinton v. Board of Mills County, 1923, 196 Iowa 329, 194 N.W. 358.

Supreme Court will consider no objections to order of board except such as are raised before the board itself.

Simpson v. Board of Kossuth County, 1919, 186 Iowa 1034, 171 N.W. 259, error dismissed 41 S. Ct. 376, 255 U. S. 579, 65 L. Ed. 795.

Filing of petition for counter-scheme met requirement of written objection and second petitioners were entitled to appeal.

Lewis v. Pryor Drainage Dist., 1918, 183 Iowa 236, 167 N.W. 94.

Where owner failed to appeal from decision including

his land in district, it could not later be insisted that district included lands which should have been omitted.

Chicago etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

On appeal to district court only objections urged before the board may be considered.

Simpson v. Board of Kossuth County, 1917, 180 Iowa 1330, 162 N.W. 824.

On appeal to district court claimant for damages could not recover on different ground than that presented to board.

Mackland v. Board of Pottawattamie County, 1913, 162 Iowa 604, 144 N.W. 317.

Description of land in notice of appeal was so defective that court did not acquire jurisdiction to review assessment as originally made.

Bradford v. Board of Emmet County, 1913, 160 Iowa 206, 140 N.W. 804.

Only owners of lands in new district could complain on appeal of establishment of new district drainage into old ditch.

Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

Where supervisors found drain should not be established, the fact that such findings was not made in order of sequence provided did not invalidate such finding.

In re Bradley, 1902, 117 Iowa 472, 91 N.W. 780.

Owner cannot on appeal from action of board impeach the determination that his land was properly included in district where he did not so claim before the board.

Oliver v. Monona County, 1902, 117 Iowa 43, 90 N.W. 510.

**455.28 Establishment—further investigation.** If the board shall find that such petition complies with the requirements of law in form and substance, and that such improvement would be conducive to the public health, convenience, welfare, benefit, or utility, and that the cost thereof is not excessive, and no claims shall have been filed for damages, it may locate and establish the said district in accordance with the recommendation of the engineer and the report and plans on file; or it may refuse to establish the proposed district if it deem best, or it may direct the engineer or another one employed for that purpose to make further examination, surveys, plats, profiles, and reports for the modification of said plans, or for new plans in accordance with sections 455.17 and 455.18, and continue further hearing to a fixed date. All parties over whom the board then has jurisdiction

shall take notice of such further hearing; but any new parties rendered necessary by any modification or change of plans shall be served with notice as for the original establishment of a district. The county auditor shall appoint three appraisers as provided for in section 455.30 to assess the value of the right of way required for open ditches or other improvements. [S13,§1989-a5; C24, 27, 31, 35, 39,§7448; C46, 50, 54,§455.28]

**1. Construction and application.**

No duty imposed on county in connection with establishment of drainage district.

Mills County v. Hammack, 1925, 200 Iowa 251, 202 N.W. 521.

Any one of three methods provided by law for establishment of district could have been used.

Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

Survey and report by engineer is prerequisite to authority of supervisors to establish district.

Hartshorn v. Wright County District Court, 1909, 142 Iowa 72, 120 N.W. 479.

Authority to pass on necessity and fix boundaries of district is more legislative than judicial.

Temple v. Hamilton County, 1907, 134 Iowa 706, 112 N.W. 174.

**2. Purpose of drain.**

Purpose is to more effectually drain lands in district by a general system of improvements and mere elevation is not sole test of benefit.

In re Drainage Dist. No. 3, Hardin County, 1909, 146 Iowa 564, 123 N.W. 1059; Bump v. Board of Hardin County, 1909, 123 N.W. 1065.

Where executive council found that to maintain a lake as such would be detrimental to the public, it became surface water to be dealt with as such.

Higgins v. Board of Dickinson County, 1920, 188 Iowa 448, 176 N.W. 268.

Ditch to carry waters could not be established, the plan being to build it undersize and rely on erosion to enlarge it, where it was not shown enlargement would occur in reasonable time.

Hall v. Polk, 1917, 181 Iowa 828, 165 N.W. 119.

**3. Branches.**

A branch or branches to a main drain is not repugnant to the statute as establishing two districts.

Obe v. Board of Hamilton County, 1915, 169 Iowa 449, 151 N.W. 453.

**4. Discretion of board.**

Board has wide discretion in creating or refusing establishment of drainage districts.

Thompson v. Board of Buena Vista County, 1925, 201 Iowa 1099, 206 N.W. 624.

**5. County attorney, representation by.**

County attorney may represent property owners in litigation growing out of drainage proceedings.

O. A. G. 1925-26, p. 103.

**6. Report of engineer.**

Recommendations of engineer should not be set aside for slight or transient reasons.

Chicago, etc. R. Co. v. Board of Clay County, 1925, 200 Iowa 557, 204 N.W. 311.

Board must find report of engineer and plat to be disinterested and competent before establishing drainage district.

Hall v. Polk, 1917, 181 Iowa 828, 165 N.W. 119.

Filing by engineer of report was necessary to give board jurisdiction to order establishment.

Simpson v. Board of Kossuth County, 1917, 180 Iowa 1330, 162 N.W. 824.

Fixing of boundaries of district at point where benefits were tangible is within legislative discretion of board.

Mittman v. Farmer, 1913, 162 Iowa 364, 142 N.W. 991, Ann. Cas. 1915C, 1.

Where engineer's report gives route, description of land included, etc., and board accepts reports as sufficiently specific, courts will not interfere on grounds of insufficiency of report.

Munn v. Board of Greene County, 1913, 161 Iowa 26, 141 N.W. 711.

Establishment held to be of entire improvement and not only of the part covered by second report of engineer.

Lawrence v. Board of Page County, 1911, 151 Iowa 182, 131 N.W. 8.

Where report of engineer furnished board all information necessary to enable it to act, inaccuracies in report were not jurisdictional.

In re Drainage Dist. No. 3, Hardin County, 1910, 146 Iowa 564, 123 N.W. 1059; followed in Bump v. Board of Hardin County, 123 N.W. 1065.

If board had return of engineer before it, it could act though return had not then been filed with auditor.

In re Drainage Dist. No. 3, Hardin County, 1909, 146 Iowa 564, 123 N.W. 1059, followed in Bump v. Board of Hardin County, 123 N.W. 1065.

**7. Plans.**

Board limited to plans recommended by engineer as practicable.

Kelley v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 841; Herron v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 846.

If district gave reasonable promise of benefit, it should not be condemned because in a minor respect it does not do all desired by some interested parties.

Shay v. Board of Ringgold County, 1919, 185 Iowa 282, 170 N.W. 393.

Two contiguous divisions draining in different directions may be in one district.

Hatcher v. Board of Sup'rs of Greene County, 1914, 165 Iowa 197, 145 N.W. 12.

No authority in board to establish district except as planned and recommended by engineer.

Shaw v. Nelson, 1911, 150 Iowa 559, 129 N.W. 827.

**8. Changes in plan.**

Slight changes in construction from original plan, additional expense being paid by those benefiting, gave other owner no ground for complaint.

Fardal Drainage Dist. No. 72 in Hamilton County v. Board of Hamilton County, 1912, 157 Iowa 590, 138 N.W. 443; Fardal Drainage Dist. No. 72 in Hamilton County v. Board of Hamilton County, 1912, 138 N.W. 444.

Slight changes made during construction at comparatively inconsequential cost authorized under Code Supp. 1913 §1989-a11.

Chicago, etc. R. Co. v. Board of Clinton County, 1924, 197 Iowa 1208, 198 N.W. 640.

**9. Approval of plan.**

Service of notice of hearing of petition and claims for damages prior to adoption of plan recommended was not fatal where board did in fact approve the plan.

Kelley v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 841; Herron v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 846.

**10. Cost of construction.**

Change of lateral, entering little into question of apportionment of cost, though unauthorized did not affect jurisdiction of board to make assessment.

Chicago, etc. R. Co. v. Board of Monona County, 1923, 196 Iowa 447, 194 N.W. 213.

Excessiveness of cost decided by comparing expense with benefit to be derived from improvement.

Shaw v. Board of Greene County, 1923, 195 Iowa 545, 192 N.W. 525.

**11. Territorial extent.**

Entire area held properly included in one district so improvement might substantially benefit whole district.

In re Drainage Dist. No. 3, Hardin County, 1909, 146 Iowa 564, 123 N.W. 1059; Bump v. Board of Hardin County, 1909, 123 N.W. 1005.

Irregularity not fatal where from all proceedings a consistent result can be found.

Loomis v. Board of Sup'rs, 1919, 186 Iowa 721, 173 N.W. 615.

**12. Lands to be included.**

Benefits should be considered in determining whether particular lands should be included in district.

In re Drainage Dist. No. 3, Hardin County, 1909, 146 Iowa 564, 123 N.W. 1059; Bump v. Board of Hardin County, 1909, 123 N.W. 1065.

Lands not requiring drainage cannot be included because waters reach the same creek.

Thompson v. Board of Buena Vista County, 1925, 201 Iowa 1099, 206 N.W. 624.

Determination of lands to be included is matter within the discretion of board.

Plumer v. Board of Harrison County, 1921, 191 Iowa 1022, 180 N.W. 863.

Inclusion of some tracts deriving only slight advantage would not of itself defeat organization of district.

Hall v. Polk, 1917, 181 Iowa 828, 165 N.W. 119.

Inclusion of appellant's land in district held justified.

Harker v. Board of Greene County, 1917, 182 Iowa 121, 163 N.W. 233, certiorari denied, 1918, 38 S. Ct. 424, 246 U. S. 673, 62 L. Ed. 932.

Board can establish district only when satisfied it contains all land to be benefited.

Wood v. Honey Creek Drainage & Levee Dist. No. 6, 1916, 180 Iowa 159, 160 N.W. 342.

To justify inclusion of lands, they must derive a benefit, either directly or by being afforded an outlet for excess water.

Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

**13. Proceedings.**

Jurisdiction is obtained by legislative finding that district will be conducive to public benefit.

Christensen v. Agan, 1930, 209 Iowa 1315, 230 N.W. 800.
Irregularities of detail not affecting jurisdiction would not void proceedings.
County Drains No. 44, 45 v. Long, 1911, 151 Iowa 47, 130 N.W. 152.

**14. Resolutions.**

After ditch was begun board could not widen right of way and allow damages therefor on recommendation of engineer.
Simpson v. Board of Kossuth County, 1917, 180 Iowa 1330, 162 N.W. 824.
Proceeding was not invalidated because supervisors resolution of necessity of improvement was worded in past instead of probable future tense.
Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

**15. Presumptions and burden of proof.**

Presumed in first instance that drainage system is rightfully established.
Maben v. Olson, 1919, 187 Iowa 1060, 175 N.W. 512.
No presumption that board will not exercise judgment honestly.
Monter v. Board of Webster County, 1919, 187 Iowa 625, 174 N.W. 407.
Objectors to construction have burden of showing improper establishment.
Mapel v. Board of Calhoun County, 1917, 179 Iowa 981, 162 N.W. 198.
Presumed ditch was properly established.
Knudson v. Board of Hamilton County, 1913, 162 Iowa 97, 143 N.W. 988.
Burden on objectors to prove district not a work of public usefulness and excessive cost.
Mittman v. Farmer, 1913, 162 Iowa 364, 142 N.W. 991, Ann. Cas. 1915C, 1.

**16. Evidence.**

Supervisors held without power to establish expensive district of uncertain benefit.
Anderson v. Board of Monona County, 1927, 203 Iowa 1023, 213 N.W. 623.
Evidence failed to show district was not legally established.
Lincoln v. Moore, 1923, 196 Iowa 152, 194 N.W. 299.
Evidence that cost would exceed benefits held not sufficient to require reversal of decree affirming establishment of district.
Shaw v. Board of Greene County, 1923, 195 Iowa 545, 192 N.W. 525.

Evidence insufficient to sustain contention of excessive cost and lack of public utility.
Rider v. Hockett, 1920, 188 Iowa 1289, 176 N.W. 242.

Evidence sustained finding that construction was warranted and that cost was not excessive.
Mapel v. Board of Calhoun County, 1917, 179 Iowa 981, 162 N.W. 198.

Evidence held to sustain finding that benefit would be commensurate with cost.
Henderson v. Board of Polk County, 1915, 171 Iowa 499, 153 N.W. 63.

Evidence sustained finding of board that reclamation of the land involved would be for public welfare.
Hatcher v. Board of Greene County, 1914, 165 Iowa 197, 145 N.W. 12.

Evidence failed to show any contemplation in proceedings that there should be a culvert in the embankment as claimed by plaintiff.
Elliott v. Woodbury County, 1913, 162 Iowa 473, 143 N.W. 826.

Evidence insufficient to establish that the work was not of public utility.
Mittman v. Farmer, 1913, 162 Iowa 364, 142 N.W. 991, Ann. Cas. 1915C, 1.

Evidence held to show plan adopted by board was suitable in view of nature of lands to be drained.
Schumaker v. Edgington, 1911, 152 Iowa 596, 132 N.W. 966.

Evidence held to show establishment would not be for best interests of owners in district.
In re Nishnabotna River Improvement Dist. No. 2, 1909, 145 Iowa 130, 123 N.W. 769.

**17. Hearing and determination of questions.**

Previous finding of board on formation of original district did not require finding new district with different boundaries would promote public benefit.
Christensen v. Agan, 1930, 209 Iowa 1315, 230 N.W. 800.

Finding that improvement will benefit lands is an exercise of quasi judicial function.
Thompson v. Board of Buena Vista County, 1925, 201 Iowa 1099, 206 N.W. 624.

Board held not limited to particular improvement described in petition.
Monona County v. Gray, 1925, 200 Iowa 1133, 206 N.W. 26.

It was not material when objections were presented if they were fairly brought to consideration of the board in time to guide its action.

Lewis v. Pryor Drainage Dist., 1918, 183 Iowa 236, 167 N.W. 94.

Whether certain land shall be included in district is a matter of fact for board to decide on the evidence submitted.

Stewart v. Board of Floyd County, 1918, 183 Iowa 256, 166 N.W. 1052.

Whether cost of district is excessive should not be determined by taking average cost per acre of all land in the district.

Mapel v. Board of Calhoun County, 1917, 179 Iowa 981, 162 N.W. 198.

Establishment of drain by board involves a finding of necessity and is conclusive thereon.

Hoyt v. Brown, 1911, 153 Iowa 324, 133 N.W. 905.

**18. Disqualification of board member.**

Disqualification of member of board casting deciding vote for establishment when he had a substantial interest not avoided on ground no statute demands he be disinterested since the spirit of the statutes so demand.

Stahl v. Board of Ringgold County, 1920, 187 Iowa 1342, 175 N.W. 772, 11 A. L. R. 185.

**19. Findings of board.**

Order of board reciting that "all requirements of law have been fully complied with and that the ditch be declared established," involved finding of necessity.

Oliver v. Monona County, 1902, 117 Iowa 43, 90 N.W. 510.

**20. Order establishing drain.**

Legal establishment conclusive that lands received benefit as to nonappearing parties served with notice.

Chicago, etc. R. Co. v. Sedgwick, 1927, 203 Iowa 726, 213 N.W. 435.

Unquestioned order establishing district and including certain land for purpose of outlet could not be contradicted with later injunction proceeding where owner had due notice of all proceedings.

Baird v. Hamilton County, 1919, 186 Iowa 856, 173 N.W. 106.

Order of establishment is conclusive on owner except as right of appeal is given.

Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects, 182 Iowa 60, 165 N.W. 390.

Board in ordering establishment is limited to recommendations of engineer.

Simpson v. Board of Kossuth County, 1917, 180 Iowa 1330, 162 N.W. 824.

Order of ditch by board was not a breach of covenant against incumbrances in deed thereafter given.

Stuhr v. Butterfield, 1911, 151 Iowa 736, 130 N.W. 897, 36 L. R. A., N. S. 321.

**21. Collateral attack.**

Decision of board that ditch was of required depth and width cannot be reviewed in another proceeding.

Patterson v. Baumer, 1876, 43 Iowa 477.

**22. Estoppel to question establishment.**

Acquiescence, assent and payment of taxes for 20 years estopped owners to assert illegal establishment.

Lincoln v. Moore, 1923, 196 Iowa 152, 194 N.W. 299.

**23. Record.**

Verity of drainage district record to which proceedings plaintiff was a party is not open to dispute in his proceedings to enjoin construction of ditch.

Baird v. Hamilton County, 1918, 186 Iowa 856, 167 N.W. 590, rehearing denied 186 Iowa 856, 173 N.W. 106.

In proceeding to establish district no record of finding as to the land subject to overflow or too wet for cultivation is required.

Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

**24. Amendment of record.**

Where board was enjoined from levying tax to pay for costs, it could not on certiorari proceeding to review subsequent order for levy of tax avail itself of an amendment to its record made after adverse decision.

Tod v. Crisman, 1904, 123 Iowa 693, 99 N.W. 686.

**25. Bond, insufficiency of.**

Insufficiency of bond filed by petitioners for establishment of district could not be raised to affect action of board in establishing district after bond was acted upon.

In re Drainage Dist. No. 3 Hardin County, 1909, 146 Iowa 564, 123 N.W. 1059, followed in Bump v. Board of Hardin County, 123 N.W. 1065.

**26. Injunction.**

Maben v. Olson, 1919, 187 Iowa 1060, 175 N.W. 512. With three-fourths of work completed, relief of owner

asking stoppage of work would be granted only on clear showing of this right to demand it.

Simpson v. Board of Kossuth County, 1919, 186 Iowa 1034, 171 N.W. 259, error dismissed 41 S. Ct. 376, 255 U. S. 579, 65 L. Ed. 795.

Evidence showed plaintiff knew his land was in district and that it would cross his land.

Baird v. Hamilton County, 1918, 186 Iowa 856, 167 N.W. 590, rehearing denied, 1919, 186 Iowa 856, 173 N.W. 106.

Owner could not enjoin construction where he accepted and retained, without objections, damages awarded him and fully knew how much of his land would be taken.

Knudson v. Board of Hamilton County, 1913, 162 Iowa 97, 143 N.W. 988.

**27. Review.**

Action of board including land in district not reviewable until assessments are made.

In re Drainage Dist. No. 3, Hardin County, 1909, 146 Iowa 564, 123 N.W. 1059; Bump v. Board of Hardin County, 1909, 123 N.W. 1065.

Finding of board that district would not be conducive to public welfare was not reviewable.

Christensen v. Agan, 1930, 209 Iowa 1315, 230 N.W. 800.

Owner's remedy from ruling of board that district was legally established was by appeal only.

Wilcox v. Marshall County, 1941, 229 Iowa 865, 294 N.W. 907, modified in other respects 297 N.W. 640.

Exclusion of land from district by board if without jurisdiction though reviewable on appeal could be reviewed by certiorari.

Estes v. Board of Mills County, 1927, 204 Iowa 1043, 217 N.W. 81.

Owners of land have right to appeal from order establishing district.

Thompson v. Board of Buena Vista County, 1926, 201 Iowa 1099, 206 N.W. 624.

Reversal of order not error where project is impossible.

Dean v. Wright Drainage Dist., 1925, 200 Iowa 1162, 206 N.W. 245.

Supreme Court would not consider constitutionality where not pressed below.

Shaw v. Board of Greene County, 1923, 195 Iowa 545, 192 N.W. 525.

Where evidence satisfied Supreme Court that improvement resulted in benefit at moderate cost the court would not interfere with statutory discretion of board.
Hixson v. Joint Boards of Iowa and Benton Counties, 1920, 189 Iowa 244, 178 N.W. 349.

On appeal from district court while it was proper for counsel to stipulate original exhibits of engineers to appellate court, they should abstract the same for convenience of appellate court.
Rider v. Hockett, 1920, 188 Iowa 1289, 176 N.W. 242.

Defects occurring prior to order of board establishing district not considered on appeal from order of board fixing assessments.
Chicago, etc. R. Co. v. Board of Hamilton County, 1918, 184 Iowa 590, 169 N.W. 103.

Filing of petitions for counter scheme is equivalent to filing written objections and such petitioners were entitled to appeal.
Lewis v. Pryor Drainage Dist., 1918, 183 Iowa 236, 167 N.W. 94.

Determination of board whether drain is conducive to public utility is not reviewable.
Wood v. Honey Creek Drainage & Levee Dist. No. 6, 1916, 180 Iowa 159, 160 N.W. 342.

Fact that no estimate as to full cost of improvement had been made could be considered on appeal from order establishing district as reason for reversing the order.
In re Nishnabotna River Improvement Dist. No. 2, 1910, 145 Iowa 130, 123 N.W. 769.

Appeal from decision of board on whether district should be established properly dismissed for want of jurisdiction.
Denny v. Des Moines County, 1909, 143 Iowa 466, 121 N.W. 1066.

Court may not decree establishment of district which is a substantial variance from district proposed by board.
Hartshorn v. Wright County District Court, 1909, 142 Iowa 72, 120 N.W. 479.

Under the facts appeal held taken in time.
Clary v. Woodbury County, 1907, 135 Iowa 488, 113 N.W. 330.

In an appeal from order establishing district petitioner whose lands were affected and who gave bond for costs and expenses could intervene and defend order appealed from.
Temple v. Hamilton County, 1907, 134 Iowa 706, 112 N.W. 174.

Where supervisors found drain should not be established the fact such finding was not made in order of sequence provided did not invalidate such finding.
In re Bradley, 1902, 117 Iowa 472, 91 N.W. 780.

**28. Failure to appeal.**

Plaintiff's failure to appeal from order of drainage board was a waiver of irregularity in engineer's report.
Simpson v. Board of Kossuth County, 1917, 180 Iowa 1330, 162 N.W. 824.

**455.29 Settling basins—purchase or lease of lands.** If a settling basin or basins are provided as a part of a drainage improvement, the board of supervisors may buy or lease the necessary lands in lieu of condemning said lands. [C27, 31, 35,§7448-a1; C39,§7448.1; C46, 50, 54,§455.29]

**1. Construction and application.**

That defendant's land was condemned for settling basin would not make district proper party in suit to determine right of railroad to cast on land of certain persons, water from a creek on defendant's land.
Chicago, etc. R. Co. v. Lynch, 1913, 163 Iowa 283, 143 N.W. 1083.

**2. Damages.**

Where plaintiff received full value of his land condemned as settling basin he could not recover from railroad continuing and recurring damages for alleged diversion of water thereon.
Lynch v. Chicago, etc. R. Co. 1919, 186 Iowa 733, 173 N.W. 53.

**455.30 Appraisers.** If the board shall find that such improvement will materially benefit said lands, will be conducive to the public health, convenience, welfare, benefit, or utility, and that the law has been complied with as to form and substance of the petition, the service of notice, and the survey and report of the engineer, and that said improvement should be made, then if any claims for damages shall have been filed, further proceedings shall be continued to an adjourned, regular, or special session, the date of which shall be fixed at the time of adjournment, and of which all interested parties shall take notice, and the auditor shall appoint three appraisers to assess damages, one of whom shall be an engineer, and two freeholders of the county who shall not be interested in nor related to any person interested in the proposed improvement, and the said appraisers shall take and subscribe an oath to examine the said premises, ascertain and impartially assess all damages

according to their best judgment, skill and ability. [S13,§1989-a5; C24, 27, 31, 35, 39,§7449; C46, 50, 54,§455.30]

Referred to in §455.28 Establishment—further investigation; and §455.210 Appraisement.

**1. Construction and application.**

Owners could not assert notice to bidder was defective where, after letting of contract, owner waived notice of appointment of appraisers of damages, claims for damages and granted right of way.

Petersen v. Sorensen, 1921, 192 Iowa 471, 185 N.W. 42.

Survey and report by engineer prerequisite to authority of board to establish district.

Hartshorn v. Wright County District Court, 1909, 142 Iowa 72, 120 N.W. 479.

**2. Actions.**

No instruction required on claim filed before supervisors but abandoned in district court.

Brown v. Drainage Dist. No. 48, 1913, 163 Iowa 290, 143 N.W. 1077.

**455.31 Assessment—report—adjournment—other appraisers.** The appraisers appointed to assess damages shall view the premises and determine and fix the amount of damages to which each claimant is entitled, and shall place a separate valuation upon the acreage of each owner taken for right of way for open ditches or for settling basins, as shown by plat of engineer, and shall, at least five days before the date fixed by the board to hear and determine the same, file with the county auditor reports in writing, showing the amount of damage sustained by each claimant. Should the report not be filed in time or should any good cause for delay exist, the board may postpone the time of final action on the subject, and, if necessary, the auditor may appoint other appraisers. [S13,§1989-a6; C24, 27, 31, 35, 39,§7450; C46, 50, 54,§455.31]

**1. Construction and application.**

Notice necessary to owner whose land is taken for right of way and one whose land is not actually taken is not entitled to notice.

Board of Pottawattamie County v. Board of Harrison County, 1932, 214 Iowa 655, 241 N.W. 14, motion denied 54 S. Ct. 47, appeal dismissed 54 S. Ct. 125, 290 U. S. 595, 78 L. Ed. 523.

No additional compensation should be allowed insofar as new right of way includes part of former improvement for which owner has been fully paid.

Johnston v. Drainage Dist. No. 80 of Palo Alto County, 1918, 184 Iowa 346, 168 N.W. 886.

**2. Claims.**

Claim is sufficient if board can reasonably understand nature of claim in its broadest sense.

Harris v. Board of Trustees of Green Bay Levee & Drainage Dist. No. 2, Lee County, 1953, 244 Iowa 1169, 59 N.W. 2d 234.

**455.32 Award by board.** At the time fixed for hearing and after the filing of the report of the appraisers, the board shall examine said report, and may hear evidence thereon, both for and against each claim for damages and compensation, and shall determine the amount of damages and compensation due each claimant, and may affirm, increase, or diminish the amount awarded by the appraisers. [S13,-§1989-a6; C24, 27, 31, 35, 39,§7451; C46, 50, 54§455.32]

Referred to in §455.210.

**1. Construction and application.**

Award of anticipated damages gives option to take the land and payment of award cannot be enforced.

Griffeth v. Drainage Dist. No. 41 in Pocahontas County, 1918, 182 Iowa 1291, 166 N.W. 570.

Failure to award damages, property ditch passes through is not jurisdictional and cannot be basis of collateral attack.

Oliver v. Monona County, 1902, 117 Iowa 43, 90 N.W. 510.

**2. Persons entitled to damages.**

Owner abutting meandered lake had no private or vested right in such waters and no right to damages because of its drainage.

Higgins v. Board of Dickinson County, 1920, 188 Iowa 448, 176 N.W. 268.

Where award was made to owner for appropriation of part of his land and he sells his land, award is paid to him if award is treated as part of purchase price.

Griffeth v. Drainage Dist. No. 41 in Pocahontas County, 1918, 182 Iowa 1291, 166 N.W. 570.

If plaintiff was not entitled to damages it was not his concern whether defendant had waived his right to damages.

Haswell v. Thompson, 1917, 181 Iowa 248, 164 N.W. 605.

Objectors not prevented from claiming damages for diversion of water course insofar as thrown on them.

Wallis v. Board of Harrison County, 1911, 152 Iowa 458, 132 N.W. 850.

**3. Claims for damages.**

If prior to contracting to exchange his land for plaintiff's, defendant failed to file claim for damages plaintiffs could not complain.

Johnstone v. Robertson, 1917, 179 Iowa 838, 162 N.W. 66.

Claim disallowed in action for damages to property where no land was taken and damages were consequential.

Haitz v. Joint Boards of Woodbury and Monona Counties, 1914, 167 Iowa 194, 149 N.W. 95.

Fact that nonresident owner suffers because of his failure to present his claim furnishes no ground for equitable relief.

Taylor v. Drainage Dist. No. 56, 1914, 167 Iowa 42, 148 N.W. 1040, L. R. A. 1916B, 1193, affirmed 37 S. Ct. 651, 244 U. S. 644, 61 L. Ed. 1368.

Claim for damages held to not limit claim to land actually taken but to claim damages to whole farm.

Mackland v. Board of Pottawattamie County, 1913, 162 Iowa 604, 144 N.W. 317.

**4. Elements of damage.**

In drainage condemnations interest on award governed by rules applicable in other condemnation cases.

Harris v. Green Bay Levee and Drainage Dist. No. 2, Lee County, 1955, 68 N.W.2d 69.

In taking of land in drainage proceeding, presence on land of private ditch does not deprive owner of right to compensation for land taken.

Johnston v. Drainage Dist. No. 80 of Palo Alto County, 1918, 184 Iowa 346, 163 N.W. 886.

Amount of land occupied by ditch, its waste banks and the manner of dividing the land were proper to consider in fixing the damage.

Brown v. Drainage Dist. No. 48, 1913, 163 Iowa 290, 143 N.W. 1077.

Value of the land covered by the ditch should be considered.

Anderson v. Board of Clay County, 1912, 154 Iowa 497, 133 N.W. 653.

**5. Measure of damages.**

Market value of the land immediately before establishment of ditch and immediately after.

In re Joint Drainage Dist. No. 3 in Boone and Story Counties, 1913, 160 Iowa 293, 141 N.W. 939.

Measure is fair market value of land taken without regard to benefits to the tract.

Gish v. Castner, Williams & Askland Drainage Dist., 1908, 137 Iowa 711, 115 N.W. 474.

**6. Amount of damages.**

Damages of $1,050 from construction of ditch to a farm of 55 acres, held not excessive.

Kerr v. Tysseling, 1931, 239 N.W. 233.

Award of $5,733.13 for ditch through 413 acre farm held not excessive.

Sherwood v. Reynolds, 1931, 213 Iowa 539, 239 N.W. 137.

**7. Injuries from defects or obstructions.**

County not liable for overflowing of ditch primarily for benefit of abutting owners, constructed under direction of county which ditch was obstructed by sediment.

Green v. Harrison County, 1883, 61 Iowa 311, 16 N.W. 136; Nutt v. Mills County, 1883, 61 Iowa 754, 16 N.W. 536.

**8. Injunction.**

Where owner retained damages awarded him with full knowledge of how much of his land would be taken, he could not enjoin construction of ditch as not located according to final plan.

Knudson v. Board of Hamilton County, 1913, 162 Iowa 97, 143 N.W. 988.

Maintenance of tile drain along highway, discharging water on plaintiff's property in greater and different amounts than would otherwise flow thereon would be enjoined.

Holmes v. Calhoun County, 1896, 97 Iowa 360, 66 N.W. 145.

**9. Evidence.**

In proceeding for damages evidence relating to cost of removing sand deposited on plaintiff's land by break in levy properly received as it tended to evaluate damage by flood and rebutted defendant's evidence that land had been ruined for farming.

Harris v. Board of Trustees of Green Bay Levee & Drainage Dist. No. 2, Lee County, 1953, 244 Iowa 1169, 59 N.W.2d 234.

That before board plaintiff claimed damages of $5 per acre did not preclude, on appeal, opinion of evidence of damages of $10 per acre.

Brown v. Drainage Dist. No. 48, 1913, 163 Iowa 290, 143 N.W. 1077.

In action for damage caused by ditch defendants could show that part of channel of river straightened would eventually fill up and become tillable land.

Anderson v. Board of Clay County, 1912, 154 Iowa 497, 133 N.W. 653.

**10. Instructions.**

Instruction on measure of damages for ditch held not erroneous as permitting jury to consider cost of bridges.
Kerr v. Tysseling, 1931, 239 N.W. 233.

Instruction on measure of damages confines jury to damage resulting from the ditch.
In re Joint Drainage Dist. No. 3 in Boone and Story Counties, 1913, 160 Iowa 293, 141 N.W. 939.

**11. Review.**

County could not appeal judgment of district court on appeal from action of board in assessing damages caused by construction of ditch.
Gish v. Castner-Williams & Askland Drainage Dist., 1907, 136 Iowa 155, 113 N.W. 757.

On appeal from disallowance of damages, the district, not being a legal entity, is not proper party defendant.
Clary v. Woodbury Co., 1907, 135 Iowa 488, 113 N.W. 330.

**12. Jury questions.**

Under facts question of waiver of damages by owner was properly taken from jury.
Larson v. Webster County, 1911, 150 Iowa 344, 130 N.W. 165.

**455.33 Dismissal or establishment.** The board shall at said meeting, or at an adjourned session thereof, consider the costs of construction of said improvement as shown by the reports of the engineer and the amount of damages and compensation awarded to all claimants, and if, in its opinion, such costs of construction and amount of damages awarded create a greater burden than should justly be borne by the lands benefited by the improvement, it shall then dismiss the petition and assess the costs and expenses to the petitioners and their bondsmen, but if it finds that such cost and expense is not a greater burden than should be justly borne by the land benefited by the improvement, it shall finally and permanently locate and establish said district and improvement. [S13,§1989-a6; C24, 27, 31, 35, 39,§7452; C46, 50, 54,§455.33]

**1. Construction and application.**

Drainage laws proceed on theory that scientific knowledge is necessary to pass on drainage system.
Hall v. Polk, 1917, 181 Iowa 828, 165 N.W. 119.

Board could determine that a larger ditch than recommended by engineer would be more effective and order construction.
Lawrence v. Board of Page County, 1911, 151 Iowa 182, 131 N.W. 8.

**2. Hearing and determination.**

Inaccuracies in report not jurisdictional where report furnished board information necessary to act.

In re Drainage Dist. No. 3, Hardin County, 1910, 146 Iowa 564, 123 N.W. 1059; followed in Bump v. Board of Hardin County, 123 N.W. 1065.

**3. Record.**

In proceeding to enjoin construction the verity of the record of proceedings to which plaintiff was a party is not open to dispute.

Baird v. Hamilton County, 1918, 186 Iowa 856, 167 N.W. 590, rehearing denied 186 Iowa 856, 173 N.W. 106.

In proceeding to establish district no record of any finding on land subject to overflow or too wet for cultivation is required.

Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

**4. Exclusion of lands after establishment.**

Board had no power to exclude lands from district after establishment.

Estes v. Board of Mills County, 1927, 204 Iowa 1043, 217 N.W. 81.

**5. Injunction.**

Injunction not granted to restrain proceedings under voidable order of drainage board where there was special remedy of appeal.

Simpson v. Board of Kossuth County, 1917, 180 Iowa 1330, 162 N.W. 824.

**6. Review.**

District court acts as appellate court so that petition in intervention could not be filed in that court.

Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

**455.34 Dismissal on remonstrance.** If, at or before the time set for final hearing as to the establishment of a proposed levee, drainage, or improvement district, except sub-drainage district, there shall have been filed with the county auditor, or auditors, in case the district extends into more than one county, a remonstrance signed by a majority of the landowners in the district, and these remonstrants must in the aggregate own seventy percent or more of the lands to be assessed for benefits or taxed for said improvements, remonstrating against the establishment of said levee, drainage, or improvement district, setting forth the reasons therefor, the board or boards as the case may be,

shall assess to the petitioners and their bondsmen, or apportion the costs among them as the board or boards may deem just or as said parties may agree upon. When all such costs have been paid, the board or boards of supervisors shall dismiss said proceedings and cause to be filed with the county auditor all surveys, plats, reports, and records in relation to the proposed district. [C24, 27, 31, 35, 39,§7453; C46, 50, 54,§455.34]

**1. Remonstrants.**

Party signing petition and later signing a remonstrance must be regarded as a remonstrant.

Richman v. Board of Supervisors of Muscatine County, 1886, 70 Iowa 627, 26 N.W. 24.

**455.35 Dissolution.** When for a period of two years from and after the date of the establishment of a drainage district, or when an appeal is taken or litigation brought against said district within two years from the date such appeal or litigation is finally determined, no contract shall have been let or work done or drainage certificates or bonds issued for the construction of the improvements in such district, a petition may be filed in the office of the auditor, addressed to the board of supervisors, signed by a majority of the persons owning land in such district and who, in the aggregate, own sixty percent or more of all the land embraced in said district, setting forth the above facts and reciting that provision has been made by the petitioners for the payment of all costs and expenses incurred on account of such district. The board shall examine such petition at its next meeting after the filing thereof, and if found to comply with the above requirements, shall dissolve and vacate said district by resolution entered upon its records, to become effective upon the payment of all the costs and expenses incurred in relation to said district. In case of such vacation and dissolution and upon payment of all costs as herein provided, the auditor shall note the same on the drainage record, showing the date when such dissolution became effective. [C24, 27, 31, 35, 39,§7454; C46, 50, 54,§455.35]

**455.36 Permanent survey, plat and profile.** When the improvement has been finally located and established, the board may if necessary appoint the said engineer or a new one to make a permanent survey of said improvement as so located, showing the levels and elevations of each forty-acre tract of land and file a report of the same with the county auditor together with a plat and profile thereof. [S13,§1989-a6; C24, 27, 31, 35, 39,§7455; C46, 50, 54,§455.36]

Referred to in §455.69. Change of conditions—modification of plan.

**1. Construction and application.**

Details of provision for small streams flowing to river proposed to be ditched are to be worked out in permanent survey.

Hall v. Polk, 1917, 181 Iowa 828, 165 N.W. 119.

**2. Engineer as board member.**

Board not without jurisdiction because engineer serving on board of commissioners made surveys and superintended construction.

Chicago, etc. R. Co. v. Board of Monona County, 1923, 196 Iowa 447, 194 N.W. 213.

**3. High water mark.**

Levee held to have become boundary of high water mark.

Musser v. Hershey, 1876, 42 Iowa 356.

**455.37 Paying or securing damages.** The amount of damages or compensation finally determined in favor of any claimant shall be paid in the first instance by the parties benefited by the said improvement, or secured by bond in the amount of such damages and compensation with sureties approved by the auditor. [S13,§1989-a7; C24, 27, 31, 35, 39,§7456; C46, 50, 54,§455.37]

**1. Construction and application**

Damages assessed at difference between value of the land immediately before and after construction of ditch.

Gish v. Castner-Williams & Askland Drainage Dist., 1907, 136 Iowa 155, 113 N.W. 757.

**2. Payment in general.**

Board may not pay damages to land outside the county caused by district within the county.

Clary v. Woodbury County, 1907, 135 Iowa 488, 113 N.W. 330.

Payment for ditching out of general fund is not such violation as will provide evasion of tax levied therefor.

Patterson v. Baumer, 1876, 43 Iowa 477.

**3. Bond.**

Bond was sufficient to secure payment of the damages.

Sisson v. Board of Buena Vista County, 1905, 128 Iowa 442, 104 N.W. 454, 70 L. R. A. 440.

**4. Failure to pay damages.**

Failure of board to award and pay damages before locating ditch was not jurisdictional and could not be collaterally attacked.

Oliver v. Monona County, 1902, 117 Iowa 43, 90 N.W. 510.

**455.38 Division of improvement.** After the damages as finally fixed, shall have been paid or secured, the board may divide said improvement into suitable sections, having regard to the kind of work to be done, numbering the same consecutively from outlets to the beginning, and prescribing the time within which the improvement shall be completed. A settling basin, if provided for, may be embraced in a section by itself. [S13,§1989-a7; C24, 27, 31, 35, 39,§7457; C46, 50, 54,§455.38]

**1. Construction and application.**

A branch or branches to a main drain is not repugnant to the statute as establishing two districts.

Obe v. Board of Hamilton County, 1915, 169 Iowa 449, 151 N.W. 453.

**455.39 Supervising engineer—bond.** Upon the payment or securing of damages, the board shall appoint a competent engineer to have charge of the work of construction thereof, who shall be required before entering upon the work to give a bond to the county for the use and benefit of the levee or drainage district, to be approved by the auditor in such sum as the board may fix, conditioned for the faithful discharge of his duties. [S13,§1989-a7; C24, 27, 31, 35, 39,§7458; C46, 50, 54,§455.39]

**1. Recommendations.**

Recommendations of engineer should not be set aside for slight reasons.

Chicago, etc. R. Co. v. Board of Clay County, 1925, 200 Iowa 557, 204 N.W. 311.

**2. Powers of engineer.**

Construction of contract and estimates by engineer according to his powers as defined in the contract were binding.

Nishnabotna Drainage Dist. No. 10 v. Lana Const. Co., 1919, 185 Iowa 368, 170 N.W. 491.

**3. Unauthorized acts of engineer.**

Enlargement of ditch by engineer without reporting such to board as necessary and proceedings being taken thereon was without authority.

Monaghan v. Vanatta, 1909, 144 Iowa 119, 122 N.W. 610.

**455.40 Advertisement for bids.** The board shall cause notice to be given by publication once each week for two consecutive weeks in some newspaper published in the county wherein such improvement is located, and such additional advertisement and publication elsewhere as it may direct, of the time and place of letting the work of construc-

tion of said improvement, specifying the approximate amount of work to be done in each numbered section of the district, the time fixed for the commencement, and the time of the completion thereof, that bids will be received on the entire work and in sections or divisions thereof, and that each bidder will be required to deposit with his bid cash or certified check on and certified by a bank in Iowa, payable to the auditor or his order, at his office, in an amount equal to ten percent of his bid, in no case to exceed ten thousand dollars. When the estimated cost of the improvement exceeds fifteen thousand dollars, the board shall make additional publication for two consecutive weeks in some contractors journal of general circulation giving only the type of proposed construction or repairs, estimated amount, date of letting, amount of bidder's bond, and the name and address of the county auditor. All notices shall fix the date to which bids will be received, and upon which said work will be let. [C73,§1212; C97,§1944; S13,§1944; SS15,§1989-a8; C24, 27, 31, 35, 39,§7459; C46, 50, 54,§455.40]

See §455.73. Bids required.

**1. Validity.**

There was no lack of due process where statute did not provide for notice to owners of letting of contract for improvement.

Horton Tp. of Osceola County v. Drainage Dist. No. 26 of Osceola County, 1921, 192 Iowa 61, 182 N.W. 395.

**2. Construction and application.**

That bid must be let to lowest bidder implies that there must be more than one valid bid.

Vincent v. Ellis, 1902, 116 Iowa 609, 88 N.W. 836.

**3. Advertisement for bids.**

Notice to bidders held sufficient.

Petersen v. Sorensen, 1921, 192 Iowa 471, 185 N.W. 42.

Readvertisement published one week had no jurisdictional effect and supervisors could act unless objections were properly filed.

In re Lightner, 1909, 145 Iowa 95, 123 N.W. 749.

Provision of this section not controlling of advertising for bids on highway projects.

O. A. G. 1938, p. 731.

**4. Specifications.**

Where notice and specifications did not provide extra pay if quicksand was encountered, the county commissioners could not put such clause in contract.

Gjellefald v. Hunt, 1926, 202 Iowa 212, 210 N.W. 122.

**5. Bids.**

Provision that contractors should purchase bonds to provide fund for preliminary expenses should not have been included in notice to bidders.

Wood v. Hall, 1907, 138 Iowa 308, 110 N.W. 270.

That bid for one section of work was less than sum for which the whole contract was let was not an irregularity.

Patterson v. Baumer, 1876, 43 Iowa 477.

**455.41 Bids—letting of work.** The board shall award contract or contracts for each section of the work to the lowest responsible bidder or bidders therefor, bids to be submitted, received and acted upon separately as to the main drain and each of the laterals, and each settling basin, if any, exercising their own discretion as to letting such work as to the main drain as a whole, or as to each lateral as a whole, or by sections as to both main drain and laterals, and reserving the right to reject any and all bids and readvertise the letting of the work. [SS15,§1989-a8; C24, 27, 31, 35, 39, §7460; C46, 50, 54,§455.41]

See §455.73. Bids required.

**1. Construction and application.**

Letting to lowest bidder implies existence of competition.

Vincent v. Ellis, 1902, 116 Iowa 609, 88 N.W. 836.

**2. Bids.**

That bid for one section of work was less than sum for which the whole contract was let was not an irregularity.

Patterson v. Baumer, 1876, 43 Iowa 477.

**3. Readvertisement.**

Readvertisement published one week had no jurisdictional effect and supervisors could act unless objections were properly filed.

In re Lightner, 1909, 145 Iowa 95, 123 N.W. 749.

**4. Acceptance of bid and award of contract.**

Acceptance of bid must be unconditional to be binding upon bidder.

Jameson v. Joint Drainage Dist. No. 3 of Dickinson and Osceola Counties, 1921, 191 Iowa 920, 183 N.W. 512.

**5. Contract.**

Supervisors held authorized to contract for river bank improvements.

Dashner v. Woods Bros. Const. Co., 1928, 205 Iowa 64, 217 N.W. 464.

Bid for improvement and acceptance by drainage district constitutes a "contract".

Gjellefald v. Drainage Dist. No. 42, 1927, 203 Iowa 1144, 212 N.W. 691.

Evidence insufficient to sustain claim that clause for extra payment was put in contract by mistake, or that bid was changed after filing.

Gjellefald v. Hunt, 1926, 202 Iowa 212, 210 N.W. 122.

Provision that contractors should purchase bonds to provide fund for preliminary expenses should not have been included in notice to bidders.

Wood v. Hall 1907, 138 Iowa 308, 110 N.W. 270.

Letting of contract by board may be done without reference to making of assessment.

O. A. G., 1918, p. 534.

**6. Reformation of contract.**

Contract held properly reformed to conform to bid as accepted.

Gjellefald v. Drainage Dist. No. 42, 1927, 203 Iowa 1144, 212 N.W. 691.

**7. Modification of contract.**

Board may modify the contract made with lowest responsible bidder, when for benefit of property owners, without resubmitting matter for bids.

Wood v. Hall, 1907, 138 Iowa 308, 110 N.W. 270.

**8. Mandamus.**

Where the only two bidders each claimed entitlement to the contract, the act of auditor in passing on sufficiency of bids and bonds was a judicial and discretionary act not controllable by mandamus.

Vincent v. Ellis, 1902, 116 Iowa 609, 88 N.W. 836.

**455.42 Manner of making bids—deposit.** Each bid shall be in writing, specifying the portion of the work upon which the bid is made, and filed with the auditor, accompanied with a deposit of cash or a certified check on and certified by a bank in Iowa, payable to the auditor or his order at his office in a sum equal to ten percent of the amount of the bid, but in any event not to exceed ten thousand dollars. The checks of unsuccessful bidders shall be returned to them, but the checks of successful bidders shall be held as a guarantee that they will enter into contract in accordance with their bids. [SS15,§1989-a8; C24, 27, 31, 35, 39,§7461; C46, 50, 54,§455.42]

**455.43 Performance bond—return of check.** Each successful bidder shall be required to execute a bond with sure-

ties approved by the auditor in favor of the county for the use and benefit of the levee or drainage district and all persons entitled to liens for labor or material in an amount not less than seventy-five percent of the contract price of the work to be done, conditioned for the timely, efficient and complete performance of his contract, and the payment, as they become due, of all just claims for labor performed and material used in carrying out said contract. When such contract is executed and bond approved by the board, the certified check deposited with the bid shall be returned to the bidder. [SS15,§1989-a8; C24, 27, 31, 35, 39,§7462; C46, 50, 54,§455.43]

**1. Prior statutes, bond under.**

Code 1897 did not preclude supervisors from treating contract as forfeited upon contractor's default and instituting new proceedings for construction of ditch.

R. A. Brown & Co. v. Board of Pottawattamie County, 1906, 129 Iowa 533, 105 N.W. 1019.

**2. Liability of surety.**

Liability of surety to whom contract was assigned was no greater than that of his principal on the bond.

Teget v. Polk County Drainage Ditch No. 40, 1926, 202 Iowa 747, 210 N.W. 954.

Under bond providing that district should retain payment due contractor till expiration of time for filing of liens, failure of district to retain money did not make surety liable.

Joint Boards of Dickinson and Osceola Counties v. Title Guaranty & Surety Co., 1925, 198 Iowa 1382, 201 N.W. 88.

Failure to notify surety of intention to forfeit contract for delay did not relieve surety where not prejudiced and bond did not provide for notice.

Humboldt County v. Ward Bros. 1914, 163 Iowa 510, 145 N.W. 49.

Liability of surety is measured by liability of contractor.

Webster County v. Nelson, 1912, 154 Iowa 660, 135 N.W. 390.

**3. Release of surety.**

Surety released from liability because of material alteration of the contract.

Holland v. Story County, 1923, 195 Iowa 489, 192 N.W. 402.

That district after insolvency of contractor and breach, retained amounts to be paid on estimates, held not release of surety on contractor's bond.

Wykoff v. Stewart, 1917, 180 Iowa 949, 164 N.W. 122.

Surety not relieved of liability by changes in the work as it progressed which did not increase amount for which it would otherwise be liable.

Humboldt County v. Ward Bros., 1914, 163 Iowa 510, 145 N.W. 49.

**4. Recovery on bond.**

Right of county to recover on contractor's bond not affected by refusal of county to pay installment for work done after intention to forfeit contract was declared.

Webster County v. Nelson, 1912, 154 Iowa 660, 135 N.W. 390.

**5. Laborers' rights.**

Laborers employed by contractor had equitable right to portion of contract price in hands of county as against surety.

Humboldt County v. Ward Bros., 1914, 163 Iowa 510, 145 N.W. 49.

**6. Surety's rights.**

Rights of surety paying lienable claims in funds due contractor were superior to rights of bank as assignee of contractor.

Ottumwa Boiler Works v. M. J. O'Meara & Son, 1928, 206 Iowa 577, 218 N.W. 920.

As against attacking creditors of contractor surety was not entitled to receive as its own the profits in excess of the cost of completing the job after default of contractor.

Winnebago County State Bank v. Davidson, 1919, 186 Iowa 532, 172 N.W. 449.

**7. Actions.**

In action to enjoin acceptance of ditch on ground that contract had not been complied with, the burden was on plaintiff to show non compliance.

Monter v. Board of Webster County, 1919, 187 Iowa 625, 174 N.W. 407.

Action on contractor's bond to recover for breach of contract was not defeated by inadequate notice of intent of county to forfeit the contract where defendant appeared before board and resisted.

Webster County v. Nelson, 1912, 154 Iowa 660, 135 N.W. 390.

**8. Damages.**

Contractor bound to keep in repair ditches and drains prior to completion of contract and failure to do so was proper element of damages.

Humboldt County v. Ward Bros., 1914, 163 Iowa 510, 145 N.W. 49.

**9. Mandamus.**

Contractor could bring mandamus to compel supervisors to levy tax to provide funds for payment of work done.

Hoy v. Drainage Dist. No. 34 Buena Vista County, 1921, 190 Iowa 1101, 181 N.W. 456.

**455.44 Contracts.** All agreements and contracts for work or materials in constructing the improvements of such district shall be in writing, signed by the chairman of the board of supervisors for and on behalf of the district and the parties who are to perform the work or furnish the materials specified in such contract. Such contract shall specify the particular work to be done or materials to be furnished, the time when it shall begin and when it shall be completed, the amount to be paid and the times of payment, with such other terms and conditions as to details necessary to a clear understanding of the terms thereof. [C24, 27, 31, 35, 39,§7463; C46, 50, 54,§455.44]

**1. Construction and application.**

Where all except one section was let in compliance with the statute, irregularity, if any, as to one contract would not invalidate all proceedings.

Patterson v. Baumer, 1876, 43 Iowa 477.

**2. Contracts.**

Contracts for river bank protection work construed in light of topography and geography at time and place in question.

Dashner v. Woods Bros. Const. Co., 1928, 205 Iowa 64, 217 N.W. 464.

Supervisors incur no liability except to properly proceed to levy and devote proceeds of special assessments.

First Nat. Bank v. Webster County, 1927, 204 Iowa 720, 216 N.W. 8.

Bid for improvement and acceptance by district constitutes a "contract".

Gjellefald v. Drainage Dist. N. 42, 1927, 203 Iowa 1144, 212 N.W. 691.

Where notice and specifications did not provide extra pay if quicksand were found, county commissioners could not put such clause in contract.

Gjellefald v. Hunt, 1926, 202 Iowa 212, 210 N.W. 122.

Under contract and bonds, surety held liable only for breach of bond or contract, not for labor and materialmen's claims.

Joint Board of Dickinson and Osceola Counties v. Title Guaranty & Surety Co., 1924, 198 Iowa 1382, 201 N.W. 88.

Contract not deemed invalid because too broad in its terms.

Petersen v. Sorensen, 1921, 192 Iowa 471, 185 N.W. 42.

Contract for cleaning and repairing of ditch may provide for deepening in certain places and for increase of bank slopes in other places.

Breiholz v. Board of Pocahontas County, 1919, 186 Iowa 1147, 173 N.W. 1, affirmed 42 S. Ct. 13, 257 U. S. 118, 66 L. Ed. 159.

Where contract provided power in engineer to construe contract and make estimates, his construction of contract and estimates, absent fraud, were binding on district.

Nishnabotna Drainage Dist. No. 10 v. Lana Const. Co., 1919, 185 Iowa 368, 170 N.W. 491.

Where plaintiff wrote its understanding of the contract to defendant, defendant, after completing the work, could not assert that plaintiff's understanding was wrong.

Pocahontas County v. Katz-Craig Contracting Co., 1918, 181 Iowa 1313, 165 N.W. 422.

Invalidity of certain stipulations in contract did not destroy whole validity of the contract.

Littell v. Webster County, 1911, 152 Iowa 206, 131 N.W. 691.

Supervisors may reject bid where bidder is not responsible and may modify contract with lowest responsible bidder when for benefit of property owners without resubmitting matter for bids.

Wood v. Hall, 1908, 138 Iowa 308, 110 N.W. 270.

**3. Sub-contracts.**

One contracting to furnish labor and materials and to construct improvement in accordance with original contract held to be a subcontractor.

Teget v. Polk County Drainage Ditch No. 40, 1926, 202 Iowa 747, 210 N.W. 954.

Provision in contract between contractor and subcontractor construed to contemplate payments to subcontractor as they became due the contractor.

Conn v. Milliken, 1910, 146 Iowa 700, 125 N.W. 801.

**4. Modification of contract.**

Sufficient consideration found for compromise contract.

Horton Tp. of Osceola County v. Drainage Dist. No 26 of Osceola County, 1921, 192 Iowa 61, 182 N.W 395.

Supervisors and engineer held to have no authority to change contract to the advantage of contractor or his sureties.

Humboldt County v. Ward Bros., 1914, 163 Iowa 510, 145 N.W. 49.

Supervisors may reject bid where bidder is not responsible, and may modify contract with lowest responsible bidder when for benefit of property owners without resubmitting matter for bids.

Wood v. Hall, 1907, 138 Iowa 308, 110 N.W. 270.

**5. Changes in work.**

Contractor could not complain of changes in work by county in which he acquiesced and was paid for.

Humboldt County v. Ward Bros., 1914, 163 Iowa 510, 145 N.W. 49.

**6. Waiver of contract provisions.**

Contractor may waive periodic acceptance of his work and may postpone tender of acceptance until completion of entire work.

Littell v. Webster County, 1911, 152 Iowa 206, 131 N.W. 691, modified in other respects 152 Iowa 206, 132 N.W. 426.

**7. Performance or breach of contract.**

Where it would have been useless to declare forfeiture because of insolvency of contractor and surety, there was no prejudice to landowners due to failure to declare forfeiture and sue on bond.

Busch v. Joint Drainage Dist. No. 49, 1924, 198 Iowa 398, 198 N.W. 789.

Under contract, a delay by county in securing necessary funds, did not constitute a breach.

Humboldt County v. Ward Bros., 1914, 163 Iowa 510, 145 N.W. 49.

Contract held not substantially performed, justifying refusal to accept work.

Littell v. Webster County, 1911, 152 Iowa 206, 131 N.W. 691, modified in other respects 152 Iowa 206, 132 N.W. 426.

Absent provision to contrary, contractor could excavate by generally approved and usual means without liability for injury to adjoining property by overflow.

Fitzgibbon v. Western Dredging Co., 1908, 141 Iowa 328, 117 N.W. 878.

**8. Extra work.**

Contractor held, under contract, entitled to compensation for overdepth excavation in removing dirt washed into ditch constructed under contract.

Gjellefald v. Drainage Dist. No. 42, 1927, 203 Iowa 1144, 212 N.W. 691.

Contract provision that when quicksand was encountered board could order extra work necessitated thereby at cost plus 15 percent under direction of engineer was not invalid.

Busch v. District Court of Winnebago County, 1924, 198 Iowa 398, 198 N.W. 789.

Contractor was not entitled to extra compensation where obliged to place dirt excavated on one side where specifications provided that materials shall be deposited as directed by engineer.

Whitney v. Wendel, 1922, 193 Iowa 175, 186 N.W. 771.

**9. Duties and care required of contractor.**

Contractor was not bound to use super care to discover whether there was an outlet.

Board of Greene County v. Adamson, 1918, 182 Iowa 1265, 166 N.W. 563.

Contractor held bound to keep ditches and drains in repair until completion of contract.

Humboldt County v. Ward Bros., 1914, 163 Iowa 510, 145 N.W. 49.

Contractor must use reasonable care in performance to avoid injury to adjacent lands.

Fitzgibbon v. Western Dredging Co., 1908, 141 Iowa 328, 117 N.W. 878.

**10. Acceptance of work.**

Letter accompanying acceptance by county, stating an interpretation different from that later advanced by contractor was sufficient notice to put contractor on inquiry.

Pocahontas County v. Katz-Craig Contracting Co., 1917, 181 Iowa 1313, 165 N.W. 422.

Defendant accepting contractor's work of leveling bank of ditch was bound to take it as it was and contractor was not bound to replace the dirt.

Barnes v. Bradford, 1917, 165 N.W. 306.

**11. Rescission of contract.**

Mutual mistake entitled contractor to rescind.

Board of Greene County v. Adamson, 1918, 182 Iowa 1265, 166 N.W. 563.

**12. Abandonment of contract.**

Where contractor was insolvent and had abandoned contract and material and labor liens had been filed, the district was justified in withholding payments.

Wykoff v. Stewart, 1917, 180 Iowa 949, 164 N.W. 122.

**13. Liability of contractor.**

Stipulation in contract that contractor is not liable for damage to completed work due to freshets is not ultra vires.

Littell v. Webster County, 1911, 152 Iowa 206, 131 N.W. 691, modified in other respects 152 Iowa 206, 132 N.W. 426.

Contractor not liable for damages naturally resulting to lands from executing the plan of drainage.

Fitzgibbon v. Western Dredging Co., 1908, 141 Iowa 328, 117 N.W. 878.

**14. Payment of contractor.**

Payment to contractor under the facts could not be recovered.

Nishnabotna Drainage Dist. No. 10 v. Lana Const. Co., 1919, 185 Iowa 368, 170 N.W. 491.

**15. Work outside improvement ordered, payment for.**

Contractor not entitled to recover for work not included in original contract and not ordered or approved by district.

Gjellefald v. Drainage Dist. No. 42, 1927, 203 Iowa 1144, 212 N.W. 691.

Property owners in district were not, due to their knowledge of work done, estopped to assert that contractor should not be paid for part of work outside the ordered improvement.

Monaghan v. Vanatta, 1909, 144 Iowa 119, 122 N.W. 610.

**16. Collateral attack.**

Collateral attack on contract could succeed only if contract was void.

Danielson v. Cline, 1944, 234 Iowa 167, 12 N.W.2d 254.

**17. Recovery under contracts.**

Contractor may not be deprived of his rights to compensation by failure of engineer to act or by fraud or collusion.

Littell v. Webster County, 1911, 152 Iowa 206, 131 N.W. 691, modified in other respects 152 Iowa 206, 132 N.W. 426.

Where contractor agreed to abide by estimates of engigineer, he could not recover more, absent fraud or mistake.

Edwards v. Louisa County, 1893, 89 Iowa 499, 56 N.W. 656.

**18. Actions.**

Whether action for balance due was prematurely brought was question for jury.

Zabawa v. Osman, 1926, 202 Iowa 561, 210 N.W. 602.

Contractor failing to complete work satisfactorily could, under the facts, sue in quantum meruit.

Farmers' Loan & Trust Co. of Sioux City v. Wright County, 1921, 191 Iowa 825, 183 N.W. 500.

In breach of contract action plaintiff need only prove defendant's admission of a breach and amount of damages.

Brown v. Mostoller, 1914, 167 Iowa 568, 149 N.W. 908.

In action on contract to pay plaintiff for work, according to defendant's contract with county, plaintiff need plead only defendant's non performance of his contract with plaintiff.

Conn v. Milliken, 1910, 146 Iowa 700, 125 N.W. 801.

Contractor in postponing performance acted in his own peril.

R. A. Brown & Co. v. Board of Pottawattamie County, 1906, 129 Iowa 533, 105 N.W. 1019.

**19. Presumptions and burden of proof.**

In action for breach of contract, defendant admitting breach and relying on other work as performance had burden of showing his defense.

Brown v. Mostoller, 1914, 167 Iowa 568, 149 N.W. 908.

Parties to contract presumed to know limits placed on contracts by statutes.

Humboldt County v. Ward Bros., 1914, 163 Iowa 510, 145 N.W. 49.

Burden on one alleging fraud to prove fraud.

Federal Contracting Co. v. Board of Webster County, 1911, 153 Iowa 362, 133 N.W. 765.

**20. Evidence.**

Evidence insufficient to sustain claim that bid, after filing, was changed by insertion of clause for extra pay.

Gjellefald v. Hunt, 1926, 202 Iowa 212, 210 N.W. 122.

Evidence insufficient to show fraud on part of engineer in his determination as to completion of work according to plans and specifications.

Farmers' Loan & Trust Co. of Sioux City v. Wright County, 1921, 191 Iowa 825, 183 N.W. 500.

In action for breach of contract to construct tile, admission of testimony of farmers as to value of land in its then condition and value had tile been put in, was not erroneous merely because defendant showed tile system to be inadequate.

Brown v. Mostoller, 1914, 167 Iowa 568, 149 N.W. 908.

Evidence of modification of contract admissible.

Gorton v. Moeller Bros., 1911, 151 Iowa 729, 130 N.W. 910.

**21. Instructions.**

Instruction held not reversible error as requiring defendant to prove matters immaterial to defense pleaded.

Rorem v. Pederson, 1925, 199 Iowa 304, 201 N.W. 784.

On question of whether a contract was made the court erred in instructing that jury might consider whether ditch would be of benefit to defendant.

Coskery v. Young, 1886, 70 Iowa 335, 30 N.W. 605.

**455.45 Commissioners to classify and assess.** When a levee or drainage district shall have been located and finally established, and the contracts for construction let, or, unless otherwise provided by law, when the required proceedings have been taken to enlarge, deepen, widen, change, or extend any of the ditches, laterals, settling basins, or drains of such district, or the required proceedings have been had to annex additional lands to such district, the board shall appoint three commissioners to assess benefits and classify the lands affected by such improvement. One of such commissioners shall be a competent civil engineer and two of them shall be resident freeholders of the county in which the district is located, but not living within, nor interested in any lands included in, said district, nor related to any party whose land is affected thereby. The commissioners shall take and subscribe an oath of their qualifications and to perform the duties of classification of said lands, fix the percentages of benefits and apportion and assess the costs and expenses of constructing the said improvement according to law and their best judgment, skill, and ability. If said commissioners or any of them fail or neglect to act or perform the duties in the time and as required of them by law, the board shall appoint others with like qualifications to take their places and perform said duties. [SS15,§1989-a12; C24, 27, 31, 35, 39, §7464; C46, 50, 54,§455.45]

Referred to in §455.72 **Reclassification; §455.135 Repair.**
See §455.74 Procedure governing reclassification.

**1. Validity.**

Local assessment is not a "tax" within constitutional provisions relating to the assessment of taxes.

Munn v. Board of Greene County, 1913, 161 Iowa 26, 141 N.W. 711.

Acts 1904(30G.A.) ch. 68, §12, now incorporated in this section held valid.

In re Johnson Drainage Dist. No. 9, 1908, 141 Iowa 380, 118 N.W. 380.

**2. Prior laws, validity of.**

Failure to provide notice of assessment to mortgagee did not invalidate the statute.

Fitchpatrick v. Botheras, 1911, 150 Iowa 376, 130 N.W. 163, 37 L. R. A., N. S. 558, Ann Cas. 1912D, 534.

Failure to provide notice of assessment to owners other than those abutting the improvement violated due process.

Beebe v. Magoun, 1904, 122 Iowa 94, 97 N.W. 986, 101 Am. St. Rep. 259.

Statute providing for assessments to pay for establishment of ditches was not invalid.

Oliver v. Monona County, 1902, 117 Iowa 43, 90 N.W. 510.

Subsequent passage of an act validating prior proceedings was not an unconstitutional interference with vested rights.

Richman v. Board of Muscatine County, 1889, 77 Iowa 513, 42 N.W. 422, 4 L. R. A. 445, 14 Am. St. Rep. 308.

**3. Construction and application.**

Purpose of the law to equitably apportion cost by personal inspection and consideration of existing conditions.

White v. Board of Story County, 1912, 138 N.W. 447.

Power to establish districts and assess costs rests on power to tax though involving the police power incidentally.

Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

County not liable for failure of officers to legally assess, levy and collect taxes.

Canal Const. Co. v. Woodbury County, 1910, 146 Iowa 526, 121 N.W. 556.

Power to levy and collect assessments to be strictly construed.

Howard v. Emmet County, 1908, 140 Iowa 527, 118 N.W. 882.

County could not transfer funds to drainage district fund for purpose of making up deficiency therein.

O. A. G. 1934, p. 142.

District had no right to acquire land except for right of way.

O. A. G. 1918, p. 536.

Laws did not require letting or construction prior to taking proceedings to classify lands and levy assessments.
O. A. G. 1918, p. 534.

Absent statute limiting amount of assessment, it may be levied equally on entire value of the property.
O. A. G. 1913-14, p. 179.

**4. Board of supervisors, powers and proceedings.**

Board not without jurisdiction because engineer serving on board of commissioners made surveys and superintended construction and member of board owned land subject to assessment.
Chicago, etc. R. Co. v. Board of Monona County, 1923, 196 Iowa 447, 194 N.W. 213.

Governing board of drainage and levy district need not publish its proceedings.
O. A. G. 1942, p. 86.

Supervisors acting for district could not obligate district to pay the state difference between selling price of state's land and assessment which was placed on it.
O. A. G. 1918, p. 536.

Supervisors of county could change part of a drain from an open ditch to a tile drain after it was regularly established.
O. A. G. 1910, p. 177.

**5. Appointment of commissioners.**

Additional lateral tile drain could be constructed under §455.135 as repair work.
Mathwig v. Drainage Dist. No. 29, Emmet County, 1919, 188 Iowa 267, 171 N.W. 125.

Improper appointment of appraisers to apportion assessments not jurisdictional.
In re Lightner, 1909, 145 Iowa 95, 123 N.W. 749.

**6. Persons who may be appointed.**

Board not without jurisdiction because engineer serving on board of commissioners made surveys and superintended construction and member of board owned land subject to assessment.
Chicago, etc. R. Co. v. Board of Monona County, 1923, 196 Iowa 447, 194 N.W. 213.

Engineer who planned and constructed improvement not disqualified from serving as engineer member on commission to assess benefits.
Sullivan v. Board of Palo Alto County, 1922, 193 Iowa 739, 187 N.W. 575.

**7. Powers of commissioners.**

Assessment commissioners have no jurisdiction to determine whether all land was properly included in district.

Zinser v. Board of Buena Vista County, 1907, 137 Iowa 660, 114 N.W. 51.

**8. Survey.**

Not contemplated that commissioners to assess costs should survey the lands assessed.

Zinser v. Board of Buena Vista County, 1907, 137 Iowa 660, 114 N.W. 51.

**9. Actions.**

Special assessment paid by purchaser could not be recovered in an action for damages for breach of contract.

Johnstone v. Robertson, 1917, 179 Iowa 838, 162 N.W. 66.

Action under prior statute to recover taxes wrongfully assessed.

Allerton v. Monona County, 1900, 111 Iowa 560, 82 N.W. 922.

**10. Presumptions and burden of proof.**

Objector to assessment has burden of showing improper assessment.

Fulton v. Sherman, 1931, 212 Iowa 1218, 238 Iowa 88.

**11. Evidence.**

Evidence insufficient to establish inequality of assessment.

Fulton v. Sherman, 1931, 212 Iowa 1218, 238 N.W. 88.

**12. Review.**

Inclusion of land in district is legislative act which courts will not review until assessments are made.

In re Drainage Dist. No. 3, Hardin County, 1909, 146 Iowa 564, 123 N.W. 1059; Bump v. Board of Hardin County, 1909, 123 N.W. 1065.

Court could not say classification of lands was error without comparing lands.

Fulton v. Sherman, 1931, 212 Iowa 1218, 238 N.W. 88.

Assessments reviewed and part approved and part rejected.

Thielen v. Board of Wright County, 1917, 179 Iowa 248, 160 N.W. 915.

Owner appealing from assessment cannot question validity of order establishing district because of defective service of notice of pendency of petition for establishment.

In re Lightner, 1909, 145 Iowa 95, 123 N.W. 749.

Statement in abstract that objector "duly appealed from such order . . ." construed as concession that appeal was properly taken.
Canal Const. Co. v. Woodbury County, 1909, 146 Iowa 526, 121 N.W. 556.

Notice of appeal held defective for failure to serve all parties interested.
Poage v. Grant Tp. Ditch & Drainage Dist. No. 5, 1909, 141 Iowa 510, 119 N.W. 976.

Unauthorized appearance by attorneys claiming to represent a county did not make the county a party.
Yockey v. Woodbury County, 1906, 130 Iowa 412, 106 N.W. 950.

**455.46 Duties—time for performance—scale of benefits.** At the time of appointing said commissioners, the board shall fix the time within which said assessment, classification, and apportionment shall be made, which may be extended for good cause shown. Within twenty days after their appointment, they shall begin to inspect and classify all the lands within said district, or any change, extension, enlargement, or relocation thereof in tracts of forty acres or less according to the legal or recognized subdivisions, in a graduated scale of benefits to be numbered according to the benefit to be received by each of such tracts from such improvement, and pursue said work continuously until completed and, when completed, shall make a full, accurate, and detailed report thereof and file the same with the auditor. The lands receiving the greatest benefit shall be marked on a scale of one hundred, and those benefited in a less degree with such percentage of one hundred as the benefits received bear in proportion thereto. They shall also make an equitable apportionment of the costs, expenses, fees and damages computed on the basis of the percentages fixed. [SS15,§1989-a12; C24, 27, 31, 35, 39,§7465; C46, 50, 54,§455.46]

**1. Validity.**

Mortgagee takes lien subject to rights of state or municipal authority to impose taxes and assessments, therefore failure of law to provide notice did not render act unconstitutional.
Fitchpatrick v. Botheras, 1911, 150 Iowa 376, 130 N.W. 163, 37 L. R. A., N. S. 558, Ann. Cas. 1912D, 534.

Validity upheld.
Sisson v. Board of Buena Vista County, 1905, 128 Iowa 442, 104 N.W. 454, 70 L. R. A. 440.

Code 1897, §1946 not unconstitutional for failure to provide for notice to landowner of assessment, law pro-

viding notice on hearing to determine boundaries of district.

Oliver v. Monona County, 1902, 117 Iowa 43, 90 N.W. 510.

**2. Construction and application.**

Commissioners cannot relieve lands included in district from assessment on grounds that they are not benefited.

Wood v. Honey Creek Drainage & Levee Dist. No. 6, 1916, 180 Iowa 159, 160 N.W. 342.

Only lands benefited specially in a manner different and in addition to common benefit conferred on all lands in the locality.

Zinser v. Board of Buena Vista County, 1907, 137 Iowa 660, 114 N.W. 51.

**3. Classification of lands.**

That timber land and adjoining cleared land under cultivation were both assessed 100 percent, held not to render assessment against timber land invalid.

Fulton v. Sherman, 1931, 212 Iowa 1218, 238 N.W. 88.

Classification of land for widening of ditch should have been made on its condition at time of widening.

Mayne v. Board of Pottawattamie County, 1929, 208 Iowa 987, 225 N.W. 953.

Method of assessing benefits and classification were not contrary to statute.

Sullivan v. Board of Palo Alto County, 1922, 193 Iowa 739, 187 N.W. 575.

Where unusual method adopted leads to equitable result, assessments will not be disturbed because procedure was not strictly that prescribed by statute if equivalent thereto.

Boslaugh v. Board of Buena Vista County, 1921, 190 Iowa 1168, 181 N.W. 441.

The 100 percent tract need only represent a maximum wetness in the particular district.

Board of Polk County v. McDonald, 1920, 188 Iowa 6, 175 N.W. 817.

Lands are classified on percentage basis without special reference to expense of constructing the improvement across or in vicinity of any given tract.

Conklin v. City of Des Moines, 1918, 184 Iowa 384, 168 N.W. 874.

The estimation of acreage of dry, low, wet and swampy land in the district by appraisers, preliminary to assessment of benefits on a scale of 100, is not error.

Obe v. Board of Hamilton County, 1915, 169 Iowa 449, 151 N.W. 453.

Method of classification held to not be substantial departure from the statute.
In re Farley Drainage Dist. No. 7, 1909, 144 Iowa 476, 123 N.W. 241.

Assessment held to not exceed benefits.
Farley Drainage Dist. No. 7 v. Hamilton County, 1908, 140 Iowa 339, 118 N.W. 432.

**4. Benefits to land.**

New drains furnishing additional outlet benefited all lands tributary thereto though not touching such lands.
Kelley v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 841; Herron v. Drainage Dist. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 846.

Existence of drainage system on land should be considered in classifying such land.
Fulton v. Sherman, 1931, 212 Iowa 1218, 238 N.W. 88.

That private drainage enhanced the value of the land would necessarily result in less benefit than had land been wholly undrained.
Brandt v. Board of Franklin County, 1924, 197 Iowa 495, 197 N.W. 462.

Departure from channel held to not have been made solely for the benefit of lands above.
Sullivan v. Board of Palo Alto County, 1922, 193 Iowa 739, 187 N.W. 575.

Tile drain furnished outlet for lateral tile more accessible than had it not touched the premises.
Christenson v. Board of Hamilton County, 1918, 168 N.W. 114.

Land in proposed district could be assessed only for such special benefits as are separate and distinct from benefits to the public generally.
Schafroth v. Buena Vista County, 1917, 181 Iowa 1223, 165 N.W. 341.

Test of benefit and extent of benefits is whether, within a reasonable time, proposed improvements will increase actual or intrinsic value.
Hall v. Polk, 1917, 181 Iowa 828, 165 N.W. 119.

Owner having tile drain held specially benefited.
Obe v. Board of Hamilton County, 1915, 169 Iowa 449, 151 N.W. 453.

That it would be necessary to lay other drains did not exempt owner from paying for benefits received.
Schropfer v. Hamilton County Drainage Dist. No. 37, 1910, 147 Iowa 63, 125 N.W. 992.

Where construction of drain will not drain land in question any more than by existing swale or swamp the land may not be benefited.

Zinser v. Board of Buena Vista County, 1907, 137 Iowa 660, 114 N. W. 51.

**5. Percentage of benefits.**

That timber land and adjoining cultivated land were both assessed as 100 percent benefited, held to not void assessment against the timber land.

Fulton v. Sherman, 1931, 212 Iowa 1218, 238 N.W. 88.

**6. Matters to be considered when classifying lands.**

Existing drainage should be considered in comparing land to determine validity of classification.

Fulton v. Sherman, 1931, 212 Iowa 1218, 238 N.W. 88.

That lots may be occupied by buildings, use of which may be enhanced, may be considered in classifying lands.

Cordes v. Board of Hamilton County, 1924, 197 Iowa 136, 196 N.W. 997.

Board may take into account fact that underground tile has been laid as a part of the plan through land of owner against whom an assessment is made.

Jackson v. Board of Sup'rs, 1913, 159 Iowa 673, 140 N.W. 849.

**7. Distance from outlet.**

In estimating benefits, the right of owner to conduct surface water into natural courses extending on adjoining land must be considered.

Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

Mere matter of distance of lands from outlet of ditch is immaterial in estimating benefits.

In re Castner, 1909, 142 Iowa 716, 119 N.W. 980.

Assessment or construction of drain can be made only for actual benefits.

In re Johnson Drainage Dist. No. 9, 1908, 141 Iowa 380, 118 N.W. 380.

**8. Elevation.**

Elevation alone is not controlling factor in classifying lands for assessment.

Rogers v. Board of Cerro Gordo County, 1922, 195 Iowa 1, 189 N.W. 950.

Fact that lands are so high that they do not need a drain of extraordinary depth may be considered.

Monson v. Board of Boone and Story Counties, 1914, 167 Iowa 473, 149 N.W. 624.

**9. Inequality of benefits.**

Inequality of benefits from ditch may be met in assessment of benefits.

Henderson v. Board of Polk County, 1915, 171 Iowa 499, 153 N.W. 63.

**10. Railroads, benefits to.**

Facts held to show benefit derived was substantial.

In re Story County Drainage Dist. No. 34, 1914, 166 Iowa 344, 147 N.W. 875.

Railroad property should not be classified in tracts of 40 acres or less.

In re Johnson Drainage Dist. No. 9, 1908, 141 Iowa 380, 118 N.W. 380.

**11. Equality of apportionment and assessments.**

Drainage law, §12, incorporated in part in this section requires burdens placed according to benefits, but leaves determination of equitable apportionment to the commissioners.

Fardal Drainage Dist. No. 72 in Hamilton County v. Board of Hamilton County, 1912, 157 Iowa 590, 138 N.W. 443; Fardal Drainage Dist. No. 72 in Hamilton County v. Board of Hamilton County, 1912, 138 N.W. 444.

Evidence held to sustain finding of inequitable and excessive assessments.

Mills v. Board of Monona County, 1940, 227 Iowa 1141, 290 N.W. 50.

In determining validity of assessment, question of whether land bore inequitable portion of total cost is presented.

Fulton v. Sherman, 1931, 212 Iowa 1218, 238 N.W. 88.

Cost of improvement is to be apportioned equitably between landowners.

Rasch v. Drainage Dist. No. 10 in Shelby County, 1924, 198 Iowa 31, 199 N.W. 168.

Assessment of town lots on same basis as agricultural lands did not render assessment against farm lands inequitable.

Cordes v. Board of Hamilton County, 1924, 197 Iowa 136, 196 N.W. 997.

Assessment held inequitable under the facts.

Thomas v. Board of Harrison County, 1922, 194 Iowa 1316, 191 N.W. 154.

If appellants have in fact been overassessed they need not point out a way the deficiency created by reduction may be made up.

Loomis v. Board of Sup'rs, 1919, 186 Iowa 721, 173 N.W. 615.

Objection that all lands in district are not benefited alike and that assessments are inequitable was without merit.

Breiholz v. Board of Pocahontas County, 1919, 186 Iowa 1147, 173 N.W. 1, affirmed 42 S. Ct. 13, 257 U. S. 118, 66 L. Ed. 159.

Evidence held to show landowner was assessed excessively.

Sorenson v. Wright County, 1919, 185 Iowa 721, 171 N.W. 40.

Evidence held to show inequitable assessment.

Thielen v. Board of Wright County, 1917, 179 Iowa 248, 160 N.W. 915.

Objection that assessment is inequitable cannot be considered where there is no evidence from which a comparison of assessments with other land can be made.

Mayne v. Board of Pottawattamie County, 1917, 178 Iowa 783, 160 N.W. 345.

Unjust assessment was properly corrected by district court.

Flood v. Board of Dallas County, 1916, 173 Iowa 224, 155 N.W. 280.

**12. Apportionment of costs.**

Owners in upper district could be compelled to bear their portion of cost of new right of way for lower district despite failure to receive notice.

Board of Pottawattamie County v. Board of Harrison County, 1932, 214 Iowa 655, 241 N.W. 14, motion denied 54 S. Ct. 47, appeal dismissed 54 S. Ct. 125, 290 U. S. 595, 78 L. Ed. 523.

In determining validity of assessment, question of whether land bears inequitable portion of total cost is presented.

Fulton v. Sherman, 1931, 212 Iowa 1218, 238 N.W. 88.

Assessment against lands for portion of cost of work done in another section of district from which no benefit was received was improper.

Lee v. Board of Sac County, 1924, 197 Iowa 1125, 198 N.W. 494.

Test of fair assessment is whether it represents a fair proportional part of the total cost of improvement.

Rogers v. Board of Cerro Gordo County, 1922, 195 Iowa 1, 189 N.W. 950.

Sole objection to assessment, where owner admits district was properly organized, is that apportionment of costs or classification was inequitable.

Philip Drainage District v. Peterson, 1922, 192 Iowa 1094, 186 N.W. 18.

In apportioning assessments for improvement approximation is the best that can be done.

Bloomquist v. Board of Hardin County, 1920, 188 Iowa 994, 177 N.W. 95.

Total cost must be borne by property located in the district though it be shown the engineer and board were mistaken in estimating benefits.

Interurban Ry. Co. v. Board of Polk County, 1920, 189 Iowa 35, 175 N.W. 743.

Factors to be considered in determining whether a given tract has been charged excessively discussed.

Thielen v. Board of Wright County, 1917, 179 Iowa 248, 160 N.W. 915.

Commissioners could not relieve any land in the district from assessment on ground it received no benefits.

Wood v. Honey Creek Drainage & Levee Dist. No. 6, 1916, 180 Iowa 159, 160 N.W. 342.

In assessing benefits a reasonably fair apportionment of the expenses is all that can be expected.

Jackson v. Board of Sup'rs, 1913, 159 Iowa 673, 140 N.W. 849.

Cost of improvement must be apportioned according to benefits, and natural advantages of any tract must be considered.

In re Jenison, 1909, 145 Iowa 215, 123 N.W. 979.

Land not overflowed, but indirectly benefited may be assessed.

Chambliss v. Johnson, 1889, 77 Iowa 611, 42 N.W. 427.

**13. Assessments.**

In determining propriety of assessment comparison of the land with all or the determining portion in district must be had.

Fulton v. Sherman, 1931, 212 Iowa 1218, 238 N.W. 88.

"Assessment" for ditch repairs held properly limited to lands benefited as shown by original classification, though original assessment levied part of cost of ditch against entire district.

Seabury v. Adams, 1929, 208 Iowa 1332, 225 N.W. 264.

Assessment of whole cost of widening ditch to care for waters coming from another district against land in district in which ditch was situated was erroneous.

Mayne v. Board of Pottawattamie County, 1929, 208 Iowa 987, 223 N.W. 904, rehearing denied 208 Iowa 987, 225 N.W. 953.

Each tract should be assessed for actual benefit received, and assessment of the several tracts to be proportionate.

Harriman v. Drainage Dist. No. 7-146 of Franklin and Wright Counties, 1924, 198 Iowa 1108, 199 N.W. 974.

Assessments based on mere estimates held invalid.

Rasch v. Drainage Dist. No. 10 in Shelby County, 1924, 198 Iowa 31, 199 N.W. 168.

Assessments are made with reference to special benefits received.

Kimball v. Board of Polk County, 1921, 190 Iowa 783, 180 N.W. 988.

A "special assessment" is imposed for special benefits conferred on the property.

Cornelius v. Kromminga, 1917, 179 Iowa 712, 161 N.W. 625.

Assessment of 40 acre tract for whole cost of constructing a drain thereon is erroneous.

Lightner v. Board of Greene County 1912, 156 Iowa 398, 136 N.W. 761, modified in other respects 156 Iowa 398, 137 N.W. 462.

After land has been included in an established district a subdistrict may be established.

In re C. G. Hay Drainage Dist. No. 23, 1910, 146 Iowa 280, 125 N.W. 225.

Statute relating to drainage districts to be construed liberally, thus description was held to sufficiently describe the property.

Chicago, etc. R. Co. v. Monona County, 1909, 144 Iowa 171, 122 N.W. 820.

**14. Power to levy assessments.**

No lack of jurisdiction to levy shown by the facts.

Chicago, etc. R. Co. v. Board of Clinton County, 1924, 197 Iowa 1208, 198 N.W. 640.

Power to levy assessment is part of general powers of taxation.

Fitchpatrick v. Botheras, 1911, 150 Iowa 376, 130 N.W. 163, 37 L. R. A., N. S. 558, Ann. Cas. 1912D, 534.

Under Code Supp. 1913, §9189-a12 the board could cause assessments to be made as soon as district was located and established.

O. A. G. 1918, p. 534.

**15. Basis for assessment.**

Formula used to determine assessment for railroad held improper.

Illinois, etc. R. Co. v. Boyer River Drainage Dist. No. 2, Crawford County, Iowa, D. C. 84 F. Supp. 306.

Use of engineer's statement of comparative cost of different sections of the drain and its branches by court in figuring assessments held not prejudicial where computations were advantageous to appellant.

Monson v. Board of Boone and Story Counties, 1914, 167 Iowa 473, 149 N.W. 624.

Cost of constructing drain across a particular tract is not proper basis for assessment.

Pollock v. Board of Story County, 1912, 157 Iowa 232, 138 N.W. 415.

**16. Purposes of assessment.**

Owner held not to be assessed for sum paid as damages for additional servitude of drain where he had paid damages for its construction.

Harriman v. Board of Franklin County, 1915, 169 Iowa 324, 151 N.W. 468.

**17. Matters to be considered in fixing assessments.**

Where some tracts could be farmed, question of benefit from drain running through such tracts in comparison with other lands in district was proper for consideration.

Harriman v. Drainage Dist. No. 7-146 of Franklin and Wright Counties, 1924, 198 Iowa 1108, 199 N.W. 974.

In assessing it is proper to consider relative productiveness of land and drainage existing prior to construction of drain.

Rasch v. Drainage Dist. No. 10 in Shelby County, 1924, 198 Iowa 31, 199 N.W. 168.

Court could consider that lands were drained naturally or by means accomplished by the owners.

Monson v. Board of Boone and Story Counties, 1914, 167 Iowa 473, 149 N.W. 624.

Fact that owner has already constructed a drainage system should be given due consideration.

Obe v. Board of Hamilton County, 1915, 169 Iowa 449, 151 N.W. 453.

**18. Amount of assessment.**

Test of propriety of assessment is not whether it exceeds actual benefits but whether it represents a fair proportional part of the total cost of improvements.

Chicago, etc. R. Co. v. Dreessen, 1952, 243 Iowa 397, 52 N.W.2d 34.

Fact that assessment recommended in second report of engineer greatly exceeded that in the first report, was entitled to consideration.

Mills v. Board of Monona County, 1940, 227 Iowa 1141, 290 N.W. 50.

In determining propriety of assessment the particular land may be compared with district generally.
Fulton v. Sherman, 1931, 212 Iowa 1218, 238 N.W. 88.

Assessment against quarter section held not out of proportion with other assessments.
Petersen v. Board of Cerro Gordo County, 1929, 208 Iowa 748, 226 N. W. 1.

Drainage assessment against high land, previously tiled by owner, and not touched by drain or laterals held excessive.
Brandt v. Board of Franklin County, 1924, 197 Iowa 495, 197 N.W. 462.

Cultivated land, largely protected from overflow by dike, was improperly assessed as wet land.
Boyd v. Board of Palo Alto County, 1920, 187 Iowa 1234, 175 N.W. 319.

Assessment against owner whose lands were only partly redeemed held not excessive.
Loomis v. Board of Sup'rs, 1919, 186 Iowa 721, 173 N.W. 615.

Any assessment may be burdensome if district does not receive a corresponding benefit from the expenditure of its money.
Shay v. Board of Ringgold County, 1919, 185 Iowa 282, 170 N.W. 393.

Assessment against lands needing connection with proposed drain through other lands held excessive in comparison to lands directly drained.
Thielen v. Board of Wright County, 1917, 179 Iowa 248, 160 N.W. 915.

Assessment for tile drain held excessive.
Harriman v. Board of Franklin County, 1915, 169 Iowa 324, 151 N.W. 468.

Assessment held to not be excessive.
Obe v. Board of Hamilton County, 1915, 169 Iowa 449, 151 N.W. 453.

Statute providing special assessments levied by city should not exceed 25 percent of value of tract did not apply to drainage assessments.
Hatcher v. Board of Greene County, 1914, 165 Iowa 197, 145 N.W. 12.

Swamp land made useful for pasture held not overassessed. Method of determining assessment immaterial, only question being whether assessment was equitable.
Farley Drainage Dist. No. 7 v. Hamilton County, 1908, 140 Iowa 339, 118 N.W. 432.

**19. Description.**

Owner in district could mandamus to compel correction of description of another's land on which assessment was unpaid because of defective description.

Plumer v. Board of Harrison County, 1927, 203 Iowa 643, 213 N.W. 257.

Assessment roll describing 40 acre tracts as "ne qr. 13-85-31," sufficiently describes the property.

In re Lightner, 1909, 145 Iowa 95, 123 N.W. 749.

**20. Report.**

Failure to file report within 20 days after appointment or any other given time does not deprive board of jurisdiction.

In re Farley Drainage Dist. No. 7, 1909, 144 Iowa 476, 123 N.W. 241.

Farley Drainage Dist. No. 7 v. Hamilton County, 1908, 140 Iowa 339, 118 N.W. 432.

**21. Irregularities.**

Assessment of 30 acre tract as one of 39.25 acres did not void assessment, but was an irregularity and could not be collaterally attacked.

Whisenand v. Van Clark, 1940, 227 Iowa 800, 288 N.W. 915.

**22. Waiver and estoppel.**

Deposit of assessment with treasurer with understanding that it was to be held subject to litigation was not voluntary payment and did not estop them from recovering it.

Lade v. Board of Hancock County, 1918, 183 Iowa 1026, 166 N.W. 586.

Failure of appraisers to follow statute in making classification and assessments is an irregularity.

In re Lightner, 1910, 145 Iowa 95, 123 N.W. 749.

**23. Validating acts.**

Landowner held estopped under the facts to recover assessments paid by him.

Wilcox v. Marshall County, 1941, 297 N.W. 640.

Acts 1904 (30 G.A.) ch. 67, 68, cured defects in prior law.

Smittle v. Haag, 1908, 140 Iowa 492, 118 N.W. 869.

**24. Injunction.**

That benefits to be derived by objectors are slight is not ground for restraining work as a whole.

Wallis v. Board of Harrison County, 1911, 152 Iowa 458, 132 N.W. 850.

**25. Actions.**

Where owners exchanged properties and defendant conveyed subject to assessment lien for dike and ditch, plaintiff could not recover amount of such assessment.

Johnstone v. Robertson, 1917, 179 Iowa 838, 162 N.W. 66.

**26. Presumptions and burden of proof.**

Presumption in favor of correctness of action of commissioners to assess benefits and classify land.

Fulton v. Sherman, 1931, 212 Iowa 1218, 238 N.W. 88.

All lands in district presumed to be benefited.

Cordes v. Board of Hamilton County, 1924, 197 Iowa 136, 196 N.W. 997.

Classification by supervisors and commissioners when approved by district court is presumed correct.

Interurban R. Co. v. Board of Polk County, 1920, 189 Iowa 35, 175 N.W. 743.

Presumption of correctness of assessments can be overcome only by clear showing of prejudicial error, fraud or mistake.

Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

Assessment presumed to be correct and equitable and party appealing must show otherwise.

Collins v. Board of Pottawattamie County, 1913, 158 Iowa 322, 138 N.W. 1095.

Assessment presumed to be correct and proper and objector must establish error therein.

Guttormsen v. Drainage Dist. No. 7, 1911, 153 Iowa 126, 133 N.W. 326.

**27. Evidence.**

In action to recover assessment paid plaintiff failed to show ownership in her mother of land in district which would have entitled mother to notice of establishment.

Wilcox v. Marshall County, 1941, 229 Iowa 865, 294 N.W. 907, modified in other respects 297 N.W. 640.

Evidence held insufficient to establish inequality of assessment as compared with other lands in district.

Fulton v. Sherman, 1931, 212 Iowa 1218, 238 N.W. 88.

Evidence held to warrant reduction of assessment by court.

Evans v. Board of Mills County, 1924, 198 Iowa 918, 200 N.W. 572.

Evidence held to establish invalidity of assessment.

Rasch v. Drainage Dist. No. 10 in Shelby County, 1924, 198 Iowa 31, 199 N.W. 168.

Evidence showed improper classification as swamp land.
Boyd v. Board of Palo Alto County, 1919, 187 Iowa 1234, 175 N.W. 319.

Evidence that aggregate expense anticipated was from $10 to $14 an acre does not raise presumption of extravagance.
Shay v. Board of Ringgold County, 1919, 185 Iowa 282, 170 N.W. 393.

Evidence held to sustain owner's assessment as for substantial benefits.
Schropfer v. Hamilton County, Iowa, Drainage Dist., 1910, 147 Iowa 63, 125 N.W. 992.

**28. Review.**

On appeal by railroad from assessment the district and county board had burden to prove that despite use of improper formula the assessments did not exceed benefits.
Illinois, etc. R. Co. v. Boyer River Drainage Dist. No. 2, Crawford County, Iowa, D. C. 84, F. Supp. 306.

Court could not say assessments were erroneous without comparing land involved to others in the district.
Fulton v. Sherman, 1931, 212 Iowa 1218, 238 N.W. 88.

If method of classifying land is within purview of statute and results in fair assessments it will not be disturbed.
Rogers v. Board of Cerro Gordo County, 1922, 195 Iowa 1, 189 N.W. 950.

Supreme Court will not interfere with assessments by benefit commission, approved by supervisors and district court except on clear showing of prejudicial error.
Sullivan v. Board of Palo Alto County, 1922, 193 Iowa 739, 187 N.W. 575.

Finding of court below being an approximation the assessment would not further be reduced.
Board of Polk County v. McDonald, 1920, 188 Iowa 6, 175 N.W. 817.

Where board established district covering lands servient to two previously established districts and apportioned small part of costs to each of such districts, owners in third district not precluded from apportionment as insufficient by failure to appeal order adopting commissioners' report.
Loomis v. Board of Sup'rs, 1919, 186 Iowa 721, 173 N.W. 615.

Variance from statutory procedure as to classification does not defeat jurisdiction by board or court.
Chicago, etc. R. Co. v. Board of Dubuque County, 1916, 176 Iowa 690, 158 N.W. 553.

Under Code 1897, §1947, and Code Supp. 1913, §1989-a12, it could not be shown on appeal from assessment that property was not benefited.

Chicago, etc. R. Co. v. Wright County Drainage Dist. No. 43, 1915, 175 Iowa 417, 154 N.W. 888.

Commissioners presumed to have considered all evidence bearing on question of benefits or values.

Rystad v. Drainage Dist. No. 12, 1912, 157 Iowa 85, 137 N.W. 1030.

Objection to commissioners' apportionment of costs cannot be first raised on appeal.

Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

Method of making assessment is not jurisdictional and cannot be first raised on appeal.

In re C. G. Hay Drainage Dist. No. 23, 1910, 146 Iowa 280, 125 N.W. 225.

Objection that classification was not made in manner required by statute cannot be first raised on appeal.

In re Farley Drainage Dist. No. 7, 1909, 144 Iowa 476, 123 N.W. 241.

Unauthorized appearance of attorney on behalf of the county at hearing before supervisors and in district court did not make county a party so as to entitle it to appeal from district court judgment.

Yockey v. Woodbury County, 1906, 130 Iowa 412, 106 N.W. 950.

**455.47 Rules of classification.** In the report of the appraisers so appointed they shall specify each tract of land by proper description, and the ownership thereof, as the same appears on the transfer books in the auditor's office.

In estimating the benefits as to the lands not traversed by said improvement, they shall not consider what benefits such land shall receive after some other improvements shall have been constructed, but only the benefits which will be received by reason of the construction of the improvement in question as it affords an outlet to the drainage of such lands, or brings an outlet nearer to said lands or relieves the same from overflow and relieves and protects the same from damage by erosion. [S13,§1989-a13; SS15,§1989-a12; C24, 27, 31, 35, 39,§7467; C46, 50, 54,§455.47]

Reclassification when new assessment is necessary for repairs or changes, see §455.141.

**1. Construction and application.**

Slight variances from prescribed method of classification and assessment, unless prejudicial, are immaterial.

Kelley v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 841; Herron v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 846.

Method of assessing benefits against various lands was not contrary to statute.

Sullivan v. Board of Palo Alto County, 1922, 193 Iowa 739, 187 N.W. 575.

Limitation in §391.48 that assessments should not exceed 25 percent of lot does not apply to drainage assessments.

Hatcher v. Board of Greene County, 1914, 165 Iowa 197, 145 N.W. 12.

Entire assessment should be paid in March but when county issues "drainage bonds" tax may be paid semi-annually.

O. A. G. 1919-20, p. 317.

**2. Apportionment of cost.**

Productiveness of land before and after, drainage enjoyed before construction and outlet advantages are to be considered in determining whether there has been excessive assessment.

Thielen v. Board of Wright County, 1917, 179 Iowa 248, 160 N.W. 915.

**3. Equality of assessments.**

Assessment held inequitable and reduced.

Interurban Ry. Co. v. Board of Polk County, 1920, 189 Iowa 35, 175 N.W. 743.

Objection that all lands are not benefited by repairing, deepening and widening of ditches is without merit.

Breiholz v. Board of Pocahontas County, 1919, 186 Iowa 1147, 173 N.W. 1, affirmed 42 S. Ct. 13, 257 U. S. 118, 66 L. Ed. 159.

Comparison of lands revealed inequitable assessment.

Thielen v. Board of Wright County, 1917, 179 Iowa 248, 160 N.W. 915.

**4. Amount of assessment.**

Assessment against high land rendered tillable by private drain held excessive where such lands were not touched by new drain.

Brandt v. Board of Franklin County, 1924, 197 Iowa 495, 197 N.W. 462.

Assessment against railroad reduced.

Chicago, etc. R. Co. v. Board of Monona County, 1923, 196 Iowa 447, 194 N.W. 213.

Assessment against lands only partly redeemed held not excessive.
Loomis v. Board of Sup'rs, 1919, 186 Iowa 721, 173 N.W. 615.

Assessment against railroad reduced.
Chicago, etc. R. Co. v. Board of Hamilton County, 1918, 184 Iowa 590, 169 N.W. 103.

Assessment against land which would have to be connected to proposed drain through other lands held excessive.
Thielen v. Board of Wright County, 1917, 179 Iowa 248, 160 **N.W. 915.**

Benefits assessed held excessive.
Harriman v. Board of Franklin County, 1915, 169 Iowa 324, 151 N.W. 468.

Assessment against railroad reduced.
In re Story County Drainage Dist. No. 34, 1914, 166 Iowa 344, 147 N.W. 875.

**5. Review.**

Supreme Court presumes description of land before supervisors at time of assessment was still available.
Plumer v. Board of Harrison County, 1927, 203 Iowa 643, 213 N.W. 257.

On appeal from assessment evidence held not to show assessment was raised because of ill notice or malice.
Monter v. Board of Webster County, 1919, 187 Iowa 625, 174 N.W. 407.

**455.48 Assessment for lateral ditches.** In fixing the percentages and assessment of benefits and apportionment of costs of construction on lands benefited by lateral ditches and drains as a part of the entire improvement to be made in a drainage district, the commissioners shall ascertain and fix the percentage of benefits and apportionment of costs to the lands benefited by such lateral ditches on the same basis and in the same manner as if said lateral was, with its sublaterals, being constructed as a subdistrict as provided in this chapter, reporting separately:

1. The percentage of benefits and amount accruing to each forty-acre tract or less on account of the construction of the main ditch, drain, or watercourse including pumping plant, if any.

2. The percentage of benefits and amount accruing to each forty-acre tract or less on account of the construction of such lateral improvement. [S13,§1989-a23; SS15,§1989-a12; C24, 27, 31, 35, 39,§7468; C46, 50, 54,§455.48]

Referred to in §455.141 **Reclassification required.**

**1. Construction and application.**

Powers of trustees under Code Supp. 1913 limited to improvement of existing drains and ditches.

Smith v. Monona-Harrison Drainage Dist. No. 1, 1916, 178 Iowa 823, 160 N.W. 229.

**2. Assessments for lateral ditches.**

Money collected for laterals and unused must be accounted for.

Senneff v. Board of Hancock County, 1917, 178 Iowa 1281, 160 N.W. 936.

Invalidity of assessment cannot be predicated on the fact that one assessment covered both main drain and branches.

Obe v. Board of Hamilton County, 1915, 169 Iowa 449, 151 N.W. 453.

**455.49 Railroad property—collection.** The commissioners to assess benefits and make apportionment of costs and expenses shall determine and assess the benefits to the property of any railroad company extending into or through the levee or drainage district, and make return thereof showing the benefit and the apportionment of costs and expenses of construction. Such assessment when finally fixed by the board shall constitute a debt due from the railroad company to the district, and unless paid it may be collected by ordinary proceedings for the district in the name of the county in any court having jurisdiction. All other proceedings in relation to railroads, except as otherwise provided, shall be the same as provided for individual property owners within the levee or drainage district. [S13,§1989-a18; C24, 27, 31, 35, 39,§7469; C46, 50, 54,§455.49]

**1. Validity.**

Statute held to not fail to provide for notice and right of appeal.

In re Johnson Drainage Dist. No. 9, 1908, 141 Iowa 380, 118 N.W. 380.

**2. Construction and application.**

Assessment if not paid becomes debt due personally from railroad.

Chicago, etc. R. Co. v. Board of Clinton County, 1924, 197 Iowa 1208, 198 N.W. 640.

Railroad property should not be classified in tracts of 40 acres or less.

In re Johnson Drainage Dist. No. 9, 1908, 141 Iowa 380, 118 N.W. 380.

**3. Benefits to railroads.**

Benefits to railroad property may be approximated only.
Chicago, etc. R. Co. v. Dreesen, 1952, 243 Iowa 397, 52 N.W.2d 34.

Many factors enter into value of drainage of railroad property that do not obtain in consideration of benefits to farm lands.
Chicago, etc. R. Co. v. Board of Clay County, 1925, 200 Iowa 557, 204 N.W. 311.

No recognized rule for accurately determining benefits accruing to railroad right of way.
Chicago, etc. R. Co. v. Board of Kossuth County, 1924, 199 Iowa 857, 201 N.W. 115.

Though assessment was excessive benefits to railroad were not merely nominal.
Chicago, etc. R. Co. v. Board of Clinton County, 1924, 197 Iowa 1208, 198 N.W. 640.

Construction held to not benefit railroad.
U. S. Railroad Administration v. Board of Buena Vista County, 1923, 196 Iowa 309, 194 N.W. 365.

Benefits need not result in immediate increase in market value.
Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects, 182 Iowa 60, 165 N.W. 390.

Enhancement in actual value is enough to give right to assess.
Chicago, etc. R. Co. v. Wright County Drainage Dist. No. 43, 1915, 175 Iowa 417, 154 N.W. 888.

Benefits ascertainable by lessened expense of maintenance.
Chicago, etc. R. Co. v. Board of Hamilton County, 1915, 171 Iowa 741, 153 N.W. 110.

**4. Assessment of railroads.**

Itemized assessment by committee of component parts of railroad right of way not disturbed absent showing of prejudice.
Chicago, etc. R. Co. v. Dreesen, 1952, 243 Iowa 397, 52 N.W.2d 34.

Railroad assessed for drain could not in addition be charged with portion of cost of highway bridge, over drain, not located on its right of way.
U. S. Railroad Administration v. Board of Buena Vista County, 1923, 196 Iowa 309, 194 N.W. 365.

In assessing it is competent to consider benefit to roadbed, ties, bridges, culverts, fences, etc.
Chicago, etc. R. Co. v. Board of Winnebago County, 1922, 188 N.W. 848.

Railroad could be assessed its full pro rata share of total cost though necessary to make additional levies.

Chicago, etc. R. Co. v. Mosquito Drainage Dist. of Harrison County, 1920, 190 Iowa 162, 180 N.W. 170.

Method of assessment not prejudicial where result would have been the same anyway.

Chicago, etc. R. Co. v. Board of Hamilton County, 1918, 184 Iowa 590, 169 N.W. 103.

Benefits of advantage enjoyed in common with general public were too remote.

Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 165 N.W. 390.

That railroad would acquire increase in business due to increase in productiveness of district was too speculative.

Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

**5. Notice.**

Proper service of notice of assessment insufficient to confer jurisdiction with regard to proceedings to establish district.

Minneapolis, etc. R. Co. v. Board of Marshall County, 1925, 198 Iowa 1288, 201 N.W. 14.

**6. Description of property.**

Statute to be construed liberally.

Chicago, etc. R. Co. v. Monona County, 1909, 144 Iowa 171, 122 N.W. 820.

**7. Amount of assessment.**

Assessment held not excessive where tracks had overflowed in times of high water.

Chicago, etc. R. Co. v. Board of Appanoose County, C. C. 1908, 170 F. 665, affirmed 182 F. 291, 104 C. C. A. 573, 31 L. R. A., N. S. 1117, and affirmed 182 F. 301, 104 C. C. A. 583.

Assessment of right of way not excessive merely because greater than assessment per acre on adjoining farm land.

Chicago, R. Co. v. Board of Kossuth County, 1925, 199 Iowa 857, 201 N.W. 115.

Assessment held too high proportionally.

Chicago, etc. R. Co. v. Board of Monona County, 1923, 196 Iowa 447, 194 N.W. 213.

Test of proper assessment is not whether it exceeds actual benefit but whether it represents a fair proportional part of total cost.

Interurban R. Co. v. Board of Polk County, 1920, 189 Iowa 35, 175 N.W. 743.

Assessment reduced.

Chicago, etc. R. Co. v. Board of Hamilton County, 1918, 184 Iowa 590, 169 N.W. 103.

That assessment of right of way is greater per acre than on farm lands does not show it to be excessive.

Chicago, etc. R. Co. v. Wright County Drainage Dist. No. 43, 1915, 175 Iowa 417, 154 N.W. 888.

Assessment properly reduced where benefits exceeded cost, but assessment against railroad was for full benefit.

Chicago, etc. R. Co. v. Board of Hamilton County, 1915, 171 Iowa 741, 153 N.W. 110.

Benefit held substantial.

In re Story County Drainage Dist. No. 34, 1914, 166 Iowa 344, 147 N.W. 875.

**8. Objections.**

Objections did not raise question of invalidity of assessment because of error in classifying right of way and assessing benefits in parcels.

Chicago, etc. R. Co. v. Monona County, 1909, 144 Iowa 171, 122 N.W. 820.

**9. Set-off of damages.**

Railroad could not set off damage caused by contractor to its property against assessment.

Chicago, etc. R. Co. v. Board of Monona County, 1923, 196 Iowa 447, 194 N.W. 213.

**10. Payment of assessments.**

Railroad's payment of drainage assessments did not relieve it from liability for assessments made in prior projects by larger district subsequently organized.

Chicago, etc. R. Co. v. Board of Kossuth County, 1924, 199 Iowa 857, 201 N.W. 115.

**11. Injunction.**

Grantee of railroad which was granted swamp land, company releasing state and county from liability to reclaim, could not enjoin county from collecting tax for ditch and drain.

Hatch, Holbrook & Co. v. Pottawattamie County, 1876, 43 Iowa 442.

**12. Presumptions and burden of proof.**

Assessment presumed to be correct and equitable.

Chicago, etc. R. Co. v. Dreessen, 1952, 243 Iowa 397, 52 N.W.2d 34.

Strong presumption of equitableness attends assessment.

Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

**13. Evidence.**

Evidence did not justify increase in assessment of benefits against railroad.

Chicago, etc. R. Co. v. Board of Clay County, 1925, 200 Iowa 557, 204 N.W. 311.

Evidence held to show inequitable assessment.

Chicago, etc. R. Co. v. Board of Winnebago County, 1922, 188 Iowa 848.

Evidence insufficient to overcome presumption of correctness.

Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

**14. Review.**

Absent prejudice assessment not disturbed though method employed may vary from that defined in this section.

Chicago, etc. R. Co. v. Dreessen, 1952, 243 Iowa 397, 52 N.W.2d 34.

Assessments not disturbed except on showing of prejudice, corruption or mistake.

Chicago, etc. R. Co. v. Board of Appanoose County, Iowa, C. C. A., 1910, 182 F. 301.

Decree on appeal reducing assessment does not determine and fix the benefit but merely fixes basis on which apportionment of cost should be based.

Chicago, etc. R. Co. v. Mosquito Drainage Dist. of Harrison County, 1921, 190 Iowa 162, 180 N.W. 170.

Evidence held to not overcome presumption of fair assessment.

Chicago, etc. R. Co. v. Board of Dubuque County, 1916, 176 Iowa 690, 158 N.W. 553.

**455.50 Public highways.** When any public highway extends into or through a levee or drainage district, the commissioners to assess benefits shall ascertain and return in their report the amount of benefits and the apportionment of costs and expenses to such highway, and the board of supervisors shall assess the same against such highway.

Such assessments against primary highways shall be paid by the state highway commission from the primary road fund on due certification of the amount by the county treasurer to said commission, and against all secondary roads, from the secondary road construction fund or from the

secondary road maintenance fund, or from both of said funds. [S13,§1989-a19,-a26; C24, 27, 31, 35, 39,§7470; C46, 50, 54,§455.50]

**1. Construction and application.**

Jurisdiction not lacking to assess because no assessment was made against highways where it was not shown they needed drainage.

Chicago, etc. R. Co. v. Board of Clinton County, 1924, 197 Iowa 1208, 198 N.W. 640.

Where highway is benefited commissioners have duty to classify and assess in same manner as benefits to private property.

O. A. G. 1906, p. 416.

**2. Payment of assessment.**

If county pays assessment on highway from township funds, township funds should be credited with county's share.

O. A. G. 1930, p. 240.

Under the facts county was not required to pay any portion of assessment levied against township.

O. A. G. 1925-26, p. 492.

Provision that assessments against primary roads should be paid out of county's allotment of primary fund did not have retroactive effect.

O. A. G. 1925-26, p. 278.

**455.51 Report of commissioners.** The commissioners, within the time fixed or as extended, shall make and file in the auditor's office a written verified report in tabulated form as to each forty-acre tract, and each tract of less than forty acres, setting forth:

1. The names of the owners thereof as shown by the transfer books of the auditor's office or the reports of the engineer on file, showing said entire classification of lands in said district for erosion protection or flood control.

2. The amount of benefits to highway and railroad property and the percentage of benefits to each of said other tracts and the apportionment and amount of assessment of cost and expense against each:

a. For main ditches, and settling basins.

b. For laterals.

c. For levees and pumping station.

3. The aggregate amount of all assessments.

4. Any specific benefits other than those derived from the drainage of agricultural lands shall be separately stated. [SS15,§1989-a12; C24, 27, 31, 35, 39,§7471; C46, 50, 54,§455.51]

See §455.74 Procedure governing reclassification.

**1. Construction and application.**

Reduction in one assessment would increase all others so persons notified of hearing were on notice of such possible action.

Gray v. Anderson, 1908, 140 Iowa 359, 118 N.W. 526.

**2. Benefits.**

That benefit may be slight is to be considered in making assessment but is no ground for restraining whole work.

Wallis v. Board of Harrison County, 1911, 152 Iowa 458, 132 N.W. 850.

**3. Report.**

Report of commissioners in making assessment presumed correct.

Cordes v. Board of Hamilton County, 1924, 197 Iowa 136, 196 N.W. 997; Hatcher v. Board of Greene County, 1914, 165 Iowa 197, 145 N.W. 12.

Commissioners were not required to make report within 20 days after appointment, they having some additional time.

In re Farley Drainage Dist. 1908, 140 Iowa 339, 118 N.W. 432.

**4. Presumptions and burden of proof.**

Assessment presumed correct.

In re Johnson Drainage Dist. No. 9, 1908, 141 Iowa 380, 118 N.W. 380.

**5. Review.**

Court may modify assessment on clear and convincing showing of error.

Brandt v. Board of Franklin County, 1924, 197 Iowa 495, 197 Iowa 462.

Supreme Court has duty of examining the record independently to determine fairness of assessment.

Petersen v. Board of Cerro Gordo County, 1929, 208 Iowa 748, 226 N.W. 1.

The regular inclusion of property in district is conclusive as to benefit.

Chicago, etc. R. Co. v. Wright County Drainage Dist. No. 43, 1915, 175 Iowa 417, 154 N.W. 888.

Findings of assessing commissioners not disturbed if consistent with findings of trial court upon disputed facts.

Rystad v. Drainage Dist. No. 12, 1912, 157 Iowa 85, 137 N.W. 1030.

Where proceedings are irregular and not illegal, remedy of owner was to object before the board and then appeal.

In re Lightner, 1910, 145 Iowa 95, 123 N.W. 749.

Objection not made below not considered by Supreme Court unless it goes to right of board to act.

In re Farley Drainage Dist. 1909, 144 Iowa 476, 123 N.W. 241.

**455.52 Notice of hearing.** The board shall fix a time for a hearing upon the report of the commissioners, and the auditor shall cause notice to be served upon each person whose name appears as owner, naming him, and also upon the person or persons in actual occupancy of any tract of land without naming him, of the day and hour of such hearing, which notice shall be for the same time and served in the same manner as is provided for the establishment of a levee or drainage district, and shall state the amount of assessment of costs and expenses of construction apportioned to each owner upon each forty-acre tract or less, and that all objections thereto must be in writing and filed with the auditor at or before the time set for such hearing. [SS15,§1989-a12; C24, 27, 31, 35, 39,§7472; C46, 50, 54,§455.52]

**1. Validity.**

Failure of statute to provide for notice to mortgagee did not make it unconstitutional.

Fitchpatrick v. Botheras, 1911, 150 Iowa 376, 130 N.W. 163, 37 L. R. A., N. S. 558, Ann. Cas. 1912D, 1534.

**2. Construction and application.**

It is proper to levy tax before work is done.

Ross v. Board of Wright County, 1905, 128 Iowa 427, 104 N.W. 506, 1 L. R. A., N. S. 431.

**3. Notice.**

Where seal of court was not affixed on affidavit of publication of notice and issue of newspaper introduced showed proper publication notice and proof were sufficient.

Whisenand v. Van Clark, 1940, 227 Iowa 800, 288 N.W. 915.

Owners in upper district could be compelled to bear portion of new right of way by lower district without notice of improvement.

Board of Pottawattamie County v. Board of Harrison County, 1932, 214 Iowa 655, 241 N.W. 14, motion denied 54 S. Ct. 47, appeal dismissed 54 S. Ct. 125, 290 U. S. 595, 78 L. Ed. 523.

Actual notice on part of railroad held insufficient to confer jurisdiction on court.
Minneapolis, etc. R. Co. v. Board of Marshall County, 1925, 198 Iowa 1288, 201 N.W. 14.

Statute on changes in dimensions or location of improvement required, no notice of new contract for work where there was no change in dimension or location.
Horton Tp. of Osceola County v. Drainage Dist. No. 26 of Osceola County, 1921, 192 Iowa 61, 182 N.W. 395.

If owners were entitled to notice of final hearing on assessment, the board's prior ex parte resolution that assessment in same proportion as that adopted in prior improvement was premature and ineffective.
Bloomquist v. Board of Hardin County, 1920, 188 Iowa 994, 177 N.W. 95.

Where statute provides for notice at some state of proceedings on assessment there is no deprivation of due process.
Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 165 N.W. 390.

Additional assessment could be made without notice.
Plummer v. Pitt, 1914, 167 Iowa 632, 149 N.W. 878.

Defects in notice must be raised before board.
In re Lightner, 1910, 145 Iowa 95, 123 N.W. 749.

Reduction of one assessment would increase all others so persons notified of hearing were on notice of possible action.
Gray v. Anderson, 1908, 140 Iowa 359, 118 N.W. 526.

**4. Objections.**

Defects in notice must be raised before board.
In re Lightner, 1910, 145 Iowa 95, 123 N.W. 749.

**5. Objections to assessments.**

Slight changes from plan, added expense being paid for by those for whose benefit made gave no ground for complaint.
Fardal Drainage Dist. No. 72 in Hamilton County v. Board of Hamilton County, 1912, 157 Iowa 590, 138 N.W. 443; Fardal Drainage Dist. No. 72 in Hamilton County v. Board of Hamilton County, 1912, 138 N.W. 444.

Owner not disputing proper establishment could not avoid assessment by plea that no benefit was received.
Philip Drainage Dist. v. Peterson, 1922, 192 Iowa 1094, 186 N.W. 18.

It is no concern to party assessed for costs if another enjoyed advantages over others than himself.
Christenson v. Board of Hamilton County, 1918, 168 N.W. 114.

Objection held sufficient though not particularly describing the land.

Christenson v. Board of Hamilton County, 1916, 174 Iowa 724, 156 N.W. 810.

Owners allowing construction of drain on their land could not complain afterward of irregularities.

Patterson v. Baumer, 1876, 43 Iowa 477.

**6. Waiver of objections.**

Where owner appeared and failed to object to notice provisions of the law, such objection was waived.

Howard v. Emmet County, 1908, 140 Iowa 527, 118 N.W. 882.

**7. Adjournment.**

Adjournment by supervisors to a later day than fixed in notice did not cause loss of jurisdiction nor did it require further notice.

Gray v. Anderson, 1908, 140 Iowa 359, 118 N.W. 526.

**8. Injunction.**

Assessments held extinguished by tax deeds.

Shipman v. Bucher, 1941, 296 N.W. 396.

**9. Review.**

On appeal, district court must try case on the objections filed before board.

Lightner v. Board of Greene County, 1912, 156 Iowa 398, 136 N.W. 761, modified in other respects, 156 Iowa 398, 137 N.W. 462.

**455.53 Hearing and determination.** At the time fixed or at an adjourned hearing, the board shall hear and determine all objections filed to said report and shall fully consider the said report, and may affirm, increase, or diminish the percentage of benefits or the apportionment of costs and expenses made in said report against any body or tract of land in said district as may appear to the board to be just and equitable. [SS15,§1989-a12; C24, 27, 31, 35, 39,§7473; C46, 50, 54,§455.53]

**1. Construction and application.**

Result of proceedings for assessment to pay contractor conclusive as to amount, extent of liability and validity of claims.

First Nat. Bank v. Webster County, 1927, 204 Iowa 720, 216 N.W. 8.

Assessments are not void where there are only irregularities in proceedings properly begun.

Petersen v. Sorensen, 1921, 192 Iowa 471, 185 N.W. 42.

Legislature could create tribunal for hearing of objections to assessments and provide that objections not there made are waived.

In re Lightner, 1910, 145 Iowa 95, 123 N.W. 749.

Reduction of one assessment would increase all others so persons notified of hearing were on notice of such possible action.

Gray v. Anderson, 1908, 140 Iowa 359, 118 N.W. 526.

**2. Adjournment.**

Adjournment by board to day later than fixed in notice did not cause loss of jurisdiction or require further notice.

Gray v. Anderson, 1908, 140 Iowa 359, 118 N.W. 526.

**3. Powers of board.**

In making assessment it is proper to consider fact that an underground tile was laid through land of an owner.

Jackson v. Board of Sup'rs, 1913, 159 Iowa 673, 140 N.W. 849.

Board in levying final assessment may, after hearing, increase, diminish, annul or affirm apportionment made by commissioners.

Temple v. Hamilton County, 1907, 134 Iowa 706, 112 N.W. 174.

**4. Jurisdiction.**

Board not without jurisdiction because engineer serving on board of commissioners made surveys and superintended construction and member of board owned land subject to assessment.

Chicago, etc. R. Co. v. Board of Monona County, 1923, 196 Iowa 447, 194 N.W. 213.

Failure of engineer's report to include all items entering into plan and cost of drain did not go to jurisdiction of board to assess.

Hatcher v. Board of Greene County, 1914, 165 Iowa 197, 145 N.W. 12.

**5. Report of commissioners.**

Report of commissioners presumed correct.

Cordes v. Board of Hamilton County, 1924, 197 Iowa 136, 196 N.W. 997.

Commissioners' report may be set aside for fraud, gross error, or apparent mistake.

Hatcher v. Board of Greene County, 1914, 165 Iowa 197, 145 N.W. 12.

**6. Objections.**

Owners' petition asking that part of assessment be

charged to another district sufficiently presented the question.

Mayne v. Board of Pottawattamie County, 1929, 208 Iowa 987, 223 N.W. 904, rehearing denied 208 Iowa 987, 225 N.W. 953.

Objection properly questioned validity of purchase of culverts.

First Nat. Bank v. Webster County, 1927, 204 Iowa 720, 216 N.W. 8.

Where owner filed objections and later conveyed the land, the purchasers did not need to refile objections in their own name.

Hopkins v. Board of Boone County, 1925, 200 Iowa 441, 204 N.W. 242.

Where owner admits regular organization of district his sole objection to assessment is inequitable apportionment or unfair classification.

Philip Drainage Dist. v. Peterson, 1922, 192 Iowa 1094, 186 N.W. 18.

That assessment is inequitable cannot be considered without evidence from which comparison can be made.

Mayne v. Board of Pottawattamie County, 1916, 178 Iowa 783, 160 N.W. 345.

Objections before board are sufficient if objections fairly construed can be understood.

Christenson v. Board of Hamilton County, 1916, 174 Iowa 724, 156 N.W. 810.

Objection sufficient to raise question of amount of benefits.

Lightner v. Board of Greene County, 1912, 156 Iowa 398, 136 N.W. 761, modified in other respects 156 Iowa 398, 137 N.W. 462.

Objections to confirmation of assessment that classification was illegal did not raise question of invalidity of assessment because assessments to right of way were by parcels and not as entirety.

Chicago, etc. R. Co. v. Monona County, 1909, 144 Iowa 171, 122 N.W. 820

**7. Waiver of objections.**

Failure of appraisers to follow statutes was at most an irregularity.

In re Lightner, 1910, 145 Iowa 95, 123 N.W. 749.

**8. Hearing.**

Right of hearing of owners on appeal after hearing before board is coextensive with right of hearing before board.

Bloomquist v. Board of Sup'rs, Hardin County, 1920, 188 Iowa 994, 177 N.W. 95.

Only issues fairly presented by objections can be considered.

Chicago, etc. R. Co. v. Monona County, 1909, 144 Iowa 171, 122 N.W. 820.

**9. Apportionment of cost.**

Commissioners to apportion costs cannot relieve any land from assessment on ground it is not benefited.

Wood v. Honey Creek Drainage & Levee Dist. No. 6, 1916, 180 Iowa 159, 160 N.W. 342.

It does not necessarily follow that lands are to be relieved from all cost of drain because they are high.

Monson v. Board of Boone and Story Counties, 1914, 167 Iowa 473, 149 N.W. 624.

Reasonably fair apportionment of expense is all that can be expected.

Jackson v. Board of Sup'rs, 1913, 159 Iowa 673, 140 N.W. 849.

**10. Assessments.**

Mistake of engineer may be determined in the assessment.

Shaw v. Board of Greene County, 1923, 195 Iowa 545, 192 N.W. 525.

Assessments made with reference to special benefits derived from improvement.

Kimball v. Board of Polk County, 1921, 190 Iowa 783, 180 N.W. 988.

Inequality of benefits may be met in asessment.

Henderson v. Board of Polk County, 1915, 171 Iowa 499, 153 N.W. 63.

Invalidity of assessment cannot be based on fact that appraisers first classified lands as "dry," "low," "wet," and "swampy" to intelligently mark lands on scale of 100.

Obe v. Board of Hamilton County, 1915, 169 Iowa 449, 151 N.W. 453.

Local assessment is not a tax within constitutional provisions relating to assessment of taxes.

Munn v. Board of Greene County, 1913, 161 Iowa 26, 141 N.W. 711.

Recital by board in record was insufficient to show an adjudication that requisite petition was filed.

Richman v. Board of Muscatine County, 1885, 70 Iowa 627, 26 N.W. 24.

**11. Matters to be considered in making assessments.**

Assessing tribunal could compare benefits to certain lands and to each other.

Harriman v. Drainage Dist. No. 7-146 of Franklin and Wright Counties, 1924, 198 Iowa 1108, 199 N.W. 974.

**12. Equalization of assessments.**

Classification and assessment held inequitable.
Thomas v. Board of Harrison County, 1923, 194 Iowa 1316, 191 N.W. 154.

Board in levying final assessments may equalize them.
Temple v. Hamilton County, 1907, 134 Iowa 706, 112 N.W. 174.

**13. Increase in assessments.**

Supervisors of district may increase assessment but not arbitrarily.
Chicago, etc. R. Co. v. Board of Clay County, 1925, 200 Iowa 557, 204 N.W. 311.

Increase by supervisors not justified by evidence.
In re Castner, 1909, 142 Iowa 716, 119 N.W. 980.

**14. Reduction in assessments.**

Reduction by court held warranted.
Evans v. Board of Mills County, 1924, 198 Iowa 918, 200 N.W. 572.

Land held improperly assessed as "wet."
Boyd v. Board of Palo Alto County, 1919, 187 Iowa 1234, 175 N.W. 319.

Landowner assessed excessively as compared to other lands in district.
Sorenson v. Wright County, 1919, 185 Iowa 721, 171 N.W. 40.

Assesment held excessive in view of work towards drainage previously done by owner on his land.
Harriman v. Board of Franklin County, 1915, 169 Iowa 324, 151 N.W. 468.

Evidence warranted reduction.
Hill Drainage Dist. v. Hamilton, 1913, 162 Iowa 182, 143 N.W. 991.

Reduction by court warranted.
Bibler v. Board of Hamilton County, 1913, 162 Iowa 1, 142 N.W. 1017.

Cost of construction drain across particular tract is not basis for assessment of that tract.
Pollock v. Board of Story County, 1912, 157 Iowa 232, 138 N.W. 415.

**15. Collateral attack on assessment.**

Irregularities and illegalities could not be reviewed in a collateral action, appeal being exclusive.
Whisenand v. Van Clark, 1940, 227 Iowa 800, 288 N.W. 915.

**16. Presumptions and burden of proof.**

Report of commissioners presumed correct.

Cordes v. Board of Hamilton County, 1924, 197 Iowa 136, 196 N.W. 997.

Burden of proving inequitable assessment on landowners.

Rogers v. Board of Cerro Gordo County, 1922, 195 Iowa 1, 189 N.W. 950.

Presumption of correctness of assessment can be overcome only by clear showing of prejudice, fraud or mistake.

Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

Commissioners' assessment presumed correct and proper.

Guttormsen v. Drainage Dist. No. 7, 1911, 153 Iowa 126, 133 N.W. 326.

Presumption is in favor of assessment.

In re Johnson Drainage Dist. No. 9, 1908, 141 Iowa 380, 118 N.W. 380.

**17. Review.**

In appeal to Supreme Court cause is triable de novo.

Petersen v. Board of Cerro Gordo County, 1929, 208 Iowa 748, 226 N.W. 1.

Supreme Court slow to interfere with findings of board.

Rasch v. Drainage Dist. No. 10 in Shelby County, 1924, 198 Iowa 31, 199 N.W. 168.

Superior advantage of commissioners in ascertaining benefits cannot be disregarded.

Chicago, etc. R. Co. v. Board of Monona County, 1923, 196 Iowa 447, 194 N.W. 213.

To set aside assessment there must be evidence that an essential element was overlooked or that assessment was inequitable or erroneous.

Rogers v. Board of Cerro Gordo County, 1922, 195 Iowa 1, 189 N.W. 950.

Where result was fair assessments were not disturbed where procedure was not strictly as prescribed by statute.

Boslaugh v. Board of Buena Vista County, 1921, 190 Iowa 1168, 181 N.W. 441.

Parties on appeal to district court held to same theory of case adopted before board.

Bloomquist v. Board of Hardin County, 1920, 188 Iowa 994, 177 N.W. 95.

Under evidence assessment was not open to interference on ground of incorrectness for computing too wet an area.

Board of Polk County v. McDonald, 1920, 188 Iowa 6, 175 N.W. 817.

Where owner is denied a hearing in establishment proceedings, his remedy is by appeal and cannot raise the question in assessment proceeding.

Harker v. Board of Greene County, 1917, 163 N.W. 236.

Variance from statutory method of classification and assessment does not defeat jurisdiction where there is no showing of prejudice.

Chicago, etc. R. Co. v. Board of Dubuque County, 1916, 176 Iowa 690, 158 N.W. 553.

On appeal owner may show by witnesses that his land is benefited less than assessment.

Jackson v. Board of Sup'rs, 1913, 159 Iowa 673, 140 N.W. 849.

On appeal courts have responsibility of trying questions de novo.

Pollock v. Board of Story County, 1912, 157 Iowa 232, 138 N.W. 415.

Notice of appeal to Supreme Court held sufficient.

Lightner v. Board of Greene County, 1912, 156 Iowa 398, 136 N.W. 761, modified in other respects 156 Iowa 398, 137 N.W. 462.

Where proceedings before board were erroneous, not illegal, remedy of owner is to object before board and appeal.

In re Lightner, 1910, 145 Iowa 95, 123 N.W. 749.

Absent statutory provision for appeal from supervisors' determination of what lands are subject to assessment, no appeal would lie.

Lambert v. Mills County, 1882, 58 Iowa 666, 12 N.W. 715.

**18. Questions reviewable.**

That drain departed from natural channel, causing excessive construction costs may not be raised on appeal from assessment.

Sullivan v. Board of Palo Alto County, 1922, 193 Iowa 739, 187 N.W. 575.

Objections not presented to supervisors not considered on appeal.

Philip Drainage Dist. v. Peterson, 1922, 192 Iowa 1094, 186 N.W. 18.

Defects prior to order establishing district not con-

sidered on appeal from order fixing and levying assessments.
Chicago, etc. R. Co. v. Board of Hamilton County, 1918, 184 Iowa 590, 169 N.W. 103.

Only objections made before board considered on appeal.
Christenson v. Board of Hamilton County, 1918, 168 N.W. 114.

Failure to appeal from order establishing district waived right to deny any benefit at all.
Chicago, etc. R. Co. v. Board of Dubuque County, 1916, 176 Iowa 690, 158 N.W. 553.

Objection before board held understandable and allowable on appeal.
Flood v. Board of Dallas County, 1916, 173 Iowa 224, 155 N.W. 280.

In case of failure to appeal from establishment only questions affecting authority of board to act and those on assessments are raised on appeal from order confirming assessments.
Kelley v. Drainage Dist., 1913, 158 Iowa 735, 138 N.W. 841.

Appellate courts may review questions on propriety of particular assessment.
Pollock v. Board of Story County, 1912, 157 Iowa 232, 138 N.W. 415.

Objection to inclusion of land in district could not be raised on appeal from assessment.
Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

Objections filed too late could not be appealed.
Patch v. Board of Osceola and Dickinson Counties, 1916, 178 Iowa 283, 159 N.W. 694.

Plaintiff liable to his purchaser to pay assessment could appeal from adverse ruling by board.
Christenson v. Board of Hamilton County, 1916, 174 Iowa 724, 156 N.W. 810.

District court must try case on objections raised before board.
Lightner v. Board of Greene County, 1912, 156 Iowa 398, 136 N.W. 761, modified in other respects, 156 Iowa 398, 137 N.W. 462.

Objection not raised before board could not be raised on appeal.
In re Jenison, 1909, 145 Iowa 215, 123 N.W. 979.

Objections not made before board cannot be heard on appeal unless going to authority of board to act.
In re Farley Drainage Dist. No. 7, 1909, 144 Iowa 476, 123 N.W. 241.

If assessment is equitably apportioned and does not exceed benefits there is no constitutional objection to proceedings which Supreme Court can consider.
Farley Drainage Dist. No. 7 v. Hamilton County, 1908, 140 Iowa 339, 118 N.W. 432.

Inclusion of land in district cannot be objected to on appeal from assessment.
Oliver v. Monona County, 1902, 117 Iowa 43, 90 N.W. 510.

**19. Presumptions and burden of proof on appeal.**

Supreme Court presumed description of land before board at time of assessment was still available.
Plumer v. Board of Harrison County, 1927, 203 Iowa 643, 213 N.W. 257.

Person appealing assessment has burden of overcoming presumption of correctness.
Sullivan v. Board of Palo Alto County, 1922, 193 Iowa 739, 187 N.W. 575.

Failure of supervisors to act with aid of commissioners and engineer negatived presumption in favor of its finding.
Bloomquist v. Board of Hardin County, 1920, 188 Iowa 994, 177 N.W. 95.

Classification presumed correct in absence of fraud or mistake.
Interurban Ry. Co. v. Board of Polk County, 1920, 189 Iowa 35, 175 N.W. 743.

**20. Evidence on appeal.**

Judicial notice taken of shrinkage of real estate values occurring after assessment of land in district.
Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N.W. 568.

Evidence warranted classifications and assessment by commissioners as reduced by court.
Evans v. Board of Mills County, 1924, 198 Iowa 918, 200 N.W. 572.

Evidence established invalidity of assessments based only on estimates, without use of mechanical measurements.
Rasch v. Drainage Dist. No. 10 in Shelby County, 1924, 198 Iowa 31, 199 N.W. 168.

Evidence showed railroad not benefited.
U. S. Railroad Administration v. Board of Buena Vista County, 1923, 196 Iowa 309, 194 N.W. 365.

Evidence insufficient to warrant reduction in assessment.
Rogers v. Board of Cerro Gordo County, 1922, 195 Iowa 1, 189 N.W. 950.

Evidence insufficient to show excessive assessment.
Sullivan v. Board of Palo Alto County, 1922, 193 Iowa 739, 187 N.W. 575.

Evidence held to require finding that assessment was excessive.
O'Donnell v. Board of Sup'rs, 1918, 184 Iowa 1360, 169 N.W. 660.

Inequitable assessment not established by evidence.
Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects, 182 Iowa 60, 165 N.W. 390.

Evidence held to show benefit.
Obe v. Board of Hamilton County, 1915, 169 Iowa 449, 151 N.W. 453.

Evidence showed cost of improvement not out of proportion to benefits resulting.
Munn v. Board of Greene County, 1913, 161 Iowa 26, 141 N.W. 711.

Evidence sustained finding that assessments as reduced were reasonable.
Rystad v. Drainage Dist. No. 12, 1912, 157 Iowa 85, 137 N.W. 1030.

Evidence sustained assessment.
Schropfer v. Hamilton County Drainage Dist. No. 37, 1910, 147 Iowa 63, 125 N.W. 992.

Evidence failed to show unjust discrimination in levying assessment.
In re Farley Drainage Dist. No. 7, 1909, 144 Iowa 476, 123 N.W. 241.

**21. Decision on appeal.**

Assessments affirmed by district court not disturbed except on clear showing of prejudicial error.
Chicago, etc. R. Co. v. Board of Kossuth County, 1925, 199 Iowa 857, 201 N.W. 115.

Strong and satisfactory showing necessary to justify interference with assessments by Supreme Court.
Thomas v. Board of Harrison County, 1922, 194 Iowa 1316, 191 N.W. 154.

Where certain owners objected only to operation or condition of the outlet, judgment confirming assessment but suspending payment until condition was remedied held proper.
Roseborough v. Board of Dallas County, 1921, 191 Iowa 344, 182 N.W. 201.

Decree on appeal merely fixes basis of assessment, and does not bar additional assessment for added expenses to complete improvement.

Chicago, etc. R. Co. v. Mosquito Drainage Dist. of Harrison County, 1921, 190 Iowa 162, 180 N.W. 170.

Holding on prior appeal of measure of damages for flooding land, requiring establishment of district and assessment against such land is law of the case and governed later appeal.

Conklin v. City of Des Moines, 1920, 189 Iowa 181, 178 N.W. 353.

Supreme Court may not increase assessments on certain lands higher than on those on which assessment is complained of.

Board of Polk County v. McDonald, 1920, 188 Iowa 6, 175 N.W. 817.

Utmost relief granted on appeal from assessment where order establishing district is not appealed from is to modify or reduce assessment.

Chicago, etc. R. Co. v. Board of Dubuque County, 1916, 176 Iowa 690, 158 N.W. 553.

Decree reducing some assessments and increasing others should have provided interest from time assessments were made.

Appeal of Lightner, 1912, 156 Iowa 398, 137 N.W. 462.

**455.54 Evidence—conclusive presumption.** At such hearing, the board may hear evidence both for and against the approval of said report or any portion thereof, but it shall not be competent to show that any of the lands in said district assessed for benefits or against which an apportionment of costs and expenses has been made will not be benefited by such improvement in some degree. Any interested party may be heard in argument by himself or counsel. [SS15, §1989-a12; C24, 27, 31, 35, 39,§7474; C46, 50, 54,§455.54]

Conclusive presumption of benefits on appeal, see §455.102.
Nov. 1932, 18 Iowa Law Review 6.

**1. Validity.**

Statute providing it is not competent, in contesting assessment, to show lands not benefited did not violate state and federal constitutions.

Chicago, etc. R. Co. v. Board of Clinton County, 1924, 197 Iowa 1208, 198 N.W. 640.

Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects, 182 Iowa 60, 165 N.W. 390.

Drainage law not invalid for permitting assessment on

land not benefited, theory being promotion of public health and welfare.

Oliver v. Monona County, 1902, 117 Iowa 43, 90 N.W. 510.

**2. Construction and application.**

Right of owner to show land was not benefited was a privilege which might be withdrawn.

Oliver v. Monona County, 1902, 117 Iowa 43, 90 N.W. 510.

**3. Prior laws.**

Where sole ground alleged was that lands were not benefited, demurrer properly sustained.

Allerton v. Monona County, 1900, 111 Iowa 560, 82 N.W. 922.

**4. Benefits to land.**

Inclusion of land in district is conclusive unless appealed from.

Estes v. Board of Mills County, 1927, 204 Iowa 1043, 217 N.W. 81.

All lands presumed to receive benefit and assessment should represent fair proportional part of total cost.

Cordes v. Board of Hamilton County, 1924, 197 Iowa 136, 196 N.W. 997.

Assessment not avoided on grounds of no benefit where there was no dispute that district was properly organized.

Philip Drainage Dist. v. Peterson, 1922, 192 Iowa 1094, 186 N.W. 18.

Land in district presumed to receive benefit.

Boslaugh v. Board of Buena Vista County, 1921, 190 Iowa 1168, 181 N.W. 441.

Once established and completed, district as a whole conclusively presumed to benefit.

Breiholz v. Board of Pocahontas County, 1919, 186 Iowa 1147, 173 N.W. 1, affirmed 42 S. Ct. 13, 257 U. S. 118, 66 L. Ed. 159.

Objection of inequitable assessment not considered where there is no evidence from which comparison can be made.

Mayne v. Board of Pottawattamie County, 1916, 178 Iowa 783, 160 N.W. 345.

Land not benefited where drain will not drain land in question more or differently than existing swale or swamp.

Zinser v. Board of Buena Vista County, 1907, 137 Iowa 660, 114 N.W. 51.

**5. Evidence.**

Inclusion of land in district determines that it will be benefited and this issue may not be raised again.

Stewart v. Board of Floyd County, 1918, 183 Iowa 256, 166 N.W. 1052.

Inequitable apportionment not shown.

Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects, 182 Iowa 60, 165 N.W. 390.

Absent opposing evidence, expert testimony as to reasonable cost of improvement may be treated as conclusive.

Webster County v. Nelson, 1912, 154 Iowa 660, 135 N.W. 390.

**6. Review.**

In determining whether land is benefited appeals are triable de novo, but consideration may be given advantages of board in ascertaining the truth.

Stewart v. Board of Floyd County, 1918, 183 Iowa 256, 166 N.W. 1052.

Claim of total non-benefit may not be raised against the validity of an assessment.

Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects, 182 Iowa 60, 165 N.W. 390.

Assessment, regularly made and affirmed by court, comes to Supreme Court with every presumption in its favor.

Chicago, etc. R. Co. v. Wright County Drainage Dist. No. 43, 1915, 175 Iowa 417, 154 N.W. 888.

**455.55 Notice of increased assessment.** The board shall cause notice to be served upon the owner of any tract of land against which it is proposed to increase the assessment, requiring him to appear at a fixed date, not less than ten nor more than twenty days from the date of service, and show cause why such assessment should not be so increased, which notice shall be served in the same manner as an original notice upon residents of the county or counties in which the district is located, and upon nonresidents of the county or counties by service on any tenant or occupant of the land affected, and upon any agent of any railroad company affected. [SS15,§1989-a12; C24, 27, 31, 35, 39,§7475; C46, 50, 54,§455.55]

**1. Construction and application.**

Supervisors may not increase assessments arbitrarily.

In re Castner, 1909, 142 Iowa 716, 119 N.W. 980.

Land not overflowed but situated as to receive indirect benefit may be assessed.

Chambliss v. Johnson, 1889, 77 Iowa 611, 42 N.W. 427.

**2. Notice under prior law.**

Reduction of one assessment would increase all others, so persons notified of hearing were on notice of such possible action.

Gray v. Anderson, 1908, 140 Iowa 359, 118 N.W. 526.

**3. Publication of notice.**

Notice and proof of service of notice held sufficient.

Whisenand v. Van Clark, 1940, 227 Iowa 800, 288 N.W. 915.

**4. Equalization of assessments.**

Board in levying final assessments may equalize assessments according to benefits.

Temple v. Hamilton County, 1907, 134 Iowa 706, 112 N.W. 174.

**5. Evidence.**

Evidence held not to show assessment was raised because of malice or wrong motive.

Monter v. Board of Webster County, 1919, 187 Iowa 625, 174 N.W. 407.

Evidence held to show benefit but not to warrant increase in assessment.

Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

**455.56 Classification as basis for future assessments.** A classification of land for drainage, erosion or flood control purposes, when finally adopted, shall remain the basis of all future assessments for the purpose of said district unless revised by the board in the manner provided for reclassification, except that where land included in said classification has been destroyed, in whole or in part, by the erosion of a river, or where additional right of way has been subsequently taken for drainage purposes, said land which has been so eroded and carried away by the action of a river or which has been taken for additional right of way, may be removed by said board from said district as classified, without any reclassification, and no assessment shall thereafter be made on the land so removed. Any deficiency in assessment existing as the result of said action of the board shall be spread by it over the balance of lands remaining in said district in the same ratio as was fixed in the classification of the lands, payable at the next taxpaying period. [SS15, §1989-a12; C24, 27,§7466, 7476; C31, 35, 39,§7476; C46, 50, 54, §455.56]

**1. Construction and application.**

Spreading of assessment year by year for costs of operation not required.

Coe v. Board of Harrison County, 1941, 229 Iowa 798, 295 Iowa 151.

Board without power to exclude lands from district once established.

Estes v. Board of Mills County, 1927, 204 Iowa 1043, 217 N.W. 81.

That board may provide for reclassification if it finds assessment on basis of original improvement to be inequitable was not denied by statute construed.

Nervig v. Joint Boards of Polk and Story Counties, 1922, 193 Iowa 909, 188 N.W. 17.

Decree that classification of lands affected by improvement should be basis of present assessments and future assessments by way of improvements held improper.

Board of Polk County v. McDonald, 1920, 188 Iowa 6, 175 N.W. 817.

**2. Improvements.**

Supervisors in assessing are limited to original classification of benefits where not revised.

Seabury v. Adams, 1929, 208 Iowa 1332, 225 N.W. 264.

**3. New outlet.**

Portion of cost of new outlet taxable against lands in old district included in new district must be separately assessed by commissioners and not in ratio fixed for old district.

Christenson v. Board of Hamilton County, 1917, 179 Iowa 745, 162 N.W. 19.

**4. Repairs.**

"Assessment" for repairs properly limited to lands benefited as shown by original classification, though original assessment levied part of cost against entire district.

Seabury v. Adams, 1929, 208 Iowa 1332, 225 N.W. 264.

**5. Notice of additional assessment.**

Where original assessment was made after notice additional assessments may be made without notice to the owners.

Plummer v. Pitt, 1914, 167 Iowa 632, 149 N.W. 878.

**455.57 Levy—interest.** When the board has finally determined the manner of assessments of benefits and apportionment, it shall levy such assessments as fixed by it upon the lands within such district, and all assessments shall be

levied at that time as a tax and shall bear interest at four percent per annum from that date, payable annually, except as hereinafter provided as to cash payments thereof within a specified time. [SS15,§1989-a12; C24, 27, 31, 35, 39, §7477; C46, 50, 54,§455.57]

**1. Construction and application.**

Where board was required to liquidate certain assets to pay bondholders and amount of deficiency assessment could be ascertained only after liquidation and interest was brought forward to date of levy, mandamus requiring board to take required steps would issue.

Whitfield v. Sears, 1943, 233 Iowa 887, 10 N.W. 2d 564.

Process for levy of assessments and payment of bonds is statutory and exclusive of all other remedies.

Teget v. Lambach, 1939, 226 Iowa 1346, 286 N.W. 522, 123 A. L. R. 392.

County not liable for officers' failure to legally assess, levy and collect assessments.

Canal Const. Co. v. Woodbury County, 1910, 146 Iowa 526, 121 N.W. 556.

Statutes conferring power to levy and collect assessments strictly construed.

Howard v. Emmet County, 1908, 140 Iowa 527, 118 N.W. 882.

Tax may be levied before work is done.

Ross v. Board of Wright County, 1905, 128 Iowa 427, 104 N.W. 506, 1 L. R. A., N. S. 431.

Auditor has duty to enter drainage assessments on regular tax books.

O. A. G. 1916, 116.

**2. Power to levy.**

Power to levy assessment is part of general power of taxation.

Fitchpatrick v. Botheras, 1911, 150 Iowa 376, 130 N.W. 163, 37 L. R. A., N. S., 558, Ann. Cas. 1912D, 534.

**3. Property liable.**

"Assessment" for repairs properly limited to lands benefited as shown by original classification, though original assessment levied part of cost against entire district.

Seabury v. Adams, 1929, 208 Iowa 1332, 225 N.W. 264.

Land not overflowed, but situated so as to receive indirect benefit may be assessed.

Chambliss v. Johnson, 1889, 77 Iowa 611, 42 N.W. 427.

**4. Change in survey.**

Tax not invalid because change made in survey as originally fixed and as accepted if it appeared both corresponded in length and were on substantially the same line.

Butts v. Monona County, 1896, 100 Iowa 74, 69 N.W. 284.

**5. Interest.**

Assessments bore interest from date of original assessment.

Rystad v. Buena Vista County Drainage Dist. No. 12, 1915, 170 Iowa 178, 152 N.W. 364.

Warrants stamped "not paid for want of funds" bear interest at rate prescribed by law in effect that timely warrants were so stamped.

O. A. G. 1944, p. 37.

**6. Remedies.**

Bondholders' right against county for negligence of board in failing to levy assessments is limited within purview of statutory duties of board.

Mitchell County v. Odden, 1935, 219 Iowa 793, 259 N.W. 774.

**7. Injunction.**

Enjoining collection of assessments see notes under §455.62.

Board could not avail itself of amendment to its record made by it after submission of suit.

Tod v. Crisman, 1904, 123 Iowa 693, 99 N.W. 686.

Where amendatory legislation gave right to appeal order levying tax, failure of prior law to do so was unavailable in action to enjoin collection of tax levied after right was given.

Butts v. Monona County, 1896, 100 Iowa 74, 69 N.W. 284.

**8. Mandamus.**

In mandamus to compel additional assessment to pay warrants, statute of limitations not tolled till fund was raised from which to satisfy warrants.

Lenehan v. Drainage Dist. No. 71 of Sac County, 1935, 219 Iowa 294, 258 N.W. 91.

**9. Presumptions and burden of proof.**

Relator claiming fraud in failure to approve construction of ditch had burden of proving same.

Federal Contracting Co. v. Board of Webster County, 1911, 153 Iowa 362, 133 N.W. 765.

**10. Review.**

Appeal from district court confirming assessments made by board may be taken by serving notice on counsel representing drainage district in district court.

In re Jenison, 1910, 145 Iowa 215, 123 N.W. 979.

**455.58 Lien of tax.** Such taxes shall be a lien upon all premises against which they are assessed as fully as taxes levied for state and county purposes. [SS13,§1989-a45; C24, 27, 31, 35, 39,§7478; C46, 50, 54,§455.58]

May 1936, 21 Iowa Law Review 817.

**1. Validity.**

Act not void for failure to provide notice to mortgagee of assessment and hearing on objections.

Fitchpatrick v. Botheras, 1911, 150 Iowa 376, 130 N.W. 163, 37 L. R. A., N. S. 588 Ann. Cas. 1912D, 534.

**2. Construction and application.**

Assessment and not bonds issued by district constitutes a lien on the land.

Teget v. Lambach, 1939, 226 Iowa 1346, 286 N.W. 522, 123 A. L. R. 392.

**3. Personal liability.**

Local assessment only levied on land and is not personal liability.

Kimball v. Board of Polk County, 1921, 190 Iowa 783, 180 N.W. 988.

**4. Priority of liens.**

Assessments for sewer held prior to drainage assessments.

Anderson-Deering Co v. City of Boone, 1925, 201 Iowa 1129, 205 N.W. 984.

Lien of city for sewerage taxes superior to lien for drainage taxes where first perfected.

Charles City v. Ramsay, 1925, 199 Iowa 722, 202 N.W. 499.

**5. Incumbrance, lien as.**

Drainage assessment neither a lien nor incumbrance within covenant against incumbrances.

Cornelius v. Kromminga, 1917, 179 Iowa 712, 161 N.W. 625.

**6. Bonds as lien.**

Bond issued by district is lien on entire proceeds of assessment and not on any particular tract of land.

Teget v. Lambach, 1939, 226 Iowa 1346, 286 N.W. 522, 123 A. L. R. 392.

**7. Duration of lien.**

Duration of drainage lien or time to enforce payment not limited by statute.

Whisenand v. Van Clark, 1940, 227 Iowa 800, 288 N.W. 915.

**8. Payment of assessments.**

Persons paying assessments to county treasurer not compelled to pay them again though funds were insufficient to pay bonds.

Western Bohemian Fraternal Ass'n v. Barrett, 1937, 223 Iowa 932, 274 N.W. 55.

**9. Tax Sale.**

Holders of bonds were not disqualified from purchasing at tax sale because of interest in land.

Teget v. Lambach, 1939, 226 Iowa 1346, 286 N.W. 522, 123 A. L. R. 392.

Where other liens are not of equal priority with tax lien the sale may extinguish rights of other liens.

Fergason v. Aitken, 1936, 220 Iowa 1154, 263, N.W. 850.

**10. Tax certificates.**

Holder of tax certificate on sale for general taxes not compelled to pay drainage maintenance taxes assessed between his receipt of tax sale certificate and taking of tax deed.

O. A. G. 1942, p. 205.

**11. Transfer of tax certificates.**

Board cannot transfer tax certificate in absence of statutory authority, expressed or implied.

Finance Corporation v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

**12. Tax deeds.**

Court properly held assessments extinguished by tax deed.

Shipman v. Bucher, 1941, 229 Iowa 1196, 296 N.W. 394.

In assigning tax certificates board could transfer no greater title than it had and only right of board was to hold certificates in trust for district.

Finance Corporation v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

Issuance of tax deed from sale for general taxes cuts off lien of drainage tax levied after tax sale and before issuance of tax deed.

O. A. G. 1942, p. 205.

**13. Extinguishment of lien by tax deeds.**

Tax deed for general taxes extinguished lien of drainage taxes previously levied.

Reconstruction Finance Corporation v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

Tax deeds not acquired through board of supervisors were valid and lien of drainage taxes was extinguished and land was not subject to new levy.

Reconstruction Finance Corporation v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

Lien for unpaid future installments of drainage tax held cut off by sale for general taxes subsequently levied.

Fergason v. Aitken, 1936, 219 Wis. 1154, 263 N.W. 850.

Montgomery v. Des Moines, 190 Iowa 705, 180 N.W. 723.

Charles City v. Ramsey, 199 Iowa 722, 202 N.W. 499.

Anderson-Deering Co. v. City of Boone, 201 Iowa 1129, 1130, 205 N.W. 984.

Iowa Securities Co. v. Barrett, 210 Iowa 53, loc. cit. 56, 230 N.W. 528.

Western Securities Co. v. Black Hawk Nat. Bank, 211 Iowa 1304, 231 N.W. 317.

Means v. Boone, 214 Iowa 948, loc. cit. 951, 241 N.W. 671.

**14. Quieting title.**

Property owners could not quiet title against cloud of tax deeds held by owners of drainage bonds without offering to pay taxes and cost of improvements placed on land by holders of tax deeds.

Teget v. Lambach, 1939, 226 Iowa 1346, 286 N.W. 522, 123 A. L. R. 392.

**15. Land contracts.**

Special assessment paid by purchaser could not be recovered in an action for damages for breach of contract.

Johnstone v. Robertson, 1917, 179 Iowa 838, 162 N.W. 66.

Where vendor's agreement to satisfy lien "by reason of the drainage tax that has been assessed" was prior to formal entry of levy, the contract could be reformed, if necessary, to enable purchaser to recover assessment from vendor.

Greiner v. Swartz, 1914, 167 Iowa 543, 149 N.W. 598.

**16. Validating acts.**

Legalization of assignment of tax certificate.

Reconstruction Finance Corporation v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

Acts 1904 (30 G.A.) ch. 67, 68 relating to drains, expressly cured all defects in Code 1897, §1952.
Smittle v. Haag, 1908, 140 Iowa 492, 118 N.W. 869.

**17. Limitations.**

Sale of land for taxes not an "action" barred by the five year statute of limitations.
Whisenand v. Van Clark, 1940, 227 Iowa 800, 288 N.W. 915.

**455.59 Levy for deficiency.** If the first assessment made by the board for the original cost or for repairs of any improvement is insufficient, the board shall make an additional assessment and levy in the same ratio as the first for either purpose, payable at the next taxpaying period after such indebtedness is incurred subject, however, to the provisions of section 455.64. [S13,§1989-a26; C24, 27, 31, 35, 39,§7479; C46, 50, 54,§455.59]

Additional levy to pay bonds and interest, see §455.87 Deficiency levy—additional bonds.

**1. Construction and application.**

Additional assessments may be used only for payment of the improvement.
Ames v. Board of Polk County, 1944, 234 Iowa 617, 12 N.W. 2d 567.

One acquiring an interest in land in a drainage district is charged with knowledge of possibility of reassessment.
Whitfield v. Sears, 1943, 233 Iowa 887, 10 N.W.2d 564.

Policy and intent of legislature that drainage bonds be payable solely from taxes assessed against lands in the district.
Whitfield v. Grimes, 1940, 229 Iowa 309, 294 N.W. 346.

Levy of additional assessment did not operate as breach of covenant of warranty.
Kleinmeyer v. Willenbrock, 1926, 202 Iowa 1049, 210 N.W. 447.

**2. Necessity of additional assessment.**

That improvements were all paid for would not mean there was no deficiency where bond fund was invaded to make part of such payments.
Deming v. Board of Sup'rs, 1946, 237 Iowa 11, 21 N.W.2d 19, 162 A. L. R. 391.

**3. Liability for additional assessment.**

Owners in district could not be absolved from additional levy for drainage bonds if additional assessments were required.
Whitfield v. Sears, 1943, 233 Iowa 887, 10 N.W.2d 564.

**4. Amount of assessment.**

Land may not be assessed for any greater sum than necessary to pay cost of improvement.

Ames v. Board of Polk County, 1944, 234 Iowa 617, 12 N.W.2d 567.

**5. Time for payment.**

Statutory provisions relating to time for payment of assessment are directory.

Danielson v. Cline, 1944, 234 Iowa 167, 12 N.W.2d 254.

**6. Mandamus.**

In action to compel an additional levy, order sustaining demurrer to original petition did not become law of the case on motion to dismiss substituted petition.

Whitfield v. Grimes, 1941, 229 Iowa 309, 294 N.W. 346.

Mandamus to compel additional levy to pay unpaid drainage warrants was barred by three-year statute of limitations, where there was no assessment out of which to pay warrants.

Lenehan v. Drainage Dist. No. 71 of Sac County, 1935, 219 Iowa 294, 258 N.W. 91.

**7. Evidence.**

Findings of board in levying additional tax are presumptively warranted.

Plummer v. Pitt, 1915, 167 Iowa 632, 149 N.W. 878.

Evidence held to show land would be benefited but not to warrant an increase in assessment.

Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

**455.60 Record of drainage taxes.** All drainage or levee tax assessments shall be entered in the drainage record of the district to which they apply, and also upon the tax records of each county. [C24, 27, 31, 35, 39,§7480; C46, 50, 54, §455.60]

**1. In general.**

Where taxpayer executes waiver there is no liability for penalty.

O. A. G. 1923-24, p. 310.

**455.61 Funds—disbursement—interest.** Such taxes when collected shall be kept in a separate fund known as the drainage or levee fund of the district to which they belong, and shall be paid out only for purposes properly connected with and growing out of the drainage or levee improvement of such district, and on order of the board. Interest collected by the treasurer on drainage or levee districts funds

shall be credited to the drainage or levee district to which such funds belong. [S13,§1989-a13; C24, 27, 31, 35, 39,§7481; C46, 50, 54,§455.61]

**1. Construction and application.**

Drainage district funds paid to and held by county treasurer as special fund to pay obligations of district.

Houghton v. Bonnicksen, 1931, 212 Iowa 902, 237 N.W. 313.

**2. Warrants.**

Warrants held valid.

Dashner v. Woods Bros. Const. Co., 1928, 205 Iowa 64, 217 N.W. 464.

**3. Transfer of money.**

Board of supervisors could not transfer money from general or county fund to drainage fund.

O. A. G. 1925-26, p. 428.

**4. Refunds.**

Refund of taxes erroneously exacted can be paid back only from district drainage fund.

Whisenand v. Nutt, 1944, 235 Iowa 301, 15 N.W.2d 533.

**5. Restoration of funds wrongfully paid out.**

Mandamus not proper remedy to require treasurer to repay drainage district bond fund for alleged wrongful payment of bond fund.

Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N.W. 568.

**6. Actions.**

Action of board of district in allowing a bill for attorney fees is not subject to review in action by landowners to annul allowance and restrain payment.

Kemble v. Weaver, 1926, 200 Iowa 1333, 206 N.W. 83.

Where warrants are drawn on county treasury, payable out of a particular fund, the holder may bring suit against county to replenish the fund.

Mills County Nat. Bank v. Mills County, 1886, 67 Iowa 697, 25 N.W. 884.

**7. Presumptions.**

Presumed that board, approving excavation and paying therefor, performed full duty.

Kellogg v. Illinois Cent. R. Co., 1931, 239 N.W. 557.

**8. Review.**

County held not entitled to appeal from judgment of

district court, on appeal of supervisors, setting aside order of board for reassessment.

Yockey v. Woodbury County, 1906, 130 Iowa 412, 106 N.W. 950.

**455.62 Assessments—maturity and collection.** All drainage or levee tax assessments shall become due and payable at the same time as other taxes, and shall be collected in the same manner with the same penalties for delinquency and the same manner of enforcing collection by tax sales. [S13,§1989-a26; C24, 27, 31, 35, 39,§7482; C46, 50, 54,§455.62]

Collection of taxes, ch. 445.

**1. Construction and application.**

Spreading of assessment year by year for cost of operation is not required.

Coe v. Board of Harrison County, 1941, 229 Iowa 798, 295 N.W. 151.

Drainage assessment made in July, 1909, did not become delinquent until March 1, 1911.

Rystad v. Buena Vista County Drainage Dist. No. 12, 1915, 170 Iowa 178, 152 N.W. 364.

Statutes conferring power to levy and collect special assessments are strictly construed.

Howard v. Emmet County, 1909, 140 Iowa 527, 118 N.W. 882.

**2. Liability of county.**

County not liable for failure of its officers to levy and collect assessments.

Canal Const. Co. v. Woodbury County, 1910, 146 Iowa 526, 121 N.W. 556.

**3. Enforcement of collection.**

County not liable for failure of its officers to levy and collect assessments.

Canal Const. Co. v. Woodbury County, 1910, 146 Iowa 526, 121 N.W. 556.

**4. Irregularities.**

Owners, having permitted expenditures without objection, cannot later complain of irregularities defeating collection of the tax.

Patterson v. Baumer, 1876, 43 Iowa 477.

**5. Payment.**

Entire annual assessment was required to be paid in March but where bonds were issued the tax could be paid semi-annually.

O. A. G. 1919-20, p. 317.

**6. Effect of payment.**

Owner held estopped in action to recover assessments paid.

Wilcox v. Marshall County, 1941, 297 N.W. 640.

Payment of assessments by railroad did not relieve it from liability for assessments made in prior projects by larger district organized later.

Chicago, etc. R. Co. v. Board of Kossuth County, 1924, 199 Iowa 857, 201 N.W. 115.

**7. Tax sale.**

Holders of drainage bonds could purchase land in district at tax sale.

Teget v. Lambach, 1939, 226 Iowa 1346, 286 N.W. 522, 123 A. L. R. 392.

**8. Redemption by owner.**

Owner, by purchasing the tax sale certificates upon the sale of her land thereby redeemed the land.

Hoyt v. Brown, 1911, 153 Iowa 324, 133 N.W. 905.

**9. Tax deeds.**

Tax deeds held to have extinguished assessments.

Shipman v. Bucher, 1941, 296 N.W. 396.

**10 Injunction.**

Injunction will not lie against county supervisors, auditor and treasurer to restrain collection of assessment levied to repair improvement.

Seabury v. Adams, 1929, 208 Iowa 1332, 225 N.W. 264.

Hoyt v. Brown, 1911, 153 Iowa 324, 133 N.W. 905.

Action to enjoin collection of tax on grounds of no benefit is not proper remedy.

Hatch, Holbrook & Co. v. Pottawattamie County, 1876, 43 Iowa 442.

**11. Quieting title.**

Title could not be quieted against tax deeds held by owners of drainage bonds without offering to pay taxes and costs of improvement on premises by tax deed holders.

Teget v. Lambach, 1939, 226 Iowa 1346, 286 N.W. 522, 123 A. L. R. 392.

**12. Recovery of amount paid.**

Where land is excluded from district by court owner may recover assessment paid though he signed a waiver.

O. A. G. 1925-26, p. 501.

**13. Mandamus.**

Owner of land in district entitled to maintain mandamus to compel officials to correct description on land of an-

other not paying assessment because of defective descriptions.

Plumer v. Board of Harrison County, 1927, 203 Iowa 643, 213 N.W. 257.

**14. Actions.**

Plaintiff failed to prove such ownership in her deceased mother as would have entitled her to notice of establishment of district.

Wilcox v. Marshall County, 1941, 229 Iowa 865, 294 N.W. 907, modified in other respects 297 N.W. 640.

Demurrer to petition sustained where plaintiff suing to set aside sale under assessment relied on an insufficient tender.

Rystad v. Buena Vista County Drainage Dist. No. 12, 1915, 170 Iowa 178, 152 N.W. 364.

**15. Review.**

Assessment does not become delinquent, rendering owner subject to penalties, while his opponent's appeal is pending.

Rystad v. Buena Vista County Drainage Dist. No. 12, 1915, 170 Iowa 178, 152 N.W. 364.

Decree restraining issuance of bonds and collection of taxes is not res judicata in certiorari proceeding to review subsequent action of board as limited by decree.

Tod v. Crisman, 1904, 123 Iowa 693, 99 N.W. 686.

**455.63. Payment before bonds or certificates issued.** All assessments for benefits, as corrected and approved by the board, shall be levied at one time against the property benefited, and when levied and certified by the board, shall be payable at the office of the county treasurer. Each person or corporation shall have the right, within twenty days after the levy of assessments, to pay his or its assessment in full without interest, and before any improvement certificate or drainage bond issued therefor, and any certificate at any time after issue with accrued interest. [S13,§1989-a26; C24, 27, 31, 35, 39,§7483; C46, 50, 54,§455.63]

**1. Validity.**

Constitutionality upheld against claim that equal protection of the laws was not granted.

Sisson v. Board of Buena Vista County, 1905, 128 Iowa 442, 104 N.W. 454, 70 L. R. A. 440.

**2. Construction and application.**

Where deficiency arose supervisors could levy deficiency assessment against all property in district despite fact that some land owners paid original assessment in full.

O. A. G. 1932, p. 104.

**3. County treasurer as ex officio district officer.**

County treasurer was not ex officio officer of district so as to make it responsible for his acts.

Western Bohemian Fraternal Ass'n v. Barrett, 1937, 223 Iowa 932, 274 N.W. 55.

**4. Payment.**

Persons having paid assessment to county treasurer not compelled to pay them again though funds allegedly would be insufficient to pay bonds of district.

Western Bohemian Fraternal Ass'n v. Barrett, 1937, 1937, 223 Iowa 932, 274 N.W. 55.

Payment by landowners held not voluntary so as to estop recovery.

Lade v. Board of Hancock County, 1918, 183 Iowa 1026, 166 N.W. 586.

**455.64 Installment payments—waiver.** If the owner of any premises against which a levy exceeding twenty dollars has been made and certified shall, within thirty days from the date of such levy, agree in writing indorsed upon any improvement certificate referred to in section 455.77, or in a separate agreement, that in consideration of having a right to pay his assessment in installments, he will not make any objection as to the legality of his assessment for benefit, or the levy of the taxes against his property, then such owner shall have the following options:

1. To pay one-third of the amount of such assessment at the time of filing such agreement; one-third within twenty days after the engineer in charge shall certify to the auditor that the improvement is one-half completed; and the remaining one-third within twenty days after the improvement has been completed and accepted by the board. All such installments shall be without interest if paid at said times, otherwise said assessments shall bear interest from the date of the levy at the rate of four percent per annum, payable annually, and be collected as other taxes on real estate, with like penalty for delinquency.

2. To pay such assessments in not less than ten nor more than twenty equal installments, the number to be fixed by the board and interest at the rate fixed by the board, not exceeding four percent per annum. One such installment shall be payable at the March semiannual taxpaying date in each year; provided, however, that the county treasurer shall, at the March semiannual taxpaying date, require only the payment of a sufficient portion of the assessments to meet the interest and the amount maturing on bonds or certificates prior to the regular time for the payment of the second installment of taxes and the balance shall be collected with such second installment and without penalty.

The provisions of this section and of sections 455.65 to 455.68, inclusive, may within the discretion of the board, also be made applicable to repairs and improvements made under the provisions of section 455.135. [S13,§1989-a26-a27; SS15,§1989-a2; C24, 27, 31, 35, 39,§7484; C46, 50, 54,§455.64; 55 G3, ch 21,§1]

Referred to in §455.59 Levy for deficiency, §455.66 Notice of half and full completion, §455.136 Payment.
Change in interest rate not applicable to outstanding bonds, 49 GA, ch 263, §7.

**1. Validity.**

Constitutionality upheld against claim that equal protection of the laws was not granted.

Sisson v. Board of Supervisors of Buena Vista County, 1905, 128 Iowa 442, 104 N.W. 454, 70 L. R. A. 440.

**2. Construction and application.**

Statutory provisions relating to time for payment of assessments are directory.

Danielson v. Cline, 1944, 234 Iowa 167, 12 N.W.2d 254.

Not intention of legislature to limit making of separate agreement to 30 days from date of assessment.

O. A. G. 1913-14, p. 195.

**3. Installment payments.**

Where statute provided for annual installment payments for 3 years or 10 years but not 7 years, action of board ordering payment in 7 years was not jurisdictional.

Whisenand v. Van Clark, 1940, 227 Iowa 800, 288 N.W. 915.

Entire annual assessment required to be paid in March but where bonds are issued tax could be paid semi-annually.

O. A. G. 1919-20, p. 317.

Property owner may pay in installments providing he has executed written waiver and agreement as specified in this section.

O. A. G. 1911-12, p. 446.

**4. Deficiency assessments.**

Deficiency assessment not invalid because additional tax was not made payable at next tax paying period after indebtedness was incurred.

Danielson v. Cline, 1944, 234 Iowa 167, 12 N.W.2d 254.

Supervisors could levy additional assessment and fact that some owners paid original assessment in full was immaterial.

O. A. G. 1932, p. 104.

**5. Penalties for nonpayment.**

Owners waiving in writing all objections were not liable for the one percent penalty on default of payment provided in the latter part of section 1989-a26, Code Supp. 1907.

Fitchpatrick v. Fowler, 1912, 157 Iowa 215, 138 N.W. 392.

**6. Interest.**

Warrants stamped "not paid for want of funds" bear interest at rate prescribed by Iowa law in effect that timely warrants were so stamped.

O. A. G. 1944, p. 37.

**7. Actions.**

Action on agreement indorsed on improvement certificates properly transferred to county where defendant resided.

Bechtel v. District Court of Worth County, 1932, 215 Iowa 295, 245 N.W. 299.

**455.65 Installment payments after appeal.** When an owner takes an appeal from the assessment against any of his land, the option to pay in installments whatever assessment is finally established against such land in said appeal shall continue, if within twenty days after the final determination of said appeal he shall file in the office of the auditor his written election to pay in installments, and within said period pay such installments as would have matured prior to that time if no appeal had been taken, together with all accrued interest on said assessment to the last preceding interest-paying date. [C24, 27, 31, 35, 39,§7486; C46, 50, 54, §455.65]

Referred to in §455.64 Installment payments—waiver; §455.136 Payment.

**455.66 Notice of half and full completion.** Within two days after the engineer has filed a certificate that the work is half completed and within two days after the board of supervisors has accepted the completed improvement as in this chapter provided, the county auditor shall notify the owner of each lot or parcel of land who has signed an agreement of waiver as provided in section 455.64, of such fact. Such notice shall be given by registered mail sent to such owners, respectively, at the addresses filed with the auditor at the time of making such agreement of waiver. [C24, 27, 31, 35, 39,§7487; C46, 50, 54,§455.66]

Referred to in §455.64 Installment payments—waiver; §455.136 Payment.

**1. Construction and application.**

Contractor cannot be deprived of his right to compensa-

tion by failure of engineer to act or by arbitrary action of engineer.

Littell v. Webster County, 1911, 152 Iowa 206, 131 N.W. 691, modified in other respects 152 Iowa 206, 132 N.W. 426.

**455.67. Lien of deferred installments.** No deferred installment of the amount assessed as between vendor and vendee, mortgagor and mortgagee shall become a lien upon the property against which it is assessed and levied until the thirty-first day of December of the year next preceding that in which it is due and payable. [SS15,§1989-a12; C24, 27, 31, 35, 39,§7488; C46, 50, 54,§455.67]

Referred to in §455.64 Installment payments—waiver; §455.136 Payment.

**1. Covenants of warranty, breach of.**

Establishment of levee and ditch did not constitute a breach of covenant of warranty.

Johnstone v. Robertson, 1917, 179 Iowa 838, 162 N.W. 66.

Special assessment for drainage not lien or incumbrance within contemplation of parties to prior contract for sale or exchange of land, nor within contemplation of prior covenant of warranty against incumbrances.

Cornelius v. Kromminga, 1917, 179 Iowa 712, 161 N.W. 625.

That ditch was ordered by board did not constitute breach of covenant against incumbrances in a deed thereafter given.

Stuhr v. Butterfield, 1911, 151 Iowa 736, 130 N.W. 897, 36 L. R. A., N. S. 321.

**455.68 Surplus funds—application of.** When one-half or more of all assessments for a drainage or levee district have been paid and it is ascertained that there will be a surplus in the district fund after all assessments have been paid, the board may refund to the owner of each tract of land, not more than fifty percent of his proportionate part of such surplus. When all construction work has been completed and all cost paid, and all assessments have been paid in full, the board may refund, to the owner of each tract of land, his proportionate part of any surplus funds except such portion of the surplus as the board considers should be retained for a sinking fund to pay future maintenance and repair costs. [C24, 27, 31,§7489; C35,§§7488-e1, 7489; C39, §§7488.1, 7489; C46,§§455.68, 455.69; C50, 54,§455.68]

Referred to in §455.64 Installment payments—waiver; §455.136 Payment.

**455.69 Change of conditions—modification of plan.** If, after the improvement has been finally located and before construction thereof has been completed, there has been a change of conditions of such nature that the plan of improvement as adopted should be modified or amended, the board may direct the engineer appointed under section 455.36 or another engineer, to make a report showing such changes or modifications of the plan of improvement as may be necessary to meet the change of conditions. Upon the filing of such report, the board shall have jurisdiction to adopt said modified or amended plan of improvement or may further modify or amend and adopt the same by following the procedure provided in sections 455.201, 455.205 to 455.209, inclusive, of this chapter so far as same are applicable, except that awards for damages shall not be canceled where there has been no change made in the improvement which would increase or decrease the damages awarded. [55GA, ch 211,§6]

**1. Construction and application.**

Section applicable to district consisting only of main ditches, to one consisting of main ditches and laterals and to a district with only laterals.
O. A. G. 1932, p. 72.

**2. New district organized.**

Old district must account for money collected and not used when replaced by or included in new district.
Senneff v. Board of Hancock County, 1917, 178 Iowa 1281, 160 N.W. 936.

**455.70 Subdrainage district.** After the establishment of a drainage district, any person, company, or corporation owning land within such district which has been assessed for benefits, but which is separated from the main ditch, drain, or watercourse for which it has been so assessed, by the land of others, who desires a ditch or drain constructed from his land across the land of such others in order to connect with the main ditch, drain, or watercourse, and shall be unable to agree with such intervening owners on the terms and conditions on which he may enter upon their lands and cause to be constructed such connecting drain or ditch, may file a petition for the establishment of a subdistrict and thereafter the proceedings shall be the same as provided for the establishment of an original district. [S13,§1989-a23; C24, 27, 31, 35, 39,§7490; C46, 50, 54,§455.70]

Referred to in §455.151 Subdistricts in intercounty districts.

**1. Construction and application.**

Objections filed to petition by owner of land proposed

to be included was sufficient evidence of inability to agree.

Plumer v. Board of Harrison County, 1921, 191 Iowa 1022, 180 N.W. 863.

District trustees had no authority to do work not a part of the original improvement.

Smith v. Monona-Harrison Drainage Dist. No. 1, 1916, 178 Iowa 823, 160 N.W. 229.

This section as applicable to annexed territory as to lands originally included in district.

Bird v. Board of Harrison County, 1912, 154 Iowa 692, 135 N.W. 581.

After principal improvement is made, subordinate improvements may be established in districts which may include part of district created for principal improvement.

Lawrence v. Page, 1911, 151 Iowa 182, 131 N.W. 8.

**2. Jurisdiction of board.**

Board acquired jurisdiction on filing of proper petition and giving of proper notice to other owners.

Plumer v. Board of Harrison County, 1921, 191 Iowa 1022, 180 N.W. 863.

**3. Natural drainage.**

The creation of drainage improvement does not destroy or abridge the landowner's right to avail himself of natural watercourses.

Cowley v. Reynolds, 1917, 178 Iowa 701, 160 N.W. 241.

**4. Double assessment.**

A subdistrict may be established and land assessed if benefited without amounting to a double assessment.

In re C. G. Hay Drainage Dist. No. 23, 1910, 146 Iowa 280, 125 N.W. 225.

**5. Use of drain.**

Owners, part of whose land was included in subdistrict, were entitled to drain into subdistrict system their other land included in subdistrict watershed, but erroneously excluded from subdistrict.

Cowley v. Reynolds, 1916, 178 Iowa 701, 160 N.W. 241.

**6. Conditions.**

Equitable conditions to use main drain of district for lands outside the district were not imposed on landowners in subdistrict.

Cowley v. Reynolds, 1917, 178 Iowa 701, 160 N.W. 241.

**7. Lands included.**

Lands in district which would benefit by establishment of subdistrict could be included in subdistrict.

Plumer v. Board of Harrison County, 1921, 191 Iowa 1022, 180 N.W. 863.

**8. Repairs.**

Work done held to not be repair work under the law.

Chicago, etc. R. Co. v. Board of Harrison County, 1919, 187 Iowa 402, 172 N.W. 443.

**9. Review.**

Objection that board lacked jurisdiction for lack of proof of failure to agree regarding terms on which connections be constructed, could not be maintained on appeal where not made before board.

Plumer v. Board of Harrison County, 1921, 191 Iowa 1022, 180 N.W. 863.

**455.71 Presumption—jurisdiction.** Such connecting ditch or drain which he shall cause to be constructed shall be presumed conducive to the public health, welfare, convenience, and utility the same as if it had been so constructed as a part of the original improvement of said district. When such subdistrict has been established and constructed it shall become and be a part of the improvement of such drainage district as a whole and be under the control and supervision of the board to the same extent and in every way as if it had been a part of the original improvement of such district. [S13,§1989-a23; C24, 27, 31, 35, 39,§7491; C46, 50, 54,§455.71]

**1. Construction and application.**

Creation of improvement does not destroy or abridge owner's right to avail himself of natural watercourses.

Cowley v. Reynolds, 1917, 178 Iowa 701, 160 N.W. 241.

Statute relative to organization of subdistricts held as applicable to annexed territory as to original lands in districts.

Bird v. Board of Harrison County, 1912, 154 Iowa 692, 135 N.W. 581.

**455.72 Reclassification.** After a drainage or levee district has been established and the improvements thereof constructed and put in operation, if the board or boards shall find that the original assessments are not equitable as a basis for the expense of any repair, improvement, or extension which may have become necessary, they shall order a new classification of all land in such district by resolution, and shall appoint three commissioners who shall have the

qualifications as provided in section 455.45. [C24, 27, 31, 35, 39,§7492; C46, 50, 54,§455.72]

Commissioners, appointment and oath, §455.45.

**1. Construction and application.**

In making assessments supervisors are limited to original classification of benefits where not revised for good cause.

Seabury v. Adams, 1929, 208 Iowa 1332, 225 N.W. 264.

Land should have been classified as it existed just prior to and at construction of improvement for which assessment is made.

Mayne v. Board of Pottawattamie County, 1929, 208 Iowa 987, 223 N.W. 904, rehearing denied 208 Iowa 987, 225 N.W. 953.

Order including lands in district is conclusive in proceedings to reclassify lands for assessment after improvement.

Mayne v. Board of Pottawattamie County, 1916, 178 Iowa 783, 160 N.W. 345.

**2. Exclusion of lands from district.**

Board could not exclude lands after establishment of district.

Estes v. Board of Mills County, 1927, 204 Iowa 1043, 217 N.W. 81.

**3. Repairs.**

"Assessment" for repairs properly limited to lands benefited as shown by original classification where there was no reclassification.

Seabury v. Adams, 1929, 208 Iowa 1332, 225 N.W. 264.

**4. Changes under prior laws.**

Slight changes made during construction at comparatively inconsequential cost were authorized.

Chicago, etc. R. Co. v. Board of Clinton County, 1924, 197 Iowa 1208, 198 N.W. 640.

Changes in dimensions or location of improvement required notice of new contract for work.

Horton Tp. of Osceola County v. Drainage Dist. No. 26 of Osceola County, 1921, 192 Iowa 61, 182 N.W. 395.

Code Supp. 1913, section 1989-a11, expressly limited to changes after district was established and before completion of improvement and did not supersede section 1989-a21.

Breiholz v. Board of Pocahontas County, 1919, 186 Iowa 1147, 173 N.W. 1, affirmed 42 S. Ct. 13, 257 U. S. 118, 66 L. Ed. 159.

Possibility of litigation and lack of record showing injury was too remote to affect validity of action of board in making change.

Simpson v. Board of Kossuth County, 1919, 186 Iowa 1034, 171 N.W. 259, error dismissed 41 S. Ct. 376, 255 U. S. 579, 65 L. Ed. 795.

District not liable for cost of changes made by engineer without approval of board.

Monaghan v. Vanatta, 1909, 144 Iowa 119, 122 N.W. 610.

**5. Injunction.**

Injunction does not lie against supervisors, auditor and treasurer to restrain collection of special assessments.

Seabury v. Adams, 1929, 208 Iowa 1332, 255 N.W. 264.

**455.73 Bids required.** In case the board shall finally determine that any such changes shall be made involving an expenditure of five thousand dollars or more, said work shall be let by bids in the same manner as is provided for the original construction of such improvements. [C24, 27, 31, 35, 39,§7493; C46, 50, 54,§455.73]

See §455.40 Advertisement for bids; §455.41 Bids—letting of work.

**1. Construction and application.**

This section not applicable to cleaning, deepening and widening ditch since it applies only to enlargements and extensions, not to repairs.

Haugen v. Humboldt-Kossuth Joint Drainage Dist. No. 2, 1942, 231 Iowa 288, 1 N.W.2d 242.

**2. Failure of contractor to perform.**

Where contractor declined to proceed because of quicksand, district could finish improvement on time basis at cost plus percentage.

Busch v. Joint Drainage Dist. No. 49-79, Winnebago and Hancock Counties, 1924, 198 Iowa 398, 198 N.W. 789.

Where contractor failed to perform according to contract, notice was not required to be given before new contract could be made.

Horton Tp. of Osceola County v. Drainage Dist. No. 26 of Osceola County, 1921, 192 Iowa 61, 182 N.W. 395.

**455.74 Procedure governing reclassification.** The proceedings for such reclassification shall in all particulars be governed by the same rules as for original classification. The commissioners shall fix the percentage of actual benefits and make an equitable apportionment of the costs and expenses of such repairs, improvements or extensions and file

a report thereof with the auditor in the same form and manner as for original classification. Thereafter, all the proceedings in relation thereto as to notice, hearing, and fixing of percentage of benefits and amount of assessments shall be as in this chapter provided in relation to original classification and assessments, and at such hearing the board may affirm, increase, or diminish the percentage and assessment of benefits and apportionment of costs and expenses so as to make them just and equitable, and cause the record of the original classification, percentage of benefits, and assessments to be modified accordingly. [C24, 27, 31, 35, 39,§7494; C46, 50, 54,§455.74]

See §455.45 Commissioners to classify and assess; §455.51 Report of commissioners.

**1. Construction and application.**

In making assessments, supervisors are limited to original classification of benefits, where not revised.

Seabury v. Adams, 1929, 208 Iowa 1332, 225 N.W. 264,

**2. Exclusion of lands from district.**

Board without power to exclude lands from district after establishment of district.

Estes v. Board of Mills County, 1927, 204 Iowa 1043, 217 N.W. 81.

**3. Injunction.**

Injunction does not lie against supervisors, auditor and treasurer to restrain collection of assessments levied for repairs.

Seabury v. Adams, 1929, 208 Iowa 1332, 225 N.W.264.

**455.75 Drainage warrants received for assessments.** Warrants drawn upon the construction or maintenance funds of any district for which an assessment has been or must be levied, shall be transferable by indorsement and may be acquired by any taxpayer of such district and applied at their accrued face value upon the assessment levied to create the fund against which the warrant was drawn; when the amount of the warrant exceeds the amount of the assessment, the treasurer shall cancel the said warrant, and give the holder thereof a certificate for the amount of such excess, which certificate shall be filed with the auditor, who shall issue a warrant for the amount of such excess, and charge the treasurer therewith. Such certificate is transferable by indorsement, and will entitle the holder to the new warrant, made payable to his order, and bearing the original number, preceded by the words, "Issued as unpaid balance due on warrant number . . . . . ". [S13,§1989-a13; C24, 27, 31, 35, 39,§7495; C46, 50, 54,§455.75]

**1. Liability of county.**

County not liable for failure of officers to legally assess, levy and collect assesments.

Canal Const. Co. v. Woodbury County, 1910, 146 Iowa 526, 121 N.W. 556.

County liable for warrant drawn on district which was never established.

O. A. G. 1928, p. 296.

**2. Transfer of warrants.**

Assignee of warrant had no equitable interest in proceeds as against persons to whom warrant was transferred.

Simmons v. Tatham, 1917, 219 Iowa 1407, 261 N.W. 434.

**3. Repudiation of warrants.**

Where joint boards repudiated warrants, treasurer was without authority to pay warrant from district funds.

Houghton v. Bonnicksen, 1931, 212 Iowa 902, 237 N.W. 313.

**4. Actions.**

Validity of claims was put in issue by objections alleging invalidity of contracts and claims thereon.

First Nat. Bank v. Webster County, 1927, 204 Iowa 720, 216 N.W. 8.

**5. Limitations.**

Statute of limitations runs against drainage warrants from date of issue and are barred 10 years after such date.

O. A. G. 1932, p. 232.

**455.76 Bonds received for assessments.** Bonds issued for the cost of construction, maintenance or repair of any drainage or levee district, or for the refunding of any obligation of such district, may be acquired by any taxpayer or group of taxpayers of such district, and applied at their face value in the order of their priority, if any priority exists between bonds of the same issue, upon the payment of the delinquent and/or future assessments levied against the property of such taxpayers to pay off the bonds so acquired; the interest coupons attached to such bonds, may likewise be applied at their face value to the payment of assessments for interest accounts, delinquent or future. [C35,§7495-e1; C39,§7495.1; C46, 50, 54,§455.76]

See §74.1 et seq. Public warrants.

**1. Construction and application.**

Section strictly construed and bonds may not be used to redeem property from tax sale.

O. A. G. 1942, p. 21.

Priority determined by maturity date, not by numbers to redeem property from tax sale.
O. A. G. 1942, p. 21.
O. A. G. 1940, p. 239.

**455.77 Improvement certificates.** The board may provide by resolution for the issuance of improvement certificates payable to bearer or to the contractors, naming them, who have constructed the said improvement or completed any part thereof, in payment or part payment of such work. [S13,§1989-a26; C24, 27, 31, 35, 39,§7499; C46, 50, 54,§455.77]

Referred to in §455.64 Installment payments—waiver; §455.81 Drainage bonds.
Bonds, application to payment of work, see §455.86.
Issuance of improvement certificates, see also §455.110.

**1. Construction and application.**

Warrants issued for work done in draining of ditch banks were valid.
Board of Hamilton County v. Paine, 1926, 203 Iowa 263, 210 N.W. 929.

**2. Actions.**

Action on agreement endorsed on improvement certificates to pay drainage taxes properly transferred to county where defendant resided.
Bechtel v. District Court of Worth County, 1932, 215 Iowa 295, 245 N.W. 299.

**455.78 Form, negotiability, and effect.** Each of such certificates shall state the amount of one or more drainage assessments or part thereof made against the property, designating it and the owner thereof liable for the payment of such assessments. Said certificates shall be negotiable and transfer to the bearer all right and interest in and to the tax in every such assessment or part thereof described in such certificates, and shall authorize such bearer to collect and receive every assessment embraced in said certificate by or through any of the methods provided by law for their collection as the same mature. [S13,§1989-a26; C24, 27, 31, 35, 39,§7500; C46, 50, 54,§455.78]

Referred to in §455.81 Drainage bonds.

**1. Construction and application.**

Drainage board would have authority to take up old warrants stamped "not paid for want of funds" and issue new ones.
O. A. G. 1932, p. 232.

When owner fails to pay assessment represented by certificate which is presented to treasurer for payment,

treasurer should stamp it "not paid for want of funds", and certificate holder would have no claim against county.
O. A. G. 1930, p. 106.

**455.79 Interest—place of payment.** Such certificates shall bear interest not to exceed four percent per annum, payable annually, and shall be paid by the taxpayer to the county treasurer, who shall receipt for the same and cause the amount to be credited on the certificates issued therefor. [S13,§1989-a26; C24, 27, 31, 35, 39,§7501; C46, 50, 54,§455.79]
Referred to in §455.81 Drainage bonds.
Change in interest rate not applicable to outstanding bonds, 49GA, ch 263, §7.

**1. Construction and application.**

Warrants stamped "not paid for want of funds" bear interest at rate prescribed by Iowa law in effect that timely warrants were so stamped.
O. A. G. 1944, p. 37.

**2. Review.**

In suit for assessments paid and to enjoin collection of those unpaid, plaintiff was not entitled to relief on appeal for error of engineer in computing interest on unpaid warrants.
Coe v. Board of Harrison County, 1941, 229 Iowa 798, 295 N.W. 151.

**455.80 Sale at par—right to pay.** Any person shall have the right to pay the amount of his assessment represented by any outstanding improvement certificate, with the interest thereon to the date of such payment, at any time. No improvement certificate shall be issued or negotiated for the use of the drainage district for less than par value with accrued interest up to the delivery or transfer thereof. Every such certificate, when paid, shall be delivered to the treasurer and by him surrendered to the party to whose assessment it relates. [S13,§1989-a26,-a27; C24, 27, 31, 35, 39,§7502; C46, 50, 54,§455.80]
Referred to in §455.81 Drainage bonds.

**1. Construction and application.**

Owner may pay assessment at any time and holder of certificate must surrender it when paid.
O. A. G. 1930, p. 106.

**2. Sale of certificates.**

Contract of board for sale of certificates and bonds that might be issued in a specified period would be contrary to public policy.
O. A. G. 1923-24, p. 150.

Supervisors have no authority to pay auditor or other person a commission for selling certificates or bonds.
O. A. G. 1919-20, p. 310.

**3. Mandamus.**

Treasurer, if not officer of district, not a proper party in mandamus seeking order requiring officers of district to levy drainage taxes.
Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N.W. 568.

**455.81 Drainage bonds.** When a drainage district has been established or the making of any subsequent repair or improvement determined upon, if the board of supervisors shall find that the cost of such improvement will create assessments against the land included therein greater than should be levied in a single year upon the lands benefited by such improvement, then, instead of issuing improvement certificates, as provided in section 455.77 to 455.80, inclusive, the board may fix the amount that shall be levied and collected each year until such cost and expenses are paid, and may issue drainage bonds of the county covering all assessments exclusive of assessments of twenty dollars and less.

Before such bonds shall be issued, the governing body of the district shall cause an action for declaratory judgment to be brought in the district court of the county in which the bonds are to be issued, asking that their legality be confirmed. The court shall fix a date for hearing thereon and notice thereof shall be given to the owners of each lot or tract of land within the district, which shall be affected by an assessment to pay the proposed bonds, as shown by the transfer books in the auditor's office; also to the holders of liens of record upon said lands; and to all persons to whom it may concern without naming them specifically. Such notice shall be given by publication once each week for two consecutive weeks in a newspaper of general circulation within the county, the last publication date of which shall be not less than twenty days before the date set for such hearing. After the entry of the declaratory judgment adjudicating the validity of such bonds, the approval of the district court shall be indorsed on the bonds before their issuance. [C97,§1953; S13,§1989-a27; C24, 27, 31, 35, 39,§7503; C46, 50, 54,§455.81]

Defaulted drainage bonds, extension of payment see §464.1 et seq.

**1. Validity.**

Drainage bonds do not constitute an obligation of county as a whole.
Sisson v. Board of Buena Vista County, 1905, 128 Iowa 442, 104 N.W. 454, 70 L. R. A. 440.

**2. Construction and application.**

Bonds issued under this section are not an obligation of the county.

Sisson v. Board of Buena Vista County, 1905, 128 Iowa 442, 104 N.W. 454, 70 L. R. A. 440.

**3. Sale of bonds.**

Dealers buying drainage bonds must ascertain whether compliance with statutes was had.

Mitchell County v. Odden, 1935, 219 Iowa 793, 259 N.W. 774.

**4. Lien.**

Assessments against land, not bonds, are a lien against the land.

Teget v. Lambach, 1939, 226 Iowa 1346, 286 N.W. 522, 123 A. L. R. 392.

Lien on property for unpaid future installments held cut off by sale of property for unpaid delinquent general taxes subsequently levied.

Fergason v. Aitken, 1936, 263 N.W. 850, 219 Wis. 1154.

Liens of holders of bonds first maturing are prior to those unmatured.

Bechtel v. Mostrom, 1932, 214 Iowa 623, 243 N.W. 361.

**5. Payment of bonds.**

Holders of matured bonds entitled to payment from funds of district without regard to time assessments were paid.

Bechtel v. Mostrom, 1932, 214 Iowa 623, 243 N.W. 361.

**6. Installment payment of assessments.**

In case of bonds issued under Code 1927, section 7503, taxpayer cannot pay installments in advance unless he pays them all and interest to maturity.

O. A. G. 1930, p. 73.

If owner does not take advantage of annual installment provision and fails to pay assessment due, both interest and penalties attach.

O. A. G. 1922, p. 246.

**7. Contracts.**

Contract provisions that contractor shall take in payment bonds of two counties construed as not requiring him to take joint bonds.

Wood v. Hall, 1907, 138 Iowa 308, 110 N.W. 270.

**8. Mandamus.**

Under evidence board would not be required to levy assessment to replace sums allegedly paid from bond

fund for repairs and general expenses.
Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N.W. 568.

**9. Injunction.**

Collection of special assessment will not be enjoined on ground that part will be used to pay interest on void bonds where petition does not show assessment to be void.
Bradley v. Appanoose County, Iowa, Drainage Dist. No. 1, 1924, 199 Iowa 317, 200 N.W. 216.

**10. Actions.**

Holder of bonds not entitled to judgment at law thereon against board who issued such bonds.
Board of Worth County v. District Court of Scott County, 1930, 209 Iowa 1030, 229 N.W. 711.

Answer held to present no defense to suit on bond for payment of costs in establishing district.
Monona County v. Gray, 1925, 200 Iowa 1133, 206 N.W. 26.

**11. Presumptions and burden of proof.**

No burden to show time of alteration arises from showing of alteration.
Monona County v. Gray, 1926, 200 Iowa 1133, 206 N.W. 26.

**12. Jury questions.**

Proof of alteration of bond for establishment of district made no question for jury.
Monona County v. Gray, 1925, 200 Iowa 1133, 206 N.W. 26.

**455.82 Form.** Each of such bonds shall be numbered and have printed upon its face that it is a "Drainage Bond", stating the county and number of the district for which it is issued, the date and maturity thereof, that it is in pursuance of a resolution of the board of supervisors, that it is to be paid only from taxes for levee and drainage improvement purposes levied and collected on the lands assessed for benefits within the district for which the bond is issued. [S13,§1989-a27; C24, 27, 31, 35, 39,§7504; C46, 50, 54,§455.82]

**1. Construction and application.**

Drainage bonds were not "general obligation bonds."
Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N.W. 568.

County cannot be sued on drainage district bonds.
Board of Worth County v. District Court of Scott County, 1930, 209 Iowa 1030, 229 N.W. 711.

**2. Pledge of county's resources.**

Pledge by county of its resources for payment of drainage bond is ultra vires.

Mitchell County v. Odden, 1935, 219 Iowa 793, 259 N.W. 774.

**3. Lien.**

Assessments, not bonds, constitute lien against land in district.

Teget v. Lambach, 1939, 226 Iowa 1346, 286 N.W. 522 123 A. L. R. 392.

**4. Payment.**

Under later statutes bond holders were entitled to have deficiency assessments made.

Whitfield v. Grimes, 1940, 229 Iowa 309, 294 N.W. 346.

Holders of matured bonds held entitled to payment from funds of district without regard to time assessments were paid.

Bechtel v. Mostrom, 1932, 214 Iowa 623, 243 N.W. 361.

**5. Treasurer's liability to county for unlawful payment of bonds.**

Payment from county funds of bonds exceeding funds of district without warrants from auditor rendered treasurer and his surety liable to county.

Mitchell County v. Odden, 1935, 219 Iowa 793, 259 N.W. 774.

**6. Additional levy to pay bonds.**

Deficiency due to error of treasurer was insufficient reason to authorize additional levy.

Whitfield v. Sears, 1943, 233 Iowa 887, 10 N.W.2d 564.

**7. Compelling levy to pay bonds.**

Action to compel levy of sufficient assessments to pay bonds accrued when payment was due not at time of issuance.

Whitfield v. Grimes, 1940, 229 Iowa 309, 294 N.W. 346.

**8. Bondholders' right to purchase at tax sale.**

Holders of bonds were not disqualified from becoming purchasers at tax sale.

Teget v. Lambach, 1939, 226 Iowa 1346, 286 N.W. 522, 123 A. L. R. 392.

**9. Bondholders' remedies.**

Bondholders had no right of action against county for failure of board to levy assessments.

Mitchell County v. Odden, 1935, 219 Iowa 793, 259 N.W. 774.

**10. Tax sales.**

Acquisition by board of land for district did not constitute a collection of proceeds of assessments previously levied against such land.

Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N.W. 568.

**11. Tax deeds.**

Tax deeds held to extinguish special assessment and they were not subject to deficiency levy.

Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N.W. 568.

**12. Quieting title.**

Owner could not quiet title against tax deeds held by owners of drainage bonds without offering to pay taxes and costs of improvements by holders of tax deeds.

Teget v. Lambach, 1939, 226 Iowa 1346, 286 N.W. 522, 123 A. L. R. 392.

**455.83 Amount—interest—maturity.** In no case shall the aggregate amount of all bonds issued exceed the benefits assessed. Such bonds shall not be issued for a greater amount than the aggregate amount of assessments for the payment of which they are issued, nor for a longer period of maturity than twenty years, and bear a rate of interest not to exceed five percent per annum, payable semiannually, on June 1 and December 1 of each year. [C97,§1953; S13 §1989-a27; C24, 27, 31, 35, 39,§7505; C46, 50, 54,§455.83]

Referred to in §357.21 Substance of bonds.
May 1936, 21 Iowa Law Review 817, 818.

**1. Construction and application.**

Section is mandatory.

Western Bohemian Fraternal Ass'n v. Barrett, 1937, 223 Iowa 932, 274 N.W. 55.

Entire annual assessment should be paid in March but when county issues "drainage bonds" tax may be paid semi-annually.

O. A. G. 1919-20, p. 317.

Board lacks authority to pay auditor or other person for selling drainage certificates or bonds.

O. A. G. 1919-20, p. 310.

**2. Additional assessments.**

Land may not be assessed more than what is necessary to pay costs of improvement.

Ames v. Board of Polk County, 1944, 234 Iowa 617, 12 N.W.2d 567.

Bondholders were entitled to have deficiency assessment made under the facts.

Whitfield v. Grimes, 1940, 229 Iowa 309, 294 N.W. 346.

Bondholder was not entitled to compel trustees to levy additional assessment.
Western Bohemian Fraternal Ass'n v. Barrett, 1937, 223 Iowa 932, 274 N.W. 55.

**3. Interest on bonds.**

Absent provision in bonds stopping interest at maturity, interest should be paid on bonds having matured up to the date of their payment.
O. A. G. 1930, p. 131.

**455.84 Maturity—interest—highway benefits.** The board shall fix the amount, maturity, and interest of all bonds to be issued. It shall determine the amount of assessments to highways for benefits within the district to be covered by each bond issue. The taxes levied for benefits to highways within any drainage or levee district shall be paid at the same times and in the same proportion as assessments against the lands of private owners. [S13,§1989-a27; C24, 27, 31, 35, 39,§7506; C46, 50, 54,§455.84]

**1. Construction and application.**

When there are no funds to pay bonds or coupons on presentation they should be stamped "not paid for lack of funds" and both principal and interest draw interest.
O. A. G. 1936, p. 163.

Entire annual assessment should be paid in March but if bonds are issued tax may be paid semi-annually.
O. A. G. 1919-20, p. 317.

**455.85** Repealed by 55GA, ch 211, §2.

**455.86 Sale or application at par—premium.** Such bonds may be applied at par with accrued interest to the payment of work as it progresses upon the improvements of the district, or, the board may sell, through the county treasurer, said bonds at not less than par with accrued interest and devote the proceeds to such payment. Any premium derived from the sale of said bonds shall be credited to the drainage fund of the district. [C97,§1953; S13,§1989-a27; C24, 27, 31, 35, 39,§7508; C46, 50, 54,§455.86]

Referred to in §357.21 Substance of bonds.
Improvement certificates payable to contractor, see §455.77.

**1. Construction and application.**

Provision designating treasurer as a person to sell bonds does not contemplate a substitute .
Haferman v. Joint Drainage Dist. No. 1, Cerro Gordo, Franklin and Hancock Counties, 1927, 204 Iowa 936, 216 N.W. 257.

Duty of board to secure highest price and best terms for bonds.

O. A. G. 1923-24, p. 150.

**2. Agent's commission.**

Where payment of agent's fee resulted in sale of bonds at less than par, payment was illegal and not part of cost of improvement and deficiency assessment could not be had.

Deming v. Board of Sup'rs, 1946, 237 Iowa 11, 21 N.W.2d 19, 162 A. L. R. 391.

Lands of district in one county could not be assessed to pay sum other county paid agent to sell bonds.

Haferman v. Joint Drainage Dist. No. 1, Cerro Gordo, Franklin and Hancock Counties, 1927, 204 Iowa 936, 216 N.W. 257.

Supervisors lack authority to contract with financial institution to pay commission for sale of bonds.

O. A. G. 1923-24, p. 133.

Supervisors lack authority to pay auditor or other person a commission for selling bonds or certificates.

O. A. G. 1919-20, p. 310.

**3. Payment without interest.**

Deficiency due to error of treasurer was insufficient reason to authorize additional levy.

Whitfield v. Sears, 1943, 233 Iowa 887, 10 N.W.2d 564.

**4. Contracts.**

Unauthorized provisions that contractors would purchase bonds to provide for preliminary expenses was a mere irregularity.

Wood v. Hall, 1907, 138 Iowa 308, 110 N.W. 270.

**5. Mandamus.**

Treasurer, if not officer of district, not a proper party in mandamus seeking order requiring officers of district to levy drainage taxes.

Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N.W. 568.

**455.87 Deficiency levy—additional bonds.** If any levy of assessments is not sufficient to meet the interest and principal of outstanding bonds, or if default shall occur by reason of nonpayment of assessments, additional assessments may be made on the same classification as the previous ones. Additional bond issues may be made when necessary to complete full payment for improvements by the same proceedings as previous issues. [C97,§1953; S13, §1989-a27; C24, 27, 31, 35, 39,§7509; C46, 50, 54,§455.87]

Additional levy to pay for original cost or repairs, see §455.59. May 1936, 21 Iowa Law Review 817, 818.

**1. Construction and application.**

Assessment may not exceed sum necessary to pay costs of improvement.

Ames v. Board of Polk County, 1944, 234 Iowa 617, 12 N.W.2d 567.

Under the facts bondholders were entitled to have deficiency assessment made.

Whitfield v. Grimes, 1940, 229 Iowa 309, 294 N.W. 346.

Statute held to authorize new apportionment of tax and other bonds sold if proceeds of tax were insufficient to pay principal and interest of bonds sold.

Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N.W. 568.

Provision that if assessments are insufficient to meet interest and principal of bonds, additional assessments may be made is not mandatory.

Western Bohemian Fraternal Ass'n v. Barrett, 1937, 223 Iowa 932, 274 N.W. 55.

**2. Additional assessments.**

Bondholder seeking reassessment must establish that it is sought to pay for additional costs of improvement.

Deming v. Board of Sup'rs, 1946, 237 Iowa 11, 21 N.W.2d 19, 162 A. L. R. 391.

One acquiring interest in land in district is charged with knowledge of possibility of reassessment.

Whitfield v. Sears, 1943, 233 Iowa 887, 10 N.W.2d 564.

Reassessment could not be made on other lands which had paid original levy where deficiency resulted from failure to collect all assessments originally.

Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N.W. 568.

Holder of certificate or bond on which payment has been refused must look to assessments against benefited lands for payment.

O. A. G. 1932, p. 232.

Where part of assessments were paid in full and part by installments, supervisors could levy deficiency assessment against all property in district.

O. A. G. 1932, p. 104.

**3. Original levy insufficient.**

That improvements were all paid for would not mean there was no deficiency if bond fund was invaded to pay for some of the payments.

Deming v. Board of Sup'rs, 1946, 237 Iowa 11, 21 N.W.2d 19, 162 A. L. R. 391.

Relevy proper where lack of funds to pay bonds arises from insufficiency of original levy to pay costs and proceeds of deferred assessment are used in part to make up.

Whitfield v. Sears, 1943, 233 Iowa 887, 10 N.W.2d 564.

Section limitation on right of supervisors to make additional levy for outstanding bonds to cases where original levy was insufficient.

Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N.W. 568.

**4. Discrepancy between assessment, and bonds issued.**

Reassessment authorized where shortage of funds to pay bonds was due to initial discrepancy between amount of assessment and bonds issued thereunder and total cost of improvement.

Ames v. Board of Polk County, 1944, 234 Iowa 617, 21 N.W.2d 567.

**5. Interest losses, assessment for.**

Where bonds bore interest 6½ months longer than assessments against land, losses were implicit in situation when levy was made and additional assessment could be made.

Whitfield v. Sears, 1943, 233 Iowa 887, 10 N.W.2d 564.

Deficiency from allowing taxpayer to pay assessments in full with interest to date of payment cannot be reassessed against the properties affected.

O. A. G. 1930, p. 108.

**6. Replacement of money improperly paid out.**

Where payment of agent's fee resulted in sale of bonds at less than par, payment was illegal and not a part of cost of improvement and deficiency assessment could not be had.

Deming v. Board of Sup'rs, 1946, 237 Iowa 11, 21 N.W.2d, 162 A. L. R. 391.

Recovery by county of damages from treasurer and his surety for unlawful payment of bonds in excess of district funds from county funds.

Mitchell County v. Odden, 1935, 219 Iowa 793, 259 N.W. 774.

**7. Default of other landowners.**

No right to reassess exists where shortage of funds is due to failure to collect assessment from a landowner or is caused by improper diversion of funds.

Deming v. Board of Sup'rs, 1946, 237 Iowa 11, 21 N.W.2d 19, 162 A. L. R. 391.

Owners, having paid their part of costs cannot be required to make good default of others or a deficiency resulting from erroneous use of funds.

Whitfield v. Sears, 1943, 233 Iowa 887, 10 N.W.2d 564.

**8. Use of additional assessments.**

Additional assessments must be used only to pay cost of improvements.

Ames v. Board of Polk County, 1944, 234 Iowa 617, 12 N.W.2d 567.

**9. Tax sale, acquisition of lands at, effect.**

Special assessments were extinguished by tax deeds and tracts could not be subjected to deficiency levy for benefit of bonds.

Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N.W. 568.

**10. Mandamus.**

Mandamus would issue requiring board to take necessary steps to ascertain whether there was a deficiency.

Whitfield v. Sears, 1943, 233 Iowa 887, 10 N.W.2d 564.

In proceeding to compel additional levy where demurrer to petition was sustained the order sustaining demurrer did not become "law of the case" on motion to dismiss substituted petition.

Whitfield v. Grimes, 1940, 229 Iowa 309, 294 N.W. 346.

**455.88 Funding or refunding indebtedness.** Drainage districts may settle, adjust, renew, or extend the time of payment of the legal indebtedness they may have, or any part thereof, in the sum of one thousand dollars or upwards, whether evidenced by bonds, warrants, certificates, or judgments, and may fund or refund the same and issue bonds therefor in the manner provided in section 461.13. [C27, 31, 35,§7509-a1; C39, §7509.1; C46, 50, 54,§455.88]

Additional provisions, ch 463.

**1. Construction and application.**

This section relates to indebtedness of entire district, not of particular landowners in the district.

O. A. G. 1932, p. 141.

**455.89 Record of bonds.** A record of the numbers, amounts, and maturities of all such bonds shall be kept by the auditor showing specifically the lands embraced in the district upon which the tax has not been previously paid in full. [S13,§1989-a27; C24, 27, 31, 35, 39,§7510; C46, 50, 54, §455.89]

**455.90 Assessments payable in cash.** All assessments of twenty dollars and less shall be paid in cash. [C24, 27, 31, 35, 39,§7511; C46, 50, 54,§455.90]

**455.91 Payment before bonds issued.** The board at the time of making the levy, shall fix a time within which all assessments in excess of twenty dollars may be paid in cash, and before any bonds are issued, publish notice in an official newspaper in the county where the district is located, of such time. After the expiration of such time, no assessments may be paid except in the manner and at the times fixed by the board in the resolution authorizing the issue of the bonds. [C24, 27, 31, 35, 39,§7512; C46, 50, 54,§455.91]

**1. Construction and application.**

Deficiency due to error of treasurer was insufficient reason to authorize additional levy.

Whitfield v. Sears, 1943, 233 Iowa 887, 10 N.W.2d 564.

Where bonds were issued under Code 1927, section 7503, taxpayer could not pay installments in advance unless he paid all of them and interest to maturity.

O. A. G. 1930, p. 73.

**455.92 Appeals.** Any person aggrieved may appeal from any final action of the board in relation to any matter involving his rights, to the district court of the county in which the proceeding was held. [S13,§1989-a6,-a11,-a14; C24, 27, 31, 35, 39,§7513; C46, 50, 54,§455.92]

Referred to in §455.145 Report and review—appeal.
Presumption of benfits on appeal, see §455.102.

**1. Construction and application.**

Assessments are void only if proceedings before board were unauthorized and without jurisdiction.

Petersen v. Sorensen, 1921, 192 Iowa 471, 185 N.W. 42.

Where proceedings before board were erroneous as distinguished from illegal, remedy of owner is to file objections before board and appeal from adverse decision.

In re Lightner, 1910, 145 Iowa 95, 123 N.W. 749.

**2. Prior laws, appeal under.**

Appeal from assessment on notice only to auditor without notice to the first four petitioners was defective.

Poage v. Grant Tp. Ditch & Drainage Dist. No. 5, 1909, 141 Iowa 510, 119 N.W. 976.

Notice of appeal in drainage proceeding had to be served on petitioners.

Henderson v. Calhoun County, 1905, 129 Iowa 119, 105 N.W. 383.

Appeals could be taken in same manner as in location of roads but statute did not imply that method of trials should also be the same.

In re Bradley, 1899, 108 Iowa 476, 79 N.W. 280.

Unconstitutionality of law for failure to provide appeal from order levying tax was not available in action to enjoin collection of tax where tax was not levied until right of appeal was given by subsequent legislation.

Butts v. Monona County, 1896, 100 Iowa 74, 69 N.W. 284.

Absent statutory provision for appeal, board had final jurisdiction to determine lands to be taxed.

Lambert v. Mills County, 1882, 58 Iowa 666, 12 N.W. 715.

Assessment did not deprive owner of his property without due process of law.

Yeomans v. Riddle, 1891, 84 Iowa 147, 50 N.W. 886.

**3. Nature of appeal.**

Appeal from assessment is a "suit" within meaning of the Removal Act.

Chicago, etc. R. Co. v. Drainage Dist. No. 8 of Shelby County, D. C. 1918, 253 F. 491.

**4. Other remedies.**

Mandamus to compel repairs in improvement based on failure of board to act was proper remedy.

Wise v. Board of Webster County, 1951, 242 Iowa 870, 48 N.W.2d 247.

Exclusive remedy of appeal from assessment bars action for refund of amount paid thereon unless assessment is void.

Whisenand v. Nutt, 1944, 235 Iowa 301, 15 N.W.2d 533.

Where board authorized work which was "repair" work, taxpayers remedy was by appeal, not injunction.

Baldozier v. Mayberry, 1939, 226 Iowa 693, 285 N.W. 140.

Relief from assessment must be sought by appeal, not by injunction.

Petersen v. Sorensen, 1921, 192 Iowa 471, 185 N.W. 42.

Injunction not granted where order of board was merely voidable in view of special remedy by appeal.

Simpson v. Board of Kossuth County, 1917, 180 Iowa 1330, 162 N.W. 824.

**5. Persons entitled to appeal.**

Where owner filed objections and board had not yet

acted on them, purchasers did not have to refile objections and could appeal from adverse ruling.

Hopkins v. Board of Boone County, 1925, 200 Iowa 441, 204 N.W. 242.

Where part of improvement scheme was rejected without notice that such exception would be made, persons adversely interested could appeal without having filed objections.

Lewis v. Pryor Drainage Dist. 1918, 183 Iowa 236, 167 N.W. 94.

Person selling land, having agreed to pay any assessments on it, has such interest that he may appeal the overruling of this objection.

Christenson v. Board of Hamilton County, 1916, 174 Iowa 724, 156 N.W. 810.

**6. County, appeal by.**

County could not appeal judgment on appeal from order of board in assessing damages due to construction of ditch.

Gish v. Castner-Williams & Askland Drainage District, 1907, 136 Iowa 155, 113 N.W. 757.

That attorney of parties appealing entitled proceedings as against the county without objections did not make county a party.

Yockey v. Woodbury County, 1906, 130 Iowa 412, 106 N.W. 950.

**7. Intervention.**

On appeal from order establishing district, district court acted as appellate tribunal so petition in intervention could not be filed therein.

Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

Petitioner who gave statutory bond for costs and expenses could intervene and defend order appealed from.

Temple v. Hamilton County, 1907, 134 Iowa 706, 112 N.W. 174.

**8. Failure to appeal.**

Failure to appeal was waiver of other remedies.

Kelly v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 841.

Herron v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 846.

Error in assessing tax against 29½ acre tract on basis of 39½ acre tract did not void assessment, and failure to appeal barred action for refund.

Whisenand v. Nutt, 1944, 235 Iowa 301, 15 N.W.2d 533.

Collateral attack against validity of contract could succeed only if contract for improvement was void.
Danielson v. Cline, 1944, 234 Iowa 167, 12 N.W.2d 254.

Where trustees of outlet district authorized demand on boards of tributary districts to share costs of repairs and demand was made, tributary districts had right to appeal.
Board of Monona-Harrison Drainage Dist. No. 1 in Monona and Harrison Counties v. Board of Monona County, 1942, 232 Iowa 1098, 5 N.W.2d 189.

Where board rules district to be legally established, if erroneous as to owner, his remedy is by appeal.
Wilcox v. Marshall County, 1941, 229 Iowa 865, 294 N.W. 907, modified in other respects 297 N.W. 640.

Party not appealing in action involving claims cannot have decree more favorable than that obtained in lower court.
Ottumwa Boiler Works v. M. J. O'Meara & Son, 1929, 208 Iowa 80, 224 N.W. 803.

Owners in district were not precluded from objecting to apportionment of costs to other district as being insufficient by failure to appeal from order adopting commissioner's report.
Loomis v. Board of Sup'rs, 1919, 186 Iowa 721, 173 N.W. 615.

Claim of total non-benfit may not be raised against the validity of an assessment.
Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.
Simpson v. Board of Kossuth County, 1917, 180 Iowa 1330, 162 N.W. 824.

**9. Waiver of right to appeal.**

Supervisors waived no right to appeal from reduction of assessment by district court by selling the lands in question for the assessment fixed by the court.
Bibler v. Board of Hamilton County, 1913, 162 Iowa 1, 142 N.W. 1017.

Where treasurer accepted payment as reduced by court with understanding that right of appeal was reserved, the right was not waived.
Lightner v. Board of Greene County, 1912, 156 Iowa 398, 136 N.W. 761, modified in other respects 156 Iowa 398, 137 N.W. 462.

**10. Payment of assessment after appeal.**

Protest upon payment did not relieve landowner from consequences of payment.

Collins v. Board of Pottawattamie County, 1912, 158 Iowa 322, 138 N.W. 1095.

**11. Appealable orders.**

No right to appeal until board has reviewed commissioners' report as to assessment of benefits and reduced or confirmed or increased assessments.

Farmers Drainage Dist. v. Monona-Harrison Drainage Dist., 1955, 67 N.W.2d 445.

Action of board in excluding land from district, if without jurisdiction, could be reviewed by certiorari.

Estes v. Board of Mills County, 1927, 204 Iowa 1043, 217 N.W. 81.

Owners of land have right to appeal from order establishing district.

Thompson v. Board of Buena Vista County, 1926, 201 Iowa 1099, 206 N.W. 624.

Where objections were filed too late no appeal could be taken.

Patch v. Boards of Osceola and Dickinson Counties, 1916, 178 Iowa 283, 159 N.W. 694.

Appeal lies from order establishing district, but no appeal lies from order that proposed district is not for public good.

In re Nishnabotna River Improvement Dist. No. 2, 1910, 145 Iowa 130, 123 N.W. 769.

**12. Abstract.**

Statement in abstract construed as a concession that owner had properly appealed.

Canal Const. Co. v. Woodbury County, 1909, 146 Iowa 526, 121 N.W. 556.

**13. Jurisdiction of district court.**

District court had jurisdiction where notice of appeal was accepted by auditor and filed in accordance with statute.

Shaw v. Nelson, 1911, 150 Iowa 559, 129 N.W. 827.

**14. District court's powers on appeal.**

District court could determine if benefit to district would justify expense.

In re Drainage Dist. No. 3, Hardin County, 1909, 146 Iowa 564, 123 N.W. 1059.

Bump v. Board of Hardin County, 1909, 123 N.W. 1065.

Action of board including land in district is not reviewable until land is assessed.

In re Drainage Dist. No. 3, Hardin County, 1909, 146 Iowa 564, 123 N.W. 1059.

Bump v. Board of Hardin County, 1909, 123 N.W. 1065.

District court should attach some weight to findings of the board because of its superior advantage in knowing the situation.

In re Nishnabotna River Improvement Dist. No. 2, 1910, 145 Iowa 130, 123 N.W. 769.

Courts may, when jurisdiction is properly invoked, review assessments.

Chicago, etc. R. Co. v. Monona County, 1909, 144 Iowa 171, 122 N.W. 820.

On appeal the district court could not establish a district not planned or recommended by a competent engineer.

Hartshorn v. Wright County District Court, 1909, 142 Iowa 72, 120 N.W. 479.

**15. Review in district court.**

Since drainage proceedings are informal, courts are not disposed to review them with technical strictness.

Mackland v. Board of Pottawattamie County, 1913, 162 Iowa 604, 144 N.W. 317.

**16. Questions reviewable.**

Where findings overruling objections to establishment are not appealed only question affecting authority of boards to act and those bearing on assessments are raised on appeal from order confirming assessments.

Kelly v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 841.

Herron v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 846.

Absent fraud there is no review of action of drainage board allowing bills.

Kemble v. Weaver, 1925, 200 Iowa 1333, 206 N.W. 83.

On appeal from order establishing district question of nonbenefit can be raised; also excessive cost of improvement and its doubtful utility.

Shaw v. Board of Greene County, 1923, 195 Iowa 545, 192 N.W. 525.

Defects in proceedings for establishment, occurring prior to order establishing district, not considered on appeal from order fixing and levying assessments.

Chicago, etc. R. Co. v. Board of Hamilton County, 1918, 184 Iowa 590, 169 N.W. 103.

Determination of public good and utility not reviewable.
Wood v. Honey Creek Drainage & Levee Dist. No. 6, 1916, 180 Iowa 159, 160 N.W. 342.

On appeal from assessment it could not be urged that notice of pendency of petition was defective as to nonresidents.
In re Lightner, 1909, 145 Iowa 95, 123 N.W. 749.

Board may reject bid where bidder is not responsible and modify contract with low bidder without resubmitting matter for bids.
Wood v. Hall, 1907, 138 Iowa 308, 110 N.W. 270.

Statutes did not authorize consideration on appeal from assessments whether land was actually benefited.
Chambliss v. Johnson, 1889, 77 Iowa 611, 42 N.W. 427.

**17. New grounds of objection.**

Objections not made at hearing before board are waived unless jurisdictional.
Bloomquist v. Board of Hardin County, 1920, 188 Iowa 994, 177 N.W. 95.

Objections not specifically made are waived.
Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

New grounds of objection cannot first be urged on appeal.
Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

**18. Findings by board, review of.**

Finding that district was not conducive to public health, convenience or welfare was not reviewable.
Christensen v. Agan, 1930, 209 Iowa 1315, 230 N.W. 800.

Order of board denying petition construed as holding that the improvement was unnecessary.
Vinton v. Board of Mills County, 1923, 196 Iowa 329, 194 N.W. 358.

Proceedings may not be attacked in independent action for nonjurisdictional errors or irregularities.
Hoyt v. Brown, 1911, 153 Iowa 324, 133 N.W. 905.

**19. Orders, review of.**

Order of supervisors to issue warrants to contractor could not be reviewed, absent fraud, in suit to cancel warrants.
Dashner v. Woods Bros. Const. Co., 1928, 205 Iowa 64, 217 N.W. 464.

Order of establishment, except for statutory appeal, is conclusive on owners.

Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

Order establishing district should only reluctantly be set aside on appeal.

Mittman v. Farmer, 1913, 162 Iowa 364, 142 N.W. 991, Ann. Cas. 1915C, 1.

Act of board establishing district subject to review.

Temple v. Hamilton County, 134 Iowa 706, 112 N.W. 174.

**20. Evidence on appeal.**

Witness who was one of commissioners examining the land could in testifying refresh his memory by referring to memoranda made at time of examination.

In re Drainage Dist. No. 3, Hardin County, 1909, 146 Iowa 564, 123 N.W. 1059.

Bump v. Board of Hardin County, 1909, 123 N.W. 1065.

On appeal held that plat and profile presumed to show lakes, ponds or deep depressions, and their elevations.

Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

Witness allowed to say that injury caused by ditch made the land worth about $350 less.

Larson v. Webster County, 1911, 150 Iowa 344, 130 N.W. 165.

Evidence held to authorize court on appeal to reverse order establishing district.

In re Nishnabotna River Improvement Dist. No. 2, 1909, 145 Iowa 130, 123 N.W. 769.

Court should be very reluctant to interfere with action of board.

Hartshorn v. Wright County District Court, 1909, 142 Iowa 72, 120 N.W. 479.

To justify interference by court with action by board, clearest proof is required.

Wood v. Hall, 1907, 138 Iowa 308, 110 N.W. 270.

**21. Instructions.**

No instruction required as to claim abandoned in district court and not offered in evidence.

Brown v. Drainage Dist. No. 48, 1913, 163 Iowa 290, 143 N.W. 1077.

**22. Disposition on appeal.**

Decision of board not interfered with.

Vinton v. Board of Mills County, 1923, 196 Iowa 329, 194 N.W. 358.

Assessment for cleaning and repairing ditch made without notice not sustained where in reality ditch was deepened and widened.
Lade v. Board of Hancock County, 1918, 183 Iowa 1026, 166 N.W. 586.

Evidence must clearly show facts warranting interference by courts.
Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

Fact that no estimate as to full cost of improvement had been made might be considered on appeal as a reason for reversing order establishing district.
In re Nishnabotna River Improvement Dist. No. 2, 1910, 145 Iowa 130, 123 N.W. 769.

**23. Supreme court, review in.**

Failure to make timely submission of proposition in trial court prevented its consideration on appeal.
Whisenand v. Van Clark, 1940, 227 Iowa 800, 288 N.W. 915.

Petitioners for establishment of district, not being parties to appeal from order of establishment, were not entitled to appeal order vacating establishment.
Chicago, etc. R. Co. v. Board of Fremont County, 1928, 206 Iowa 488, 221 N.W. 223.

Where order of district court dismissing appeal from establishment must be affirmed, merits are not reviewable.
Stewart v. Board of Floyd County, 1918, 183 Iowa 256, 166 N.W. 1052.

Question of validity of owner's appeal cannot be first raised in appeal to Supreme Court.
Larson v. Webster County, 1911, 150 Iowa 344, 130 N.W. 165.

Unauthorized appearance by attorneys on behalf of county did not make county a party.
Yockey v. Woodbury County, 1906, 130 Iowa 412, 106 N.W. 950.

**455.93 Appeals in intercounty districts.** In districts extending into two or more counties, appeals from final orders resulting from the joint action of the several boards or the board of trustees of such district may be taken to the district court of any county into which the district extends. [S13,§1989-a35; C24, 27, 31, 35, 39,§7514; C46, 50, 54,§455.93]

**1. Construction and application.**

Appeal from assessment may only be taken to district court of county wherein the land lies.

Cooper v. Calhoun County, 1911, 152 Iowa 252, 132 N. W. 40.

Lynch v. Webster County, 1911, 132 N.W. 41.

**455.94 Time and manner.** All appeals shall be taken within twenty days after the date of final action or order of the board from which such appeal is taken by filing with the auditor a notice of appeal, designating the court to which the appeal is taken, the order or action appealed from, and stating that the appeal will come on for hearing at the next succeeding term of the court and designating such term. This notice shall be accompanied by an appeal bond with sureties to be approved by the auditor conditioned to pay all costs adjudged against the appellant and to abide the orders of the court. [S13,§1989-a6,-a14,-a35; C24, 27, 31, 35, 39,§7515; C46, 50, 54,§455.94]

Referred to in §357.33 Appeal procedure; §455.95 Transcript; §455.145 Report and review—appeal; §463.8 Time and manner appeal.

Presumption of approval of bond, §682.10.

**1. Construction and application.**

Collateral attack on validity of contract for improvement could succeed only if it was void.

Danielson v. Cline, 1944, 234 Iowa 167, 12 N.W. 2d 254.

Where trustees of outlet district authorized demand on boards of tributary districts to share costs of repairs and demand was made, tributary districts had right to appeal.

Board of Trustees of Harrison-Monona Drainage Dist. No. 1 in Monona and Harrison Counties v. Board of Monona County, 1942, 232 Iowa 1098, 5 N.W. 2d 189.

Prior statute incorporated in part in this section must be liberally construed.

Elwood v. Board of Sac County, 1912, 156 Iowa 407, 136 N.W. 709.

Statute held not to have retroactive effect so as to deprive court of jurisdiction.

Arnold v. Board of Kossuth County, 1911, 151 Iowa 155, 130 N.W. 816.

Court has jurisdiction where notice of appeal is served on county auditor and filed by him.

Shaw v. Nelson, 1911, 150 Iowa 559, 129 N.W. 827.

**2. Prior laws, appeal under.**

Under the statutes in existence notice of appeal had to be served on petitioners.

Henderson v. Calhoun County, 1905, 129 Iowa 119, 105 N.W. 383.

First four petitioners had to be served with notice of appeal.

Poage v. Grant Tp. Ditch & Drainage Dist. No. 5, 1909, 141 Iowa 510, 119 N.W. 976.

In appeal from amount of damages awarded, the appeal could be taken in 20 days after order establishing drain.

Henderson v. Calhoun County, 1905, 129 Iowa 119, 105 N.W. 383.

Provision that appeals could be taken in same manner as in location of roads did not imply method of trial was also to be the same.

In re Bradley, 1899, 108 Iowa 476, 79 N.W. 280.

**3. Intervention.**

District court on appeal from order establishing district is an appellate court and petition in intervention could not be filed therein.

Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

**4. Filing of notice and bond.**

Statutory requirement for notice of appeal from assessment satisfied when attorney for owner delivered notice and bond to auditor with instructions to file them.

Mills v. Board of Monona County, 1940, 227 Iowa 1141, 290 N.W. 50.

Mere "service" upon auditor is insufficient, filing being necessary.

Bedford v. Board of Carroll County, 1914, 162 Iowa 588, 144 N.W. 301.

**5. Notice of appeal.**

Notice must be signed by appellant or his attorney.

Bedford v. Board of Carroll County, 1914, 162 Iowa 588, 144 N.W. 301.

Notice held to sufficiently describe the property.

Hill Drainage Dist. No. 115 v. Board of Hamilton County, 1913, 162 Iowa 182, 143 N.W. 991.

Description held inadequate.

Bradford v. Board of Emmet County, 1913, 160 Iowa 206, 140 N.W. 804.

Notice of appeal to Supreme Court accepted by Clerk of District Court and filed by him, was good.

Lightner v. Board of Greene County, 1912, 156 Iowa 398, 136 N.W. 761, modified in other respects, 156 Iowa 398, 137 N.W. 462.

Notice of appeal was ineffective where not served on petitioners.

In re Farley Drainage Dist. No. 7, 1909, 120 N.W. 83.

**6. Bond.**

Facts showed bond filed with county auditor.

Chicago, etc. R. Co. v. Drainage Dist. No. 9, Iowa County, 1924, 197 Iowa 131, 197 N.W. 91.

Appeal bond filed with auditor and approved by him, which is only defective cannot be collaterally attacked.

Shaw v. Nelson, 1911, 150 Iowa 559, 129 N.W. 827.

**7. Intercounty districts, appeal in.**

Appeal from district court in proceeding to establish district including lands in such county and another perfected by filing notice and bond with auditor of county where appeal was taken.

Schumaker v. Edgington, 1911, 152 Iowa 596, 132 N.W. 966.

Appeal from assessment of benefits may be taken only to district court of county in which the land assessed lies.

Lynch v. Webster County, 1911, 132 N.W. 41.

Appeal from joint action of boards of two counties properly taken by filing notice and bond with auditor of county in which the land lay.

Cooper v. Calhoun County, 1911, 152 Iowa 252, 132 N.W. 40.

**8. Perfection of appeal and transfer of case.**

Notice of appeal filed with auditor and bond approved by him operate to transfer the case to district court.

In re Jenison, 1910, 145 Iowa 215, 123 N.W. 979; Henderson v. Board of Polk County, 1911, 153 Iowa 283, 470, 133 N.W. 671; Henderson v. Board of Polk County, 1911, 133 N.W. 672.

Appeal perfected by filing notice and giving bond within prescribed time.

Elwood v. Board of Sac County, 1912, 156 Iowa 407, 136 N.W. 709.

**9. Abstract.**

Statement in abstract that objector duly appealed from order of supervisors construed as concession that appeal was properly taken.

Canal Const. Co. v. Woodbury County, 1909, 146 Iowa 526, 121 N.W. 556.

**10. Attorneys' fees.**

Where appeal from establishment was unsuccessful, appellant not chargeable with fees of attorney for district.

County Drains Nos. 44, 45 v. Long, 1911, 151 Iowa 47, 130 N.W. 152.

**11. Supreme Court, appeal to.**

Appeal from confirmation of assessments may be taken by serving notice on counsel who represented the drainage district in district court.

In re Jenison, 1910, 145 Iowa 215, 123 N.W. 979.

**12. Time.**

No right to appeal until board had reviewed report of assessments and acted thereon.

Farmers Drainage Dist. v. Monona-Harrison Dist., 1955, 67 N.W. 2d 445.

**455.95 Transcript.** When notice of any appeal with the bond as required by section 455.94 shall be filed with the auditor, he shall forthwith make and certify a transcript of the notice of appeal and appeal bond, and file the same with the clerk. [S13,§1989,-a14; C24, 27, 31, 35, 39,§7516; C46, 50, 54,§455.95]

Referred to in §357.33 Appeal procedure; §455.145 Report and review—appeal.

**1. Construction and application.**

District court has jurisdiction where auditor accepts service of notice and is filed by him.

Shaw v. Nelson, 1911, 150 Iowa 559, 129 N.W. 827.

**455.96 Petition — docket fee — waiver — dismissal.** On or before the first day of the next succeeding term of court, the appellant shall file a petition setting forth the order or final action of the board appealed from and the grounds of his objections and his complaint, with a copy of his claim for damages or objections filed by him with the auditor. He shall pay to the clerk with filing fee as provided by law in other cases. A failure to pay the filing fee or to file such petition shall be deemed a waiver of the appeal and in such case the court shall dismiss the same. [S13,§1989-a14; C24, 27, 31, 35, 39,§7517; C46, 50, 54,§455.96]

Referred to in §357.33 Appeal procedure; §455.145 Report and review—appeal.
Fee, §606.15, subsection 1.

**1. Construction and application.**

If appellant has been overassessed he need not point out how deficiency due to reduction may be made up.

Loomis v. Board of Sup'rs, 1919, 186 Iowa 721, 173 N.W. 615.

Section liberally construed.
Elwood v. Board of Sac County, 1912, 156 Iowa 407, 136 N.W. 709.

Statute taking effect after filing of notice and bond making failure to file petition a waiver of appeal, did not have retroactive effect.
Arnold v. Board of Kossuth County, 1911, 151 Iowa 155, 130 N.W. 816.

**2. Petition.**

Petition for review of assessments held sufficient.
Rystad v. Drainage Dist. No. 12, 1912, 157 Iowa 85, 137 N.W. 1030.

**3. Filing of petition.**

Right to be heard on appeal not lost by failure to file petition by first day of next term, unless delay is such as to constitute a waiver of right of appeal.
Reichenbach v. Getty, 1913, 163 Iowa 25, 143 N.W. 842.

Dismissal of appeal for failure to file petition held erroneous where filed in time to answer all legal requirements before court ruled on motion to dismiss appeal.
Elwood v. Board of Sac County, 1912, 156 Iowa 407, 136 N.W. 709.

**4. Motion to dismiss petition.**

Motion to dismiss appeal properly overruled where petition substantially complied with statute.
Mills v. Board of Monona County, 1940, 227 Iowa 1141, 290 N.W. 50.

Motion to dismiss petition in district court was equivalent to demurrer thereto for want of facts.
Vinton v. Board of Mills County, 1923, 196 Iowa 329, 194 N.W. 358.

**5. Dismissal of proceedings.**

In proceedings to open drain where county attorney, acting for the board, entered a disclaimer for the board, such did not operate as dismissal of proceedings.
Temple v. Hamilton Co., 1907, 134 Iowa 706, 112 N.W. 174.

**6. Dismissal of appeal.**

Appeal properly dismissed for failure to file.
Steward v. Board of Floyd County, 1918, 183 Iowa 256, 166 N.W. 1052.

**7. Questions reviewable.**

Objections properly filed present issues on appeal.
Farmers Drainage Dist. v. Monona-Harrison Drainage Dist., 1955, 67 N.W.2d 445.

Objections not presented before board will not be considered on appeal.

Philip Drainage Dist. v. Peterson, 1922, 192 Iowa 1094, 186 N.W. 18.

Objections on appeal held proper, as amplification of those made to board.

Flood v. Board of Dallas County, 1915, 173 Iowa 224, 155 N.W. 280.

On appeal case must be tried on objections filed before board.

Lightner v. Board of Greene County, 1912, 156 Iowa 398, 136 N.W. 761, modified in other respects 156 Iowa 398, 137 N.W. 462.

Objection to manner of apportioning benefits may not be first raised on appeal.

In re C. G. Hay Drainage Dist. No. 23, 1910, 146 Iowa 280, 125 N.W. 225.

Objection to assessment not made before board cannot be urged on appeal from assessment.

In re Jenison, 1909, 145 Iowa 215, 123 N.W. 979.

Question of lack of jurisdiction of board to act may be presented on appeal.

In re Lightner, 1909, 145 Iowa 95, 123 N.W. 749.

**8. Theory of case.**

Theory of case on appeal held to same theory as adopted before board by both parties.

Bloomquist v. Board of Hardin County, 1920, 188 Iowa 994, 177 N.W. 95.

**9. Claims for damages.**

On appeal landowners may not change position and recover on another and different ground than was called to attention of board.

Harris v. Board of Green Bay Levee & Drainage Dist. No. 2, Lee County, 1953, 244 Iowa 1169, 59 N.W.2d 234.

**455.97 Pleadings on appeal.** It shall not be necessary for the appellees to file an answer to the petition unless some affirmative defense is made thereto, but they may do so. [S13,§1989-a14; C24, 27, 31, 35, 39,§7518; C46, 50, 54,§455.97]

Referred to in §357.33 Appeal procedure; §455.145 Report and review—appeal.

**1. Construction and application.**

Section liberally construed.

Elwood v. Board of Sac County, 1912, 156 Iowa 407, 13 N.W. 709.

**455.98 Proper parties—employment of counsel.** In all actions or appeals affecting the district, the board of supervisors shall be a proper party for the purpose of representing the district and all interested parties therein, other than the adversary parties, and the employment of counsel by the board shall be for the purpose of protecting the rights of the district and interested parties therein other than the adversary parties. [S13,§1989-a14; C24, 27, 31, 35, 39,§7519; C46, 50, 54,§455.98]

Referred to in §357.33 Appeal procedure; §455.145 Report and review—appeal.
Authority to employ counsel, see §455.166.

**1. Validity.**

Section, if construed as denying personal right to appeal, is not unconstitutional.

Chicago, etc. R. Co. v. Board of Fremont County, 1928, 206 Iowa 488, 221 N.W. 223.

**2. Construction and application.**

This section does not bar intervention by a proper party upon a proper showing.

Chicago B. & Q. R. Co. v. Board of Supervisors of Fremont County, 1928, 206 Iowa 448, 221 N.W. 223.

One contracting with district through supervisors commits to board duty to proceed on his behalf for levy of assessment to pay him.

First Nat. Bank of Fort Dodge v. Webster County, 1927, 204 Iowa 720, 216 N.W. 8.

Section liberally construed.

Elwood v. Board of Sac County, 1912, 156 Iowa 407, 136 N.W. 709.

**3. Board as representative of district.**

County not obligated in its corporate capacity on drainage district bonds.

Mitchell County v. Odden, 1935, 219 Iowa 793, 259 N.W. 774.

Venue of action on bonds against board of supervisors is in county of members' residence.

Board of Worth County v. District Court of Scott County, 1930, 209 Iowa 1030, 229 N.W. 711.

**4. Persons entitled to appeal.**

Petitioners for establishment, not parties to appeal from order establishing district could not appeal order vacating establishment.

Chicago, etc. R. Co. v. Board of Fremont County, 1928, 206 Iowa 488, 221 N.W. 223.

**5. Necessary parties.**

Parties affected by assessment of damages and benefits

are necessary parties to appellate proceedings.
In re Farley Drainage Dist. No. 7, 1909, 120 N.W. 83.

**6. Proper parties.**

On appeal from disallowance of damages for establishment of district, the district is not proper party defendant.
Clary v. Woodbury County, 1907, 135 Iowa 488, 113 N.W. 330.

**7. Intervention.**

Petition in intervention could not be filed in district court in appeal from order establishing district.
Prichard v. Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

**8. Attorneys, employment of.**

Board of supervisors could employ attorneys on behalf of drainage district to defend action against board in establishing district.
Kilpatrick v. Mills County, 1940, 227 Iowa 721, 288 N.W. 871.

Drainage board may employ attorneys to assist in securing appropriation from state to assist in paying taxes on assessed lands.
Kemble v. Weaver, 1926, 200 Iowa 1333, 206 N.W. 83.

Board could employ county attorney for compensation other than his salary in drainage matters.
O. A. G. 1940, p. 112.

Board may employ county attorney after establishment of district, but cannot pay fees in case district is abandoned before establishment.
O. A. G. 1919-20, p. 328.

**9. Attorney's and engineer's fees.**

Warrant for services rendered by attorneys was not void.
Kilpatrick v. Mills County, 1940, 227 Iowa 721, 288 N.W. 871.

Employment of attorneys by supervisors to resist proceeding to establish new district was unauthorized.
Christensen v. Agan, 1930, 209 Iowa 1315, 230 N.W. 800.

No review could be had of allowance of attorneys fees in suit to annul allowance and restrain payment.
Kemble v. Weaver, 1925, 200 Iowa 1333, 260 N.W. 83.

One appealing order of board was not chargeable with fees of attorney for district.
County Drains Nos. 44, 45 v. Long, 1911, 151 Iowa 47, 130 N.W. 152.

**455.99 Plaintiffs and defendants.** In all appeals or actions adversary to the district, the appellant or complaining party shall be entitled the plaintiff, and the board of supervisors and drainage district it represents, the defendants. [S13, §1989-a14; C24, 27, 31, 35, 39,§7520; C46, 50, 54,§455.99]

Referred to in §357.33 Appeal procedure.

**1. Construction and application.**

Section liberally construed.

Elwood v. Board of Sac County, 1912, 156 Iowa 407, 136 N.W. 709.

**2. Removal of causes.**

State statute cannot deprive party of removal rights by designating him plaintiff where he is essentially defendant.

Chicago, etc. R. Co. v. Drainage Dist. No. 8 of Shelby County, Iowa, D. C. 1917, 253 F. 491.

**455.100 Right of board and district to sue.** In all appeals or actions for or in behalf of the district, the board and the drainage district it represents may sue as the plaintiffs. [S13,§1989-a14; C24, 27, 31, 35, 39,§7521; C46, 50, 54,§455.100]

Referred to in §357.33 Appeal procedure.

**1. Construction and application.**

Board does not represent county as a whole.

Mitchell County v. Odden, 1935, 219 Iowa 793, 259 N.W. 774.

Employment of attorneys and engineer to resist establishment of district unauthorized.

Christensen v. Agan, 1930, 209 Iowa 1315, 230 N.W. 800.

**2. District as corporation.**

Drainage district is not corporation.

Mitchell County v. Odden, 1935, 219 Iowa 793, 259 N.W. 774.

**3. District as legal entity.**

District is not legal entity and cannot be sued.

Houghton v. Bonnicksen, 1931, 212 Iowa 902, 237 N.W. 313.

One whose land is outside district has no remedy by way of damages since district is not entity.

Maben v. Olson, 1920, 187 Iowa 1060, 175 N.W. 512.

District not such entity as to be proper party to adversary proceedings.

Gish v. Castner-Williams & Askland Drainage Dist., 1907, 136 Iowa 155, 113 N.W. 757.

**4. Judgments.**

Holder of bonds not entitled to judgment at law against district thereon.

Board of Worth County v. Dist. Court of Scott County, 1930, 209 Iowa 1030, 229 N.W. 711.

**455.101 Trial on appeal—consolidation.** Appeals from orders or actions of the board fixing the amount of compensation for lands taken for right of way or the amount of damages to which any claimant is entitled shall be tried as ordinary proceedings. All other appeals shall be triable in equity. The court may, in its discretion, order the consolidation for trial of two or more of such equitable cases. [C13, §1989-a6,-14,-a35; C24, 27, 31, 35, 39,§7522; C46, 50, 54,§455.101]

Referred to in §357.33 Appeal procedure.

**1. Construction and application.**

Effective date of act did not affect appeal.

Arnold v. Board of Kossuth County, 1911, 151 Iowa 155, 130 N.W. 816.

When appeal is perfected, the matter is a proceeding in the district court as though statute had provided for its origination therein.

In re Bradley, 1902, 117 Iowa 472, 91 N.W. 780.

**2. Abandonment of appeal.**

Presumed that claim when filed included all damage.

Baird v. Hamilton County, 1919, 186 Iowa 856, 173 N.W. 106.

**3. Review in general.**

Delay in perfecting appeal until contract was let on work was done placed heavier burden to establish right to reversal.

Hixson v. Joint Boards of Iowa and Benton Counties, 1920, 189 Iowa 244, 178 N.W. 349.

Courts are not disposed to review drainage proceedings with technical strictness.

Mackland v. Board of Pottawattamie County, 1913, 162 Iowa 604, 144 N.W. 317.

**4. Damages, review of.**

On appeal plaintiff could not recover on different ground than presented to board.

Mackland v. Board of Pottawattamie County, 1913, 162 Iowa 604, 144 N.W. 317.

**5. Apportionment of cost, review of.**

Court may consider natural and artificial drainage state

of lands before establishment and reduce assessment.
Monson v. Boards of Boone and Story Counties, 1914, 167 Iowa 473, 149 N.W. 624.

**6. Assessments, review of.**

Assessments affirmed by a court not disturbed on appeal except in case of gross error, corruption or mistake.
Chicago, etc. R. Co. v. Board of Appanoose County, C. C. A. 1910, 182 F. 301.

Classification and assessment held warranted.
Evans v. Board of Mills County, 1924, 198 Iowa 918, 200 N.W. 572.

Strong and satisfactory showing required to justify interference.
Thomas v. Board of Harrison County, 1922, 194 Iowa 1316, 191 N.W. 154.

To set aside findings of commissioners and board there must be evidence of their having overlooked some essential element or arrived at an erroneous and inequitable apportionment.
Rogers v. Board of Cerro Gordo County, 1922, 195 Iowa 1, 189 N.W. 950.

Assessment not shown to be inequitable.
Philip Drainage Dist. v. Peterson, 1922, 192 Iowa 1094, 186 N.W. 18.

Assessments not disturbed where procedure was not strictly as prescribed by statute where they were equivalent thereto.
Boslaugh v. Board of Buena Vista County, 1921, 190 Iowa 1168, 181 N.W. 441.

That board failed to act with aid of commissioners and engineers tends to negative presumption of correctness.
Bloomquist v. Board of Hardin County, 1920, 188 Iowa 994, 177 N.W. 95.

Supreme court slow to interfere with assessments of board.
Board of Polk County v. McDonald, 1920, 188 Iowa 6, 175 N.W. 817.

Assessment reduced.
Boyd v. Board of Palo Alto County, 1920, 187 Iowa 1234, 175 N.W. 319.

A way to overcome deficiency.
Loomis v. Board of Sup'rs, 1919, 186 Iowa 721, 173 N.W. 615.

Assessment held excessive.
Chicago, etc. R. Co. v. Board of Hamilton County, 1918, 184 Iowa 590, 169 N.W. 103.

Assessments can be overcome only by very clear showing of prejudicial error or fraud or mistake.
Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects, 182 Iowa 60, 165 N.W. 390.

Relief granted only on clear and satisfactory showing that estimate is inequitably apportioned.
Chicago, etc. R. Co. v. Board of Dubuque County, 1916, 176 Iowa 690, 158 N.W. 553.

Assessment held inequitable.
Flood v. Board of Dallas County, 1916, 173 Iowa 224, 155 N.W. 280.

Greatest relief any court can grant as to a regularly made assessment is to reduce or modify it.
Chicago, etc. R. Co. v. Wright County Drainage Dist. No. 43, 1915, 175 Iowa 417, 154 N.W. 888.

Means used by court in arriving at assessments were not prejudicial.
Monson v. Boards of Boone and Story Counties, 1914, 167 Iowa 473, 149 N.W. 624.

Comparison of land in district with land out of district could not be considered.
Haitz v. Joint Boards of Woodbury and Monona Counties, 1914, 167 Iowa 194, 149 N.W. 95.

Reduction of assessment held proper.
Pollock v. Board of Story County, 1912, 157 Iowa 232, 138 N.W. 415.

Findings of commissioners will not be disturbed, if consistent with findings of trial court upon disputed facts.
Rystad v. Drainage Dist. No. 12, 1912, 157 Iowa 85, 137 N.W. 1030.

Objection that assessment is excessive, overruled by trial court, will not be sustained on appeal unless inequality is manifest.
Guttormsen v. Drainage Dist. No. 7, 1911, 153 Iowa 126, 133 N.W. 326.

Court will, when jurisdiction is properly invoked, review assessments.
Chicago, etc. R. Co. v. Monona County, 1909, 144 Iowa 171, 122 N.W. 820.

**7. Assessments, questions reviewable on appeal from.**

In an appeal from assessments sole question was whether they were inequitably or improperly assessed, not whether improvement was ill advised.
Harriman v. Drainage Dist. No. 7-146 of Franklin and Wright Counties, 1924, 198 Iowa 1108, 199 N.W. 974.

In an appeal to lower assessment question of lack of jurisdiction of board to establish district could be raised.
Cordes v. Board of Hamilton County, 1924, 197 Iowa 136, 196 N.W. 997.

Where appeal was taken only from assessment of benefits, did not involve any question as to legality or regularity of proceedings.
Nervig v. Joint Boards of Polk and Story Counties, 1922, 193 Iowa 909, 188 N.W. 17.

That drain cost excessively due to departure from natural channel cannot be raised on appeal from assessment of benefits.
Sullivan v. Board of Palo Alto County, 1922, 193 Iowa 739, 187 N.W. 575.

Objections not presented to supervisors not considered on appeal from confirmation of assessments.
Philip Drainage Dist. v. Peterson, 1922, 192 Iowa 1094, 186 N.W. 18.

Defects occurring prior to order of board establishing district could not be considered on appeal from order levying assessments.
Chicago, etc. R. Co. v. Board of Hamilton County, 1918, 184 Iowa 590, 169 N.W. 103.

Only objections made against assessments before board may be considered on appeal.
Christenson v. Board of Hamilton County, 1918, 168 N.W. 114.

Objections on appeal held to amplify those made before board.
Flood v. Board of Dallas County, 1915, 173 Iowa 224, 155 N.W. 280.

District court on appeal from assessment must try the case on objections filed before board.
Lightner v. Board of Greene County, 1912, 156 Iowa 398, 136 N.W. 761, modified in other respects, 156 Iowa 398, 137 N.W. 462.

Objections made did not raise question of invalidity of assessment due to error in classifying land and assessing benefits.
Chicago, etc. R. Co. v. Monona County, 1909, 144 Iowa 171, 122 N.W. 820.

Only question for consideration was whether assessment was equitable.
Farley Drainage Dist. No. 7 v. Hamilton County, 1908, 140 Iowa 339, 118 N.W. 432.

In appeal from assessment, the correctness of determi-

nation by board that land was properly included in district cannot be questioned.

Oliver v. Monona County, 1902, 117 Iowa 43, 90 N.W. 510.

**8. Order establishing district, review of.**

Power of board to establish district, will not, where properly established, be interfered with.

Maben v. Olson, 1919, 187 Iowa 1060, 175 N.W. 512.

Only objections urged before board may be considered.

Simpson v. Board of Kossuth County, 1917, 180 Iowa 1330, 162 N.W. 824.

Supreme Court very reluctant to set aside order establishing district.

Mittman v. Farmer, 1913, 162 Iowa 364, 142 N.W. 991, Ann. Cas. 1915C 1.

Establishment held to be of entire improvement not only of a part covered by a second report.

Laurence v. Page, 1911, 151 Iowa 182, 131 N.W. 8.

On appeal from order establishing district in district court, a petition in intervention could not be filed.

Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

Finding that proposed district was not for public benefit not reviewable on appeal.

In re Drainage Dist. No. 3, Hardin County, 1909, 146 Iowa 564, 123 N.W. 1059; Bump v. Board of Hardin County, 1909, 123 N.W. 1065.

On appeal, district court should attach weight to findings of the board.

In re Nishnabotna River Improvement Dist. No. 2, 1910, 145 Iowa 130, 123 N.W. 769.

**9. Theory of case.**

Landowners may not, on appeal, recover on a different ground than was called to attention of the board.

Harris v. Board of Green Bay Levee & Drainage Dist. No. 2, Lee County, 1953, 59 N.W.2d 234.

Parties on appeal held to same theory used before board.

Bloomquist v. Board of Hardin County, 1920, 188 Iowa 994, 177 N.W. 95.

**10. Trial de novo.**

Appeal from court order assessing costs in proceeding to review order of trustees of district is triable de novo.

Board of Harrison County v. Board of Pigeon Creek Drainage Dist. No. 2, Pottawattamie County, 1936, 221 Iowa 337, 264 N.W. 702.

Cause on appeal from assessment triable de novo.
Petersen v. Board of Cerro Gordo County, 1929, 208 Iowa 748, 226 N.W. 1.

Though triable de novo, consideration must be given to the findings of the board.
Stewart v. Board of Floyd County, 1918, 183 Iowa 256, 166 N.W. 1052.

**11. Trial as in equity.**

Where proceedings before board were erroneous, not illegal, remedy of owner was to file objections before board and appeal from adverse decision.
In re Lightner, 1910, 145 Iowa 95, 123 N.W. 749.

**12. Presumptions and burden of proof.**

Presumption exists in favor of assessments.
Chicago, etc. R. Co. v. Board of Kossuth County, 1924, 199 Iowa 857, 201 N.W. 115.

Superior advantage of commissioners in ascertaining relative benefits cannot be disregarded by courts.
Chicago, etc. R. Co. v. Board of Monona County, 1923, 196 Iowa 447, 194 N.W. 213.

Burden of providing inequitableness of assessment is on owner.
Rogers v. Board of Cerro Gordo County, 1922, 195 Iowa 1, 189 N.W. 950.

Presumed that commissioners and supervisors considered benefits conferred by improvement.
Nervig v. Joint Boards of Polk and Story Counties, 1922, 193 Iowa 909, 188 N.W. 17.

Burden on appellant from assessment to show error.
Sullivan v. Board of Palo Alto County, 1922, 193 Iowa 739, 187 N.W. 575.

Classification approved by district court presumed correct in absence of fraud or mistake.
Interurban R. Co. v. Board of Polk County, 1920, 189 Iowa 35, 175 N.W. 743.

Objector has burden of showing improper establishment.
Mapel v. Board of Calhoun County, 1917, 179 Iowa 981, 162 N.W. 198.

Report of commissioners spreading drainage district presumed to be correct.
Hatcher v. Board of Greene County, 1914, 165 Iowa 197, 145 N.W. 12.

Objectors must prove work is not of public utility and that cost is excessive.
Mittman v. Farmer, 1913, 162 Iowa 364, 142 N.W. 991, Ann. Cas. 1915C 1.

Party appealing must show assessment is inequitable.
Collins v. Board of Pottawattamie County, 1913, 158 Iowa 322, 138 N.W. 1095.

Commissioners presumed to have considered all evidence bearing on benefits or values.
Rystad v. Drainage Dist. No. 12, 1912, 157 Iowa 85, 137 N.W. 1030.

Assessment presumed correct.
Guttormsen v. Drainage Dist. No. 7, 1911, 153 Iowa 126, 133 N.W. 326.

**13. Evidence.**

Evidence held to warrant classification and assessment as reduced by court.
Evans v. Board of Mills County, 1924, 198 Iowa 918, 200 N.W. 572.

Evidence insufficient to warrant reduction of assessment.
Cordes v. Board of Hamilton County, 1924, 197 Iowa 136, 196 N.W. 997.

Evidence showed assessments to not be unfair.
McCarty v. Board of Palo Alto County, 1923, 193 N.W. 542.

Evidence insufficient to warrant reduction.
Rogers v. Board of Cerro Gordo County, 1922, 195 Iowa 1, 189 N.W. 950.

Evidence held not to show inequitable assessment.
Chicago, etc. R. Co. v. Board of Winnebago County, 1922, 188 N.W. 848.

Evidence held to show outlet would be sufficient when completed though not satisfactory when assessment was made.
Sullivan v. Board of Palo Alto County, 1922, 193 Iowa 739, 187 N.W. 575.

Evidence failed to show cost would be excessive.
Rider v. Hockett, 1920, 188 Iowa 1289, 176 N.W. 242.

Evidence warranted reduction of assessment.
Sorenson v. Wright County, 1919, 185 Iowa 721, 171 N.W. 40.

Evidence showed assessment to be excessive.
O'Donnell v. Board of Sup'rs, 1918, 184 Iowa 1360, 169 N.W. 660.

Evidence insufficient to overcome presumption of correctness of assessment.
Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

Evidence did not overcome presumption of assessment in fair proportion to other tracts.
Chicago, etc. R. Co. v. Board of Dubuque County, 1916, 176 Iowa 690, 158 N.W. 553.

Evidence comparing lands to show unequal assessment was competent and material.
Flood v. Board of Dallas County, 1916, 173 Iowa 224, 155 N.W. 280.

Evidence held to show assessment was not excessive.
Obe v. Board of Hamilton County, 1915, 169 Iowa 449, 151 N.W. 453.

Evidence sufficient to warrant reduction of assessment.
Hill Drainage Dist. No. 115 v. Board of Hamilton County, 1913, 162 Iowa 182, 143 N.W. 991.
Bibler v. Board of Hamilton County, 1913, 162 Iowa 1, 142 N.W. 1017.

Evidence insufficient to sustain finding by district court that work was not one of public utility.
Mittman v. Farmer, 1913, 162 Iowa 364, 142 N.W. 991, Ann. Cas. 1915C 1.

Owner may show, on appeal, by witnesses, that his land is not benefited in amount of assessment.
Jackson v. Board of Sup'rs, 1913, 159 Iowa 673, 140 N.W. 849.

Evidence sustained finding that assessment was properly reduced.
Pollock v. Board of Story County, 1912, 157 Iowa 232, 138 N.W. 415.

Evidence sustained finding that assessments as reduced were reasonable.
Rystad v. Drainage Dist. No. 12, 1912, 157 Iowa 85, 137 N.W. 1030.

Evidence showed assessment as confirmed by district court was excessive.
In re Jenison, 1910, 145 Iowa 215, 123 N.W. 979.

**14. Cross-examination.**

Where witnesses expressed opinion as to depreciation of value, cross-examination as to amount and character of land injured by ditch was proper.
Brown v. Drainage Dist. No. 48, 1913, 163 Iowa 290, 143 N.W. 1077.

**15. Instructions.**

No instruction was required on an abandoned claim.
Brown v. Drainage Dist. No. 48, 1913, 163 Iowa 290, 143 N.W. 1077.

**16. Disposition in district court.**

Upon a proper showing on the evidence court may modify assessment.

Brandt v. Board of Franklin County, 1924, 197 Iowa 495, 197 N.W. 462.

**17. Judgment or decree.**

Judgment confirming assessment under certain conditions held proper.

Roseborough v. Board of Dallas County, 1921, 191 Iowa 344, 182 N.W. 201.

Decree on appeal as to assessment does not bar additional assessment for additional improvement.

Chicago, etc. R. Co. v. Mosquito Drainage Dist. of Harrison County, 1921, 190 Iowa 162, 180 N.W. 170.

Should have provided for interest from time assessments were made.

Appeal of Lightner, 1912, 156 Iowa 398, 137 N.W. 462.

**18. Supreme court, review in.**

Finding of trial court entitled to some weight on appeal.

Mills v. Board of Monona County, 1940, 227 Iowa 1141, 290 N.W. 50.

Supreme Court slow to interfere with findings of board.

Rasch v. Drainage Dist. No. 10 in Shelby County, 1924, 198 Iowa 31, 199 N.W. 168.

On appeal it was proper for Supreme Court to look into reasons and data upon which benefits were fixed.

Appeal of McLain, 1920, 189 Iowa 264, 176 N.W. 817.

Supreme Court will not consider objections to order of board not raised before board.

Simpson v. Board of Kossuth County, 1919, 186 Iowa 1034, 171 N.W. 259, error dismissed 41 S. Ct. 376, 255 U. S. 579, 65 L. Ed. 795.

Supreme Court not bound by findings of fact in court below.

Shay v. Board of Ringgold County, 1919, 185 Iowa 282, 170 N.W. 393.

Where order of district court dismissing appeal must be affirmed, the court on appeal cannot review the merits which were determined by district court.

Stewart v. Board of Floyd County, 1918, 183 Iowa 256, 166 N.W. 1052.

Fact that commissioners and board personally inspected the properties should be given weight.

Chicago, etc. R. Co. v. Board of Dubuque County, 1916, 176 Iowa 690, 158 N.W. 553.

Drainage assessment proceeding triable de novo in Supreme Court as an equitable proceeding.

Bradford v. Board of Emmet County, 1913, 160 Iowa 206, 140 N.W. 804.

Supreme Court on appeal from reduction of assessment presumes district court judgment is correct.

Lightner v. Board of Greene County, 1912, 156 Iowa 398, 136 N.W. 761, modified in other respects 156 Iowa 398, 137 N.W. 462.

Where supervisors found drain to be of public utility and evidence supports such findings Supreme Court must assume district to be a public benefit.

Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

Objection that report of appraisers was not filed in required or reasonable time must be made before supervisors.

In re Farley Drainage Dist. No. 7, 1909, 144 Iowa 476, 123 N.W. 241.

If assessment is equitably apportioned and not in excess of benefits, there is no constitutional objection to proceedings which Supreme Court can consider.

Farley Drainage Dist. No. 7 v. Hamilton County, 1908, 140 Iowa 339, 118 N.W. 432.

**19. Questions reviewable in supreme court.**

On appeal from affirmance of establishment of district where constitutionality was not argued below it could not be considered.

Shaw v. Board of Greene County, 1923, 195 Iowa 545, 192 N.W. 525.

Questions of validity of appeal to district court may not be raised first on appeal to Supreme Court.

Larson v. Webster County, 1911, 150 Iowa 344, 130 N.W. 165.

On appeal to district court, only objections made to board can be brought up on appeal.

In re Hay Drainage Dist., 1910, 146 Iowa 280, 125 N.W. 225.

**20. Disposition in Supreme Court.**

Assessments confirmed by district court will not be disturbed except on clear showing of prejudicial error.

Chicago, etc. R. Co. v. Board of Kossuth County, 1925, 199 Iowa 857, 201 N.W. 115.

Assessments confirmed by district court will not be disturbed except on clear showing of prejudicial error.

Sullivan v. Board of Palo Alto County, 1922, 193 Iowa 739, 187 N.W. 575.

Where evidence satisfied Supreme Court that improvement would be beneficial and of moderate cost, court will not interfere with order of establishment.

Hixson v. Joint Boards of Iowa and Benton Counties, 1920, 189 Iowa 244, 178 N.W. 349.

Supreme Court cannot increase assessments on certain lands included in district higher than those on which assessment is complained.

Board of Polk County v. McDonald, 1920, 188 Iowa 6, 175 N.W. 817.

United holding of board and district court is entitled to great weight.

Shay v. Board of Ringgold County, 1919, 185 Iowa 282, 170 N.W. 393.

Where some appeals were withdrawn and others disposed of by stipulation, court's final order would be corrected accordingly.

Monson v. Board of Boone and Story Counties, 1914, 167 Iowa 473, 149 N.W. 624.

Supreme Court will not interfere with action of board approved by district court unless assessment was erroneous, unjust and inequitable.

Jackson v. Board of Sup'rs, 1913, 159 Iowa 673, 140 N.W. 849.

**21. Harmless error.**

Trial court's misdescription of land in submitting issues held not prejudicial error.

Sherwood v. Reynolds, 1931, 213 Iowa 539, 239 N.W. 137.

Act of trial court ordering engineer's report of comparative cost of different sections as basis for computation justifying his assessments not prejudicial.

Monson v. Board of Boone and Story Counties, 1914, 167 Iowa 473, 149 N.W. 624.

**22. Presumptions in Supreme Court.**

Assessment presumed to be equitable.

Chicago etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

Assessment, regularly made and affirmed by a court, comes to Supreme Court with every presumption in its favor.

Chicago, etc. R. Co. v. Wright County Drainage Dist. No. 43, 1915, 175 Iowa 417, 154 N.W. 888.

**455.102 Conclusive presumption on appeal.** On the trial of an appeal from the action of the board in fixing and as-

sessing the amount of benefits to any land within the district as established, it shall not be competent to show that any lands assessed for benefits within said district as established are not benefited in some degree by the construction of the said improvement. [SS15,§1989-a12; C24, 27, 31, 35, 39,§7523; C46, 50, 54,§455.102]

Referred to in §357.33 Appeal procedure. Similar provision, §455.54 Evidence—conclusive presumption.

**1. Construction and application.**

Legal establishment of district conclusive as to benefit as to parties served with notice failing to appear.

Chicago, etc. R. Co. v. Sedgwick, 1927, 203 Iowa 726, 213 N.W. 435.

District as a whole presumed to have received benefit once improvement is completed.

Breiholz v. Board of Pocahontas County, 1919, 186 Iowa 1147, 173 N.W. 1, affirmed 42 S. Ct. 13, 257 U. S. 118, 66 L. Ed. 159.

Inequitableness of apportionment not established.

Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

That certain lands in district were not benefited at all or less than others was not ground for setting aside order of establishment.

Mittman v. Farmer, 1913, 162 Iowa 364, 142 N.W. 991, Ann. Cas. 1915C, 1.

Owner on appeal from assessment could not show his land was not benefited.

Oliver v. Monona County, 1902, 117 Iowa 43, 90 N.W. 510.

Owner on appeal from assessment could not show his land was not benefited.

Allerton v. Monona County, 1900, 111 Iowa 560, 82 N.W. 922.

**2. Failure to appeal from order establishing district.**

Order establishing district conclusive on nonappealing parties served with notice, that lands are benefited.

Thompson v. Board of Buena Vista County, 1926, 201 Iowa 1099, 206 N.W. 624.

Claim of total non benefit may not be raised against assessment.

Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

Chicago, etc. R. Co. v. Board of Dubuque County, 1916, 176 Iowa 690, 158 N.W. 553.

**3. Benefits to land in general.**

Establishment of district involves benefits other than the drainage of a particular tract.

In re Drainage Dist. No. 3, Hardin County, 1909, 146 Iowa 564, 123 N.W. 1059; Bump v. Board of Hardin County, 1909, 123 N.W. 1065.

In determining whether lands are benefited consideration is given to advantages of board in ascertaining the truth.

Steward v. Board of Floyd County, 1918, 183 Iowa 256, 166 N.W. 1052.

Evidence held to show land in district would receive some benefit.

Schaforth v. Buena Vista County, 1917, 181 Iowa 1223, 165 N.W. 341.

On appeal from assessment it cannot be shown that there is no benefit at all.

Zinser v. Board, 137 Iowa 644, 114 N.W. 51; Allerton v. Monona Co., 111 Iowa 560, 82 N.W. 922; Ross v. Supervisors, 128 Iowa 439, 104 N.W. 506, 1 L. R. A. (N. S.) 431; Kelley v. District, 158 Iowa 746, 138 N.W. 841.

That lands are situated so as not to need a drain of extraordinary depth may be considered but it does not follow that they are to be entirely relieved of costs of drain.

Monson v. Board of Boone and Story Counties, 1914, 167 Iowa 473, 149 N.W. 624.

Owner could not show lands were not benefited at all.

Haitz v. Joint Boards of Woodbury and Monona Counties, 1914, 167 Iowa 194, 149 N.W. 95.

**4. Injunction.**

Action to enjoin collection of tax on ground of non benefit is not a proper remedy.

Hatch, Holbrook & Co. v. Pottawattamie County, 1876, 43 Iowa 442.

**455.103 Order as to damages—duty of clerk.** If the appeal is from the action of the board as to the amount of damages or compensation awarded, the amount found by the court shall be entered of record, but no judgment shall be rendered therefor. The amount thus ascertained shall be certified by the clerk of said court to the board of supervisors who shall thereafter proceed as if such amount had been by it allowed to the claimant. [S13,§1989-a6; C24, 27, 31, 35, 39,§7524; C46, 50, 54,§455.103]

Referred to in §357.33 Appeal procedure.

**455.104 Costs.** Unless the result on the appeal is more favorable to the appellant than the action of the board, all costs of the appeal shall be taxed to the appellant, but if more favorable, the cost shall be taxed to the appellees. [S13, §1989-a6; C24, 27, 31, 35, 39,§7525; C46, 50, 54,§455.104]

Referred to in §357.33 Appeal procedure.

**1. Construction and application.**

Person appealing order establishing district was not chargeable with attorneys fees incurred by district.

County Drains Nos. 44, 45 v. Long, 1911, 151 Iowa 47, 130 N.W. 152.

Assignment of error that court rendered judgment for costs against sureties on a bond for costs not considered where record failed to show who sureties were and that they had appealed.

In re Bradley, 1902, 117 Iowa 472, 91 N.W. 780.

**455.105 Decree as to establishing district or including lands.** On appeal from the action of the board in establishing or refusing to establish said district, or in including land within the district, the court may enter such order or decree as may be equitable and just in the premises, and the clerk of said court shall certify the decree or order to the board of supervisors which shall proceed thereafter in said matter as if such order had been made by the board. The taxation of costs among the litigants shall be in the discretion of the court. [S13,§1989-a6; C24, 27, 31, 35, 39,§7526; C46, 50, 54,§455.105]

Referred to in §357.33 Appeal procedure.

**1. Validity.**

Act providing for appeal to be heard in equity was not in conflict with art. 1, 89 of the constitution.

Sisson v. Board of Buena Vista County, 1905, 128 Iowa 442, 104 N.W. 454, 70 L. R. A. 440.

**2. Construction and application.**

Injunction to restrain proceedings not granted where order of board was voidable in view of this section.

Simpson v. Board of Kossuth County, 1917, 180 Iowa 1330, 162 N.W. 824.

Function of board in deciding to establish district is legislative.

Denny v. Des Moines Co., 1913, 143 Iowa 466, 121 N.W. 1066.

On appeal from order establishing district a petition in intervention could not be filed.

Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

Board could at subsequent meeting correct its minutes in a proceeding to establish district, to correspond to the facts.

In re Drainage District No. 3, 1910, 146 Iowa 564, 123 N.W. 1059.

Board has no power to establish a district not planned or recommended by an engineer and district court on appeal could not exercise such power.

Hartshorn v. Wright County District Court, 1909, 142 Iowa 72, 120 N.W. 479.

**3. Collateral attack.**

Failure of board to award damages to an owner through whose property the ditch was to pass could not be subject of a collateral attack.

Oliver v. Monona County, 1902, 117 Iowa 43, 90 N.W. 510.

**4. Faiure to appeal.**

Failure to appeal from order of drainage board waives irregularity in engineer's report.

Simpson v. Board of Kossuth County, 1917, 180 Iowa 1330, 162 N.W. 824.

**5. Discretion of board.**

Board has wide discretion in creating or refusing establishment of districts.

Thompson v. Board of Buena Vista County, 1926, 201 Iowa 1099, 206 N.W. 624.

Discretion of supervisors in letting contracts for construction will not be interfered with by courts absent fraud.

Wood v. Hall, 1907, 138 Iowa 308, 110 N.W. 270.

**6. Evidence.**

Supervisors held without power to establish district under the evidence.

Anderson v. Board of Monona County, 1927, 203 Iowa 1023, 213 N.W. 623.

Evidence that cost would exceed benefits was insufficient to require reversal of decree affirming establishment.

Shaw v. Board of Greene County, 1923, 195 Iowa 545, 192 N.W. 525.

Where evidence satisfied Supreme Court that substantial benefit would result at moderate cost, it would not interfere.

Hixson v. Boards of Iowa and Benton Counties, 1920, 189 Iowa 244, 178 N.W. 349.

Evidence insufficient to sustain contention of excessive cost and lack of public utility.
Rider v. Hackett, 1920, 188 Iowa 1289, 176 N.W. 242.

Court will reluctantly interfere with action of board and only on fairly clear showing of error.
Hall v. Polk, 1917, 181 Iowa 828, 165 N.W. 119.

Evidence sustained finding that proposed construction was warranted.
Mapel v. Board of Calhoun County, 1917, 179 Iowa 981, 162 N.W. 198.

Evidence showed establishment was not in best interests of landowners.
In re Nishnabotna River Improvement Dist. No. 2, 1909, 145 Iowa 130, 123 N.W. 769.

**7. Matters considered on appeal.**

Order establishing district entitled to weight on appeal.
Mittman v. Farmer, 1913, 162 Iowa 364, 142 N.W. 991, Ann. Cas. 1915C 1.

On appeal from order of establishment, only objections urged before board may be considered.
Simpson v. Board of Kossuth County, 1917, 180 Iowa 1330, 162 N.W. 824.

District should give weight to findings of board but may reverse the action of the board.
In re Nishnabotna River Improvement Dist. No. 2, 1910, 145 Iowa 130, 123 N.W. 769.

**8. Disposition in district court.**

Dean v. Fay Wright Drainage Dist., 1925, 200 Iowa 1162, 206 N.W. 245.
Vinton v. Board of Mills County, 1923, 196 Iowa 329, 194 N.W. 358.

Power of board to rightly establish improvement will not be interfered with by court of equity.
Maben v. Olson, 1920, 187 Iowa 1060, 175 N.W. 512.

**9. Decree of district court.**

Court on appeal cannot decree establishment of a district substantially different from that under consideration.
Hartshorn v. Wright County District Court, 1909, 142 Iowa 72, 120 N.W. 479.

**10. Costs.**

Board's employment of attorney and engineer on appeal to resist establishment of new district was unauthorized.
Christensen v. Agan, 1930, 209 Iowa 1315, 230 N.W. 800.

**11. Supreme Court, review in.**

While proper for counsel to stipulate original exhibits of engineers to appellate court, same should be abstracted for convenience of appellate court.
Rider v. Hockett, 1920, 188 Iowa 1289, 176 N.W. 242.

Supreme Court not bound by findings of fact below.
Shay v. Board of Ringgold County, 1919, 185 Iowa 282, 170 N.W. 393.

Decree of district court annulling order establishing district is not entitled to same weight as ordinary finding of trial court in an equitable action.
Mittman v. Farmer, 1913, 162 Iowa 364, 142 N.W. 991, Ann. Cas. 1915C 1.

Inclusion of land in district is exercise of legislative power which courts cannot review.
Chicago, etc. R. Co. v. Monona County, 1909, 144 Iowa 171, 122 N.W. 820.

**455.106 Appeal as exclusive remedy — non-appellants.** Upon appeal the decision of the court shall in no manner affect the rights or liabilities of any person who did not appeal. The remedy by appeal provided for in this chapter shall be exclusive of all other remedies. [S13,§1989-a46; C24, 27, 31, 35, 39,§7527; C46, 50, 54,§455.106]

Referred to in §357.33 Appeal procedure.

**1. Construction and application.**

Statutory remedy of appeal to district court from assessment is exclusive and bars action for refund of amount paid.
Whisenand v. Nutt, 1944, 235 Iowa 301, 15 N.W. 2d 533.

District court without authority to order alteration of structure of drainage district.
Miller v. Monona County, 1940, 229 Iowa 165, 294 N.W. 308.

Except as right of appeal is given, order of establishment is conclusive on owners.
Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

Failure to file claim for damages resulting from location of improvement worked a waiver.
O. A. G. 1919-20, p. 329.

**2. Failure to appeal.**

Failure to appeal from voidable order barred action for refund of payments.
Whisenand v. Nutt, 1944, 235 Iowa 301, 15 N.W.2d 533.

Due to failure to appeal liability could not be avoided.
Board of Trustees of Monona-Harrison Drainage Dist. No. 1 v. Board of Monona County, 1942, 232 Iowa 1098, 5 N.W.2d 189.

Jurisdictional defects did not waive failure to appear or appeal from assessment.
Chicago, etc. R. Co. v. Sedgwick, 1927, 203 Iowa 726, 213 N.W. 435.

Where joint boards had jurisdiction to establish district, absent appeal decision was conclusive.
Town of Carpenter v. Joint Drainage Dist. No. 6, 1924, 198 Iowa 182, 197 N.W. 656, modified in other respects 198 Iowa 182, 199 N.W. 265.

If plaintiff had no right to damages it was no concern of his if defendant had waived rights to damages.
Haswell v. Thompson, 1917, 181 Iowa 248, 164 N.W. 605.

Claim of total non-benefit cannot be raised against validity of an assessment.
Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

**3. Collateral attack.**

Authority of board of district to repair common outlet could be questioned by tributary district only by appeal.
Board of Monona-Harrison Drainage Dist. No. 1 v. Board of Monona County, 1942, 232 Iowa 1098, 5 N.W. 2d 189.

If ruling of board that district was legally established as to owner was erroneous, owner's remedy was by appeal.
Wilcox v. Marshall County, 1941, 229 Iowa 865, 294 N.W. 907, modified in other respects, 297 N.W. 640.

Error in assessing tract of 30 acres as one of 39.25 acres did not void assessment and could not be reviewed collaterally.
Whisenand v. Van Clark, 1940, 227 Iowa 800, 288 N.W. 915.

**4. Certiorari.**

Action of board in excluding land from district, if without jurisdiction could be reviewed on appeal or certiorari.
Estes v. Board of Mills County, 1927, 204 Iowa 1043, 217 N.W. 81.

Errors and irregularities were reviewable only by appeal.
Goeppinger v. Boards of Sac, Buena Vista and Calhoun Counties, 1915, 172 Iowa 30, 152 N.W. 58.

**5. Injunction.**

Remedy held to be by appeal, not injunction to restrain collection of assessments where board had jurisdiction.

Baldozier v. Mayberry, 1939, 226 Iowa 693, 285 N.W. 140.

Injunction proper where jurisdiction to order construction of ditch was lacking.

Maasdam v. Kirkpatrick, 1932, 214 Iowa 1388, 243 N.W. 145.

Injunction does not lie to restrain collection of assessments for repairs to improvement.

Seabury v. Adams, 1929, 208 Iowa 1332, 225 N.W. 264.

Owners failing to appeal were not entitled to injunction.

Petersen v. Sorensen, 1921, 192 Iowa 471, 185 N.W. 42.

**6. Mandamus.**

Mandamus would lie to compel repairs to ditch.

Welch v. Borland, 1954, 66 N.W. 2d 866.

Mandamus would lie to compel repairs to ditch where based on failure of board to act.

Wise v. Board of Webster County, 1951, 242 Iowa 870, 48 N.W. 2d 247.

One failing to appeal from erroneously computed tax was not entitled to mandamus requiring repayment.

Whisenand v. Nutt, 1944, 235 Iowa 301, 15 N.W.2d 533.

**7. Supreme court, appeal to.**

Code Supp. 1907, section 1989-a46 held to while perhaps taking away right to have proceedings of board reviewed on certiorari, did not have limited remedies for review of judgment of district court entered on trial of such appeal.

Hartshorn v. Wright County District Court, 1909, 142 Iowa 72, 120 N. W. 479.

Where no landowners appealed from judgment of district court on appeal from assessment of damages there was nothing for Supreme Court to consider.

Gish v. Castner-Williams & Askland Drainage Dist., 1907, 136 Iowa 155, 113 N.W. 757.

**455.107 Reversal by court—rescission by board.** In any case where the decree has been entered setting aside the establishment of a drainage district for errors in the proceedings and such decree becomes final, the board shall rescind its order establishing the drainage district, assessing benefits, and levying the tax based thereon, and shall also cancel any contract made for construction work or material, and shall refund any and all assessments paid. [S13,§1989-a14; C24, 27, 31, 35, 39,§7528; C46, 50, 54,§455.107]

Referred to in §357.33 Appeal procedure.

**455.108 Setting aside establishment—procedure.** After the court on appeal has entered a decree revising or modifying the action of the board, the board shall fix a new date for hearing, and proceed in all particulars in the manner provided for the original establishment of the district, avoiding the errors and irregularities for which the original establishment was set aside, and after a valid establishment thereof, proceed in all particulars as provided by law in relation to the original establishment of such districts. [S13,§1989-a14; C24, 27, 31, 35, 39,§7529; C46, 50, 54,§455.108]

Referred to in §357.33 Appeal procedure.

**455.109 Reassessment to cure illegality.** Whenever any special assessment upon any lands within any drainage district shall have been heretofore adjudged to be void for any jurisdictional defect or for any illegality or uncertainty as to the terms of any contract and the improvement shall have been wholly completed, the board or boards of supervisors shall have power to remedy such illegality or uncertainty as to the terms of any such contract with the consent of the person with whom such contract shall have been entered into and make certain the terms of such contract and shall then cause a reassessment of such land to be made on an equitable basis with the other land in the district by taking the steps required by law in the making of an original assessment and relevying the tax in accordance with such assessment, and such tax shall have the same force and effect as though the board or boards of supervisors had jurisdiction in the first instance and no illegality or uncertainty existed in the contract. [C24, 27, 31, 35, 39,§7530; C46, 50, 54,§455.109]

Referred to in §357.33 Appeal procedure.

**1. Prior laws, reasessment under.**

Act 1904 (30GA) chs 67, 68, cured defects in Code 1897, §1952, and validated proceedings thereunder, except those relating to assessment; power of reassessment and relevy being conferred.

Smittle v. Haag, 1908, 140 Iowa 492, 118 N.W. 869.

**455.110 Monthly estimate — payment.** The supervising engineer shall, on or before the tenth day of each calendar month, furnish the contractor and file with the auditor estimates for work done during the preceding calendar month under the contract on each section, and the auditor shall at once draw warrants in favor of such contractor on the drainage funds of the district or give him an order directing the county treasurer to deliver to him or them improvement certificates, or drainage bonds as the case may be, for eighty percent of the estimate on work done. Such monthly estimates shall remain on file in the office of the auditor as a part of the permanent records of the district to which they

relate. Drainage warrants, bonds or improvement certifi cates when so issued shall be in such amounts as the auditor determines, not, however, in amounts in excess of one thou sand dollars.

All of the provisions of this section shall, when applicable, apply to repair work and improvement work in the same force and effect as to original construction. [C97,§1944; S13, §1944; 1989-a9; C24, 27, 31, 35, 39,§7531; C46, 50, 54,§455.110]

**1. Construction and application.**

Code Supp. 1913, §1989a-34, relative to issuance of warrants to contractor for 80 percent of work done if certified by engineer was mandatory.

Farmers' Loan and Trust Co. of Sioux City v. Wright County, 1921, 191 Iowa 825, 183 N.W. 500.

Board has no power to pass on estimates preceding final report of engineer.

Littell v. Webster County, 1911, 152 Iowa 206, 131 N.W. 691, modified in other respects 152 Iowa 206, 132 N.W. 426.

Balance due contractor determined by computation of work done under contract, at agreed prices, deducting sums paid under engineer's estimates.

Monaghan v. Vanatta, 1909, 144 Iowa 119, 122 N.W. 610.

**2. Contracts.**

Payments made under estimates furnished by engineer when confirmed by public authorities are final and non recoverable.

Nishnabotna Drainage Dist. No. 10 v. Lana Const. Co., 1919, 185 Iowa 368, 170 N.W. 491.

Where contractor was insolvent and abandoned contract, and labor and material liens were filed, district was justified in withholding payments.

Wykoff v. Stewart, 1917, 180 Iowa 949, 164 N.W. 122.

Under the contract engineer not empowered to pass on character of the work and completion of work.

Littell v. Webster County, 1911, 152 Iowa 206, 131 N.W. 691, modified in other respects, 152 Iowa 206, 132 N.W. 426.

**3. Extra work.**

Contractor not entitled to extra compensation because he was obliged to place excavated dirt largely on one side, where specifications provided, "In all cases materials shall be deposited as directed by engineer."

Whitney v. Wendel, 1922, 193 Iowa 175, 186 N.W. 771.

**4. Funds from which payment made.**

Drainage district funds not part of general funds of county.

Houghton v. Bonnicksen, 1931, 212 Iowa 902, 237 N.W. 313.

Payment for ditching in first instance out of general fund could not enable owners taxed therefor to evade payment of tax.

Patterson v. Baumer, 1876, 43 Iowa 477.

**5. Warrants.**

Since draining of ditch banks was authorized warrants issued for such work were valid.

Board of Hamilton County v. Paine, 1926, 203 Iowa 263, 210 N.W. 929.

**6. Interest.**

Contractor held entitled to interest on amount due from district during delay in payment.

Gjellefald v. Drainage Dist. No. 42, 1927, 203 Iowa 1144, 212 N.W. 691.

**7. Mandamus.**

In mandamus to compel issuance of warrants for work done evidence insufficient to show fraud of engineer in his report, or to show substantial compliance with contract.

Farmers' Loan & Trust Co. of Sioux City v. Wright County, 1921, 191 Iowa 825, 183 N.W. 500.

Contractor not entitled to relief for value of work done, or contract price less sum necessary to complete work according to contract.

Littell v. Webster County, 1911, 152 Iowa 206, 131 N.W. 691, modified in other respects, 152 Iowa 206, 132 N.W. 426.

**8. Actions.**

Action cannot be maintained against county to recover compensation for work done on district.

Houghton v. Bonnicksen, 1931, 212 Iowa 902, 237 N.W. 313.

Contractor could sue in quantum meruit for sums due him above the 80 percent for which he was entitled to warrants.

Farmers' Loan & Trust Co. of Sioux City v. Wright County, 1921, 191 Iowa 825, 183 N.W. 500.

Petition claiming against county for materials furnished held not to show anything was due principal contractor so as to entitle plaintiff to equitable relief.

Iowa Pipe & Tile Co. v. Parks & Gerber, 1915, 169 Iowa 438, 151 N.W. 438.

**455.111 Completion of work—report—notice.** When the work to be done under any contract is completed to the satisfaction of the engineer in charge of construction, he shall so report and certify to the board, which shall fix a day to consider said report and shall give notice of the time and purpose of such meeting by one publication in a newspaper of general circulation published in said county and the date fixed for considering said report shall be not less than five days after the date of such publication. [S13,§1989-a9; C24, 27, 31, 35, 39,§7532; C46, 50, 54,§455.111]

Referred to in §357.18 Acceptance of work.

**1. Construction and application.**

Contractor cannot be deprived of rights to compensation by capricious or arbitrary action of engineer.

Littell v. Webster County, 1911, 152 Iowa 206, 131 N.W. 691, modified in other respects, 152 Iowa 206, 132 N.W. 426.

Where board paid for work done on basis of county surveyor's report, absent fraud such action could not be reviewed in suit by those who petitioned for ditch to restrain levy of tax.

Noyes v. Harrison County, 1881, 57 Iowa 312, 10 N.W. 751.

**2. Contract.**

Engineer's refusal to receive work as in compliance with contract did not defeat right of contractor to recover.

Littell v. Webster County, 1911, 152 Iowa 206, 131 N.W. 691, modified in other respects, 152 Iowa 206, 132 N.W. 426.

**3. Performance of contract.**

Evidence held to show no substantial performance, justifying refusal of the work.

Littell v. Webster County, 1911, 152 Iowa 206, 131 N.W. 691, modified in other respects 152 Iowa 206, 132 N.W. 426.

**4. Warrants.**

Taxpayers suing to enjoin payment of warrants chargeable with notice of engineer's report and provisions of contract.

Dashner v. Woods Bros. Const Co., 1928, 205 Iowa 64, 217 N.W. 464.

**5. Interest.**

Until there was unqualified acceptance of work by engi-

neer, contractor was not entitled to interest on money held in reserve by district.

Whitney v. Wendel, 1922, 193 Iowa 175, 186 N.W. 771.

**6. Mandamus.**

Evidence insufficient to show fraud by engineer or that contractor substantially complied with the contract.

Farmers' Loan & Trust Co. of Sioux City v. Wright County, 1921, 191 Iowa 825, 183 N.W. 500.

While contractor was refused mandamus to compel issuance of warrants, appellate court would remand case to permit trial of whether petitioner was entitled to any relief.

Littell v. Webster County, 1911, 152 Iowa 206, 132 N.W. 426.

**7. Actions.**

Contractor could sue in quantum meruit for sums due him above the 80 percent for which he was entitled to warrants.

Farmers' Loan & Trust Co. of Sioux City v. Wright County, 1921, 191 Iowa 825, 183 N.W. 500.

**8. Evidence.**

Board had burden to sustain its allegation that approval of work had been secured by fraud.

Board of Sup'rs of Webster County v. Sargent Tile Ditcher Co., 1922, 186 N.W. 14.

**455.112 Objections.** Any party interested in the said district or the improvement thereof may file objections to said report and submit any evidence tending to show said report should not be accepted. [C24, 27, 31, 35, 39,§7533; C46, 50, 54, §455.112]

Referred to in §357.18 Acceptance of work.

**1. Actions.**

No presumption that board will act in bad faith or fraudulently.

Monter v. Board of Webster County, 1919, 187 Iowa 625, 174 N.W. 407.

**455.113 Final settlement.** If it finds the work under any contract has been completed and accepted, the board shall compute the balance due, and if there are no liens on file against such balance, it shall enter of record an order directing the auditor to draw a warrant in favor of said contractor upon the levee or drainage fund of said district or give him an order directing the county treasurer to deliver to him improvement certificates or drainage bonds, as the case may be, for such balance found to be due, but such warrants, im-

provement certificates or bonds shall not be delivered to the contractor until the expiration of thirty days after the acceptance of the work. [C73,§1212; C97,§1944; S13,§§1944, 1989-a9; C24, 27, 31, 35, 39,§7534; C46, 50, 54,§455.113]

Filing of claims, §573.10.

**1. Construction and application.**

Contractor cannot be deprived of rights to compensation by capricious or arbitrary acts of the engineer.

Littell v. Webster County, 1911, 152 Iowa 206, 131 N.W. 691, modified in other respects, 152 Iowa 206, 132 N.W. 426.

**2. Contracts.**

Contractor held entitled to compensation for overdepth excavation in removing dirt washed into ditch constructed under contract.

Gjellefald v. Drainage Dist. No. 42, 1927, 203 Iowa 1144, 212 N.W. 691.

Engineer's refusal to receive work as in compliance with contract did not defeat right of contractor to recover.

Littell v. Webster County, 1911, 152 Iowa 206, 131 N.W 691, modified in other respects, 152 Iowa 206, 132 N.W. 426.

**3. Performance of contract.**

That expenditure of $10,000 is necessary to complete work negatives claim of substantial performance by contractor.

Littell v. Webster County, 1911, 152 Iowa 206, 131 N.W. 691, modified in other respects, 152 Iowa 206, 132 N.W. 426.

**4. Acceptance of work.**

Acceptance in manner provided by law, of the work as full performance not poisoned by fraud of contractor, is a finality.

Nishnabotna Drainage Dist. No. 10 v. Lana Const. Co., 1919, 185 Iowa 368, 170 N.W. 491.

**5. Liability of district.**

District held liable for excavation done between certain points though such was greater distance than estimated.

Monaghan v. Vanatta, 1909, 144 Iowa 119, 122 N.W. 610.

**6. Payment.**

That more earth was removed than estimated in preliminary is no reason why the work should not be paid for.

Monaghan v. Vanatta, 1909, 144 Iowa 119, 122 N.W. 610.

Payment for ditching in the first instance from general fund will not enable persons taxed therefor to evade payment of tax.

Patterson v. Baumer, 1876, 43 Iowa 477.

**7. Recovery of payment made.**

Payments made due to mistake, by auditor for drainage construction may be recoverable.

Pocahontas County v. Katz-Craig Contracting Co., 1917, 181 Iowa 1313, 165 N.W. 422.

**8. Interest.**

Contractor entitled to interest on amount due from district during delay in payment.

Gjellefald v. Drainage Dist. No. 42, 1927, 203 Iowa 1144, 212 N.W. 691.

**9. Waiver of contract provisions.**

Contractor may postpone tender of acceptance until completion of entire work.

Littell v. Webster County, 1911, 152 Iowa 206, 131 N.W. 691, modified in other respects, 152 Iowa 206, 132 N.W. 426.

**10. Laborers, rights of.**

Laborers held to have equitable right to portion of contract price in hands of county as against contractor's surety.

Humboldt County v. Ward Bros., 1914, 163 Iowa 510, 145 N.W. 49.

**11. Liens.**

Fact that, on order of principal contract, auditor issued warrants to subcontractor for less than he was entitled to, did not estop subcontractor from suing principal contractor for tile purchased for district.

Graettinger Tile Works v. Gjellefald, 1927, 214 N.W. 579.

**12. Surety's rights.**

As against attaching creditors of contractor, surety on contractor's bond is entitled only to be made whole from unexpended contract price for cost of completing the job.

Winnebago County State Bank v. Davidson, 1919, 186 Iowa 532, 172 N.W. 449.

**13. Mandamus.**

Mandamus not granted against engineer and board to compel approval of contractor's performance and to levy tax therefor where refusal's based on mere error.

Federal Contracting Co. v. Board of Webster County, 1911, 153 Iowa 362, 133 N.W. 765.

Mandamus does not lie to compel supervisors or engineer to accept work where refusal is due to error in judgment.

Littell v. Webster County, 1911, 152 Iowa 206, 131 N.W. 691, modified in other respects, 152 Iowa 206, 132 N.W. 426.

**14. Injunction.**

Injunction not available against assessment and payment for work unless proceedings were wholly void.

Town of Carpenter v. Joint Drainage Dist. No. 6, 1924, 198 Iowa 182, 197 N.W. 656, modified in other respects, 198 Iowa 182, 199 N.W. 265.

**15. Actions.**

Petition against county for materials furnished held not to show anything due contractor so as to entitle plaintiff to equitable relief.

Iowa Pipe & Tile Co., Parks & Gerber, 1915, 169 Iowa 438, 151 N.W. 438.

**16. Presumptions and burden of proof.**

Board of Supervisors had burden of proving that its approval of work and payment was secured by fraud and concealment.

Board of Webster County v. Sargent Tile Ditcher Co., 1922, 186 N.W. 14.

**17. Evidence.**

Evidence insufficient to show that approval of engineer and board and payment were secured by fraud and concealment.

Board of Webster County v. Sargent Tile Ditcher Co., 1922, 186 Iowa 14.

**455.114 Abandonment of work.** In case any contractor abandons or fails to proceed diligently and properly with the work before completion, or in case he fails to complete the same in the time and according to the terms of the contract, the board shall make written demand on him and his surety to proceed with the work within ten days. Service of said demand may be personal, or by registered mail addressed to the contractor and the surety, respectively, at their places of residence or business, as shown by the records in the auditor's office. [S13,§§1944, 1989-a10; C24, 27, 31, 35, 39,§7535; C46, 50, 54,§455.114]

Referred to in §357.17 Bond of contractor.

**1. Construction and application.**

Where contractor fails to perform board may make new contract without notice to taxpayers.

Horton Tp. of Osceola County v. Drainage Dist. No. 26 of Osceola County, 1921, 192 Iowa 61, 182 N.W. 395.

Where contractor failed to perform and was insolvent, district could declare forfeiture and relet the work.

Wykoff v. Stewart, 1917, 180 Iowa 949, 164 N.W. 122.

Failure to notify surety of contractor of intent to forfeit did not relieve surety from liability where bond did not provide for notice and surety was not prejudiced.

Humboldt County v. Ward Bros., 1914, 163 Iowa 510, 145 N.W. 49.

**2. Registered mail.**

Service of notice by "registered letter" is incomplete until properly addressed letter is registered, numbered, and receipt given to sender.

Ross v. Hawkeye Ins. Co., 1895, 93 Iowa 222, 61 N.W. 852, 34 L. R. A. 466.

**3. Forfeiture, declaring a.**

Where contractor and sureties became insolvent and it was useless to declare forfeiture and sue on bond, failure to do so did not prejudice landowners.

Busch v. Joint Drainage Dist. No. 49-79, Winnebago and Hancock Counties, 1924, 198 Iowa 398, 198 N.W. 789.

**4. Withholding payment.**

Under the facts district was justified in withholding payments.

Wykoff v. Stewart, 1917, 180 Iowa 949, 164 N.W. 122.

**5. Mistake, rescission for.**

Mutual mistake entitled contractor to rescind.

Board of Sup'rs of Greene County v. Adamson, 1918, 182 Iowa 1265, 166 N.W. 563.

**455.115 New contract—suit on bond.** Unless the contractor or the surety on his bond shall appear and in good faith proceed to comply with the demand, and resume work under the contract within the time fixed, the board shall proceed to let contracts for the unfinished work in the same manner as original contracts, and apply all funds not paid to the original contractor toward the completion of the work, and if not sufficient for such purpose, may cause suit to be brought upon the bond of the defaulting contractor for the benefit of the district, and the amount of recovery thereon

shall be credited to the district. [C73,§1212; C97,§1944; S13, §§1944, 1989-a10; C24, 27, 31, 35, 39,§7536; C46, 50, 54,§455.115]

Referred to in §357.17 Bond of contractor.

**1. Construction and application.**

Power of board under this section includes power to compromise claims.

Horton Tp. of Osceola County v. Drainage Dist. No. 26, 1921, 192 Iowa 61, 182 N.W. 395.

**2. Breach of contract.**

County may recover damages sustained by drainage district as its representative for contractor's breach.

Webster County v. Nelson, 1912, 154 Iowa 660, 135 N.W. 390.

**3. Termination of contract and reletting work.**

Where contractor declined to proceed because of quicksand, district could finish improvement on time basis at cost plus percentage.

Busch v. Joint Drainage Dist. No. 49-79, Winnebago and Hancock Counties, 1924, 198 Iowa 398, 198 N.W. 780.

Where contractor was insolvent and failed to perform district had right to declare forfeiture and relet the work.

Wykoff v. Stewart, 1917, 180 Iowa 949, 164 N.W. 122.

Board could terminate contract and relet work for delays, and it could recover difference between contract price and cost of completion.

Humboldt County v. Ward Bros., 1914, 163 Iowa 510, 145 N.W. 49.

**4. Performance of original contract after reletting.**

Where plaintiff failed to perform and participated in new proceedings for letting of new contract for same work by bidding, he could not, failing to get the contract contend he should be permitted to perform under the old contract.

R. A. Brown & Co. v. Board of Pottawattamie County, 1906, 129 Iowa 533, 105 N.W. 1019.

**5. Payment of contractor completing work.**

Where after default, contract was awarded to another contractor, he could, on completion, bring mandamus to compel levy of tax to pay for such work.

Hoy v. Drainage Dist. No. 34, Buena Vista County, 1921, 190 Iowa 1101, 181 N.W. 456.

**6. Laborers, rights of.**

Laborers held to have equitable right to portion of con-

tract price in hands of county as against contractor's surety.

Humboldt County v. Ward Bros., 1914, 163 Iowa 510, 145 N.W. 49.

**7. Surety's rights.**

As against attaching creditors of contractor, surety on contractor's bond is entitled only to be made whole from unexpended contract price for cost of completing job.

Winnebago County State Bank v. Davidson, 1919, 186 Iowa 532, 172 N.W. 449.

**8. Liability on bond.**

Failure to notify surety of contractor of intent to forfeit did not relieve surety from liability bond did not provide for notice and surety was not prejudiced.

Humboldt County v. Ward Bros., 1914, 163 Iowa 510, 145 N.W. 49.

Liability of surety on contractor's bond is measured by contractor's liability.

Webster County v. Nelson, 1911, 154 Iowa 660, 135 N.W. 390.

**9. Release of surety.**

Contract by surety to complete improvement held to be without consideration and not binding.

Holland v. Story County, 1923, 195 Iowa 489, 192 N.W. 402.

Surety not relieved of liability by changes in work as it progressed which did not increase amount for which it would otherwise be liable.

Humboldt County v. Ward Bros., 1914, 163 Iowa 510, 145 N.W. 49.

**10. Bond, recovery on.**

Right of county to recover on contractor's bond not affected by refusal of county to pay on installment for work done after intent to forfeit was declared.

Webster County v. Nelson, 1912, 154 Iowa 660, 135 N.W. 390.

**11. Actions.**

Contractor cannot be subjected to suit of individual landowners for breach of contract.

Town of Carpenter v. Joint Drainage Dist. No. 6, 1924, 198 Iowa 182, 197 N.W. 656, modified in other respects 198 Iowa 182, 199 N.W. 265.

Where forfeiture was resisted before board at a time set for such resistance, the fact that notice of intent to forfeit was defective was not material.

Webster County v. Nelson, 1912, 154 Iowa 660, 135 N.W. 390.

**12. Damages.**

Contractor was bound to keep ditch in repair until completion of contract and cost of remedying failure to do so was an element of damages when work was relet.

Humboldt County v. Ward Bros., 1914, 163 Iowa 510, 145 N.W. 49.

**455.116 Construction on or along highway.** When a levee or drainage district shall have been established by the board and it shall become necessary or desirable that the levee, ditch, drain, or improvement shall be located and constructed within the limits of any public highway it shall be so built as not materially to interfere with the public travel thereon. [S13,§1989-a20; C24, 27, 31, 35, 39,§7537; C46, 50, 54,455.116]

**1. Mandamus.**

Board must build highway bridge over drainage ditch since drainage district cannot extinguish public easements for highway purposes.

Robinson v. Board of Sup'rs of Davis County, 1936, 222 Iowa 663, 269 N.W. 921.

**455.117 Establishment of highways.** The board shall have power to establish public highways along and upon any levee or embankment along any such ditch or drain, but when so established the same shall be worked and maintained as other highways and so as not to obstruct or impair the levee, ditch, or drain. [S13,§1989-a20; C24, 27, 31, 35, 39,§7538; C46, 50, 54,§455.117]

**455.118 Bridges.** When such levee, ditch, drain, or change of any natural watercourse crosses a public highway, necessitating moving or building or rebuilding any secondary road bridge, the board of supervisors when in the exercise of its sound discretion it appears that it will promote the general public welfare shall move, build, or rebuild the same, paying the costs and expenses thereof from either or both of the secondary road funds.

If the bridge be a primary road bridge, the work aforesaid shall be done by the state highway commission and paid for out of the primary road fund. [S13,§1989-a19; C24, 27, 31, 35, 39,§7539; C46, 50, 54,§455.118]

Primary and secondary roads, chs 309-314.

**1. Construction and application.**

Board not required to maintain private bridge over drainage ditch.

O. A. G. 1932, p. 103.

Where drain in city of second class, board should construct necessary culverts and city may aid in cost.
O. A. G. 1919-20, p. 336.

**2. Funds.**

Cost of bridge on county road paid from 35 percent fund unless bridge over drainage ditch where payment would be from 65 percent fund.
O. A. G. 1938, p. 445.

**3. Railroads, liability of.**

Cost of bridge over drain should be included in assessment when made in order to recover.
U. S. Railroad Administration v. Board of Sup'rs of Buena Vista County, 1923, 196 Iowa 309, 194 N.W. 365.

**4. Mandamus.**

Mandamus proper to compel construction of bridge over drainage ditch crossing highway.
Robinson v. Board of Sup'rs of Davis County, 1936, 222 Iowa 663, 269 N.W. 921.

Board has no discretion in construction of bridge over drainage ditch crossing highway.
Perley v. Heath, 1926, 201 Iowa 1163, 208 N.W. 721.

The statute is mandatory.
Ruffcorn v. Chatburn, 1914, 166 Iowa 611, 147 N.W. 1110.

**5. Evidence.**

Mandamus proper to compel construction of bridge where highway not abandoned.
Robinson v. Board of Sup'rs of Davis County, 1936, 222 Iowa 663, 269 N.W. 921.

**455.119 Construction across railroad.** Whenever the board of supervisors shall have established any levee, or drainage district, or change of any natural watercourse and the levee, ditch, drain, or watercourse as surveyed and located crosses the right of way of any railroad company, the county auditor shall immediately cause to be served upon such railroad company, in the manner provided for the service of original notices, a notice in writing stating the nature of the improvement to be constructed, the place where it will cross the right of way of such company, and the full requirements for its complete construction across such right of way as shown by the plans, specifications, plat, and profile of the engineer appointed by the board, and directing such company to construct such improvement according to said plans and specifications at the place designated, across its right of way, and to build and construct or

rebuild and reconstruct the necessary culvert or bridge where any ditch, drain, or watercourse crosses its right of way, so as not to obstruct, impede, or interfere with the free flow of the water therein, within thirty days from the time of the service of such notice upon it. [S13,§1989-a18; C24, 27, 31, 35, 39,§7540; C46, 50, 54,§455.119]

Referred to in §455.120 Duty to construct. Manner of service, R. C. P. 56(a) et seq.

**1. Construction and application.**

Notice of drainage proceedings during federal control was not required to be given to director general where given to railway company.

Chicago, etc. R. Co. v. Board of Clinton County, 1924, 197 Iowa 1208, 198 N.W. 640.

Though railroad had duty to make all excavations for drainage improvement across its right of way, it had no obligation to open or remove a bridge across drain to pass contractor's equipment.

Chicago, etc. R. Co. v. Board of Sup'rs, 1922, 194 Iowa 656, 188 N.W. 986.

Railroad required to construct and maintain necessary bridges and culverts incident to construction and maintenance of proper crossings where railways cross public highways.

O. A. G. 1928, p. 191.

**2. Actions.**

In landowner's action against railroad for damage from overflow, record showed railroad complied fully with plans and specifications for drainage ditch, barring recovery.

Kellogg v. Illinois, etc. R. Co., 1932, 239 N.W. 557.

**455.120 Duty to construct.** Upon receiving the notice provided in section 455.119, such railroad company shall construct the improvement across its right of way according to the plans and specifications prepared by the engineer for said district, and build or rebuild the necessary culvert or bridge and complete the same within the time specified. [S13,§1989-a18; C24, 27, 31, 35, 39,§7541; C46, 50, 54,§455.120]

**1. Construction and application.**

Statute held to not provide that cost of construction of new bridge by railroad, over drainage improvement would be element of railroad company's damages.

Chicago, etc. R. Co. v. Drainage Dist. No. 5, Sac County, 1909, 142 Iowa 607, 121 N.W. 193.

Evidence of oral agreement by which railroad would place double span bridge over wider ditch than planned

excluded since it would be unlawful to place pilings or other obstructions in the ditch.

Mason City etc. R. Co. v. Board of Wright County, 1908, 116 N.W. 805, reversed on other grounds, 144 Iowa 10, 121 N.W. 39.

**2. Contracts.**

Contract held to not bind railroad to open or remove bridge across drain.

Chicago, etc. R. Co. v. Board of Sup'rs, 1922, 194 Iowa 656, 188 N.W. 986.

**3. Cost of construction.**

Cost of construction of drainage ditch across railroad is an element of damages to the company, but construction of culverts or bridges thereby made necessary is not an element of damages.

Mason City etc. R. Co. v. Board of Wright County, 1909, 144 Iowa 10, 121 N.W. 39.

**4. Liability of railroad.**

Railroad not liable for flooding where bridge and embankment was constructed according to plans and specifications of drainage district.

Hunter v. Chicago, etc. R. Co., 1928, 206 Iowa 655, 221 N.W. 360.

**5. Actions.**

Where petition alleges that defendant failed to construct and keep in repair suitable drains, not error for court to instruct jury on theory that ditch had been constructed.

Drake v. Chicago, etc. R. Co., 1886, 70 Iowa 59, 29 N.W. 804.

**455.121 Bridges at natural waterway—costs.** The cost of building, rebuilding, constructing, reconstructing, changing, or repairing, as the case may be, any culvert or bridge, when such improvement is located at the place of the natural waterway or place provided by the railroad company for the flow of the water, shall be borne by such railroad company without reimbursement therefor. (S13,§1989-a18; C24, 27, 31, 35, 39,§7542; C46, 50, 54,§455.121]

**1. Validity.**

Provision that railroad whose right of way is crossed by drain should not be allowed damages for bridging same was not invalid as taking property without compensation.

Chicago, etc. R. Co. v. Board of Appanoose County, 1908, 170 F. 665, affirmed 182 F. 291, 104 C. C. A. 573, 31 L. R. A., N. S., 1117, and 182 F. 301, 104 C. C. A. 583.

**2. Construction and application.**

In proceedings to condemn right of way for ditch across railroad the damages are confined to value of easement across right of way.

Chicago, etc. R. Co. v. Board of Appanoose County, 1910, 182 F. 291, 104 C. C. A. 573, 31 L. R. A., N. S. 1117.

Where county destroyed culvert carrying surface water from dominant to servient estate on other side of road, cost of new culvert to be borne by county.

Nixon v. Welch, 1946, 238 Iowa 34, 24 N.W.2d 476, 169 A. L. R. 1141.

Where new ditch was constructed in natural waterway, railway could not recover cost of constructing or maintaining bridge across ditch.

Chicago, etc. R. Co. v. Board of Washington County, 1923, 196 Iowa 370, 194 N.W. 266.

In absence of statute, railroad not entitled to recover cost of erecting new bridge over ditch passing through its right of way.

Chicago, etc. R. Co. v. Drainage Dist. No. 5, Sac County, 1909, 142 Iowa 607, 121 N.W. 193.

**3. Evidence.**

Evidence did not show improvement over railroad right of way amounted to reconstruction of original ditch requiring reconstruction of railroad bridge.

Chicago, etc. R. Co. v. Board of Sup'rs., 1922, 194 Iowa 656, 188 N.W. 986.

**455.122 Construction when company refuses.** If the railroad company shall fail, neglect, or refuse to comply with said notice, the board shall cause the same to be done under the supervision of the engineer in charge of the improvement, and such railroad company shall be liable for the cost thereof to be collected by the county for said district in any court having jurisdiction. [S13,§1989-a18; C24, 27, 31, 35, 39,§7543; C46, 50, 54,§455.122]

**455.123 Cost of construction across railway.** The cost of constructing the improvement across the right of way of such company, not including the cost of building or rebuilding and constructing or reconstructing any necessary culvert or bridge, when such improvement is located at the

place of the natural waterway or place provided by the railroad company for the flow of the water, shall be considered as an element of such company's damages by the appraiser to appraise damages. [S13,§1989-a18; C24, 27, 31, 35, 39,§7544; C46, 50, 54,§455.123]

**1. Construction and application.**

Where new ditch was constructed in natural waterway, railway could not recover cost of constructing or maintaining bridge across ditch.

Chicago, etc. R. Co. v. Board of Washington County, 1923, 196 Iowa 370, 194 N.W. 266.

In absence of statute, railroad not entitled to recover cost of erecting new bridge over ditch passing through its right of way.

Chicago, etc. R. Co. v. Drainage Dist. No. 5 Sac County, 1909, 142 Iowa 607, 121 N.W. 193.

**455.124 Passing drainage equipment across railway.** It shall be the duty of any stream or electric railway company to furnish the contractor unrestricted passage across its right of way, telegraph, telephone, and signal lines for his machines and equipment, whenever recommended by the engineer and approved by the board of supervisors, and the cost thereof shall be considered as an element of such company's damages by the appraisers thereof; provided that if such company shall fail to do so within thirty days after written notice from the auditor, the engineer shall cause the same to be done under his direction and the company shall be liable for the cost thereof to be collected by the county in any court having jurisdiction. Provided, further, that the railway company shall have the right to designate the day and hours thereof within said period of thirty days above mentioned when such crossing shall be made. [C24, 27, 31, 35, 39,§7545; C46, 50, 54,§455.124]

**1. Construction and application.**

Though railroad had duty to make all necessary excavations for drainage improvement across its right of way, it had no obligation to open or remove a bridge across drain to pass contractor's equipment.

Chicago, etc. R. Co. v. Board of Sup'rs, 1922, 194 Iowa 656, 188 N.W. 986.

**2. Contracts.**

Contract held to not bind railroad to open or remove bridge across drain.

Chicago, etc. R. Co. v. Board of Sup'rs, 1922, 194 Iowa 656, 188 N.W. 986.

**455.125 Passage across other public utilities.** The owner or operator of a public utility, whether operated publicly or privately, other than steam and electric railways, shall afford the contractor of any drainage project under this chapter unrestricted passage for his machines and equipment across the right of way lines or other equipment of such utility whenever recommended by the engineer and approved by the board of supervisors. [C24, 27, 31, 35, 39,§7546; C46, 50, 54, §455.125]

**455.126 Failure to comply.** If the owner or operator of the utility fails to afford such passage within fifteen days after written notice from the drainage engineer so to do, the contractor, under the supervision of the engineer, may proceed to do the necessary work to afford such passage and to place said utility in the same condition as before said passage; but the owner or operator shall have the right to designate the hours of the day when such crossing or passage shall be made. [C24, 27, 31, 35, 39,§7547; C46, 50 54, §455.126]

**455.127 Expenses attending passage.** The work necessary to afford such passage shall be deemed to be covered by and included in the contract with the district under which the contractor is operating and if the work is done by the owner or operator of such utility the reasonable expense thereof shall be paid out of the drainage funds of the district and charged to the account of the contractor. [C24, 27, 31, 35, 39,§7548; C46, 50, 54,§455.127]

**455.128 Annexation of additional lands.** After the establishment of a levee or drainage district, if the board becomes convinced that additional lands are benefited by the improvement and should have been included in the district as originally established, it may adopt, with or without a petition from owners of the proposed annexed lands, a resolution of necessity for annexation of such additional land and appoint an engineer with the qualifications provided in this chapter to examine such additional lands, to make a survey and plat thereof showing their relation, elevation, and conditions of drainage with reference to such established district, and to make and file with the auditor a report as in this chapter provided for the original establishment of such district. [S13,§1989-a54; C24, 27, 31, 35, 39, §7549; C46, 50, 54,§455.128]

**1. Construction and application.**

Section held to contemplate addition of lands to district both after original establishment and after improvement has been made.

Bird v. Board of Harrison County, 1912, 154 Iowa 692, 135 N.W. 581.

Upper proprietors of established district could establish new district to turn waters into established ditch.

Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

**2. Addition of lands.**

Section authorizes annexation of lands that should have been included in original district and does not limit annexation to lands not originally considered for inclusion.

Roewe v. Pavik, 1955, 246 Iowa 1112, 70 N.W.2d 845.

Where original improvement became obstructed and new lands were added to district and new improvements made, it was held that such amounted to an original proceeding to establish a new district.

Hopkins v. Board of Boone County, 1925, 200 Iowa 441, 204 N.W. 242.

**3. Adjoining county, lands in.**

Section does not authorize annexation of lands in an adjoining county.

Glenn v. Marshall County, 1926, 201 Iowa 1003, 206 N.W. 802.

**4. Intercounty districts.**

Lands in other districts could not be annexed to intercounty district without joint action of supervisors of counties involved.

Farley Drainage Dist. No. 7 of Hamilton County v. Big Four Joint Drainage Dist., 1928, 207 Iowa 970, 221 N.W. 589.

**5. Assessments.**

Assessment of original lands at approximately one fifth of the charge made on additional lands inequitable in absence of showing to such effect.

Philip Drainage Dist. v. Peterson, 1922, 192 Iowa 1094, 186 N.W. 18.

**6. Finding.**

Finding of joint boards that improvement will be of benefit is exercise of quasi judicial power.

Thompson v. Board of Buena Vista County, 1926, 201 Iowa 1099, 206 N.W. 624.

**7. Exclusion of lands.**

Board held without power to exclude lands from district after establishment.

Estes v. Board of Mills County, 1927, 204 Iowa 1043, 217 N.W. 81.

**8. Subdrainage districts.**

Code Supp. 1907, Section 1989-a23, incorporated in Sections 455.7, 455.9, 455.48, 455.70, 455.71, held applicable to annexed lands.

Bird v. Board of Harrison County, 1912, 154 Iowa 692, 135 N.W. 581.

**455.129 Proceedings on report.** If such report recommends the annexation of such lands or any portion thereof, the board shall consider such report, plats, and profiles and if satisfied that any of such lands are materially benefited by the district and that such annexation is feasible, expedient, and for the public good, it shall proceed in all respects as to notice, hearing, appointment of appraisers to fix damages and as to hearing thereon; and (if such annexation is finally made), as to classification and assessment of benefits, to the same extent and in the same manner as provided in the establishment of an original district. All parties shall have the right to receive notice, to make objections, to file claims for damages, to have hearing, to take appeals and to do all other things to the same extent and in the same manner as provided in the establishment of an original district. [S13, §1989-a54; C24, 27, 31, 35, 39,§7550; C46, 50, 54,§455.129]

**1. Construction and application.**

Where supervisors had never passed upon whether plaintiff's land should be included in district such land could later be included.

Roewe v. Pavik, 1955, 246 Iowa 1112, 70 N.W.2d 845.

Lands not in another district may be annexed to intercounty district by resolution of necessity.

Farley Drainage Dist. No. 7 of Hamilton County v. Big Four Joint Drainage Dist., 1928, 207 Iowa 970, 221 N.W. 589.

**455.130 Petition for annexation.** After such annexation is made the board shall levy upon the annexed lands an assessment sufficient to equal the assessment for benefit originally paid by the lands of equal classification, plus their proportionate share of the costs of any enlargement or extension of drains required to serve the annexed lands. [S13, §1989-a54; C24, 27, 31, 35, 39,§7551; C46, 50, 54,§455.130]

**1. Petition for extension of district.**

Irregularities in proceeding held not fatal.

Loomis v. Board of Supervisors, 1919, 186 Iowa 721, 173 N.W. 615.

**455.131 Use of former and abandoned surveys.** In cases where proceedings have been taken for the establishment

of a levee or drainage district and an engineer has been appointed who has made a survey, return, and plat thereof and for any reason the improvement has been abandoned and the proceedings dismissed, and afterwards proceedings are instituted for the establishment of a levee or drainage district which will benefit any territory surveyed in said former proceedings, the engineer shall use so much of the return, levels, surveys, plat, and profile made in the former proceedings as may be applicable. He shall specify in his reports the parts thereof so used, and in case the cost of said returns, levels, surveys, plat, and profile made in said former proceedings has been paid by the former petitioners or their bondsmen, then a reasonable amount shall be allowed said petitioners or bondsmen for the use of the same. [S13,§1989-a16; C24, 27, 31, 35, 39,§7552; C46, 50, 54,§455.131]

**455.132 Unsuccessful procedure—re-establishment.** When proceedings have been instituted for the establishment of a drainage district or for any change or repair thereof, or the change of a natural watercourse, and the establishment thereof has failed for any reason either before or after the improvement is completed, the board shall have power to re-establish such district or improvement and any new improvement in connection therewith as recommended by the report of the engineer. As to all lands benefited by such re-establishment, repair, or improvement, the board shall proceed in the same manner as in the establishment of an original district, using as a basis for assessment the entire cost of the proceedings, improvement, and maintenance from the beginning; but in awarding damages and in the assessment of benefits account shall be taken of the amount of damages and taxes, if any, theretofore paid by those benefited, and credit therefor given accordingly. All other proceedings shall be the same as for the original establishment of the district, making of improvements, and assessment of benefits. [S13,§1989-a17,-a50; C24, 27, 31, 35, 39,§7553; C46, 50, 54,§455.132]

**1. Construction and application.**

Under the facts, where assessment was illegal, the fact that the assessment made against plaintiff's land was fully paid did not prevent reassessment thereof.

Howard v. Emmet County, 1908, 140 Iowa 527, 118 N.W. 882.

**455.133 New district including old district.** If any levee or drainage district or improvement established either by legal proceedings or by private parties shall be insufficient to properly drain all of the lands tributary thereto, the board upon petition as for the establishment of an original levee

or drainage district, shall have power to establish a new district covering and including such old district or improvement together with any additional lands deemed necessary. All outstanding indebtedness of the old levee or drainage district shall be assessed only against the lands included therein. [S13,§1989-a25; C24, 27, 31, 35, 39,§7554; C46, 50, 54, §455.133]

Referred to in 455.134 Credit for old improvement.

**1. Construction and application.**

Where district was organized to dike river banks, it had duty to protect the opening of a natural watercourse from flood waters caused by diking the river.

Hogue v. Monona-Harrison Drainage Dist., 1941, 229 Iowa 1151, 296 N.W. 204.

If original improvement is insufficient to properly drain lands, procedure should be under this section.

Kelleher v. Joint Drainage Dist. No. 18, Greene County, 1933, 216 Iowa 348, 249 N.W. 401.

Repair work on levee not used for over 10 years not within this section.

Myerholz v. Board of Louisa County, 1925, 200 Iowa 237, 204 N.W. 452.

Section not applicable where improvement is sufficient to drain lands proposed to be annexed.

Bird v. Board of Harrison County, 1912, 154 Iowa 692, 135 N.W. 581.

Lands in one district may be made a part of another district to be established.

Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

**2. Purpose.**

Purpose to permit formation of district over land already incorporated in another.

Farley Drainage Dist. No. 7 of Hamilton County v. Big Four Joint Drainage Dist, 1928, 207 Iowa 970, 221 N.W. 589.

**3. New district.**

District may be established covering same lands as one previously organized for enlarging of outlet.

Kelley v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 841; Herron v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 846.

Where outlet of original district was obstructed and additional land and improvements added, it amounted to an original proceeding to establish a new district.

Hopkins v. Board of Boone County, 1925, 200 Iowa 441, 204 N.W. 242.

Facts held not to show new district contemplated.
Nelson v. Graham, 1924, 198 Iowa 267, 197 N.W. 905.

Enlargement of right of way and slight changes in location within district, wholly on land of single owner consenting thereto did not make new project.
Simpson v. Board of Kossuth County, 1919, 186 Iowa 1034, 171 N.W. 259, error dismissed 41 S. Ct. 376, 255 U. S. 579, 65 L. Ed. 795.

Creation of new and independent drains to supply deficiencies can only be accomplished under this section.
Smith v. Monona-Harrison Drainage Dist. No. 1, 1917, 178 Iowa 823, 160 N.W. 229.

Upper proprietors of established district could establish new district to turn waters of a stream into ditch already established.
Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

**4. Repairs or new construction.**

This section and section 455.135 are supplemental.
Kelleher v. Joint Drainage Dist. No. 18, Greene County, 1933, 216 Iowa 348, 249 N.W. 401.

New plan held to be "new construction", not "repair", necessitating petition, notice, and bond.
Maasdam v. Kirkpatrick, 1932, 214 Iowa 1388, 243 N.W. 145.

Ditch held to be new improvement necessitating organization of new district under this section.
Chicago, etc. R. Co. v. Board of Harrison County, 1919, 187 Iowa 402, 172 N.W. 443.

**5. Proceedings.**

Notice to owners, and also proceedings as in establishment of new district are contemplated.
Kelleher v. Joint Drainage Dist. No. 18, Greene County, 1933, 216 Iowa 348, 249 N.W. 401.

It is not function of petition to designate any particular drains to be laid out.
Chicago, etc. R. Co. v. Board of Hamilton County, 1918, 184 Iowa 590, 169 N.W. 103.

**6. Notice.**

Where work considered by district is original construction there must be notice to owners.
Kelleher v. Joint Drainage Dist. No. 18, Greene County, 1933, 216 Iowa 348, 249 N.W. 401.

**7. Tenant as agent.**

Owner's conduct held to not have made tenant his agent to authorize improvement.

Kelleher v. Joint Drainage Dist. No. 18, Greene County, 1933, 216 Iowa 348, 249 N.W. 401.

**8. Waiver or estoppel.**

Plaintiff held to not have shown fraud, waiver, or estoppel where officials proceeded illegally in establishing new district without proper notice.

Kelleher v. Joint Drainage Dist. No. 18, Greene County, 1933, 216 Iowa 348, 249 N.W. 401.

**9. Compensation to land owners.**

No additional compensation to owner for that part of new improvement included in old right of way for which owner had been paid.

Johnston v. Drainage Dist. No. 80 of Palo Alto County, 1918, 184 Iowa 346, 168 N.W. 886.

**10. Benefits to lands.**

New drain held to benefit lands though not touching them where it relieved main drain by furnishing additional outlet.

Kelley v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 841; Herron v. Drain-

Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 846.

**11. Apportionment of costs.**

Where new improvement was added to furnish additional outlet, equitable rule for distribution of cost would be to charge original district for benefits received.

Hopkins v. Board of Boone County, 1925, 200 Iowa 441, 204 N.W. 242.

Portion of cost of new outlet taxable against lands in old district included in new district must be separately assessed by commissioners.

Christenson v. Board of Hamilton County, 1917, 179 Iowa 745, 162 N.W. 19.

**12. Assessments.**

Payment of assessments by railroad did not relieve it from liability for assessments for improvements in prior projects by larger district organized later.

Chicago, etc. R. Co. v. Board of Kossuth County, 1924, 199 Iowa 857, 201 N.W. 115.

New district not established on petition to repair and reconstruct an existing drain.

Brill v. Board of Sac County, 1923, 195 Iowa, 132, 191 N.W. 859.

Proceeding for cleaning and widening ditch and conversion of part of it to covered tile was for "new improvement", not repairs.

Bloomquist v. Board of Hardin County, 1920, 188 Iowa 994, 177 N.W. 95.

Assessment method held not prejudicial to railroad.

Chicago, etc. R. Co. v. Board of Hamilton County, 1918, 184 Iowa 590, 169 N.W. 103.

Landowner held not to be assessed for amount paid as damages for additional servitude of drain where he had paid damages for its construction.

Harriman v. Board of Franklin County, 1915, 169 Iowa 324, 151 N.W. 468.

**13. Lands subject to assessment.**

If original drain served only part of lands, it is proper that lands originally drained bear their share of enlargement cost in proportion of original assessment.

Mayne v. Board of Pottawattamie County, 1916, 178 Iowa 783, 160 N.W. 345.

**14. Use of moneys collected.**

Money collected for lateral must be used to construct lateral for which collected.

Senneff v. Board of Hancock County, 1917, 178 Iowa 1281, 160 N.W. 936.

**15. Exclusion of lands.**

Board held without power to exclude lands from district after its establishment.

Estes v. Board of Mills County, 1927, 204 Iowa 1043, 217 N.W. 81.

**16. Objections.**

Owner failing to object to improvement after having knowledge of the facts cannot say he received no benefits.

Read v. Board of Hamilton County, 1919, 185 Iowa 718, 171 N.W. 23.

**17. Evidence.**

Evidence held to show district included in district being organized was substantially benefited.

Read v. Board of Hamilton County, 1919, 185 Iowa 718, 171 N.W. 23.

**18. Findings of board.**

Previous finding of board on formation of original district did not require finding that new district would promote public benefit.

Christensen v. Agan, 1930, 209 Iowa 1315, 230 N.W. 800.

**19. Review.**

On appeal from judgment cancelling relevy, record authorized conclusion that objective had been restoration of main ditch.

Haugen v. Humboldt-Kossuth Joint Drainage Dist. No. 2, 1942, 231 Iowa 288, 1 N.W.2d 242.

If owners were overassessed they are not bound to point out a way whereby deficiency created may be made up.

Loomis v. Board of Sup'rs, 1919, 186 Iowa 721, 173 N.W. 615.

**455.134 Credit for old improvement.** When such district as contemplated in section 455.133 and the new improvement therein shall include the whole or any part of the former improvement, the commissioners, for classification of lands for assessment of benefits and apportionment of costs and expenses of such new improvement, shall take into consideration the value of such old improvement in the construction of the new one and allow proper credit therefor to the parties owning the old improvement as their interests may appear. In all other respects the same proceedings shall obtain as are provided for the original establishment of levee and drainage districts. [S13,§1989-a25; C24, 27, 31, 35, 39, §7555; C46, 50, 54,§455.134]

**1. Construction and application.**

This section relates to value of old improvement.

Johnston v. Drainage Dist. No. 80 of Palo Alto County, 1918, 184 Iowa 346, 168 N.W. 886.

Code Supp. 1907, 1989-a25, partially in this section held inappliable where improvement was sufficient to drain lands proposed to be annexed.

Bird v. Board of Harrison County, 1912, 154 Iowa 692, 135 N.W. 581.

Land owner had no title to tile in old drain though he had remedy for interference with his beneficial interest in it.

Smittle v. Haag, 1908, 140 Iowa 492, 118 N.W. 869.

**2. Apportionment of cost.**

Portion of cost of new outlet taxable against lands in old district included in new district must be separately assessed.

Christenson v. Board of Hamilton County, 1917, 179 Iowa 745, 162 N.W. 19.

**3. Assessments.**

Method of assessment held not to prejudice railroad, results being the same.

Chicago, etc. R. Co. v. Board of Hamilton County, 1918, 184 Iowa 590, 169 N.W. 103.

**4. Credit for existing improvements.**

Commissioners held to have failed to allow sufficient credit for existing improvement in determining benefit.

Petersen v. Board of Cerro Gordo County, 1929, 208 Iowa 748, 226 N.W. 1.

In considering value of old improvement, where new improvement is construed and crediting same to owners of old improvement, commissioners could not assess a judgment against district for an excess in value.

Boslaugh v. Board of Buena Vista County, 1921, 190 Iowa 1168, 181 N.W. 441.

**5. Damages.**

If owner could sue for removal of tile from his land in establishment of new contract, measure of damages would not be cost of restoring the tile.

Smittle v. Haag, 1908, 140 Iowa 492, 118 N.W. 869.

**455.135 Repair.** When any levee or drainage district shall have been established and the improvement constructed, the same shall be at all times under the supervision of the board of supervisors except as otherwise provided for control and management by a board of trustees and it shall be the duty of the board to keep the same in repair. The board at any time on its own motion, without notice, may order done whatever is necessary to restore or maintain a drainage or levee improvement in its original efficiency or capacity, and for that purpose may remove silt and debris, repair any damaged structures, remove weeds and other vegetable growth, and whatever else may be needed to restore or maintain such efficiency or capacity. In the event permanent restoration of a damaged structure is not feasible at the time, the board may order such temporary construction as it deems necessary to the continued functioning of the improvement. If in maintaining and repairing tile lines the board finds from the engineer's report it is more economical to construct a new line than to repair the existing line, such new line may be considered to be a repair. Provided, however, if the estimated cost of repair exceeds fifty percent of the original total cost of the district and subsequent improvements therein as defined in this section, the board shall set a date for a hearing on the matter of making such repairs and shall give notice as provided in sections 455.20 to 455.24 inclusive. At such hearing the board shall hear objections to the feasibility of such repairs, following the hearing the board shall order made such repairs as it deems desirable and feasible. Any interested party shall have the right to appeal from such orders in the manner provided in this chapter.

In the case of minor repairs or in the eradication of brush and weeds along the open ditches not in excess of five hundred dollars where the board finds that the same will result in a saving to the district it may cause the same to be done by secondary road equipment or weed fund equipment and labor of the county and then reimburse the secondary road maintenance fund or the weed fund from the drainage district fund thus benefited.

When the board deems it necessary it may repair or reconstruct the outlet of any private tile line which empties into a drainage ditch of any drainage district and assess the costs in each case against the land served by the private tile line.

When the board determines that improvements, which differ from the repairs referred to in the preceding paragraphs, are necessary or desirable, it may appoint an engineer to make such surveys as seem appropriate to determine the nature and extent of such improvements, and to file a report showing what improvements are recommended and their estimated costs, which report may be amended before final action. Such improvements may include enlarging, reopening, widening, deepening, straightening, or lengthening any drain, changing its location or improving or enlarging the outlet for better service; converting all or any part of any drain from an open ditch to a closed drain; installing surface pipe for open ditches; enlarging, altering, or improving pumping plants; leveling spoil banks, or constructing settling basins and intake and outlet ditches therefor. If the estimated cost of the improvements does not exceed twenty-five percent of the original cost of the district and subsequent improvements therein as defined in this section, the board may order the work done without notice. The board shall not divide proposed improvements into separate programs in order to avoid the twenty-five percent limitation herein fixed for making improvements without notice. If the board deems it desirable to make improvements where the estimated cost exceeds twenty-five percent of the orginal total cost of the district and subsequent improvements therein as defined in this section, it shall set a date for a hearing on the matter of constructing such improvements and also on the matter of whether there shall be a reclassification of benefits for the cost of such improvements, and shall give notice as provided in sections 455.20 to 455.24, inclusive. At such hearing the board shall hear objections to the feasibility of such improvements and such arguments for or against a reclassification as may be presented by or for any taxpayer of the district. Following the hearing the board shall order made such improvements as it deems desirable and feasible, and shall also determine whether there should be a reclassification of benefits for the cost of such improvement. If it is determined that such reclassification of bene-

fits should be made the board shall proceed as provided in section 455.45. Any interested party shall have the right of appeal from such orders in the manner provided in this chapter. Provided, however, that the provisions of this section shall not affect the procedures of section 455.142 covering the common outlet.

Where under the laws in force prior to 1904, drainage ditches and levees were established and constructed without fixing at the time of establishment of a definite boundary line for the body of land to be assessed for the cost thereof, the body of land which was last assessed to pay for the repair thereof shall also be considered as the established district for the purpose of this section.

The governing body of the district may, by contract or conveyance, acquire, within or without the district, the necessary lands or easements for making repairs or improvements under this section, including easements for borrow, and, in addition thereto, the same may be obtained in the manner provided for in the original establishment of a district or by exercise of the power of eminent domain as provided in chapter 472. [S13,§1989-a21; C24, 27, 31, 35, 39, §§7556, 7558-7561; C46,§455.135, 455.137-455.140; C50,§455.135; 55GA, ch 211,§3, C54; 56GA, ch 222,§1]

Referred to in §455.64 Installment payments—waiver; §455.136 Payment; §455.141 Reclassification required; §455.14 Improvement of common outlet—notice of hearing.

**1. Validity.**

Power in board to determine without notice and hearing when repairs are necessary is detail of state administration.

Breiholz v. Board of Pocahontas County, 1921, 42 S. Ct. 13, 257 U. S. 118, 66 L. Ed. 159.

This section does not deny due process.

Payne v. Missouri Valley Drainage Dist. No. 1, 1937, 223 Iowa 634, 272 N.W. 618.

Provision of Code Supp. 1913, Sec. 1989-a21, held unconstitutional.

Kimball v. Board of Polk County, 1921, 190 Iowa 783, 180 N.W. 988.

**2. Prior laws, validity of.**

Prior law held constitutional though notice was not required before improvement was made.

Ward v. Board of Pottawattamie County, 1932, 214 Iowa 1162, 241 N.W. 26.

**3. Construction and application.**

This section liberally construed.

Johnson v. Monona-Harrison Drainage Dist., 1955, 68 N.W.2d 517.

Sections 455.142 to 455.145 contain exclusive remedies.
Farmers Drainage Dist. v. Monona-Harrison Drainage Dist., 1955, 67 N.W.2d 445.

Drainage statutes liberally construed.
Morrow v. Harrison County, 1954, 245 Iowa 725, 64 N.W.2d 52.

This section is positive mandate to keep district in proper condition.
Wise v. Board of Webster County, 1951, 242 Iowa 870, 48 N.W.2d 247.

Where owner did not claim that ditch was not built according to plans and specifications, trustees, under this section, were under no duty to make extra tube installations.
Droegmiller v. Olson, 1950, 241 Iowa 456, 40 N.W.2d 292.

Subject to this section county equipment cannot be used for other than county purposes without compensation.
O. A. G. 1952, p. 116.

This section authorizes work to be done which is more than a restoration of the improvement to its original condition, efficiency and capacity.
Haugen v. Humboldt-Kossuth Joint Drainage Dist. No. 2, 1942, 231 Iowa 288, 1 N.W.2d 242.

District court was without authority to order alteration of structure of district on ground that as existing it constituted a nuisance.
Miller v. Monona County, 1940, 229 Iowa 165, 294 N.W. 308.

This section does not contemplate new system, only repair of work under old plan and old system.
Kelleher v. Joint Drainage Dist. No. 18, Greene County, 1933, 216 Iowa 348, 249 N.W. 401.

Completed open ditch held "constructed" improvement within this section.
Board of Hamilton County v. Paine, 1926, 203 Iowa 263, 210 N.W. 929.

This section must be construed with 455.156.
Nelson v. Graham, 1924, 198 Iowa 267, 197 N.W. 905.

Cost of work may be considered in determining if work is repair or construction, but is not conclusive.
Petersen v. Sorensen, 1921, 192 Iowa 471, 185 N.W. 42.

Additional lateral tile of equal capacity to drain already laid and parallel to it was in nature of a "repair".
Mathwig v. Drainage District No. 29, Emmet County, 1919, 188 Iowa 267, 171 N.W. 125.

Owner of fee in land occupied by waste banks of ditch has beneficial use of such land and statutory duty to destroy noxious weeds growing thereon.
O. A. G. 1948, p. 191.

**4. Prior laws, construction and application of.**

Code Supp. 1913, §1989-a21, incorporated in part of this section.
Meyerholz v. Board of Louisa County, 1925, 200 Iowa 237, 204 N.W. 452.

Code Supp. 1913, §1989-a11, expressly limited to changes in dimensions and location of ditch after establishment and prior to completion of improvement.
Breiholz v. Board of Pocahontas County, 1919, 186 Iowa 1147, 173 N.W. 1, affirmed 42 S. Ct. 13, 257 U. S. 118, 66 L. Ed. 159.

Assessment for cleaning and repairing existing ditch, made without notice, not sustained where work actually was deepening and widening of ditch.
Lade v. Board of Hancock County, 1918, 183 Iowa 1026, 166 N.W. 586.

Under Code 1888, section 1852 commissioners could make assessment of lands benefited by reopening and repairs though they were not assessed for original establishment.
Yeomans v. Riddle, 1891, 84 Iowa 147, 50 N.W. 886.

**5. History of legislation.**

Review of legislative history of this section.
Haugen v. Humboldt-Kossuth Joint Drainage Dist. No. 2, 1942, 231 Iowa 288, 1 N.W.2d 242.

**6. Control.**

Though ditch right of way is easement, owners may not in all cases, enter and level waste banks.
Johnston v. Drainage Dist. No. 80 of Palto Alto County, 1918, 184 Iowa 346, 168 N.W. 886.

**7. Trustees powers of.**

Where trustees had power to build dikes, they also had authority to build flood gates where a part of dike system.
Hogue v. Monona-Harrison Drainage Dist., 1941, 229 Iowa 1151, 296 N.W. 204.

Powers of trustees limited to improvement etc., of existing drains, ditches, etc.
Smith v. Monona-Harrison Drainage Dist. No. 1, 1916, 178 Iowa 823, 160 N.W. 229.

**8. Board, powers of.**

Board of Trustees not vested with absolute discretion as to improvements to be made.

Johnson v. Monona-Harrison Drainage Dist., 1955, 246 Iowa 537, 68 N.W.2d 517.

In undertaking repairs, county board exercises discretion.

Baldozier v. Mayberry, 1939, 226 Iowa 693, 285 N.W. 140.

Board held without power to exclude lands from district after its establishment.

Estes v. Board of Mills County, 1927, 204 Iowa 1043, 217 N.W. 81.

Drainage board authorized to take precaution against erosion of bank of ditch.

Bank of Hamilton County v. Paine, 1926, 203 Iowa 263, 210 N.W. 929.

In proceedings for repair, change of drain from open to tile drain with small open ditch above tile is within authority of board.

Nervig v. Joint Boards of Polk and Story Counties, 1922, 193 Iowa 909, 188 N.W. 17.

After completion of improvements board may let contracts to clean and repair ditch without notice to property owners.

Breiholz v. Board of Pocahontas County, 1919, 186 Iowa 1147, 173 N.W. 1, affirmed 42 S. Ct. 13, 257 U. S. 118, 66 L. Ed. 159.

Board may take action to have ditch cleaned and repaired, providing it does not amount to establishment of a new drain.

O. A. G. 1940, p. 16.

If for best interests of public, the board may close drain and relocate it on showing that new drain is advisable and not of prohibitive cost.

O. A. G. 1930, p. 194.

Board could change part of open drain to tile drain after drain was regularly established.

O. A. G. 1910, p. 177.

**9. Abandonment of drain.**

Under this section board lacked authority to abandon drain already established.

Griebel v. Board of Clinton County, 1925, 200 Iowa 143, 202 N.W. 379.

**10. Repairs or new construction.**

See, also notes of decisions under 455.133.

Removal of trees and brush from banks of ditch was not "new construction".

McGuire v. Voight, 1951, 242 Iowa 1106, 49 N.W.2d 472.

In determining what work is "repairs" comparative cost

of old and new work may be considered but is not controlling.

Haugen v. Humboldt-Kossuth Joint Drainage Dist. No. 2, 1942, 231 Iowa 288, 1 N.W.2d 242.

Work to prevent erosion of ditch banks was "repair" though it benefited road at side of ditch and two bridges over ditch.

Baldozier v. Mayberry, 1939, 226 Iowa 693, 285 N.W. 140.

Construction of new settling basin to replace old one which filled up held "repairs".

Payne v. Missouri Valley Drainage Dist. No. 1, 1937, 223 Iowa 634, 272 N.W. 618.

Enlarging, reopening, deepening, widening, straightening, lengthening, or changing location for better service is repair of existing system.

Kelleher v. Joint Drainage Dist. No. 18, Greene County, 1933, 216 Iowa 348, 249 N.W. 401.

Widening ditch to care for waters coming from another district was not, as regarding apportioning assessment, wholly "repair work".

Mayne v. Board of Pottawattamie County, 1929, 208 Iowa 987, 223 N.W. 904, rehearing denied 208 Iowa Iowa 987, 225 N.W. 953.

Draining of ditch banks authorized by this section. Work on levy which was in use for over 10 years held repair work and notice to landowners was not required.

Board of Hamilton County v. Paine, 1926, 203 Iowa 263, 210 N.W. 929.

Re-examination of district by engineer and other facts held to not show new district was contemplated.

Nelson v. Graham, 1924, 198 Iowa 267, 197 N.W. 905.

Replacing of damaged and broken tile by laying new tile and abandoning old tile for distance of 1400 feet constituted a "repair". To repair is to restore to good condition after decay, injury, delapidation or partial detruction.

Walker v. Joint Drainage Dist. No. 2 of Osceola and Dickinson Counties, 1924, 197 Iowa 351, 197 N.W. 72.

Additional lateral tile of equal capacity to drain previously laid and parallel to it held "repair".

Mathwig v. Drainage Dist. No. 29, Emmet County, 1919, 188 Iowa 267, 171 N.W. 125.

**11. New construction.**

This section authorized board to construct open extension roadside ditch in lieu of cleaning and straighten-

ing old channel to send water from old channel more directly and efficiently through ditch.
Morrow v. Harrison County, 1954, 245 Iowa 725, 64 N.W.2d 52.

Cost of work can be considered but is not controlling.
McGuire v. Voight, 1951, 242 Iowa 1106, 49 N.W.2d 472.

Plan of improvement held to be new construction.
Maasdam v. Kirkpatrick, 1932, 214 Iowa 1388, 243 N.W. 145.

Construction held to be new construction.
Walker v. Joint Drainage Dist. No. 2 of Osceola and Dickinson Counties, 1924, 197 Iowa 351, 197 N.W. 72.

Cost of new improvement being 190 percent of cost of original improvement, proceedings were governed by 455.133 relative to "new improvement".
Bloomquist v. Board of Hardin County, 1920, 188 Iowa 994, 177 N.W. 95.

Work held not to be repair.
Chicago, etc. R. Co. v. Board of Harrison County, 1919, 187 Iowa 402, 172 N.W. 443.

**12. Enlargement of ditch.**

Outlet may be enlarged by deepening or excavating another parallel to it.
Kelley v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 841.
Herron v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 846.

Under prior laws upper proprietors of established district could establish new district to turn waters into established ditch though such ditch was inadequate to carry water for which planned.
Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

**13. Additional outlet.**

Additional lateral tile of equal capacity to original drain and parallel to it could be constructed under Code Supp. 1913, 1989-a21 as repair work.
Mathwig v. Drainage Dist. No. 29, Emmet County, 1919, 188 Iowa 267, 171 N.W. 125.

**14. Relocation of ditch.**

Refusal of board to relocate ditch was not determination that drainage of lands is not a public benefit.
Lincoln v. Moore, 1923, 196 Iowa 152, 194 N.W. 299.

**15. Place of doing work.**

Work of repair could be done at places where original ditch was not located or established.

Yeomans v. Riddle, 1892, 84 Iowa 147, 50 N.W. 886.

**16. Proceedings.**

Statutory requisites of notice, public letting and engineer's supervision do not apply to repair work.

McGuire v. Voight, 1951, 242 Iowa 1106, 49 N.W.2d 472.

Proceedings not invalidated because one of five members of a board owned land in district where he did not cast a deciding vote and assessment on his tract was not claimed to be unjust.

Nervig v. Joint Boards of Polk and Story Counties, 1922, 193 Iowa 909, 188 N.W. 17.

**17. Notice.**

Owners in upper district could be compelled to bear portion of cost of new right of way by lower district despite not having notice.

Board of Pottawattamie County v. Board of Harrison County, 1932, 214 Iowa 655, 241 N.W. 14, motion denied 54 S. Ct. 47, appeal dismissed 54 S. Ct. 125, 290 U. S. 595, 78 L. Ed. 523.

Notice of repair work need not be given to property owners. Proceedings by board under this section instead of 455.133 where original improvement was inadequate, could not dispense with need for notice to owners.

Kelleher v. Joint Drainage Dist. No. 18, Greene County, 1933, 216 Iowa 348, 249 N.W. 401.

Code Supp. 1913, section 1989-a11 requiring notice did not preclude making of repairs on lease without notice.

Meyerholz v. Board of Louisa County, 1925, 200 Iowa 237, 204 N.W. 452.

Work herein authorized may be done without notice to those whose lands have been classified and assessed for original improvement.

Walker v. Joint Drainage Dist. No. 2 of Osceola and Dickinson Counties, 1924, 197 Iowa 351, 197 N.W. 72.

Board had authority to order improvement of outlet of old district without notice to landowners except those whose lands are taken for additional right of way.

Shaw v. Board of Greene County, 1923, 195 Iowa 545, 192 N.W. 525.

No notice necessary of proceedings for repair of existing drain.

Nervig v. Joint Boards of Polk and Story Counties, 1922, 193 Iowa 909, 188 N.W. 17.

**18. Contract.**

Though contract for repairs was too broad in terms, as possibly relating to construction, it would not be deemed invalid relating to construction, where it appeared the work done was repairs.

Petersen v. Sorensen, 1921, 192 Iowa 471, 185 N.W. 42.

**19. Apportionment of cost.**

Where all lands were assessed for original construction, all should contribute to expense of making outlet sufficient to serve all.

Brill v. Board of Sac County, 1923, 195 Iowa 132, 191 N.W. 859.

If original drain drains only part of lands in district it is proper that lands originally drained bear their share of enlargement costs in proportion to original assessment.

Mayne v. Board of Pottawattamie County, 1916, 178 Iowa 783, 160 N.W. 345.

**20. Estoppel.**

Where district was legally established there is no estoppel against owners keeping them from objecting to cleaning and repairs of ditch.

Lincoln v. Moore, 1923, 196 Iowa 152, 194 N.W. 299.

**21. Liability of county.**

County not liable for damages due to overflow of ditch primarily for the benefit of abutting owners.

Green v. Harrison County, 1883, 61 Iowa 311, 16 N.W. 136.

Nutt v. Mills County, 1883, 61 Iowa 754, 16 N.W. 536.

County was not liable for negligent construction and failing to keep open a ditch paid for by assessments.

Dashner v. Mills County, 1893, 88 Iowa 401, 55 N.W. 468.

**22. Warrants.**

Resolution by supervisors acting as drainage commission recognizing indebtedness incurred for improvement removed bar of limitations on drainage warrants.

O. A. G. 1938, p. 482.

**23. Remedies of property owners.**

Farm owners could not compel installation of discharge tube in highway ditch to carry water originating on owners' land.

Droegmiller v. Olson, 1950, 241 Iowa 456, 40 N.W. 2d 292.

No recovery from district for flood damage due to stopped up lateral drains.
O. A. G. 1932, p. 235.

**24. Injunction.**

Landowner who acquiesced in dike for almost 20 years could not enjoin its repair.
Dodd v. Aitken, 1940, 227 Iowa 679, 288 N.W. 898, opinion supplemented 291 N.W. 534.

Injunction does not lie against supervisors, auditor and treasurer to restrain collection of special assessments to repair improvement.
Seabury v. Adams, 1929, 208 Iowa 1332, 225 N.W. 264.

Injunction not granted where ditch was cleaned by persons entering without authority where nothing indicated a continuing trespass or damage done.
Hull v. Harker, 1906, 130 Iowa 190, 106 N.W. 629.

**25. Mandamus.**

Mandamus would lie to compel trustees of district to repair ditch.
Welch v. Borland, 1954, 246 Iowa 119, 66 N.W.2d 866.

Mandamus to compel supervisors to make repairs was proper though based on failure of board to act rather than on any affirmative action.
Wise v. Board of Webster County, 1951, 242 Iowa 870, 48 N.W.2d 247.
Griebel v. Board of Clinton County, 1925, 200 Iowa 143, 202 N.W. 379.

**26. Presumptions.**

Presumed that supervisors' actions as managers of district were in good faith in making repairs.
Kilpatrick v. Mills County, 1940, 227 Iowa 721, 288 N.W. 871.

**27. Objections to work.**

Rights to except or object preserved by filing of proper objections and such will present issues on appeal.
Farmers Drainage Dist. v. Monona-Harrison Drainage Dist., 1955, 246 Iowa 285, 67 N.W.2d 445.

That a majority of owners objected to any expense for repairs was not valid reason for failure of supervisors to proceed.
Wise v. Board of Webster County, 1951, 242 Iowa 870, 48 N.W.2d 247.

**28. Review.**

Action of district trustees as to improvement to be made

reviewable to ascertain if action was in good faith and if discretion was abused.

Johnson v. Monona-Harrison Drainage Dist., 68 N.W. 2d 517.

No right to appeal action of board until board has reviewed and confirmed, reduced or increased assessments.

Farmers Drainage Dist. v. Monona-Harrison Drainage Dist., 1955, 246 Iowa 285, 67 N.W.2d 445.

**29. Surveys, plans and reports.**

Specific plans for repairs of improvements of established district not required before action can be commenced.

Johnson v. Monona-Harrison Drainage Dist., 1955, 246 Iowa 537, 68 N.W.2d 517.

**455.136 Payment.** The costs of the repair or improvements provided for in section 455.135 shall be paid for out of the funds of the levee or drainage district. If the funds on hand are not sufficient to pay such expenses, the board within two years shall levy an assessment sufficient to pay the outstanding indebtedness and leave the balance which the board determines is desirable as a sinking fund to pay maintenance and repair expenses.

If the board deems that the costs of the repairs or improvements will create assessments against the lands in the district greater than should be borne in one year, it may levy the same at one time and provide for the payment of said costs and assessments in the manner provided in sections 455.64 to 455.68, inclusive; provided that assessments may be collected in less than ten installments as the board may determine. [S13,§1989-a21; C24, 27, 31, 35, 39,§7557; C46, 50, 54,§455.136; 55 GA, ch 221,§4]

**1. Construction and application.**

In determining whether work was a repair the Supreme Court was limited by definition set out in 455.140.

Haugen v. Humboldt-Kossuth Joint Drainage Dist. No. 2, 1942, 231 Iowa 288, 1 N.W. 2d 242.

Draining of ditch banks authorized.

Board of Hamilton County v. Paine, 1926, 203 Iowa 263, 210 N.W. 929.

**2. Extra work, compensation for.**

Contractor not entitled to extra compensation because obliged to place dirt excavated largely on one side of ditch.

Whitney v. Wendel, 1922, 193 Iowa 175, 186 N.W. 771.

**3. Payment.**

Owners organizing upper district impliedly undertook burden of paying part of cost of improving ditch of lower district.

Board of Pottawattamie County v. Board of Harrison County, 1932, 214 Iowa 655, 241 N.W. 14, motion denied 54 S. Ct. 47, appeal dismissed 54 S. Ct. 125, 290 U. S. 595, 78 L. Ed. 523.

**4. Interest.**

Until work is accepted without qualification contractor is not entitled to interest on money held in reserve by district.

Whitney v. Wendel, 1922, 193 Iowa 175, 186 N.W. 771.

**5. Lien.**

Claims for labor and material furnished to repair machinery used to construct improvement were not lienable.

Ottumwa Boiler Works v. M. J. O'Meara & Son, 1928, 206 Iowa 577, 218 N.W. 920.

**6. Actions.**

Actions to recover compensation for work done on district may not be maintained against county.

Houghton v. Bonnicksen, 1931, 212 Iowa 902, 237 N.W. 313.

Evidence showed breakage of tile to be due to careless handling after delivery by seller.

Graettinger Tile Works v. Gjellefald, 1927, 214 N.W. 579.

In suit to recover for cleaning of ditches under contract, evidence held to show failure of railway to excavate crossings did not cause silt to deposit so that ditch had to be cleaned twice.

Whitney v. Wendel, 1922, 193 Iowa 175, 186 N.W. 771.

**455.137 Impounding areas.** Levee and drainage districts are empowered to construct impounding areas to protect lands of the district and drainage structures at such times as outletting is retarded and may provide ways for access to improvements for the operation or protection thereof, where the cost is not excessive in consideration of the value to the district. Necessary lands or easements may be acquired within or without the district by purchase, lease or agreement, and may be procured and construction undertaken either independently or in cooperation with other districts, individuals, or any federal or state agency or political subdivision. [55GA, ch. 211,§7; C540]

§455.137, Code 1946, repealed by 53GA, ch 202, §§23-26.

**1. Validity.**

Failure to provide notice of repair, enlargement and reopening of improvement did not take property without due process.

Breiholz v. Board of Pocahontas County, 1921, 42 S. Ct. 13, 257 U. S. 118, 66 L. Ed. 159.

Spencer v. Merchant, 125 U. S. 345, 8 Sup. Ct. 921, 31 L. Ed. 763, to Branson v. Bush, 251 U. S. 182, 189, 49 Sup. Ct. 113, 64 L. Ed. 215.

Davidson v. New Orleans, 96 U. S. 97, 106, 24 L. Ed. 616

This section and 455.135, 455.136, 455.138, 455.139 were not unconstitutional as denying due process.

Payne v. Missouri Valley Drainage Dist. No. 1, 1937, 223 Iowa 634, 272 N.W. 618.

Constitutionality upheld.

Breiholz v. Board of Pocahontas County, 1919, 186 Iowa 1147, 173 N.W. 1, affirmed 42 S. Ct. 13, 257 U. S. 118, 66 L. Ed. 159.

**2. Construction and application.**

Work done to prevent erosion of banks was repair work despite benefit to road and bridges.

Baldozier v. Mayberry, 1939, 226 Iowa 693, 285 N.W. 140.

Provision that repair costs should be levied in same proportion as original expense does not deny boards' authority to reclassify lands if they found assessment so made would be inequitable.

Nervig v. Joint Boards of Polk and Story Counties, 1922, 193 Iowa 909, 188 N.W. 17.

Statutes conferring power to levy and collect assessments strictly construed.

Howard v. Emmet County, 1908, 140 Iowa 527, 118 N.W. 882.

Where stopped up lateral causes flood damage owner of land must resort to statutory remedy with respect to repairs of ditches.

O. A. G. 1932, p. 235.

**3. Assessments.**

Spreading assessment year by year for cost of operating drainage system not required.

Coe v. Board of Harrison County, 1941, 229 Iowa 798, 295 N.W. 151.

Assessment held inequitable.

Kuehnast v. Board of Humboldt County, 1923, 193 N. W. 579.

Assessment for repairs void as to land outside district and valid as to lands within district.

Brill v. Board of Sac County, 1923, 195 Iowa 132, 191 N.W. 859.

Assessments are made with reference to special benefit derived by property from the improvement.

Kimball v. Board of Polk County, 1921, 190 Iowa 783, 180 N. W. 988.

Deficiency assessments need not be in same proportion as original assessment where extended or deepened outlet is subsequently constructed.

Loomis v. Board of Sup'rs, 1919, 186 Iowa 721, 173 N.W. 615.

Local assessment not a "tax" within constitutional provisions relating to assessment of taxes.

Munn v. Board of Greene County, 1913, 161 Iowa 26, 141 N.W. 711.

Power to levy assessment for ditch on benefited property is part of general power of taxation.

Fitchpatrick v. Botheras, 1911, 150 Iowa 376, 130 N.W. 163, 37 L. R. A., N. S. 558, Ann. Cas. 1912D, 534.

Under Code 1888, §1852, assessment could be levied on lands benefited by repairs though they were not assessed for original location and establishment.

Yeomans v. Riddle, 1891, 84 Iowa 147, 50 N.W. 886.

**4. Lands subject to assessment.**

Accretions to land included in district were not subject to assessment for subsequent work.

Mayne v. Board of Pottawattamie County, 1929, 208 Iowa 987, 223 N.W. 904, rehearing denied 208 Iowa 987, 225 N.W. 953.

Land benefited by repairs may be assessed though work was not done on such land.

Kimball v. Board of Polk County, 1921, 190 Iowa 783, 180 N.W. 988.

**5. Notice.**

Supervisors can levy assessment for repairs without notice if cost of repair is less than 10 percent of original cost.

Baldozier v. Mayberry, 1939, 226 Iowa 693, 285 N.W. 140.

New plan held to be "new construction" necessitating notice.

Maasdam v. Kirkpatrick, 1932, 214 Iowa 1388, 243 N.W. 145.

Owners of land in upper district could be compelled to bear portion of cost of obtaining new right of way by lower district, without notice to it.

Board of Pottawattamie County v. Board of Harrison County, 1932, 214 Iowa 655, 241 N.W. 14, motion denied 54 S. Ct. 47, appeal dismissed 54 S. Ct. 125, 290 U. S. 595, 78 L. Ed. 523.

Work on levy held specifically authorized by enactment under which notice was not required to be given to owners of affected lands.

Meyerholz v. Board of Louisa County, 1925, 200 Iowa 237, 204 N.W. 452.

Assessment, without notice, for cleaning and repairing of ditch not sustained, where work done was deepening and widening.

Lade v. Board of Hancock County, 1918, 183 Iowa 1026, 166 N.W. 586.

Additional assessment can be made without notice where original assessment was made after notice and apportionment thereof was just.

Plummer v. Pitt, 1914, 167 Iowa 632, 149 N.W. 878.

Assessment for repairs is in nature of a tax and absent statutory requirement it is not necessary that notice of levy be given.

Yeomans v. Riddle, 1891, 84 Iowa 147, 50 N.W. 886.

Where work does not go beyond restoration of ditch board may proceed without notice and may assess at same ratio as original costs, though in excess of 10 percent of original costs.

O. A. G., 1932, p. 274.

**6. Resolution.**

Owner's right to hearing on assessments could not be foreclosed by prior ex parte resolution by board that assessments should be in same proportion as in a prior improvement.

Bloomquist v. Board of Hardin County, 1920, 188 Iowa 994, 177 N.W. 95.

**7. Injunction.**

Where board, having jurisdiction, authorized "repair" work, taxpayer's remedy was by appeal not injunction.

Baldozier v. Mayberry, 1939, 226 Iowa 693, 285 N.W. 140.

Evidence did not show facts entitling owner to restrain levy of assessment.

Payne v. Missouri Valley Drainage Dist. No. 1, 1937, 223 Iowa 634, 272 N.W. 618.

**8. Evidence.**

Evidence warranted assessment on ground that board considered work as repairs.

Baldozier v. Mayberry, 1939, 226 Iowa 693, 285 N.W. 140.

Evidence held not to show cost of repairs would exceed 10 percent of original costs.

Payne v. Missouri Valley Drainage Dist. No. 1, 1937, 223 Iowa 634, 272 N.W. 618.

**9. Review.**

Appeal taken only from assessment of benefits for repair and improvement did not involve regularity or legality of proceedings.

Nervig v. Joint Boards of Polk and Story Counties, 1922, 193 Iowa 909, 188 N.W. 17.

**455.138 Revenues used for operation, maintenance and construction.** Levee and drainage districts may realize income from incidental uses of their improvements and rights of way which are not injurious to same or incompatible with the purposes of the district. Revenues derived therefrom may be expended for operating, maintenance or construction costs of the district as its governing body may elect. [C54, §455.138]

§455.138, Code 1946, repealed by 53 GA, ch 202, § §23-26.

**1. Validity.**

This section held not unconstitutional as denying due process on ground that improvement amounted to more than a change in detail or repairs.

Payne v. Missouri Valley Drainage Dist. No. 1, 1937, 223 Iowa 634, 272 N.W. 618.

**2. Construction and application.**

By 1929 amendment legislature intended the substitution of a determinable factor for the then undeterminable factor.

Haugen v. Humboldt-Kossuth Joint Drainage Dist. No. 2, 1942, 231 Iowa 288, 1 N.W.2d 242.

Additional lateral tile of capacity equal to the original drain and parallel to it could be constructed as repair work.

Mathwig v. Drainage Dist. No. 29, Emmet County, 1919, 188 Iowa 267, 171 N.W. 125.

**3. Notice.**

If owners were entitled to notice of final hearing, board's ex parte resolution that assessment should be in same

proportion to original one was void for want of notice.
Bloomquist v. Board of Hardin County, 1920, 188 Iowa 994, 177 N.W. 95.

Where work does not go beyond restoration of ditch to original efficiency, board may proceed with work without notice to owners.
O. A. G. 1932, p. 274.

**4. Failure to give notice.**

Assessment cancelled where work was deepening and widening where notice for such work was not given.
Lade v. Board of Hancock County, 1918, 183 Iowa 1026, 166 N.W. 586.

**5. Waiver of notice.**

Where after work was let and owners waived notice of change of location and claims for damages and granted right of way, they could not assert notice to bidder was defective.
Petersen v. Sorensen, 1921, 192 Iowa 471, 185 N.W. 42.

**6. New apportionment.**

In determining whether work was repair so that new apportionment of assessment was not necessary, Supreme Court was limited by 455.140.
Haugen v. Humboldt-Kossuth Joint Drainage Dist. No. 2, 1942, 231 Iowa 288, 1 N.W.2d 242.

**7. Assessment.**

Deficiency where extended or deepened outlet was subsequently constructed, not necessarily assessed against owners in same proportion as original assessment.
Loomis v. Board of Sup'rs, 1919, 186 Iowa 721, 173 N.W. 615.

Local assessment not a "tax" within the constitutional provisions relating to assessment of taxes.
Munn v. Board of Greene County, 1913, 161 Iowa 26, 141 N.W. 711.

**8. Lands subject to assessment.**

Under Code 1888, §1852, commissioners could assess lands benefited by reopening and repairs though they were not originally assessed.
Yeomans v. Riddle, 1891, 84 Iowa 147, 50 N.W. 886.

**9. Warrants.**

Resolution by board acting as drainage commission, recognizing debt incurred by district, removed bar of limitations and re-established debt represented by warrants.
O. A. G. 1938, p. 482.

**10. Estoppel.**

Where supervisors directed cleaning of ditch and contractor deepened and widened same, owners, knowing work was in process, were not estopped to object to assessment for lack of notice.

Lade v. Board of Hancock County, 1918, 183 Iowa 1026, 166 N.W. 586.

**11. Injunction.**

Findings of supervisors in levying additional tax for improvements are presumptively warranted.

Plummer v. Pitt, 1914, 167 Iowa 632, 149 N.W. 878.

**12. Evidence.**

Evidence failed to show costs would exceed 10 percent of original cost, and assessments were not invalid for failure to follow procedure required for original establishment and assessment.

Payne v. Missouri Valley Drainage Dist. No. 1, 1937, 223 Iowa 634, 272 N.W. 618.

**13. Review.**

Appeal from court order assessing cost of repairs and improvement is triable de novo.

Board of Harrison County v. Board of Pigeon Creek Drainage Dist. No. 2, in Pottawattamie County, 1936, 221 Iowa 337, 264 N.W. 702.

Orders of board excluding certain lands and including others are material on appeal from assessment only if shown to have affected assessment against appellants' lands.

Nervig v. Joint Boards of Polk and Story Counties, 1922, 193 Iowa 909, 188 N.W. 17.

**455.139 and 455.140, inclusive.** Repealed by the 53rd GA, ch 202, §§23-26.

Subject matter of repealed §§455.139, 455.140, is now covered by §455.135.

**455.141 Reclassification required.** When an assessment for improvements as provided in section 455.135, exceeds twenty-five percent of the original assessment and the original or subsequent assessment or report of the benefit commission as confirmed did not designate separately the amount each tract should pay for the main ditch and tile lateral drains then the board shall order a reclassification in accordance with the principles and rules set forth in section 455.48. [C24, 27, 31, 35, 39,§7562; C46, 50, 54,§455.141]

**1. Construction and application.**

Addition of word "tile" to Code 1927, §§7561, 7562, did not

show intent to confine reclassification to tile laterals, and ordinary tile should be separately apportioned.
O. A. G. 1930, p. 283.

**2. Presumption.**

Presumed that commissioners and supervisors considered benefits conferred by improvement of a drain.
Nervig v. Joint Boards of Polk and Story Counties, 1922, 193 Iowa 909, 188 N.W. 17.

**455.142 Improvement of common outlet—notice of hearing.** When two or more drainage districts outlet into the same ditch, drain, or natural watercourse and the board determines that it is necessary to clean out, deepen, enlarge, extend, or straighten said ditch, drain, or natural watercourse in order to expeditiously carry off the combined waters of such districts, the board may proceed as provided in section 455.135. After said board has decided that such work should be done, it shall fix a date for hearing on its decision, and it shall give two weeks notice thereof by registered mail to the auditor of the county wherein the land to be assessed for such work is located, and said county auditor shall thereupon immediately notify by registered mail the board or boards of trustees of the districts having supervision thereof, as to said hearing on said contemplated work. Each district shall be assessed for the cost of such work in proportion to the benefits derived. [S13,§1989-a24; C24, 27, 31, 35, 39,§7563; C46, 50, 54,§455.142]

Referred to in §455.135 Repair.

**1. Validity.**

Held to not violate due process of law.
Board of Monona-Harrison Drainage Dist. No. 1 v. Board of Monona County, 1945, 236 Iowa 690, 19 N.W.2d 196, appeal dismissed 66 S. Ct. 338, 326 U. S. 694, 90 L. Ed. 409.

Not unconstitutional because authorizing assessments for work costs in same ratio to total cost as discharge of waters of district bears to combined discharge of waters of several districts.
Ward v. Board of Pottawattamie County, 1932, 214 Iowa 1162, 241 N.W. 26.

Not confiscatory or a deprivation of due process.
Board of Pottawattamie County v. Board of Harrison County, 1932, 214 Iowa 655, 241 N.W. 14, motion denied 54 S. Ct. 47, appeal dismissed 54 S. Ct. 125, 290 U. S. 595, 78 L. Ed. 523.

Not invalid as depriving owner in outlying district of property without due process of law.
Board of Monona-Harrison Drainage Dist. No. 1 v. Board of Woodbury and Monona Counties, 1924, 198 Iowa 117, 197 N.W. 82.

**2. Construction and application.**

Purpose of notice and hearings to advise upper district of proposed repairs and improvements.

Farmers Drainage Dist. v. Monona-Harrison Drainage Dist., 1955, 246 Iowa 285, 67 N.W.2d 445.

Section applicable to all districts connecting directly or indirectly with the outlet.

Board of Monona-Harrison Drainage Dist. No. 1 v. Board of Monona County, 1945, 236 Iowa 690, 19 N.W.2d 196, appeal dismissed 66 S. Ct. 338, 326 U. S. 694, 90 L. Ed. 409.

Section predicated on procedure provided in §§455.140, 455.141.

Mayne v. Board of Pottawattamie County, 1932, 215 Iowa 221, 241 N.W. 29.

Where water from upper runs through lower district, this section, providing apportionment of costs, held applicable.

Board of Pottawattamie County v. Board of Harrison County, 1932, 214 Iowa 655, 241 N.W. 14, motion denied 54 S. Ct. 47, appeal dismissed 54 S. Ct. 125, 290 U. S. 595, 78 L. Ed. 523.

This section inapplicable where lands of older district benefited by lower outlets of new district were included in new district.

Christenson v. Board of Hamilton County, 1917, 179 Iowa 745, 162 N.W. 19.

Under prior laws upper proprietors of established district could establish new district to turn waters into established ditch though such ditch was inadequate to carry the water for which planned.

Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

**3. Legislative power.**

Legislature can grant privileges and impose burdens on granting authority to organize drainage district.

Board of Pottawattamie County v. Board of Harrison County, 1932, 214 Iowa 655, 241 N.W. 14, motion denied 54 S. Ct. 47, appeal dismissed 54 S. Ct. 125, 290 U. S. 595, 78 L. Ed. 523.

**4. Notice.**

Owners in upper district could be compelled to bear portion of cost of new right of way by lower district though receiving no notice of improvement.

Board of Pottawattamie County v. Board of Harrison County, 1932, 214 Iowa 655, 241 N.W. 14, motion denied 54 S. Ct. 47, appeal dismissed 54 S. Ct. 125, 290 U. S. 595, 78 L. Ed. 523.

**5. Liability for cost.**

Owners organizing upper district impliedly undertook burden of paying part of ditch improvement costs of lower district.

Board of Pottawattamie County v. Board of Harrison County, 1932, 214 Iowa 655, 241 N.W. 14, motion denied 54 S. Ct. 47, appeal dismissed 54 S. Ct. 125, 290 U. S. 595, 78 L. Ed. 523.

Upper district compelled to pay proportionate share incurred by outlet district in repairing common outlet.

Board of Monona-Harrison Drainage Dist. No. 1 v. Board of Monona County, 1945, 236 Iowa 690, 19 N.W.2d 196, appeal dismissed 66 S. Ct. 338, 326 U. S. 694, 90 L. Ed. 409.

Tributary district liable for part of cost of repairing outlet without statutory basis for refusal.

Board of Monona Harrison Drainage Dist. No. 1 v. Board of Monona County, 1942, 232 Iowa 1098, 5 N.W.2d 189.

**6. Assessments.**

In computing share of upper district for repair and maintenance of common outlet, expense incurred on dikes and soil banks was properly included.

Board of Monona Harrison Drainage Dist. No. 1 v. Board of Monona County, 1945, 236 Iowa 690, 19 N.W.2d 196, appeal dismissed 66 S. Ct. 338, 326 U. S. 694, 90 L. Ed. 409.

Letter mailed to auditor with copy of report of apportionment of repair costs together with approval thereof was not too indefinite to be basis for spreading assessment.

Board of Harrison County v. Board of Crawford County, 1944, 234 Iowa 123, 12 N.W.2d 259.

Evidence showed legal levy of assessments against lands in other districts.

Coe v. Board of Harrison County, 1941, 229 Iowa 798, 295 N.W. 151.

Assessment of repair costs on theory of amount of water discharged under statutes repealed before work was initiated held error.

Board of Pottawattamie County v. Board of Harrison County, 1932, 214 Iowa 655, 241 N.W. 14, motion denied 54 S. Ct. 47, appeal dismissed 54 S. Ct. 125, 290 U. S. 595, 78 L. Ed. 523.

**7. Change of place of outlet.**

Action of drainage board in making change in location of outlet upheld.

Simpson v. Board of Kossuth County, 1919, 186 Iowa 1034, 171 N.W. 259, error dismissed 1921, 41 S. Ct. 376, 255 U. S. 579, 65 L. Ed. 795.

**8. Remedies.**

Redress from any injustice resulting from compliance with statute lies in legislature.

Coe v. Board of Harrison County, 1941, 229 Iowa 798, 295 N.W. 151.

**9. Actions.**

Evidence showed plaintiff district was outlet for 12 other districts, and entitled to recover their shares of repair expense on outlet.

Board of Monona-Harrison Drainage Dist. No. 1 v. Board of Monona County, 1945, 236 Iowa 690, 19 N.W.2d 196, appeal dismissed 66 S. Ct. 338, 326 U. S. 694, 90 L. Ed. 409.

**10. Limitations.**

Cause of action of district to recover from another district in adjoining county, costs of improvement in first district accrue when supervisors fixed sum due from latter district.

Board of Harrison County v. Board of Pigeon Creek Drainage Dist. No. 2 in Pottawattamie County, 1936, 221 Iowa 337, 264 N.W. 702.

**11. Mandamus.**

Cause of action in mandamus to compel another district to levy assessment for its share of repair expenses to common outlet, accrued when apportionment of expenditures had been approved.

Board of Harrison County v. Board of Crawford County, 1944, 234 Iowa 123, 12 N.W.2d 259.

In mandamus to compel contribution from tributary district, trustees under general denial had to prove it was outlet district, that it made repairs not in excess of 10 percent of original cost.

Board of Monona-Harrison Drainage Dist. No. 1 v. Board of Monona County, 1942, 232 Iowa 1098, 5 N.W.2d 189.

Outlet district could, in mandamus, join all districts using such outlet.

Board of Monona-Harrison Drainage Dist. No. 1 v. Board of Monona County, 1940, 228 Iowa 1095, 291 N.W. 141.

In mandamus action to compel levy of tax to pay for repairs to outlet district, petition failing to allege ditch was natural watercourse was insufficient to make this section applicable.

Board of Monona-Harrison Drainage Dist. No. 1 v. Board of Woodbury and Monona Counties, 1924, 198 Iowa 117, 197 N.W. 82.

**12. Review.**

Holding on prior appeal that assessment statute violated due process was law of the case in all later stages of the litigation.

Board of Monona-Harrison Drainage Dist. No. 1 v. Board of Monona County, 1945, 236 Iowa 690, 19 N.W. 2d 196, appeal dismissed 66 S. Ct. 338, 326 U. S. 694, 90 L. Ed. 409.

In action to recover assessments paid and to enjoin collection of those unpaid, nature of work done was fact question for trial court whose finding, supported by evidence, would not be disturbed.

Coe v. Board of Harrison County, 1941, 229 Iowa 798, 295 N.W. 151.

**13. Objections.**

Right to except or object is preserved to districts by filing of proper objections and such will present issues on appeal.

Farmers Drainage Dist. v. Monona-Harrison Drainage Dist., 1955, 246 Iowa 285, 67 N.W.2d 445.

**14. Repairs and alterations.**

Sections 455.142 to 455.145 provide exclusive remedy to enforce contributions.

Farmers Drainage Dist. v. Monona-Harrison Drainage Dist. 1955, 246 Iowa 285, 67 N.W.2d 445.

**455.143 Commissioners to apportion benefits—interest prohibited.** For the purpose of ascertaining the proportionate benefits, the board shall appoint commissioners having the qualifications of benefit commissioners, one of whom shall be an engineer. Such commissioners appointed shall not be residents of any of the districts affected, nor shall any member thereof have any interest in land in any districts affected by the contemplated work. Such commission shall determine the percentage of benefits and the sum total to be assessed to each district for the improvement. [C24, 27, 31, 35, 39,§7564; C46, 50, 54,§455.143]

Referred to in §455.145 Report and review—appeal.

**1. Validity.**

Validity upheld.

Ward v. Board of Pottawattamie County, 1932, 214 Iowa 1162, 241 N.W. 26.

**2. Legislative power.**

Legislature can grant privileges and impose burdens on granting authority to organize district.

Board of Pottawattamie County v. Board of Harrison County, 1932, 214 Iowa 655, 241 N.W. 14, motion denied 54 S. Ct. 47, appeal dismissed 54 S. Ct. 125, 290 U. S. 595, 78 L. Ed. 523.

**3. Liability for cost.**

Owners organizing upper district impliedly undertook burden of paying part of cost of improving ditch in lower district.

Board of Pottawattamie County v. Board of Harrison County, 1932, 214 Iowa 655, 241 N.W. 14, motion denied 54 S. Ct. 47, appeal dismissed 54 S. Ct. 125, 290 U. S. 595, 78 L. Ed. 523.

**4. Actions.**

Cause of action to compel levy of assessments arose in county where ditch was located and action could be maintained therein though supervisors of some districts resided in other counties.

Board of Monona-Harrison Drainage Dist. No. 1 v. Board of Monona County, 1940, 228 Iowa 1095, 291 N.W. 141.

**5. Mandamus.**

Trustees of outlet district could compel, by mandamus, levy of assessment to defray costs of cleaning and repairs, and join all districts using the outlet.

Board of Monona-Harrison Drainage Dist. No. 1 v. Board of Monona County, 1940, 228 Iowa 1095, 291 N.W. 141.

**6. Review.**

Former decision established law of the case and matter would not be again considered.

Board of Monona-Harrison Drainage Dist. No. 1 v. Board of Monona County, 1945, 236 Iowa 690, 19 N.W. 2d 196, appeal dismissed 66 S. Ct. 338, 326 U. S. 694, 90 L. Ed. 409.

**455.144 Time of report—notice of hearing.** When said commissioners are appointed, the board shall, by proper order, fix the time when the commissioners shall report their findings, but a report filed within thirty days of the time so fixed shall be deemed a compliance with said order. On the filing of said report, the board shall fix a time for hearing thereon, and it shall give notice thereof to the auditor of the county in which the land to be assessed for

such work is located by registered mail; said county auditor shall thereupon immediately notify by registered mail the board of supervisors, the board or boards of trustees of the districts having supervision thereof, as to said hearing on said commissioner's report. [C24, 27, 31, 35, 39,§7565; C46, 50, 54,§455.144]

Referred to §455.145 Report and review—appeal.

**1. Construction and application.**

Purpose of notice and hearings to advise upper districts of proposed repairs and improvements so objections could be made of record.

Farmers Drainage Dist. v. Monona-Harrison Drainage Dist., 1955, 246 Iowa 285, 67 N.W.2d 445.

Letter mailed to auditor with copy of report of apportionment of repair costs together with approval thereof was not too indefinite to be basis for spreading assessment.

Board of Harrison County v. Board of Crawford County, 1944, 234 Iowa 123, 12 N.W.2d 259.

Evidence showed legal levy against lands in other districts.

Coe v. Board of Harrison County, 1941, 229 Iowa 798, 295 N.W. 151.

**2. Records.**

Assessments were not invalidated by failure of auditor to make separate records of assessments and place them in the separate district files.

Coe v. Board of Harrison County, 1941, 229 Iowa 798, 295 N.W. 151.

**3. Review.**

Levy of assessment for improvement was within jurisdiction of board and taxpayers' only remedy was by appeal.

Coe v. Board of Harrison County, 1941, 229 Iowa 798, 295 N.W. 151.

**455.145 Report and review—appeal.** The commissioners shall file with the board a detailed report of their findings. Said board shall review said report and may, by proper order, increase or decrease the amount which shall be charged to each district. After the final order of the board herein has been made, said board shall notify the county auditor, in the time and manner as provided in sections 455.143 and 455.144, of said order, and said county auditor shall notify by registered mail the board of supervisors, and said board or boards of trustees, of said final order. Said board of supervisors and said board or boards of trustees,

if aggrieved by said final order, may appeal therefrom to the district court of the county in which any of the improvement proposed or done is located.

Any such appeal shall be taken, perfected and conducted in the time and manner provided in sections 455.92, 455.94 to 455.98, inclusive, for appeals contemplated by said sections. [C24, 27, 31, 35, 39,§7566; C46, 50, 54,§455.145]

**1. Construction and application.**

"Final order" as herein used has acquired an appropriate meaning in law and is to be construed accordingly.

Farmers Drainage Dist. v. Monona-Harrison Drainage Dist., 1955, 246 Iowa 285, 67 N.W.2d 445.

**2. Review.**

No right of appeal until board reviews and acts upon report of assessment of benefits.

Farmers Drainage Dist. v. Monona-Harrison Drainage Dist., 1955, 246 Iowa 285, 67 N.W.2d 445.

Former decision established law of the case and matter would not be again considered.

Board of Monona-Harrison Drainage Dist. No. 1 v. Board of Monona County, 1945, 236 Iowa 690, 19 N.W.2d 196, appeal dismissed 66 S. Ct. 338, 326 U. S. 694, 90 L. Ed. 409.

**455.146 Levy under original classification.** If the amount finally charged against a district does not exceed twenty-five percent of the original cost of the improvement in said district, the board shall proceed to levy said amount against all lands, highways, and railway rights of way and property within the district, in accordance with the original classification and apportionment. [C24, 27, 31, 35, 39,§7567; C46, 50, 54,§455.146]

**1. Construction and application.**

Tributary district could not avoid liability for its part of cost of repairs of outlet.

Board of Monona-Harrison Drainage Dist. No. 1 v. Board of Monona County, 1942, 232 Iowa 1098, 5 N.W.2d 189.

Board, having virtually annulled its resolution that assessment should be in same proportion as in a prior improvement by giving owners a hearing, it could not be said owners were not entitled to a hearing.

Bloomquist v. Board of Hardin County, 1920, 188 Iowa 994, 177 N.W. 95.

**2. Resolutions.**

Bloomquist v. Board of Hardin County, 1920, 188 Iowa 994, 177 N.W. 95.

**455.147 Levy under reclassification.** If the amount finally charged against a district exceeds twenty-five percent of the original cost of the improvement, the board shall order a reclassification as provided for the original classification of a district and upon the final adoption of the new classification and apportionment shall proceed to levy said amount upon all lands, highways, and railway rights of way and property within the district, in accordance with said new classification and apportionment. [C24, 27, 31, 35, 39,§7568; C46, 50, 54,§455.147]

**1. Construction and application.**

Letter mailed to auditor with copy of report of apportionment or repair costs together with approval thereof was not too indefinite to be basis for spreading assessment.

Board of Harrison County v. Board of Crawford County, 1944, 234 Iowa 123, 12 N.W.2d 259.

**2. Resolutions.**

Resolution by supervisors acting as drainage commission recognizing indebtedness for repairs removed limitations and re-established debt represented by warrants.

O. A. G. 1938, p. 482.

**3. Limitations.**

Limitations began to run against warrants for repair when litigation over classification of land in district for tax purposes ended.

O. A. G. 1938, p. 482.

**455.148 Removal of obstructions.** The board shall cause to be removed from the ditches, drains, and laterals of any district any obstructions which interfere with the flow of the water, including trees, hedges, or shrubbery and the roots thereof, and may cause any tile drain so obstructed to be relaid in concrete or any other adequate protection, such work to be paid for from the drainage funds of the district. [C24, 27, 31, 35, 39,§7569; C46, 50, 54,§455.148]

**1. Construction and application.**

Section 455.135 respecting improvements is a positive mandate.

Wise v. Board of Webster County, 1951, 242 Iowa 870, 48 N.W.2d 247.

Supervisors may buy mill dam and remove it where it is an obstruction to ditch.

O. A. G. 1928, p. 365.

**2. Contracts and specifications.**

Excavation in excess of engineer's estimate did not

entitle contractor to cancel where contract provided district could increase or reduce work and provided price adjustment.

Whitney v. Wendel, 1922, 193 Iowa 175, 186 N.W. 771.

**3. Evidence.**

Evidence held to show failure of railway to excavate crossings did not cause silt to deposit so that contractor had to clean ditches twice.

Whitney v. Wendel, 1922, 193 Iowa 175, 186 N.W. 771.

**4. Objections to work.**

Objection of majority of owners to work and expense was not valid reason for failure of supervisors to proceed with repair.

Wise v. Board of Webster County, 1951, 242 Iowa 870, 48 N.W.2d 247.

**5. Mandamus.**

Mandamus against board to compel repairs was not improper remedy.

Wise v. Board of Webster County, 1951, 242 Iowa 870, 48 N.W.2d 247.

**455.149 Trees and hedges.** When it becomes necessary to destroy any trees or hedges outside the right of way of any ditch, lateral, or drain in order to prevent obstruction by the roots thereof, if the board and the owners of such trees or hedges cannot agree upon the damage for the destruction thereof, the board may proceed to acquire the right to destroy and remove such trees or hedges by the same proceedings provided for acquiring right of way for said drainage improvement in the first instance. [C24, 27, 31, 35, 39,§7570; C46, 50, 54,§455.149]

Similar provision, §460.13 Trees outside of highways.

**455.150 Outlet for lateral drains—specifications.** The owner of any premises assessed for the payment of the costs of location and construction of any ditch, drain, or watercourse as in this chapter provided, shall have the right to use the same as an outlet for lateral drains from his premises. The board of supervisors shall make specifications covering the manner in which such lateral drains shall be connected with the main ditches or other laterals and be maintained, and the owner shall follow such specifications in making and maintaining any such connection. [S13,§ 1989-a22; C24, 27, 31, 35, 39,§7571; C46, 50, 54,§455.150]

**1. Construction and application.**

County and district trustees could not be compelled to place discharge tube with flood gate in highway ditch

to carry waters originating on plaintiffs' land.
Droegmiller v. Olson, 1950, 40 N.W.2d 292.

Legislature acted to relieve wet and swampy land.
Dullard v. Phelan, 1927, 204 Iowa 716, 215 N. W. 965.

Creation of drainage improvement does not abridge owner's right to avail himself of natural water courses.
Cowley v. Reynolds, 1917, 178 Iowa 701, 160 N.W. 241.

**2. Lands outside district.**

Equitable conditions normally not imposed on owner in subdistrict as condition precedent to right to use drain to drain lands out of district on which he has not been assessed.
Cowley v. Reynolds, 1917, 178 Iowa 701, 160 N.W. 241.

**3. Short cuts.**

Requirement of following general course of natural drainage held not violated by short cut.
Cowley v. Reynolds, 1917, 178 Iowa 701, 160 N.W. 241.

**4. Moneys collected, use of.**

Money collected for lateral not built and turned over to new district must be used to construct that lateral.
Senneff v. Board of Hancock County, 1917, 178 Iowa 1281, 160 N.W. 936.

**5. Injunction.**

Plaintiff could not enjoin adjoining owners from maintaining ditch opening to county ditch through their land, where plaintiff showed no damage.
Dullard v. Phelan, 1927, 204 Iowa 716, 215 N.W. 965.

In suit to restrain interference with tile outlet, it is complete defense that defendants acted for land owner to prevent plaintiff from diverting water on such land through the drain.
Orcutt v. Woodard, 1907, 136 Iowa 412, 113 N.W. 848.

**455.151 Subdistricts in intercounty districts.** The board of supervisors of any county shall have jurisdiction to establish subdrainage districts of lands included within a district extending into two or more counties when the lands to compose such subdistricts lie wholly within such county, and to make improvements therein, repair and maintain the same, fix and levy assessments for the payment thereof, and the provisions of this section shall apply to all such drainage subdistricts, the lands of which lie wholly within one county. The proceedings for all such purposes shall be the same as for the establishment, construction, and maintenance of an original levee or drainage district the lands of which lie wholly within one county, so far as applicable, except that

one or more persons may petition for a subdistrict as provided in section 455.70 [S13, §1989-a37; C24, 27, 31, 35, 39, §7572; C46, 50, 54,§455.151]

**1. Construction and application.**

Lands in other districts could not be annexed to intercounty district merely by resolution of necessity but required joint board action.

Farley Drainage Dist. No. 7 of Hamilton County v. Big Four Joint Drainage Dist. 1928, 207 Iowa 970, 221 N.W. 589.

**2. Jurisdiction of joint boards.**

Under prior law a joint drainage district, wherein was organized a subdistrict, had jurisdiction over such subdistrict though subdistrict was wholly in one county.

Bird v. Board of Harrison County, 1912, 154 Iowa 692, 135 N.W. 581.

**455.152 District by mutual agreement—presumption.** The owners of lands may provide by mutual agreement in writing duly signed, acknowledged, and filed with the auditor for combined drainage of their lands by the location and establishment of a drainage district for such purposes and the construction of drains, ditches, settling basins, and watercourses upon and through their said lands. Such drainage district shall be presumed to be conducive to the public welfare, health, convenience, or utility. [S13,§1989-a28; C24, 27, 31, 35, 39,§7573; C46, 50, 54,§455.152]

**1. Actions.**

Duffy v. Henderson, 1912, 155 Iowa 117, 135 N.W. 573.

**455.153 What the agreement shall contain.** Such agreement shall contain the following:

1. A description of the lands by congressional divisions, metes and bounds, or other intelligible manner, together with the names of the owners of all said lands.

2. The location of the drains and ditches to be constructed, describing their sources and outlets and the courses thereof.

3. The character and extent of drainage improvement to be constructed, including settling basins, if any.

4. The assessment of damages, if any.

5. The classification of the lands included in such district, the amount of drainage taxes or special assessments to be levied upon and against the several tracts, and when the same shall be levied and paid.

6. Such other provisions as the board deems necessary. [S13,§1989-a28; C24, 27, 31, 35, 39,§7574; C46, 50, 54,§455.153]

**455.154 Board to establish.** When such agreement is filed with the auditor he shall record it in the drainage record. The board shall at a regular, special, or adjourned session thereafter locate and establish a drainage district and locate the ditches, drains, settling basins, and watercourses thereof as provided in said agreement, and enter of record an order accordingly. The board thereafter shall carry out the object, purpose, and intent of such agreement and cause to be completed and constructed the said improvement and shall retain jurisdiction of the same as fully as in districts established in any other manner. It shall cause to be levied upon and against the lands of such districts, the drainage taxes and assessments according to said agreement and when collected said taxes and assessments shall constitute the drainage funds of said district to be applied upon order of the board as in said agreement provided. [S13,§1989-a28; C24, 27, 31, 35, 39,§7575; C46, 50, 54,§455.154]

**455.155 Procedure.** The board shall proceed to carry out the provisions of the agreement, advertising for and receiving bids, letting the work, making contracts, levying assessments, paying on estimates, issuing warrants, improvement certificates, or drainage bonds as the case may be, in the same manner as in districts established on petition, except as in said mutual agreement otherwise provided. [S13, §1989-a28; C24, 27, 31, 35, 39,§7576; C46, 50, 54,§455.155]

**455.156 Outlet in adjoining county.** When a drainage district is established and a satisfactory outlet cannot be obtained except through lands in an adjoining county, or when an improved outlet cannot be obtained except through lands downstream from the district boundary, the board shall have the power to purchase a right of way, to construct and maintain such outlets, and to pay all necessary costs and expenses out of the district funds. The board shall have similar authority relative to the construction and maintenance of silt basins upstream from the district boundary. In case the board and the owners of the land required for such outlet or silt basin cannot agree upon the price to be paid as compensation for the land taken or used, the board is hereby empowered to exercise the right of eminent domain in order to procure such necessary right of way. [S13,§1989-a55; C24, 27, 31, 35, 39,§7577; C46, 50, 54,§455.156]

Condemnation procedure, ch 472.

**1. Construction and application.**

Under prior law board could extend beyond boundaries of the district and procure necessary right of way therefor.

Nelson v. Graham, 1924, 198 Iowa 267, 197 N.W. 905.

This section inapplicable where district when established had its outlet on land out of district, which was part of a tract in the district.
Baird v. Hamilton County, 1919, 186 Iowa 856, 173 N.W. 106.

Supervisors have authority to extend outlet into another county where necessary to deepen ditch.
Yeomans v. Riddle, 1891, 84 Iowa 147, 50 N.W. 886.

**2. Notice.**

Authority to extend outlet beyond district boundaries may be exercised without notice to owners in district subject to assessment.
Nelson v. Graham, 1924, 198 Iowa 267, 197 N.W. 905.

**455.157 Outlet in another state.** When a district is, or has been established in this state and no practicable outlet therefor can be obtained except through lands in an adjoining state, the board of supervisors of the county where said district is situated shall, as drainage commissioners, have power to purchase a right of way and to construct a ditch for such outlet in an adjoining state or to contribute to the construction of such a ditch, in an adjoining state and to pay for the same out of the funds of such district. [S13, §1989-a39; C24, 27, 31, 35, 39,§7578; C46, 50, 54,§455.157]
Referred to in §455.158 Tax.

**1. Construction and application.**

Under Acts 1904 (30 G. A.) ch 68 supervisors could not pay damage claim to land outside county, which damage was caused by establishing district within the county.
Clary v. Woodbury County, 1907, 135 Iowa 488, 113 N.W. 330.

**455.158 Tax.** The board of supervisors shall have authority to levy a tax on the lands in said drainage district established in this state to provide funds from which to pay for the improvement referred to in section 455.157 should such levy be necessary. [C31,35,§7578-c1; C39,§7578.1; C46, 50, 54,§455.158]

**1. Construction and application.**

Statutory grant of power to levy and collect drainage assessments is strictly construed.
Howard v. Emmet County, 1908, 140 Iowa 527, 118 N.W. 882.

**2. Assessments.**

Assessments are made with reference to special benefit derived by property from the improvement.
Kimball v. Board of Polk County, 1921, 190 Iowa 783, 180 N.W. 988.

Power to levy special assessment on benefited property is part of general power of taxation.
Fitchpatrick v. Botheras, 1911, 150 Iowa 376, 130 N.W. 163, 37 L. R. A., N. S., 558, Ann. Cas. 1912 D, 534.

**455.159 Injuring or diverting—damages.** Any person who shall willfully break down or through or injure any levee or bank of a settling basin, or who shall dam up, divert, obstruct, or willfully injure any ditch, drain, or other drainage improvement authorized by law shall be liable to the person or persons owning or possessing the lands for which such improvements were constructed in double the amount of damages sustained by such owner or person in possession; and in case of a subsequent offense by the same person he shall be liable to treble the amount of such damages. [C73, §1227; C97,§1961; C24, 27, 31, 35, 39,§7579; C46, 50, 54,§455.159]

**1. Construction and application.**

Levee may not be cut by adjoining owner even temporarily for purpose of laying the drains.
Loveless v. Ruffcorn, 1909, 143 Iowa 221, 121 N.W. 1034.

**2. Contracts.**

Contract selling borrow land to county construed to not include damages to remaining land resulting from cut by county through drainage ditch.
Lage v. Pottawattamie County, 1942, 232 Iowa 944, 5 N.W.2d 161.

**3. Actions.**

Petition in former suit held to have urged improper construction of railroad track, so that judgment might bar the second suit.
Thompson v. Illinois Cent. R. Co., 1929, 191 Iowa 35, 179 N.W. 191.

Former suit held a bar to latter suit on same subject and for same damage.
Hahn v. Miller, 1886, 68 Iowa 745, 28 N.W. 51.

**4. Damages.**

Nominal damages allowed where evidence was not in condition to enable court to say what damages were sustained.
Allen v. Berkheimer, 1922, 194 Iowa 871, 186 N.W. 683.

**5. Injunction.**

Where appellate court annuls an injunction it may reverse with direction to dismiss petition with leave to renew if defendant's levee causes actual damage.
Black v. Escher, 1919, 186 Iowa 554, 173 N.W. 50.

Erroneous description in decree granting injunction did not affect the result.

Myers v. Priest, 1909, 145 Iowa 81, 123 N.W. 943.

**6. Review.**

Misnaming ditch as main ditch in instructing jury held not prejudicial.

O'Mara v. Jensma, 1909, 143 Iowa 297, 121 N.W. 518.

**455.160 Obstructing or damaging.** Any person or persons wilifully diverting, obstructing, impeding, or filling up, without legal authority, any ditch, drain, or watercourse or breaking down or injuring any levee or the bank of any settling basin, established, constructed, and maintained under any provision of law, or obstructing, or engaging in travel or agricultural practices upon the improvement or rights of way of a levee or drainage district which the governing body thereof has, by resolution, determined to be injurious to such improvement or to interfere with its proper preservation, operation or maintenance, and has prohibited, shall be deemed guilty of a misdemeanor and punished accordingly. [C24, 27, 31, 35, 39,§7580; C46, 50, 54,§455.160; 55GA, ch. 211,§5]

Punishment, §687.7 Punishment for indictable misdemeanors.

**455.161 Nuisance—abatement.** Any ditch, drain, or watercourse which is now or hereafter may be constructed so as to prevent the surface and overflow water from the adjacent lands from entering and draining into and through the same is hereby declared a nuisance and may be abated as such. [S13,§1989-a15; C24, 27, 31, 35, 39,§7581; C46, 50, 54, §455.161]

Nuisances, ch 657.

**1. Construction and application.**

Drainage district being legislative creation cannot be a nuisance while operating in the bounds of constitutionally delegated powers.

Miller v. Monona County, 1940, 229 Iowa 165, 294 N.W. 308.

Railroad could not build bridge over ditch if it would necessitate pilings or other obstructions in ditch.

Mason City, etc. R. Co. v. Board of Wright County, 1908, 116 N.W. 805, reversed on other grounds 144 Iowa 10, 121 N. W. 39.

**2. Ownership of land injured.**

Where one injured by water in ditch wrongfully dug on his land it is immaterial he was not owner when ditch was dug.

Miller v. Keokuk, etc. R. Co., 1883, 63 Iowa 680, 16 N.W. 567.

**455.162 Actions — settlement — counsel.** Levee and/or drainage districts through their governing bodies are authorized to maintain actions in law or equity for the purposes of preventing or recovering damages that may accrue to such districts on account of the impairment of their functions, or the increase in the cost of maintenance or operation of such districts or on account of damages to property owned by such districts, resulting from the construction and/or operation of locks, dams and pools in the Mississippi or Missouri rivers; they may make settlements and adjustments of such damages and written contracts with relation thereto, and receive any appropriations that may be made by the congress of the United States for the increased cost to drainage or levee districts and may agree to the construction and mainenance of present equipment and of new or remedial works, improvements and equipment as a part of such damages, or as a means of lessening the damages which will be suffered by the said districts. Said districts are further authorized to employ legal and engineering counsel for such purposes and to pay for the same out of the award of damages or out of the maintenance funds of the district.

If a lump sum settlement is made between the United States and the district to provide an annual payment of income therefrom, the county treasurer of the county in which the greater portion of the district is situated shall be custodian of such principal fund. The governing body of the district shall apply to the district court for authority to invest said fund as provided by section 682.23; in addition to the investments therein approved the court may authorize investment of said fund in interest bearing bonds or warrants of said district. The income from said fund shall be disbursed by direction of the governing body of the district. [C39, §7581.1; C46, 50, 54,§455.162, 55GA, ch 212,§1]

Membership in associations, §455.189 Other associations.

**1. Legislative power.**

Legislature has power to provide for recovery of damages caused to ditches by negligent acts.

Kimball v. Board of Polk County, 1921, 190 Iowa 783, 180 N.W. 988.

**455.163 Waste banks—private use.** The landowner may have any beneficial use of the land to which he has fee title and which is occupied by the waste banks of an open ditch when such use does not interfere in any way with the easement or rights of the drainage district as contemplated by this chapter. For the purpose of gaining such use the landowner may smooth said waste banks, but in doing so he must preserve the berms of such open ditch without de-

positing any additional dirt upon them. [C24, 27, 31, 35, 39§7582; C46, 50, 54,§455.163]

**1. Construction and application.**

Injunction against levee denied for what defendants did to levy was properly within this section as shown by the evidence.

Boat v. Van Veen, 1950, 241 Iowa 1152, 44 N.W. 2d 671.

The owner of land occupied by waste banks has beneficial use thereof and has duty to destroy all noxious weeds growing thereon.

O. A. G. 1948, 191.

**455.164 Preliminary expenses—how paid.** If the proposed district is all in one county, the board of supervisors is authorized to pay all necessary preliminary expenses in connection therewith from the general fund of the county. If it extends into other counties, the boards of the respective counties are authorized to pay from the general fund thereof, such proportion of said expenses as the work done or expenses created in each county bears to the whole amount of work done or expenses created. Said amounts shall be ascertained and reported by the engineer in charge of the work and be approved by the respective boards which shall, as soon as paid, charge the amount to said district in favor of the general fund of the counties, as their interest may appear, as soon as the said district is established. If said district shall not be established, the said amounts shall be collected upon the bond or bonds of the petitioners. [S13,§ 1989-a48; C24, 27, 31, 35, 39,§7583; C46, 50, 54,§455.164]

**1. Construction and application.**

Certification by engineer as to apportionment of expenses between counties held conclusive absent fraud.

Warren County v. Slack, 1921, 192 Iowa 275, 182 N.W. 664.

**2. Overdrafts.**

Facts held not to show creation of an overdraft by direction of or by approval of county board.

Mitchell County v. Odden, 1935, 219 Iowa 793, 259 N.W. 774.

**455.165 Additional help for auditor.** If the work in the office of the auditor by reason of the existence of drainage districts is so increased that the regular officer is unable by diligence to do the same, the board of supervisors may employ such additional help as may be necessary to keep the records and transact the business of the drainage districts. The expense of such help shall be paid by the districts in

proportion to the amount of work done therefor. [S13,§ 1989-a42; C24, 27, 31, 35, 39,§7584; C46, 50, 54,§455.165]

**455.166 Employment of counsel.** The board is authorized to employ counsel to advise and represent it and drainage districts in any matter in which they are interested. Attorney's fees and expenses shall be paid out of the drainage fund of the district for which the services are rendered, or may be apportioned equitably among two or more districts. Such attorneys shall be allowed reasonable compensation for their services, also necessary traveling expenses while engaged in such business. Attorneys rendering such services shall file with the auditor an itemized, verified account of all claims therefor, and statement of expenses, and the same shall be audited and allowed by the board in the amount found to be due. [S13,§1989-a14; C24, 27, 31, 35, 39,§7585; C46, 50, 54,§455.166]

**1. Construction and application.**

County not obligated in its corporate capacity on drainage district bonds.

Mitchell County v. Odden, 1935, 219 Iowa 793, 259 N.W. 774.

Where attorneys for intervenors did not represent district they were not entitled to attorneys' fees under statute.

Teget v. Polk County Drainage Ditch No. 40, 1926, 202 Iowa 747, 210 N.W. 954.

**2. Right to employ attorneys.**

Supervisors were not authorized to employ attorneys and engineer to resist proceeding to establish new district and expense thereof could not be taxed.

Christensen v. Agan, 1930, 209 Iowa 1315, 230 N. W. 800.

Drainage board may employ attorneys to assist in securing appropriation from state to assist in paying taxes on assessed lands.

Kemble v. Weaver, 1926, 200 Iowa 1333, 206 N.W. 83.

Not intended under §336.2 to impose on county attorney duties usually performed by drainage attorney, so he could be employed at additional compensation.

O. A. G. 1940, p. 112.

O. A. G. 1919-20, p. 328.

**455.167 Compensation of appraisers.** Persons appointed to appraise and award damages and make classifications of lands and assess benefits, other than the engineer, shall receive such compensation as the board may fix and in addition thereto, the necessary expense of transportation of said

persons while engaged upon their work. They shall file with the auditor an itemized, verified account of the amount of time employed upon said work and their expenses. [S13,§1989-a41; C24, 27, 31, 35, 39,§7586; C46, 50, 54,§455.167]

**1. Warrants.**

Act providing that warrants should state purpose for which issued did not apply to those issued to pay engineer and his personal employees.

O. A. G. 1919-20, p. 311.

**455.168** Repealed by 53 GA, ch 202, sec. 38.

**455.169 Payment.** All compensation for services rendered, fees, costs, and expenses when properly shown by itemized and verified statement shall be filed with the auditor and allowed by the board in such amounts as shall be just and true, and when so allowed shall be paid on order of the board from the levee or drainage funds of the district for which such services were rendered or expenses incurred, by warrants drawn on the treasurer by the auditor. [S13,§1989-a41; C24, 27, 31, 35, 39,§7588; C46, 50, 54,§455.169]

**1. Warrants.**

Act providing that warrants should state purpose for which issued did not apply to those issued to pay engineer and his personal employees.

O. A. G. 1919-20, p. 311.

**455.170 Purchase at tax sale.** When land in a levee, drainage, or improvement district is being sold at a tax sale for delinquent taxes or assessment, the board of supervisors or the district trustees, as the case may be, shall have authority to bid in such land or any part of it, paying the amount of the bid from the funds of the district, and taking the certificate of sale in their names as trustees for such district, and may thereafter pay any assessments for taxes or benefits levied against said premises from the district funds. The amount paid for redemption which shall include such additional payment, shall be credited to the district. [C24, 27, 31, 35, 39,§7589; C46, 50, 54,§455.170]

**1. Construction and application.**

Supervisors could not acquire tax title in hostility to landowners who were the "real parties in interest."

Reconstruction Finance Corp. v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

Action of board in securing tax titles held legal.

Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N.W. 568.

Sale of land for delinquent taxes not void in ground of inadequate consideration where supervisors could have bid at sale under this section.

Board of Pottawattamie County v. Stone, 1931, 212 Iowa 660, 237 N.W. 478.

**2. Purchase at tax sale.**

Acquisition by board at scavenger sale of land assessed for improvement was not a collection of the proceeds of assessments but amounted to taking over taxed property for benefit of district's bondholders.

Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N.W. 568.

**3. Bond holders, purchase by.**

Holders of drainage boards were not disqualified from purchasing at tax sale.

Teget v. Lambach, 1939, 226 Iowa 1346, 286 N.W. 522, 123 A. L. R. 392.

**4. Assignment of tax certificates.**

Landowners in district could question validity of tax titles acquired under assignments of tax certificates by supervisors in violation of statutes.

Reconstruction Finance Corp. v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

**5. Tax deeds.**

Where tax deeds for nonpayment of general taxes were acquired by board, under assignment of tax certificates, board held deeds as trustees for the district.

Reconstruction Finance Corp. v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

Tax deeds issued after scavenger sales extinguished special drainage assessments.

Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N.W. 568.

**6. Quieting title.**

Owner could not quiet title against cloud of tax deeds held by drainage bond owners without offering to pay tax and cost of improvements thereon.

Teget v. Lambach, 1939, 226 Iowa 1346, 286 N.W. 522, 123 A. L. R. 392.

**455.171 Tax deed—sale or lease.** If no redemption shall be made the board of supervisors or trustees, as the case may be, shall receive the tax deed as trustees for the district. They shall credit the district with all income from said property. They may lease or sell and convey said property as trustees for such district and shall deposit all money re-

ceived therefrom to the credit of such district. [C24, 27, 31, 35, 39,§7590; C46, 50, 54,§455.171]

**1. Construction and application.**

Provision that if no redemption is made, board shall receive tax deed as trustee is mandatory.

Reconstruction Finance Corp. v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

Action of board of acquiring land at scavenger tax sale did not constitute a collection of proceeds of assessments.

Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N.W. 568.

**2. Tax deeds.**

Lands conveyed by tax deeds from board were not exempt from drainage tax where board should originally have taken deeds as trustee.

Reconstruction Finance Corp. v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

Tax deeds issued after scavenger sale extinguished special drainage assessments.

Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N.W. 568.

**455.172 Purchase of tax certificate.** When land in a drainage or levee district, or subdistrict, is subject to an unpaid assessment and levy for drainage purposes and has been sold for taxes the board of supervisors of that county, or if control of the district has passed to trusteess then such trustees, may purchase the certificate of sale issued by the county treasurer by depositing with the county auditor the amount of money to which the holder of the certificate would be entitled if redemption was made at that time, and thereupon the rights of the holder of the certificate and the ownership thereof shall vest in the board of supervisors, or the trustees of that district, as the case may be, in trust for said drainage district or subdistrict. [C31, 35,§7590-c1; C39,§7590.1; C46, 50, 54,§455.172]

Referred to in §455.178 Purchase by bondholder.

**1. Construction and application.**

Only right board acquires with tax certificates is to hold them in trust, and if no redemption is made, to take title by deed as trustees.

Reconstruction Finance Corp. v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

Word "may" in provision that supervisors may buy certificates of sale of land for unpaid assessments and taxes held discretionary.

Bechtel v. Board of Winnebago County, 1934, 217 Iowa 251, 251 N.W. 633.
Weir v. Davis County, 2 Iowa 280; Parish & Porterfield v. Elwell, 46 Iowa 162; Jordan v. Wapello County, 69 Iowa 177, 28 N.W. 548.

**2. Bondholders, rights of.**

Bondholders not purchasing property at sales for unpaid assessments and taxes cannot complain of supervisors' failure to do so.
Bechtel v. Board of Winnebago County, 1934, 217 Iowa 251, 251 N.W. 633.

**3. Assignment of tax certificates.**

Supervisors could not acquire tax title to disadvantage of landowners of the district.
Reconstruction Finance Corp. v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

**4. Tax deeds.**

Where tax deeds for nonpayment of general taxes were acquired by board, under assignment of tax certificates, board held deeds as trustee for the district.
Reconstruction Finance Corp. v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

**5. Powers of board.**

Board could not acquire tax title in hostility to title of landowners of district.
Reconstruction Finance Corp. v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

Board acting for district cannot sell or dispose of certificate, having once taken assignment of it.
O. A. G. 1936, p. 256.

**455.173 Terms of redemption.** Redemption from said tax sale shall be made on such terms as may be agreed upon between such board of supervisors or such trustees and the owner of the land involved; but in any case in which the owner of said land will pay as much as fifty percent of the value of the land at the time of redemption he shall be permitted to redeem. If the parties cannot agree upon such value, either of them may bring an action against the other in the district court of the county where the land is situated, and the court shall determine the matter. The proceeding shall be triable in equity. [C31, 35,§7590-c2; C39,§7590.2; C46, 50, 54,§455.173]

**1. Construction and application.**

Lands conveyed by tax deeds from board were not ex-

empt from drainage tax where board should originally have taken as trustee.

Reconstruction Finance Corp. v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

Intent of this section to so apportion money that first application would be on general taxes.

O. A. G. 1940, p. 237.

This section provides method of compromising special assessments.

O. A. G. 1936, p. 256.

**455.174 Payment—assignment of certificate.** When such money is deposited with the county auditor he shall by mail notify the purchaser at said tax sale, or the latter's assignee if of record, and shall pay to the holder of such certificate the sum of money deposited with him for that purpose on surrender of the certificate with proper assignment thereon to the board of supervisors, or to the trustees of said district, as the case may be, as trustee for said district. [C31, 35,§7590-c3; C39,§7590.3; C46, 50, 54,§455.174]

**455.175 Funds.** Payment to the county auditor for such certificate shall be from the fund of said drainage or levee district, or subdistrict, on a warrant issued against that fund which shall have precedence over all other outstanding warrants drawn against that fund in the order of their payment. Should there not be a sufficient amount in the fund of said district, or subdistrict, to pay said warrant then the board of supervisors, or the trustees of the district, as the case may be, are authorized to borrow a sum of money sufficient for that purpose on a warrant for that amount on the fund of the district or subdistrict, which warrant shall bear interest from date at six percent per annum and shall have preference in payment over all other unpaid warrants on said fund, and the county treasurer shall so enter the same on the list of warrants in his office and call the same for payment as soon as there is sufficient money in said fund. [C31, 35,§7590-c4; C39,§5790.4; C46, 50, 54,§455.175]

**455.176 Lease or sale of land.** If said certificate goes to deed to the board or to the trustees, all leases and sales of the land shall be effected and record thereof made in the same manner in which leases and sales are effected and record thereof made when the county acquires title as a purchaser under execution sale. [C31, 35,§7590-c5; C39, §7590.5; C46, 50, 54,§455.176]

**1. Construction and application.**

Persons dealing with board of supervisors are charged with knowledge of the limits of its power.

Reconstruction Finance Corporation v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

**2. Assignment of tax certificates.**

Lands conveyed by tax deeds from board were not exempt from drainage tax where board should originally have taken deeds as trustee.

Reconstruction Finance Corporation v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

**3. Sale of land.**

Drainage board is not required to hold the land forever but may sell land acquired by tax deed.

Reconstruction Finance Corporation v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

**455.177 Duty of treasurer.** When any lands in a drainage or levee district, or subdistrict, are subject to an unpaid assessment and levy for drainage purposes and are sold for a less sum of money than the amount of delinquent taxes thereon the county treasurer shall immediately report that fact to the board of supervisors, or to the trustees for the district, as the case may be. [C31, 35,§7590-c6; C39,§7590.6; C46, 50, 54,§455.177]

**1. Construction and application.**

Word "may" in provision that supervisors may buy certificates of sale of land for unpaid assessments and taxes held discretionary.

Bechtel v. Board of Winnebago County, 1934, 217 Iowa 251, 251 N.W. 633.

**455.178 Purchase by bondholder.** In any event where upon the request of the holder of any bond or bonds issued by any drainage district the board of supervisors shall fail, neglect or refuse to purchase the certificate of sale issued by the county treasurer and referred to in section 455.172 in manner and form as permitted by said section, the holder of such bond or bonds may, upon filing with the county auditor a sworn statement as to the making of such written request upon the board of supervisors and a recital of the failure of such board to act in the premises by complying with the provisions of said section, in the same manner and form purchase such certificate and the ownership thereof shall thereupon vest in such holder of such bond or bonds in trust for said drainage district or subdistrict, provided, however, that the holder shall have a lien upon said certificate and any beneficial interest arising therefrom for his actual outlays including his reasonable expenses and attorney's fees, if any, incurred in the premises. In the event

any such holder of any bond or bonds shall acquire title he shall have a right to lease or convey said premises, upon giving thirty days written notice to the board of supervisors by filing the same with the county auditor and in the event said board shall not appprove said lease or sale, the same shall be referred to the district court of the county where the land is situated and there tried and determined in the manner prescribed in section 455.172. Any funds realized from the lease or sale of said land shall be first applied in extinguishing the lien of the holder of the certificate herein provided for and the balance shall be paid to the said drainage bond fund of said district. [C35,§7590-g1; C39,§7590.7; C46, 50, 54,§455.178]

**455.179 Voting power.** In case any proposition arises in said district to be determined by the vote of parties owning land therein, notice of such hearing shall be given and the board of supervisors or trustees, as the case may be, while holding title in trust to any such land, shall have the same right to vote for or against such proposition as the former owner would have had if he had not been divested of the title to said land. [C24, 27, 31, 35, 39,§7591; C46, 50, 54, §455.179]

**455.180 Inspection of improvements.** The board of any county into which a levee or drainage improvement extends shall cause a competent engineer to inspect such levee or drainage improvement as often as it deems necessary for the proper maintenance and efficient service thereof. The engineer shall make report to the board of the condition of the improvement, together with such recommendations as he deems necessary. For any claim for services and expenses of inspection, the engineer shall file with the auditor an itemized and verified account of such service and expense to be allowed by the board in such amount as it shall find due and paid out of the drainage funds of the district. If the district extends into two or more counties, such action shall be had jointly by the several boards, and the expenses equitably apportioned among the lands in the different counties. [S13,§1989-a44; C24, 27, 31, 35, 39,§7592; C46, 50, 54, §455.180]

**455.181 Watchmen.** When a levee has been established and constructed in any county, the board shall be empowered to employ one or more watchmen, and fix their compensation, whose duty it shall be to watch such levee and make repairs thereon in case of emergency. Such employee shall file with the auditor an itemized, verified account for services rendered, and cost and expenses incurred in watching or repairing such levee, and the same shall be audited and

allowed by the board as other claims and paid by the county from funds belonging to such district. [S13,§1989-a40; C24, 27, 31, 35, 39,§7593; C46, 50, 54,§455.181]

**455.182 Construction of drainage laws.** The provisions of this chapter and all other laws for the drainage and protection from overflow of agricultural or overflow lands shall be liberally construed to promote leveeing, ditching, draining, and reclamation of wet, swampy and overflow lands. [S13,§1989-a46; C24, 27, 31, 35, 39,§7594; C46, 50, 54,§455.182]

**1. Construction and application.**

Drainage statutes are to be liberally construed.

Morrow v. Harrison County, 1954, 245 Iowa 725, 64 N.W.2d 52.

Laws regarding establishment of drainage districts are to be liberally construed.

Plumer v. Board of Harrison County, 1921, 191 Iowa 1022; 180 N.W. 863; Kimball v. Board of Polk County, 1921, 190 Iowa 783, 180 N.W. 988.

In view of this section, section 455.142 could not be construed as applicable to districts which outlet directly into lower district.

Board of Monona-Harrison Drainage Dist. No. 1 v. Board of Supervisors of Monona County, 1945, 236 Iowa 690, 19 N.W.2d 196, appeal dismissed 66 S. Ct. 338, 326 U. S. 694, 90 L. Ed. 409.

Eminent domain provisions strictly construed.

Hoyt v. Board of Carroll County, 1925, 199 Iowa 345, 202 N.W. 98.

Laws relative to drainage districts must be liberally construed.

Flood v. Board of Dallas County, 1915, 173 Iowa 224, 155 N.W. 280.

Under acts 30 G. A., ch. 68 supervisors could not pay claim for damages outside county caused by district within the county.

Clary v. Woodbury County, 1907, 135 Iowa 488, 113 N.W. 330.

**2. Substantial compliance sufficient.**

In establishing or altering district the law contemplates only substantial compliance and irregularities are not jurisdictional.

Harris v. Board of Green Bay Levee & Drainage Dist. No. 2, Lee County, 1953, 244 Iowa 1169, 59 N.W.2d 234.

Only substantial compliance contemplated by the law.
Goeppinger v. Boards of Sac, Buena Vista and Calhoun Counties, 1915, 172 Iowa 30, 152 N.W. 58.

**3. Assessments.**

In view of the rule that drainage statutes are to be construed liberally the assessment sufficiently described the property.
Chicago, etc. R. Co. v. Monona County, 1909, 144 Iowa 171, 122 N.W. 820.

**4. Review.**

Under the facts only owners of land in new district could complain on appeal of the establishment of new district draining into old ditch.
Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

**455.183 Technical defects.** The collection of drainage taxes and assessments shall not be defeated where the board has acquired jurisdiction of the interested parties and the subject matter, on account of technical defects and irregularities in the proceedings occurring prior to the order of the board locating and establishing the district and the improvements therein. [S13,§1989-a46; C24, 27, 31, 35, 39,§7595; C46, 50, 54,§455.183]

**1. Construction and application.**

In establishment proceedings, defects occurring prior to order of establishment not considered on appeal from order fixing and levying assessments.
Chicago, etc. R. Co. v. Board of Hamilton County, 1918, 184 Iowa 590, 169 N.W. 103.

Irregularities held not to constitute jurisdictional defects.
Lyon v. Board of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

On appeal from assessments only objections filed before board may be heard except for questions of lack of jurisdiction.
In re Lightner, 1909, 145 Iowa 95, 123 N.W. 749.

**2. Persons entitled to complain.**

Under the facts only owners of land in new district could complain on appeal of establishment of new district draining into old ditch.
Prichard v. Board of Woodbury County, 1911, 150 Iowa 565, 129 N.W. 970.

**3. Irregularities in general.**

Irregularities held not fatal where court found a con-

sistent result from all the proceedings.

Loomis v. Board of Sup'rs., 1919, 186 Iowa 721, 173 N.W. 615.

Where owner was served with notice and as subcontractor worked on improvement, and paid, without objection, several installments of assessments, he was estopped to receive equitable relief from having to pay remaining installments.

Thompson v. Mitchell, 1907, 133 Iowa 527, 110 N.W. 901.

**4. Notice, failure to give.**

Under the facts the notification of establishment of district given by auditor without express direction of the board before examining engineer's return was not a fatal defect where later cured.

County Drains Nos. 44, 45 v. Long, 1911, 151 Iowa 47, 130 N.W. 152.

**5. Records.**

Failure of auditor of one county to keep record of proceedings of establishment of district in two counties did not invalidate the proceedings.

Appeal of Head, 1908, 141 Iowa 651, 118 N.W. 884.

**6. Changes.**

Slight changes during construction at comparatively inconsequential cost were authorized under the statutes.

Chicago, etc. R. Co. v. Board of Clinton County, 1924, 197 Iowa 1208, 198 N.W. 640.

**7. Waiver and estoppel.**

Jurisdictional defects in proceedings not waived by failure to appear or appeal from assessment.

Chicago, etc. R. Co. v. Sedgwick, 1927, 203 Iowa 726, 213 N.W. 435.

Proceeding to clean and repair ditch not new wrong for which estoppel can be found against objecting owners.

Lincoln v. Moore, 1923, 196 Iowa 152, 194 N.W. 299.

Objection to defective service of notice waived if not made before board.

In re Lightner, 1910, 145 Iowa 95, 123 N.W. 749.

**8. Review.**

On appeal from assessments only objections filed before board may be heard except for questions of lack of jurisdiction.

In re Lightner, 1909, 145 Iowa 95, 123 N.W. 749.

**455.184 Conclusive presumption of legality.** The final order establishing such district when not appealed from, shall be conclusive that all prior proceedings were regular and according to law. [S13,§1989-a46; C24, 27, 31, 35, 39,§ 7596; C46, 50, 54,§455.184]

**1. Construction and application.**

Provision that order of establishment is conclusive that proceedings were legal is conclusive against charge of fraud.

Town of Carpenter v. Joint Drainage Dist. No. 6, 1924, 198 Iowa 182, 197 N.W. 656, modified in other respects 198 Iowa 182, 199 N.W. 265.

Except as to right of appeal from order of establishment, the order of establishment was conclusive on the property owner.

Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects, 182 Iowa 60, 165 N.W. 390.

**2. Failure to appeal.**

Having failed to appeal from order of establishment property owner could not later challenge it.

Wilcox v. Marshall County, 1941, 229 Iowa 865, 294 N.W. 907, modified in other respects 297 N.W. 640.

Lack of jurisdiction was not cured by failure to appeal from order.

Hoyt v. Board of Carroll County, 1925, 199 Iowa 345, 202 N.W. 98.

Failure to appeal from inclusion of his land in district forecloses question of whether such land should have been omitted.

Chicago, etc. R. Co. v. Board of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified in other respects 182 Iowa 60, 165 N.W. 390.

The most relief that can be granted on appeal from assessment of benefits is to modify or reduce a given assessment.

Chicago, etc. R. Co. v. Board of Dubuque County 1916, 176 Iowa 690, 158 N.W. 553.

**3. Questions reviewable on appeal from assessments.**

Absent appeal from overruling of objections by board only questions affecting authority of board to act are raised on appeal from assessments.

Kelley v. Drainage Dist. No. 60 in Greene County 1912, 158 Iowa 735, 138 N.W. 841; Herron v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 846.

Where on appeal sole question was equitableness of assessment, whether the improvement was ill-advised could not be considered.

Harriman v. Drainage Dist. No. 7-146 of Franklin and Wright Counties, 1924, 198 Iowa 1108, 199 N.W. 974.

On appeal from assessment jurisdiction of board to order establishment of district could be first raised.

Cordes v. Board of Hamilton County, 1924, 197 Iowa 136, 196 N.W. 997.

Appeal from assessment only does not involve questions of legality or regularity of proceedings.

Nervig v. Joint Boards of Polk and Story Counties, 1922, 193 Iowa 909, 188 N.W. 17.

That drain departed from natural channel causing excessive costs cannot be raised on appeal from assessments.

Sullivan v. Board of Palo Alto County, 1922, 193 Iowa 739, 187 N.W. 575.

Where drainage plan was presented, published and adopted without objection it is beyond scope of appeal from assessment.

Board of Polk County v. McDonald, 1920, 188 Iowa 6, 175 N.W. 817.

On appeal from assessment owner cannot deny that some benefit was received.

Chicago, etc. R. Co. v. Board of Dubuque County, 1916, 176 Iowa 690, 158 N.W. 553.

**4. Collateral attack.**

One appearing at establishment proceedings and not appealing cannot urge, in appeal from assessments that improper notice was given of pendency of petition for establishment to nonresidents.

In re Lightner, 1909, 145 Iowa 95, 123 N.W. 749.

**5. Waiver.**

Failure of owner to appeal from establishment waived all other remedies under Code Supp. 1907, §1989-a 46.

Kelley v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 841; Herron v. Drainage Dist. No. 60 in Greene County, 1912, 158 Iowa 735, 138 N.W. 846.

**455.185 Drainage record.** The board shall provide a drainage record book, which shall be in the custody of the auditor, who shall keep a full and complete record therein of all proceedings relating to drainage districts, so arranged and indexed as to enable any proceedings relative to any particular

district to be examined readily. [S13,§1989-a14-a42; C24, 27, 31, 35, 39,§7597; C46, 50, 54,§455.185]

**1. Construction and application.**

Section 349.1 referring to publication of official proceedings also includes drainage matters.
O. A. G. 1909, p. 269.

Doubtful whether loose leaf book for recording proceedings is compliance, bound book would be better.
O. A. G. 1909, p. 260.

**2. Record.**

Verity of record and land included in district to which plaintiff was a party is not open question in proceeding to enjoin construction of ditch.
Baird v. Hamilton County, 1918, 186 Iowa 856, 167 N.W. 590, rehearing denied 186 Iowa 856, 173 N.W. 106.

Failure of auditor of a county to keep record of establishment proceedings of a district covering two counties in separate record did not invalidate proceedings.
In re Appeal of Head, 1909, 141 Iowa 651, 118 N.W. 884.

Drainage matters should be recorded in drainage book.
O. A. G. 1909, p. 258.

**3. Construction of entries.**

Entry in minutes of supervisors, "Board adjourned" construed to mean adjournment or recess for the day.
Hoyt v. Brown, 1912, 153 Iowa 324, 133 N.W. 905.

**4. Amendment of record.**

Where board was enjoined from levying tax to pay for costs it could not, on certiorari proceeding to review subsequent order for levy, avail itself of amendment to its record after adverse decision.
Tod v. Crisman, 1904, 123 Iowa 693, 99 N.W. 686.

**5. Evidence.**

Engineer's report of negotiation with owner was competent evidence of transaction of the board.
Wilson Subdrainage Dist. of Harrison-Pottawattamie Drainage Dist. No. 1 v. Richardson, 1922, 195 Iowa 345, 190 N.W. 384.

Board could, at later meeting, correct minutes to correspond to the facts.
In re Drainage Dist. No. 3, Hardin County, 1909, 140 Iowa 564, 123 N.W. 1059.

**455.186 Records belong to district.** All reports, maps, plats, profiles, field notes, and other documents pertaining

to said matters, including all schedules, and memoranda relating to assessment of damages and benefits, shall belong to the district to which they relate, remain on file in the office of the county auditor, and be matters of permanent record of drainage proceedings. [C24, 27, 31, 35, 39,§7598, C46, 50, 54,§455.186]

**1. Construction and application.**

Failure of auditor of a county to keep record of establishment proceedings a district covering two counties, in separate record did not invalidate proceedings.

Appeal of Head, 1908, 141 Iowa 651, 118 N.W. 884.

## DRAINAGE ASSOCIATIONS

**455.187 Membership in National Drainage Association.** Any drainage district may join and become a member of the National Drainage Association. A drainage district may pay a membership fee and annual dues upon the approval of the drainage board of such district, but not in excess of the following:

One hundred dollars for drainage districts having indebtedness in excess of one million dollars.

Fifty dollars for drainage districts having an indebtedness of five hundred thousand dollars and less than one million dollars.

Twenty-five dollars for drainage districts having an indebtedness of two hundred fifty thousand dollars and less than five hundred thousand dollars.

Ten dollars for drainage districts having an indebtedness less than two hundred fifty thousand dollars.

The annual dues for any district shall not exceed one-twentieth of one percent of the outstanding indebtedness of the district. [C31, 35,§7598-c1; C39,§7598.01; C46, 50, 54, §455.187]

**455.188 Membership fee.** The cost of membership fees and dues shall be assessed against the land in the drainage district and collected in the same manner and in the same ratio as assessments for the cost and maintenance of the drainage district. [C31, 35,§7598-c2; C39,§7598.02; C46, 50, 54,§455.188]

**455.189 Other associations.** Levee and/or drainage districts are authorized to become members of drainage associations for their mutual protection and benefit, and may pay dues and membership fees therein out of the maintenance funds. [C39,§7598.03; C46, 50, 54,§455.189]

## RECEIVERSHIP FOR DRAINAGE LANDS

**455.190 Receiver authorized.** Whenever the governing board of any drainage or levee district becomes the owner

of a tax sale certificate, for any tract of land within the district, and one or more years taxes subsequent to the tax certificate have gone delinquent, the said governing board may, on behalf of such district, make application to the district court of the county within which such real estate or a part thereof is situated, for the appointment of a receiver to take charge of said delinquent real estate. [C35,§7598-c1; C39,§7598.04; C46, 50, 54,§455.190]

**455.191 Hearing and notice thereof.** Upon the filing of the petition for such appointment, the court or a judge thereof, shall fix a time and place of hearing thereon, which may be in term time or vacation, and shall prescribe and direct the manner for the service of notice upon the owner, lienholders and persons in possession of said real estate of the pendency of said application. [C35,§7598-e2; C39,§7598.05; C46, 50, 54,§455.191]

**455.192 Appointment—grounds.** Said application shall be heard by the court, or a judge thereof, at the time and place so designated, and after hearing thereon the court or judge may appoint one of the members of the governing board of said drainage or levee district as receiver for said real estate, on the grounds that the said real estate is producing returns, and that the general and special taxes against the same are not being paid, and direct him to forthwith take possession of the same and to collect the rents, issues and profits therefrom. [C35,§7598-e3; C39,§7598.06; C46, 50, 54,§455.192]

**455.193 Bond.** The cost of the premium of the bond of such receiver shall be paid for out of the general funds of the drainage or levee district, and no charge shall be made by the receiver for compensation in said cause. [C35,§7598-e4; C39,§7598.07; C46, 50, 54,§455.193]

**455.194 Avoidance of receivership.** The owner of any such tract of real estate may avoid the appointment of such receiver, either before or after the action is commenced, by entering into a good and sufficient written instrument with the governing board of such district, agreeing to apply the rent share of the products of said land, or its equivalent to the payment of taxes thereon. [C35,§7598-e5; C39,§7598.08; C46, 50, 54,§455.194]

**455.195 Preference in leasing.** In the event a receiver is appointed for any tract of land, the owner if he is actually in possession thereof, shall have the preference to rent the same. [C35,§7598-e6; C39,§7598.09; C46, 50, 54,§455.195]

**455.196 Rents—application of.** The rents, issues and profits of the real estate when collected by the receiver, shall be applied as follows:

1. To the payment of the costs and expenses of the receivership.
2. To the payment of current general taxes against said real estate.
3. To the payment of any current special taxes against said real estate.
4. The surplus shall be applied upon any delinquent taxes or tax certificates, and the remainder, if any, shall be paid to the owner of said real estate. [C35,§7598-e7; C39,§7598.10; C46, 50, 54,§455.196]

Section numbers 455.197 to 455.200 reserved for use in future codes.

## FEDERAL FLOOD CONTROL CO-OPERATION

**455.201 Plan of improvement.** Whenever the government of the United States acting through its proper agencies or instrumentalities will undertake the original construction of improvements or the repair or alteration of existing improvements which will accomplish the purposes for which the district was established or aid in the accomplishment thereof and shall cause to be filed in the office of the auditor of the county in which said district is located a plan of such improvement or for the repair or alteration of existing improvements, the board shall have jurisdiction, power and authority, upon the notice, hearing and determination hereinafter provided, to adopt such plan of improvement or of repair or alteration of existing improvements and to provide necessary right of way therefor, and to pay such portion of all costs and damages incident to the adoption of such plan, the construction thereunder and the maintenance and operation of the works as will not be discharged by the federal government under legislation existing at the time of adoption; also to enter into such agreements with the United States government as may be necessary to meet federal requirements including the taking over, repair and maintenance of the works and to perform under such agreements. [C50, 54,§455.201]

Referred to in §455.69, laterals. Return of excess levy §455.202, cooperative agreement. §455.212 Cost, assessments, payment.

**1. Construction and application.**

Sections 455-201 to §455.216 do not materially alter existing laws on levee and drainage districts.

Harris v. Board of Trustees, 1953, 244 Iowa, 1169, 59 NW 2d 234.

**455.202 Agreement in advance.** The agreement with the federal government contemplated in section 455.201 may be entered into by the board in advance of the filing of the plan —such agreement to be effective if the plan is finally adopted.

If the plan is approved the board shall make a record of any such co-operative agreement. [C50, 54,§455.202]

**455.203 Engineer appointed.** After the filing of the plan contemplated in section 455.201 hereof the board shall, at its first session thereafter, regular, special or adjourned, appoint a disinterested, and competent civil or drainage engineer who shall give bond in an amount to be fixed by the board conditioned for the faithful and competent performance of his duties. [C50, 54,§455.203]

**1. Construction and application.**

Failure of engineer to give bond and other objections made by plaintiff did not deprive board of right to establish plan of repairs and alterations.

Harris v. Board of Trustees of Green Bay Levee & Drainage Dist. No. 2, Lee County, 1953, 244 Iowa 1169, 59 NW 2d 234.

**455.204 Engineer's report.** The engineer shall examine the plan filed by the federal agency and the lands affected thereby and shall make and file with the county auditor a full written report which, together with the federal plan, will show the following:

1. The character and location of all contemplated improvements, and the plats, profiles and specifications thereof.

2. The particular description and acreage of land required from each forty-acre tract or fraction thereof for right-of-way, borrow pits or other purposes together with congressional or other description of each tract and the names of the owners thereof as shown by the transfer books in the office of the auditor.

3. A particular description of each forty-acre tract or fraction thereof that will be excluded from benefit by adoption of the plan as filed, together with the name of the owners thereof as shown by the transfer books in the office of the auditor.

4. A particular description of each forty-acre tract or fraction thereof outside the district which will benefit from adoption of the plan as filed and the name of the owner thereof as shown by the transfer books in the office of the auditor.

5. Such rights of way or portions thereof previously established or acquired as will be rendered unnecessary by adoption of the federal plan and any unpaid damages awarded therefor.

6. Such other damages previously awarded as will be affected by adoption of the federal plan.

7. The recommendation of the enginer with respect to the adoption of the plan. [C50, 54,§455.204]

**455.205 Supplemental reports.** Upon the filing of such report the board shall examine and consider the same together with the plan and the commitments involved in its adoption and may require supplemental reports of the engineer or of another disinterested engineer with such data as they may deem necessary or desirable including recommendations for any change or modification, negotiate with the federal agency involved and amend the plan in such manner as may be mutually agreed upon. The engineer shall make such supplemental reports as may be required by the board or necessitated by amendment of plan. [C50, 54,§455.205]

Referred to in §455.69 Change of conditions—modification of plan.

**455.206 Notice and hearing.** If upon consideration of the plan or amended plan and the report or reports of the engineer and the commitments involved in the adoption of the plan the board finds that the district will benefit therefrom or the purposes for which the district was established will be promoted thereby, the board shall adopt the same as a tentative plan, entering order to that effect and fixing a date for hearing thereon not less than thirty days thereafter and directing the auditor to cause notice to be given of such hearing as hereinafter provided. [C50, 54,§455.206]

Referred to in §455.69 Change of conditions—modification of plan.

**455.207 Form of notice.** Such notice shall be captioned in the name of the district and shall be directed to the owners, including railroad companies having rights of way, lienholders, encumbrancers and occupants of all lands within the district without naming them, and to all other persons whom it may concern and, naming them, to all owners, lienholders or encumbrancers of lands which an adoption of the plan would exclude from benefits and of lands outside the district which will benefit therefrom, and shall set forth that there is on file in the office of the auditor a plan of construction of the federal agency (naming it) together with reports of an engineer thereon which the board has tentatively approved, and that such plan may be amended before final action; also the day and hour set for hearing on the adoption of said plan, and that all claims for damages, except claims for land required for right of way or construction, and all objections to the adoption of said plan for any reason must be made in writing and filed in the office of the auditor at or before the time set for hearing. Provisions of this chapter for giving notice, waiver of notice, waiver of objection and damages and adjournment for service contained in section 455.21 to section 455.26, inclusive, shall apply with the exception that if notice be given by

publication the last publication need not be more than ten days prior to the time set for hearing. [C50, 54,§455.207]

Referred to in §455.69 Change of conditions—modification of plan.

**1. Claims.**

On appeal owner could not recover on different ground than that called to attention of the board.

Harris v. Board of Green Bay Levee & Drainage Dist. No. 2, Lee County, 1953, 244 Iowa 1169, 59 N.W. 2d 234.

**455.208 Amendment—new parties.** The board may continue the hearing pending decision and may amend the plan but in the event of amendment the board shall continue further hearing to a fixed date. All parties over whom the board then has jurisdiction shall take notice of such further hearing but any new parties rendered necessary by the modification or change of plans shall be served with notice as for the original hearing. [C50, 54,§455.208]

Referred to in §455.69 Change of conditions—modification of plan.

**455.209 Entry of order—effect.** If the board, after consideration of the subject matter, including all objections filed to the adoption of the plan and all claims for damages, shall find that the district will be benefited by adoption of the plan or the purposes for which the district was established is furthered thereby, they shall enter order approving and adopting such final plan. Such order shall have the effect of:

1. Altering the boundaries of the district to conform to the changes effected by the plan adopted.

2. Canceling all existing awards for damages for property not appropriated for right of way or construction and rendered unnecessary by the plan so adopted.

3. Canceling all awards previously made for damages other than for right of way or construction but reinstating the claims for such damages which said claims may be amended by the claimants within ten days thereafter.

4. Canceling all unpaid assessments for benefits on lands excluded from the district by adoption of the plan. The assessments so canceled shall become part of the costs of the improvement.

5. Establishing as benefited thereby the lands added to the district by adoption of the plan and rendering same subject to classification and assessment. [C50, 54,§455.209]

Referred to in §455.69 Change of conditions—modification of plan.

**455.210 Appraisement.** The board shall thereupon appoint three appraisers of the qualifications prescribed in section 455.30, who shall qualify in the manner therein provided, and shall fix a time for hearing on their report of which all interested parties shall take notice. The appraisers shall

view the premises and fix and determine the damages to which each claimant is entitled, including claimants whose awards for damages were canceled by the order of adoption, and shall place a separate valuation upon the acreage of each owner taken for right of way or other purposes necessitated by adoption of the plan and shall file a report thereof in writing in the office of the auditor at least five days before the date fixed by the board for hearing thereon. Should the report not be filed on time or should good cause for delay exist the board may postpone the time for final action on the subject and, if necessary, may appoint other appraisers. Thereafter the provisions of section 455.32 shall apply. [C50, 54,§455.210]

**1. Construction and application.**

Evidence finding to evaluate damage to land by flood was properly received in action for damages to land caused by break in levee.

Harris v. Board of Green Bay Levee & Drainage Dist. No. 2, Lee County, 1953, 244 Iowa 1169, 59 N.W. 2d 234.

**455.211 Assessment of benefits.** Appointment of commissioners to assess benefits and classify lands within the district and all proceedings relative to such assessment and classification shall be as otherwise provided in this chapter except that when the lands of the district have previously been classified, the commissioners shall classify and assess only such lands as have been added to the district by adoption of the plan and recommend such changes in existing classifications as are materially affected by the plan so adopted. The board may, upon hearing, adjust the classification of lands affected by the plan. [C50, 54,§455.211]

**455.212 Installments—warrants.** The board shall levy the costs contemplated in section 455.201 upon all of the lands of the district on the basis of the classification for benefits as finally established and the assessments so levied shall be paid in one installment unless the board in its discretion shall provide for the payment thereof in not more than three equal installments with interest at four percent per annum. The board may issue warrants bearing interest at four percent per annum against assessments. [C50, 54, §455.212]

**455.213 Subsequent levies.** The board shall make such subsequent levies as may be necessary to meet the expenses of the district including costs of maintenance, repair and operation of the works. [C50, 54,§455.213]

**455.214 Applicable statutes.** Except as otherwise provided herein all provisions of this chapter and chapters 456 to 467, inclusive, relative to assessment of damages, appointment of an engineer, employment of counsel, payment for work, levy and collection of drainage and levee assessments and taxes, the issue of improvement certificates and drainage or levee bonds, the taking of appeals and the manner of trial thereof and all other proceedings relating thereto shall apply. [C50, 54,§455.214]

**1. Construction and application.**

Sections 455.201 to 455.216 do not materially alter existing laws on levee and drainage districts.

Harris v. Board of Green Bay Levee & Drainage Dist. No. 2, Lee County, 1953, 244 Iowa 1169, 59 N.W.2d 234.

**455.215 Scope of plan.** The provisions of this division shall be applicable to districts organized or established under the provisions of chapters 457 to 462, inclusive, 466 and 466. [C50, 54,§455.215]

**455.216 Districts under trustees.** When a district is in the management of trustees as provided in chapter 462 the board of trustees shall have the jurisdiction to adopt the federal plan as provided herein and to exercise all other powers herein granted except that any levy shall be made by the board of supervisors upon certificate of the amount necessary by the trustees as provided in section 462.28. [C50, 54,§455.216]

# CHAPTER 455A

## IOWA NATURAL RESOURCES COUNCIL

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**455A.1 Definitions.** As used in this chapter, council means "Iowa Natural Resources Council";

"Flood plains" means the area adjoining the river or stream, which has been or may be hereafter covered by flood water;

"Floodway" means the channel of a river or stream and those portions of the flood plains adjoining the channel, which are reasonably required to carry and discharge the flood water or flood flow of any river or stream;

"Council floodway" means a floodway designated and established by order of the council, fixing its length and landside limits;

"Person" means any natural person, firm, partnership, association, corporation, state of Iowa, any agency of the state, municipal corporation, political subdivision of the state of Iowa, legal entity, drainage district, levee district, public body, or other district or units maintained or to be constructed by assessments, or the petitioners of a proceeding, pending in any court of the state affecting flood control;

"Due notice" means a notice of not less than thirty days

by one publication in an official newspaper published in each county in which the property affected is located. [C50, 54,§455A.1]

**455A.2 Declaration of policy.** It is hereby recognized that the protection of life and property from floods, the prevention of damage to lands therefrom and the conservation of the water resources of the state by the considered and proper use thereof, is of paramount importance to the welfare and prosperity of the people of the state, and, to realize these objectives it is hereby declared to be the policy of the state to correlate and vest the powers of the state in a single agency with the duty and authority to establish and enforce an appropriate comprehensive state-wide plan for the control of water and the protection of the surface and underground water resources of the state. In the formulation of this plan the resultant effect thereof on other resources of the state shall be recognized and included in such plan. [C50, 54,§455A.2)

**455A.3 Creation.** There is hereby created and established an Iowa natural resources council. The council is established as an agency of the state government to promote the policies set forth in this chapter and shall represent the state of Iowa in all matters within the scope of this chapter. [C50, 54,§455A.3]

**455A.4 Appointment.** The council shall consist of seven members who shall be electors of the state of Iowa and shall be selected from the state at large solely with regard to their qualifications and fitness to discharge the duties of office and without regard to their political affiliation. The members of the council shall be appointed by the governor with the approval of two-thirds of the members of the senate in executive session and shall be appointed for overlapping terms of six years. The terms of two members of the council shall expire on the first day of July, 1951; the terms of two members shall expire on July 1, 1953; and the terms of three members shall expire on July 1, 1955. At the expiration of such terms all appointments shall be for terms of six years. [C50, 54,§455A.4]

**455A.5 Vacancies.** Vacancies occurring while the general assembly is in session shall be filled for the unexpired portion of the term as full-term appointments are filled. Vacancies occurring while the general assembly is not in session shall be filled by the governor, but such appointments shall terminate at the end of thirty days after the convening of the next general assembly. [C50, 54,§455A.5]

**455A.6 Removal.** The governor may, with the approval of the senate, during a session of the general assembly, remove any member of the council for malfeasance in office or for any cause that renders him ineligible for membership or incapable or unfit to discharge the duties of his office and his removal when so made shall be final. [C50, 54, §455A.6]

**455A.7 Compensation and expenses.** Each member of the council not otherwise in the full-time employment of any public body, shall receive the sum of twenty-five dollars for each day actually and necessarily employed in the discharge of official duties provided such compensation shall not exceed one thousand dollars for any fiscal year. In addition to the compensation hereinbefore described, each member of the council shall be entitled to receive the amount of his traveling and other necessary expenses actually incurred while engaged in the performance of any official duties, when so authorized by the council. No member of the council shall have any direct financial interest in, or profit by any of the operations of the council. [C50, 54, §455A.7]

**455A.8 Organization, meetings and rules.** The council shall organize by the election of a chairman and shall meet at the seat of government on the first Monday in the months of January, April, July and October, and at such other times and places as it may deem necessary. The chairman shall be elected annually at the meeting of the council in July. Meetings may be called by the chairman and shall be called by the chairman on the request of four members of the council. The majority of the council shall constitute a quorum and the concurrence of a majority of the council in any matter within their duties shall be required for its determination. The council shall adopt such rules and regulations as it may deem necessary to transact its business and for the administration and exercise of its powers and duties. [C50, 54,§455A.8]

**1. Construction and application.**

Number of members for quorum was majority of seven members, or four members notwithstanding two vacancies in membership.

O. A. G., 1950, p. 151.

**455A.9 Director.** The council shall choose a director who shall not be a member of the council and shall fix the compensation of such director, which shall be payable out of the funds appropriated to the council. The director shall be qualified by training and experience. The term of office

of the director shall be during the pleasure of the council. The director shall serve as the executive officer of the council and shall have charge of the work of the council subject to its orders and directions. [C50, 54,§455A.9]

**455A.10 Employees.** The director, with the approval of the council is empowered to employ, discharge, and fix the salaries of such technical, clerical, stenographic and such other employees and assistants as may be required. All of such employees shall be paid from funds appropriated to the council. [C50, 54,§455A.10]

**455A.11 Bonds.** The council shall provide for the execution of surety bonds for all members and employees who shall be entrusted with funds and property and the premiums on all such surety bonds shall be paid from the funds appropriated to the council. [C50, 54,§455A.11]

**455A.12 Warrants.** The comptroller is directed to draw warrants on the treasurer of the state for all disbursements authorized by this chapter upon duly itemized and verified vouchers bearing the approval of the director of the council. [C50, 54,§455A.12]

**455A.13 Reports, accounting and recommendations.** The council shall make a report to the governor of its activities for the preceding biennial period, including therein an itemized statement of all receipts and disbursements and such other information pertaining to its work as may be of value.

The council in its biennial report shall make such recommendations for amendments to this chapter, or for other legislation as it deems appropriate.

The council shall report to the governor at any time required, the results accomplished since its last report, pending plans and the status of any work or plans in progress. [C50, 54,§455A.13]

**455A.14 Departmental co-operation.** The council may request and receive from any department, division, board, bureau, commission, public body, or agency of the state, or of any political subdivision thereof, or from any organization, incorporated or unincorporated, which has for its object the control or use of any of the water resources of the state, such assistance and data as will enable the council to properly carry out its activities and effectuate its purposes hereunder. The council shall reimburse such agencies for special expense resulting from expenditures not normally a part of the operating expenses of any such agency.

The council, its agents and other employees may enter upon any lands or waters in the state for the purpose of making any investigation, examination, or survey contemplated by this chapter. [C50, 54,§455A.14]

**455A.15 Eminent domain.** The council shall have the right to exercise the power of eminent domain. All the provisions of law relating to condemnation of lands for public state purposes shall apply to the provisions hereof in and so far as applicable. The executive council shall institute and maintain such proceedings.

The council may accept gifts, contributions, donations and grants, and use the same for any purpose within the scope of this chapter. [C50, 54,§455A.15]

**455A.16 Title to lands and other property.** The title to all lands, easements, or other interest therein, or other property or rights acquired by the council shall be approved by the attorney general and taken in the name of the state of Iowa. [C50, 54,§455A.16]

**455A.17 Functions and duties.** The council shall establish a comprehensive state-wide program of flood control; and a comprehensive state-wide program for the conservation, development and use of the water resources of the state. [C50, 54,§455A.17]

**455A.18 Jurisdiction—diversion of water.** The council shall have jurisdiction over the public and private waters in the state and the lands adjacent thereto necessary for the purposes of carrying out the provisions of this chapter. The council shall make a comprehensive study and investigation of all pertinent conditions of the areas in the state affected by floods; determine the best method and manner of establishing flood control; adopt and establish a comprehensive plan for floor control for all the areas of the state subject to floods; and determine the best and most practical method and manner of establishing and constructing the necessary flood control works. The council may construct flood control works or any part thereof. The council is authorized to perform such duties in co-operation with other states or any agency thereof or with the United States or any agency of the United States, or with any person as defined in this chapter.

The council shall procure and obtain flood control works from and through or by co-operation with the United States, or any agency of the United States, by co-operation with and action of the cities, towns and other subdivisions of the state, under the laws of the state relating to flood control and water use, and by co-operation with and action of landowners in areas affected thereby.

The council shall make surveys and investigations of the water resources of the state and of the problems of agriculture, industry, conservation, health, stream pollution and allied matters as they relate to flood control and water resources, and shall make and formulate plans and recommendations for the further development, protection and preservation of the water resources of the state.

Upon application by the state conservation commission for permission to divert, pump, or otherwise take waters from any natural watercourse, drainage ditch or settling basin within the state of Iowa for the purpose of maintaining a proper level of the water in any state owned lake, the natural resources council shall cause to be made an investigation of the effect of such diversion upon the natural flow of such watercourse and also the effect of any such diversion upon the owners of any land which might be affected by such diversion.

The application to be made to the council shall set forth the amount of water it is sought to divert and the period of time during which such diversion may be permitted.

If the council shall determine after due investigation that such diversion will not be detrimental to the public interests, including drainage and levee districts, or to the interests of property owners who might be affected, the council shall grant a permit for such diversion. Any person or public body aggrieved by the granting of such permit may appeal as provided by section 455A.23. Such permit shall remain in force for one year from the date of issue and shall be renewable at the date of its expiration upon application for such renewal.

The state conservation commission, for the purpose of carrying out any permission granted, as hereinbefore provided, shall have and exercise the power of eminent domain. [C50, 54,§455A.18]

**455A.19 Unlawful acts—powers of council.** It shall be unlawful to suffer or permit any structure, dam, obstruction, deposit or excavation to be erected in or on any floodway, which will adversely affect the efficiency of or unduly restrict the capacity of the floodway, and the same are declared to be and to constitute public nuisances, provided, however, that this provision shall not apply to dams constructed and operated under the authority of chapter 469 as amended.

The council shall have the power to commence, maintain and prosecute any appropriate action to enjoin or abate a nuisance, including any of the foregoing nuisances and any other nuisance which adversely affects flood control.

In the event any person desires to erect, make, use or maintain, or to suffer or permit, a structure, dam, obstruction, deposit or excavation, other than a dam, constructed

and operated under the authority of chapter 469 as amended, to be erected, made, used or maintained in or on any floodway and it is uncertain as to whether it will adversely affect the efficiency of or unduly restrict the capacity of the floodway, such person may file a verified written application with the council, setting forth the material facts, and the council on hearing, shall enter an order, determining the fact and permitting or prohibiting the same.

The council shall have the power to remove or eliminate any structure, dam, obstruction, deposit or excavation in any floodway which adversely affects the efficiency of or unduly restricts the capacity of the floodway, by an action in condemnation, and in assessing the damages in such proceedings, the appraisers and the court shall take into consideration whether the structure, dam, obstruction, deposit or excavation is lawfully in or on the floodway. [C50, 54, §455A.19]

**1. Construction and application.**

Council may not reject proposal of drainage district without setting forth objectionable features.

Johnson v. Monona-Harrison Drainage Dist., 1955, 246 Iowa 537, 68 N.W.2d 517.

**455A.20 Additional powers — licensing of dams.** After April 17, 1949 the term "council", as used in chapter 469, shall be construed to refer to the Iowa natural resources council unless specifically otherwise provided. [C50, 54, §455A.20]

**455A.21 Council floodway.** The council may by order establish a floodway as a council floodway and alter, change, or revoke and terminate the same. In the order establishing the council floodway, the council shall fix the length thereof at any practical distance, and fix the width or the landside limits thereof, so as to include portions of the flood plains adjoining the channel, which with the channel, are reasonably required to efficiently carry and discharge the flood waters or flood flow of such river or stream. No order establishing a council floodway shall be issued until due notice of the proposed establishment of such floodway shall have been given and public hearings afforded, and opportunity given for the presentation of all protests against the establishment of such floodway. In establishing any council floodway, the council shall avoid to the greatest possible degree the evacuation of persons residing in the area of any floodway and the removal of any residental structures occupied by such persons in the area of any floodway. All of the area within a council floodway shall be the floodway for all purposes of this chapter. [C50, 54,§455A.21]

**455A.22 Flood control works co-ordinated.** All works of any nature for flood control in the state, which are hereafter established and constructed, shall be co-ordinated in design, construction and operation, according to sound and accepted engineering practice so as to effect the best flood control obtainable throughout the state. No person shall construct or install any works of any nature for flood control unless and until the proposed works and the plans and specifications therefor are approved by the council. The interested persons shall file a verified written application with the council therefor, and the council on hearing shall consider all the pertinent facts relating to the proposed works which will affect flood control in the state and shall determine whether the proposed works in the plans and specifications will be in aid of and acceptable as part of, or will adversely affect and interfere with flood control in the state, and shall enter an order approving or disapproving the application, plans and specifications. In the event of disapproval, the order shall set forth the objectionable features so that the proposed works and the plans and specifications therefor may be corrected or adjusted to obtain the approval of the council.

The provisions of this section shall apply to all drainage districts, soil conservation districts, projects undertaken by the state conservation commission, all public agencies including counties, cities, towns and all political subdivisions of the state and to all privately undertaken projects relating to or affecting flood control. [C50, 54,§455A.22]

**1. Construction and application.**

Council may not reject proposal of drainage district without setting forth objectionable features.

Johnson v. Monona-Harrison Drainage Dist., 1955, 246 Iowa 537, 68 N.W.2d 517.

**455A.23 Appeal.** Any person aggrieved by any of the acts or orders of the council shall have the right to appeal therefrom to the district court at the seat of government or the district court of any county in which the property affected is located, by filing with the council a notice of such appeal within thirty days from the date of such action or order. The notice of appeal shall state the grounds of appeal. When an appeal is taken, the council shall forthwith cause to be made a certified transcript of all proceedings had and all orders made and shall file the same with the clerk of the district court where the appeal is pending.

Upon such appeal being perfected, it shall be brought on for trial at any time by either party upon ten days notice to the other, and shall be tried by the court de novo. At such trial the burden of proof that any acts and orders of the council from which appeal is taken are reasonable and

necessary shall be upon the council. If the court shall determine that the order appealed from is reasonable and necessary, it shall be affirmed. If the court finds that the order appealed from is unjust, unreasonable or not supported by the evidence it shall make such order to take the place of the order appealed from as is justified by the record before it.

Any person aggrieved may appeal to the supreme court from the judgment of the district court made therein as in a civil action.

The pendency of any such appeal shall not stay the operation of the order of the council but the district court or the supreme court in their discretion may suspend the operation of the council order pending determination of the appeal, provided, the appellant shall file an appropriate bond approved by the court. [C50, 54,§455A.23]

Referred to in 455A.18 Jurisdiction.

**455A.24 Executive prerogatives.** The council shall have no executive prerogatives outside of its own duties and functions as set out by this chapter and shall not disturb the work, functions or authority of any of the several state or local agencies and institutions, provided the powers conferred upon the council by this chapter shall not be exercised by any other of the agencies or institutions. [C50, 54, §455A.24]

**455A.25 Appropriation.** There is hereby appropriated annually from the general fund of the state for the period beginning with the passage of this chapter the sum of fifty thousand dollars, which shall be used solely to effectuate the provisions of this chapter. [C50, 54,§455A.25]

**455A.26 Penalties.** Whoever is convicted of erecting, causing or continuing a common or public nuisance, as provided in this chapter, shall be fined not exceeding one hundred dollars or be imprisoned in the county jail not exceeding thirty days. [C50, 54,§45A.26]

# CHAPTER 456

## DISSOLUTION OF DRAINAGE DISTRICTS

456.1 Jurisdiction to abandon and dissolve
456.2 Notice of hearing
456.3 Hearing on petition
456.4 Appeal
456.5 Expense—refund
456.6 Abandonment of rights of way

**456.1 Jurisdiction to abandon and dissolve.** When any drainage or levee district is free from indebtedness and it shall appear that the necessity therefor no longer exists or that the expense of the continued maintenance of the ditch or levee is in excess of the benefits to be derived therefrom, the board of supervisors or board of trustees, as the case may be, shall have power and jurisdiction, upon petition of a majority of the landowners, who, in the aggregate, own sixty percent of all land in such district, to abandon the same and dissolve and discontinue such districts. [C35, §7598-g1; C39,§7598.11; C46, 50, 54,§456.1]

**456.2 Notice of hearing.** Upon the filing of such petition the board shall enter an order fixing the date for hearing thereon not less than forty days from the date of the filing thereof and shall enter an order directing the county auditor, if such district is under the control of the board of supervisors, or the clerk of the board, if under the control of a board of trustees, to immediately cause notice of hearing thereon to be served on the owners of lands in such district as may then be provided by law in proceedings for the establishment of a drainage or levee district. [C35,§7598-g2; C39,§7598.12; C46, 50, 54,§456.2]

**456.3 Hearing on petition.** At the time set for hearing on said petition the board shall hear and determine the sufficiency of the petition as to form and substance (which petition may be amended at any time before final action thereon), and all objections filed against the abandonment and dissolution of such district. If it shall find that such district is free from indebtedness and that the necessity for the continued maintenance thereof no longer exists or that the expense of the continued maintenance of such district is not commensurate with the benefits derived therefrom, it shall enter an order abandoning and dissolving such district, which order shall be filed with the county auditor of the county or counties in which such district is situated and noted on the drainage record. [C35,§7598-g3; C39,§7598.13; C46, 50, 54,§456.3]

**456.4 Appeal.** Appeal may be taken from the order of the board to the district court of the county in which such district or a part thereof is situated, in the same time and manner as appeal may be taken from an order of the board of supervisors establishing a district. [C35,§7598-g4; C39, §7598-14; C46, 50, 54,§456.4]

**456.5 Expense—refund.** In case there are sufficient funds on hand in such district, or there are unpaid assessments outstanding or other property belonging to such district in an amount sufficient to pay such expense, the expense of abandonment and dissolution shall be paid out of such funds or out of funds realized by the sale of such property. Where such district is free of indebtedness but there are not sufficient funds on hand or unpaid assessments outstanding or other assets to pay such expense the board shall assess such expense against the property in the district in the same proportions as the last preceding assessments of benefits. Any excess remaining to the credit of such district after sale of its assets and after payment of such expenses shall be prorated back to the property owners in the district in the proportions according to class and benefits as last assessed. If the petition is denied the costs of said proceedings shall be paid by the petitioning owners. [C35,§7598-g5; C39,§7598.15; C46, 50, 54,§456.5]

**456.6 Abandonment of rights of way.** If such a dissolution is effected, the rights of way of the district for all purposes of the district shall be deemed abandoned. [C35, §7598-g6; C39,§7598.16; C46, 50, 54,§456.6]

# CHAPTER 457

## INTERCOUNTY LEVEE OR DRAINAGE DISTRICTS

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457.27 Decree
457.28 Law applicable

**457.1 Petition and bond.** When the levee or drainage district embraces land in two or more counties, a duplicate of the petition of any owner of land to be affected or benefited by such improvement shall be filed with the county auditor of each county into which said levee or drainage district will extend, accompanied by a duplicate bond to be filed with the auditor of each of the said counties as provided when the district is wholly within one county, in an amount and with sureties approved by the auditor of the county in which the largest acreage of the district is situated, which bond shall run in favor of the several counties in which it is filed. [S13,§1989-a29; C24, 27, 31, 35, 39,§7599; C46, 50, 54,§457.1]

Bonds required, see §455.10-455.12 Bond; Engineer—bond.
Cooperation with federal agencies engaged in flood control or reclamation projects, see §455.201 et seq.
Definition of terms used in this chapter, see §455.4.
Intracounty districts converted into intercounty district, §458.1 et seq.

Number of petitioners required for establishment of district, §455.7.
Petition, contents, §455.9.

**1. Construction and application.**

Drainage districts have characteristics all their own.
Miller v. Monona County, 1940, 229 Iowa 165, 294 N.W. 308.

Mere irregularities are not jurisdictional in view of §455.182.
Goeppinger v. Boards of Sac, Buena Vista and Calhoun Counties, 1915, 172 Iowa 30, 152 N.W. 58.

Statutory requirements as to character of petition must be complied with.
Richman v. Board of Muscatine County, 1886, 70 Iowa 627, 26 N.W. 24.

**2. Nature of drainage district.**

Drainage district has no powers other than by statute.
Board of Monona-Harrison Drainage Dist. No. 1 in Monona and Harrison Counties v. Board of Monona County, Iowa, 1942, 232 Iowa 1098, 5 N.W.2d 189.

**3. Boards, powers of.**

Boards of supervisors of counties in which a drainage district extends have joint authority to determine fund raising means.
Wood v. Hall, 1907, 138 Iowa 308, 110 N.W. 270.

**4. Subdistricts, jurisdiction over.**

Subdistrict organized within joint district subject to jurisdiction of joint boards though all land in subdistrict in one county.
Bird v. Board of Harrison County, 1912, 154 Iowa 692, 135 N.W. 581.

**5. Petition.**

Joint drainage district cannot be established until petition filed in both counties.
Glenn v. Marshall County, 1926, 201 Iowa 1003, 206 N.W. 802.

Joint drainage petition must be addressed to both boards of supervisors.
Hoyt v. Board of Carroll County, 1925, 199 Iowa 345, 202 N.W. 98.

**6. Preliminary expenses.**

Absent fraud, certification of proportionate share of County's expenses held conclusive, in view of Code supp. 1913, §1989-a48, incorporated in §455.164.
Warren County v. Slack, 1921, 192 Iowa 275, 182 N.W. 664.

**7. Orders establishing district.**

Order of establishing conclusive and could not first be claimed in suit to enjoin assessment that commissioners and engineer did not make survey "together".

Town of Carpenter v. Joint Drainage Dist. No. 6, 1924, 198 Iowa 182, 197 N.W. 656, modified in other respect 198 Iowa 182, 199 N.W. 265.

**8. Setting aside order creating district.**

That all lands in a district were not benefited or benefited less than other lands not grounds for setting aside order creating district.

Mittman v. Farmer, 1913, 162 Iowa 364, 142 N.W. 991, Ann. Cas. 1915C, 1.

**9. Injunction.**

If joint boards had jurisdiction to establish district, remedy of injunction against assessments and payment for work not available to challenge legality of procedure.

Town of Carpenter v. Joint Drainage Dist. No. 6, 1924, 198 Iowa 182, 197 N.W. 656, modified in other respects 198 Iowa 182, 199 N.W. 265.

**10. Review.**

District and Supreme Courts should be reluctant to set aside order establishing inter-county district.

Mittman v. Farmer, 1913, 162 Iowa 364, 142 N.W. 991, Ann. Cas. 1915C, 1.

**457.2 Commissioners.** Upon the filing of such petition in each county and the approval of such duplicate bond by the proper auditor, the board of each of such counties shall appoint a commissioner and the commissioners of the several counties so appointed shall meet within thirty days thereafter and appoint a competent engineer who shall also act as a commissioner. [S13, §1989-a29; C24, 27, 31, 35, 39,§7600; C46, 50, 54,§457.2]

Referred to in 458.1 Intracounty districts converted into intercounty district.

**457.3 Examination and report.** The commissioners thus appointed shall examine the application and make an inspection of all the lands embraced in the proposed district and shall determine what improvements in the way of levees, ditches, drains, settling basins, or change of natural watercourse are necessary for the drainage of the lands described in the petition. Such commissioners, including the engineer, shall file a detailed report of their examination and their findings and file a duplicate thereof in the office of the auditor of each of said counties. [S13, §1989-a29; C24, 27, 31, 35, 39,§7601; C46, 50, 54,§457.3]

**1. Construction and application.**

Joint drainage petition must be addressed to both boards of supervisors.

Hoyt v. Board of Carroll County, 1925, 199 Iowa 345, 202 N.W. 98.

It could not be claimed for first time in suit to enjoin assessment that commissioners and engineer did not make survey "together".

Town of Carpenter v. Joint Drainage Dist. No. 6, 1924, 198 Iowa 182, 197 N.W. 656, modified in other respects 198 Iowa 182, 199 N.W. 265.

**457.4 Duty of Engineer.** In addition to the report of the commissioners as a whole, the engineer so appointed shall perform the same duties and in the same manner required of the engineer by chapter 455 when the proposed district is located wholly within one county, and his surveys, plats, profiles, field notes, and reports of his surveys shall be made and filed in duplicate in each county. [S13,§1989-a29; C24, 27, 31, 35, 39,§7602; C46, 50, 54,§457.4]

Duties of engineer, see §455.16 et seq.

**1. Construction and application.**

Absent fraud, certification of proportionate share of county's expenses held conclusive in view of Code Supp. 1913, §1989-a48, incorporated in §455.164.

Warren County v. Slack, 1921, 192 Iowa 275, 182 N.W. 664.

**457.5 Notice.** Immediately upon the filing of the report of the commissioners and the engineer, if the same recommends the establishment of such district, notice shall be given by the auditor of each county to the owners of all the lots and tracts of land in his own county respectively embraced within such district as recommended by the commissioners as shown by the transfer books in the office of the auditor of each of said counties, and also to the persons in actual occupancy of all the lots or tracts of land in such district, and also to each lienholder or encumbrancer of any of such lots or tracts as shown by the records of the respective counties. [S13,§1989-a29; C24, 27, 31, 35, 39,§7603; C46, 50, 54,§457.5]

**1. Construction and application.**

Where owner received statutory notice of proceedings to establish drain, unnecessary to notify occupant of the land.

Goeppinger v. Boards of Sac, Buena Vista and Calhoun Counties, 1915, 172 Iowa 30, 152 N.W. 58.

**2. Notice.**

Where notice of hearing on petition made no reference

to proposed intercounty district, there was lack of jurisdiction to establish joint district.

Hoyt v. Board of Carroll County, 1925, 199 Iowa 345, 202 N.W. 98.

**457.6 Contents of notice—service.** Such notice shall state the time and place, when and where the boards of the several counties will meet in joint session for the consideration of said petition and the report of the commissioners and engineer thereon, and shall in other respects be the same and served in the same time and manner as required when the district is wholly within one county, except that the auditor of each county shall give notice only to the owners, occupants, encumbrancers, and lienholders of the lots and tracts of land embraced within the proposed district in his own county as shown by the records of such county. [S13, §1989-a29; C24, 27, 31, 35, 39,§7604; C46, 50, 54,§457.6]

**1. Construction and application.**

Unnecessary for county auditor to publish notice in county where no land was included in district.

Goeppinger v. Boards of Sac, Buena Vista and Calhoun Counties, 1915, 172 Iowa 30, 152 N.W. 58.

The boards of supervisors of the two counties must act as one body.

Schumaker v. Edgington, 1911, 152 Iowa 596, 132 N.W. 966.

**2. Occupant, notice to.**

Where owner received statutory notice of proceedings to establish drain, unnecessary to notify occupant of the land.

Goeppinger v. Boards of Sac, Buena Vista and Calhoun Counties, 1915, 172 Iowa 30, 152 N.W. 58.

**3. Evidence.**

Drainage record showing compliance with all statutes admissible where owner sought to cancel tax sale certificates on ground that statutory notice had not been given.

Whisenand v. Van Clark, 1940, 227 Iowa 800, 288 N.W. 915.

**457.7 Claims for damages—filing—waiver.** Any person filing objections or claiming damages or compensation on account of the construction of such improvement shall file the same in writing in the office of the auditor of the county in which his land is situated, at or before the time set for hearing. He may, however, file it at the time and place of hearing. If he shall fail to file such claim at the

time specified he shall be held to have waived his right thereto, but claims for land taken for right of way for any open ditch or for settling basins need not be filed. [S13, §1989-a30; C24, 27, 31, 35, 39,§7605; C46, 50, 54,§457.7]

**1. Filing of claims.**

Objections filed after statutory limit were too late though hearing had been adjourned for one week.

Patch v. Boards of Osceola and Dickinson Counties, 1916, 178 Iowa 283, 159 N.W. 694.

Failure to file claim in time provided by statute a waiver of right to file objections.

Goeppinger v. Boards of Sac, Buena Vista and Calhoun Counties, 1915, 172 Iowa 30, 152 N.W. 58.

**2. Estoppel.**

Objections not specified till after close of testimony and commencement of argument could not be heard.

Wood v. Hall, 1907, 138 Iowa 308, 110 N.W. 270.

**3. Review.**

Appeal from joint action of supervisors allowing damages for construction of drains properly taken by filing notice and bond with auditor of county in which the land lies.

Cooper v. Calhoun County, 1911, 152 Iowa 252, 132 N.W. 40.

**457.8 Organization and procedure—adjournments.** At the time set for hearing such petition, the boards of the several counties shall meet at the place designated in said notice. They shall organize by electing a chairman and a secretary, and when deemed advisable may adjourn to meet at the call of such chairman at such time and place as he may designate, or may adjourn to a time and place fixed by said joint boards. They shall sit jointly in considering the petition, the report and the recommendations of the engineer, in the same manner as if the district were wholly within one county. [S13,§1989-a31; C24, 27, 31, 35, 39,§7606; C46, 50, 54, §457.8]

**1. Construction and application.**

The boards of supervisors of the two counties must act as one body.

Schumaker v. Edgington, 1911, 152 Iowa 596, 132 N.W. 966.

**457.9 Tentative adoption of plans.** The said boards by their joint action may dismiss the petition and refuse to establish such district, or they may approve and tentatively adopt the plans and recommendations of the engineer for the said district. [C24, 27, 31, 35, 39,§7607; C46, 50, 54,§457.9]

**457.10 Appraisers.** If the said boards shall adopt a tentative plan for the district, the board of each county shall select an appraiser and the several boards by joint action shall employ an engineer, and the said appraisers and engineer shall constitute the appraisers to appraise the damages and value of all right of way required for open ditches and of all lands required for settling basins. [S13,§1989-a31; C24, 27, 31, 35, 39,§7608; C46, 50, 54,§457.10]

**457.11 Duty of appraisers — procedure.** The appraisers shall proceed in the same manner and make return of their findings and appraisement the same as when the district is wholly within one county, except that a duplicate thereof shall be filed in the auditor's office of each of the several counties. After the filing of the report of the appraisers, all further proceedings shall be the same as where the district is wholly within one county, except as otherwise provided. [S13,§1989-a31; C24, 27, 31, 35, 39,§7609; C46; 50, 54,§457.11]

Procedure, §455.30 et seq.

**457.12 Meetings of joint boards.** The board of supervisors of any county in which a petition for the establishment of a levee or drainage district to extend into or through two or more counties is on file, may meet with the board or boards of any other county or counties in which such petition is on file, for the purpose of acting jointly with such other board or boards in reference to said petition or any business relating to such district. Any such joint meetings held in either of the counties in which such petition is on file shall constitute a valid and legal meeting of said joint boards for the transaction of any business pertaining to said petition or to the business of such district. [S13,§1989-a37; C24, 27, 31, 35, 39,§7610; C46, 50, 54,§457.12]

**1. Construction and application.**

That bills were allowed by boards of supervisors at separate rather than joint meetings did not invalidate warrants issued, where the boards jointly confirmed and established assessment to pay the bills.

Haugen v. Humboldt-Kossuth Joint Drainage Dist. No. 2, 1942, 231 Iowa 288, 1 N.W.2d 242.

It is not necessary for the boards to meet jointly merely to allow claims filed for repair of drain.

O. A. G. 1940, p. 467.

**2. Repairs.**

It is proper for each county to allow such portion of expense of repair as same bears to the area of district located in the county.

O. A. G. 1940, p. 467.

**457.13 Equalizing voting power.** When the boards are of unequal membership, for the purpose of equalizing their voting power each member of the smallest board shall cast a full vote and each member of a larger board shall cast such fractional part of a vote as results from dividing the smallest number by such larger number. [S13,§1989-a29; C24, 27, 31, 35, 39,§7611; C46, 50, 54,§457.13]

**1. Construction and application.**

Members authorized to vote separately at joint sessions of the boards.

Schumaker v. Edgington, 1911, 152 Iowa 596, 132 N.W. 966.

**457.14 Commissioners to classify and assess.** If the boards of the several counties acting jointly shall establish the district, they shall appoint a commission consisting of one from each county, and in addition thereto a competent engineer who shall within twenty days begin to inspect the premises and classify the lands in said district fixing the percentages and assessments of benefits and the apportionment of costs and expenses and shall complete said work within the time fixed by the boards. The qualifications of said commissioners, their classification of lands, fixing percentages and assessments of benefits and apportionment of costs and the report thereof in all details shall be governed in all respects by the provisions of chapter 455 for districts wholly within one county. [S13,§1989-a32; C24, 27, 31, 35, 39,§7612; C46, 50, 54,§457.14]

Commissioners to classify and assess in one county district, see §455.45 et seq.

**1. Apportionment.**

Cause of action of drainage district to recover from another district the latter's portion of costs of improvement in first district accrue when supervisors of first county fixed amount due from other district.

Board of Harrison County v. Board of Pigeon Creek Drainage Dist. No. 2, in Pottawattamie County, 1936, 221 Iowa 337, 264 N.W. 702.

**2. Assessments.**

Where evidence tended to show that drain rather than ditch was a benefit, assessment was not error.

Harriman v. Drainage Dist. No. 7-146 of Franklin and Wright Counties, 1924, 198 Iowa 1108, 199 N.W. 974.

**457.15 Notice and service thereof—objections.** Upon the filing of the report of the commissioners to classify lands, fix and assess benefits and apportion costs and expenses, the auditors of the several counties, acting jointly, shall cause

notice to be served upon all interested parties of the time when and the place where the boards will meet and consider such report and make a final assessment of benefits and apportionment of costs, which notice shall be the same and served for the time and in the manner and all proceedings thereon shall be the same as provided in chapter 455 in districts wholly within one county, except publication of notice as provided in section 455.21 shall be in each of the counties into which the district extends, and also except that said notice to be published in each of the several counties shall contain only the names of the owners of each tract of land or lot in the district located within the respective county in which said notice is to be published and the total amount of all proposed assessments on the lands located in each of the other counties into which the district extends, and further except that the objections not filed prior to the date of the hearing shall be filed with the boards at the time and place of such hearing. [S13,§1989-a32; C24, 27, 31, 35, 39, §7613; C46, 50, 54,§457.15; 56GA, ch 223,§1]

**1. Construction and application.**

Objections filed after statutory time for filing too late though hearing had been adjourned for one week.
Patch v. Board of Osceola and Dickinson Counties, 1916, 178 Iowa 283, 159 N.W. 694.

Assessment to be made by boards at joint session is ascertainment of cost and apportionment thereof.
Greiner v. Swartz, 1914, 167 Iowa 543, 149 N.W. 598.

**457.16 Levies—certificates and bonds.** After the amount to be assessed and levied against the several tracts of land shall have been finally determined, the several boards, acting separately, and within their own counties, shall levy and collect the taxes apportioned and levied in their respective counties. They may issue warrants, improvement certificates, or bonds for the payment of the cost of such improvement within their respective counties, with the same right of landowners to pay without interest or in installments all as provided where the district is wholly within one county. [S13,§1989-a32, C24, 27, 31, 35, 39,§7614; C46, 50, 54,§457.16]

Referred to in §457.17 Bonds or proceeds made available. Payment, §455.63 et seq.

**1. Bonds.**

That part of contract providing for joint issuance of bonds was an irregularity, which could be rejected, balance of contract otherwise enforced.
Wood v. Hall, 1907, 138 Iowa 308, 110 N.W. 270.

**2. Contracts.**

Contract should not be construed as requiring contrac-

tor to take bonds for issuance of which there is no authority, but only such as each county separately may lawfully issue.

Wood v. Hall, 1907, 138 Iowa 308, 110 N.W. 270.

**3. Assessments.**

Joint board could not bind taxpayer of one county to pay assessment for sum paid by other county to agent for selling bonds.

Haferman v. Joint Drainage Dist. No. 1, Cerro Gordo, Franklin and Hancock Counties, 1927, 204 Iowa 936, 216 N.W. 257.

Assessment to be made by boards at joint session is ascertainment of cost and appropriation thereof.

Greiner v. Swartz, 1914, 167 Iowa 543, 149 N.W. 598.

Power to lay special assessment on directly benefited property is part of general power of taxation.

Fitchpatrick v. Botheras, 1911, 150 Iowa 376, 130 N.W. 163, 37 L. R. A., N. S., 558, Ann. Cas. 1912D, 534.

**4. Objections to assessments.**

Objections filed after time stated in statute for filing were too late although hearing had been adjourned for one week.

Patch v. Boards of Osceola and Dickinson Counties, 1916, 178 Iowa 283, 159 N.W. 694.

**5. Actions.**

Where drainage district was declared illegal, court would not determine suit by contractor to impress on funds in hands of treasurer, amount of unpaid warrant for construction unless property owners were made parties.

Straub v. Board of Carroll County, 1937, 223 Iowa 1099, 274 N.W. 84.

In action to determine validity of contract and warrants issued thereunder, petition alleging that joint boards claimed deduction from face of warrants did not state cause of action.

Houghton v. Bonnicksen, 1931, 212 Iowa 902, 237 N.W. 313.

**6. Injunction.**

If supervisors had jurisdiction to establish district, injunction against assessments and payment for work not available to challenge illegality in procedure.

Town of Carpenter v. Joint Drainage Dist. No. 6, 1924, 198 Iowa 182, 197 N.W. 656, modified in other respects 198 Iowa 182, 199 N.W. 265.

**457.17 Bonds or proceeds made available.** When drainage bonds are to be issued under the provisions of section 457.16 they shall be issued at such time that they or the proceeds thereof shall be available for the use of the district at a date not later than ninety days after the actual commencement of the work on the improvement as provided in relation to districts wholly within one county, and subject to the same exceptions in cases of appeals set forth in section 455.85.* [C24, 27, 31, 35, 39,§7615; C46, 50, 54,§457.17]

*§455.85, Code 1950, repealed by 55GA, ch 211, §2.

**1. Construction and application.**

Lands of drainage district in one county could not be assessed for amount another county paid agent to sell bonds.

Haferman v. Joint Drainage Dist. No. 1, Cerro Gordo, Franklin and Hancock Counties, 1927, 204 Iowa 936, 216 N.W. 257.

**457.18 Supervising engineer.** At the time of finally establishing the district, the boards of the several counties, acting jointly, shall employ a competent engineer to have charge and supervision of the construction of the improvement and they shall fix his compensation and he shall, before entering upon said work, give a bond running to the several counties for the use and benefit of the district in the same amounts and of like tenor and effect as is provided in districts wholly within one county. A duplicate of such bond shall be filed with the auditor of each of said counties. [S13,§1989-a34; C24, 27, 31, 35, 39,§7616; C46, 50, 54,§457.18]

Bond, §455.39 Supervising engineer—bond.

**457.19 Duty of engineer.** The duties of the supervising engineer shall be the same in all respects as is provided by chapter 455 for districts wholly within one county. [S13, §1989-a34; C24, 27, 31, 35, 39,§7617; C46, 50, 54,§457.19]

**457.20 Notice of letting work—applicable procedure.** If the boards, acting jointly, shall establish such district, the auditors of the several counties shall immediately thereafter, acting jointly, cause notice to be given of the time and place of the meeting of the boards for letting contracts for the construction of the improvement. The notices, bids, bonds, and all other proceedings in relation to letting contracts shall be the same as provided where the district is wholly within one county, but duplicates of contractors' bonds shall be filed with the auditor of each county. [S13, §1989-a33; C24, 27, 31, 35, 39,§7618; C46, 50, 54,§457.20]

Advertisement for bids and letting of contract in one county districts, see §455.40 et seq.

**1. Bids and acceptance thereof.**

Acceptance by supervisors of construction bid, providing bidder furnish certain schedules to be subject to approval of engineer, conditional and not binding on bidder and resolution extending time to comply wherein acceptance was stated as conditional, a rejection of bid unlesss schedules promptly furnished.

Jameson v. Joint Drainage Dist. No. 3 of Dickinson and Osceola Counties, 1921, 191 Iowa 920, 183 N.W. 512.

Board may have low bidders waive provision in bid for extra compensation and make contract for the work without resubmitting the matter for further bids.

Wood v. Hall, 1907, 138 Iowa 308, 110 N.W. 270.

**2. Notice of letting of contract.**

Notice need not be exactly same as specifications and contract which govern duties, obligations and rights of parties.

Busch v. Joint Drainage Dist. No. 49-79, Winnebago and Hancock Counties, 1924, 198 Iowa 398, 198 N.W. 789.

**3. Contracts.**

Whether acting jointly or severally supervisors of two counties have no power to provide that contractors shall purchase bonds to provide fund for preliminary expenses and for rights of way.

Wood v. Hall, 1907, 138 Iowa 308, 110 N.W. 270.

**457.21 Contracts.** All contracts made for engineering work and the work of constructing improvements of an intercounty district shall be made by written contract executed by the contractor and such person as may be authorized by the boards of the several counties and by joint resolution and shall specify the work to be done, the amount of compensation therefor and the times and manner of payment, all as provided in relation to districts wholly within one county. [S13,§1989-a33; C24, 27, 31, 35, 39,§7619; C46, 50, 54,§457.21]

**1. Contracts in general.**

Part of contract providing for joint issuance of bonds is an irregularity, which may be rejected and contract otherwise enforced.

Wood v. Hall, 1907, 138 Iowa 308, 110 N.W. 270.

**2. Construction of contracts.**

Provision of contract held not to bind contractor to do extra work without extra compensation.

Busch v. Joint Drainage Dist. No. 49-79, Winnebago and Hancock Counties, 1924, 198 Iowa 398, 198 N.W. 789.

Contract should not be construed as requiring contractor to take bonds for issuance of which there is no authority, but only such as each county separately may lawfully issue.

Wood v. Hall, 1907, 138 Iowa 308, 110 N.W. 270.

**3. Default.**

Code 1897, §1944, did not preclude county supervisors from treating contract as forfeited on default of contractor and instituting proceedings for construction of different ditch.

R. A. Brown Co. v. Board of Pottawattamie County, 1906, 129 Iowa 533, 105 N.W. 1019.

**4. Actions.**

Where issue was of validity of contract and warrants issued thereunder, petition alleging that joint boards claimed deduction from face of warrants held not to state cause of action.

Houghton v. Bonnicksen, 1931, 212 Iowa 902, 237 N.W. 313.

**5. Injunction.**

Where jurisdiction was had injunction against assessment and payment for work was not available to challenge legality of procedure.

Town of Carpenter v. Joint Drainage Dist. No. 6, 1924, 198 Iowa 182, 197 N.W. 656, modified in other respects, 198 Iowa 182, 199 N.W. 265.

**457.22 Monthly estimate — payment.** The engineer in charge of the work shall furnish the contractor monthly estimates of the amount of work done on each section and the amount thereof done in each county, a duplicate of which shall be filed with the auditor of each of the several counties. Upon the filing of such statement, each auditor shall draw a warrant for the contractor or give him an order directing the treasurer to deliver to him improvement certificates or drainage bonds, as the case may be, in favor of the contractor for eighty percent of the amount due from his county. Drainage warrants, bonds or improvement certificates when so issued shall be in such amounts as the auditor determines not however in amounts in excess of one thousand dollars. [S13,§1989-a34; C24, 27, 31, 35, 39,§7620; C46, 50, 54,§457.22]

**1. Contracts.**

Specifications in drainage contract regarding drains

through a town was a function of the municipality.
Town of Carpenter v. Joint Drainage Dist. No. 6, 1924, 198 Iowa 182, 199 N.W. 265.

Provision of contract held not to bind contractor to do extra work without extra compensation.
Busch v. Joint Drainage Dist. No. 49-79, Winnebago and Handcock Counties, 1924, 198 Iowa 398, 198 N.W. 89.

That part of contract providing for joint issuance of bonds was an irregularity, which could be rejected and contract otherwise enforced.
Wood v. Hall, 1907, 138 Iowa 308, 110 N.W. 270.

**457.23 Final settlement.** When the work to be done on any contract is completed to the satisfaction of the supervising engineer he shall so report and certify to the boards of the several counties, and the auditors of the counties shall fix a day to consider said report, and all the provisions shall apply in relation to objections to said report and the approval of the same and the completion of any unfinished or abandoned work as is provided in chapter 455 relating to completion of work and final settlement in districts wholly within one county, except that, when the completed work is accepted by the joint action of the boards of supervisors of the several counties into which the district extends such acceptance shall be certified to the auditor of each county who shall draw a warrant for the contractor or give him an order directing the treasurer to deliver to him improvement certificates or drainage bonds, as the case may be, for the balance due from the portion of the district in such county. [S13,§1989-a34; C24, 27, 31, 35, 39,§7621; C46, 50, 54,§457.23]

**1. Acceptance of work.**

Acceptance of work held to be a finality.
Nishnabotna Drainage Dist. No. 10 v. Lana Const. Co., 1919, 185 Iowa 368, 170 N.W. 491.

**2. Extra work, compensation for.**

Provision of contract held not to bind contractor to do extra work without extra compensation.
Busch v. Joint Drainage Dist. No. 49-79, Winnebago and Hancock Counties, 1924, 198 Iowa 398, 198 N.W. 789.

**3. Nonperformance.**

Failure to declare a forfeiture and sue on bond did not prejudice landowner where contractor and sureties were insolvent.
Busch v. Joint Drainage Dist. No. 49-79, Winnebago and Hancock Counties, 1924, 198 Iowa 398, 198 N.W. 789.

**4. Actions.**

Evidence held to show that rock work did not include boulders, but solid or ledge rock only.

Urbana Const. Co. v. Webster County-Calhoun County Joint Drainage Dist. No. 16-31, 1915, 169 Iowa 351, 151 N.W. 385.

**5. Injunction.**

Injunction not available against assessment and payment for work unless plaintiff can show proceedings to be wholly void for want of jurisdiction.

Town of Carpenter v. Joint Drainage Dist. No. 6, 1924, 198 Iowa 182, 197 N.W. 656, modified in other respects 198 Iowa 182, 199 N.W. 265.

**457.24 Failure of board to act.** When the establishment of a district, extending into two or more counties, is petitioned for as hereinbefore provided and one or more of such boards fails to take action thereon, the petitioners may cause notice in writing to be served upon the chairman of each board demanding that action be taken upon the petition within twenty days from and after the service of such notice. [S13,§1989-a36; C24, 27, 31, 35, 39,§7622; C46, 50, 54, §457.24]

**457.25 Transfer to district court.** If such boards shall fail to take action thereon within the time named, or fail to agree, the petitioners may cause such proceedings to be transferred to the district court of any of the counties into which such proposed district extends by serving notice upon the auditors of the several counties within ten days after the expiration of said twenty days notice, or after the failure of such boards to agree. [S13,§1989-a36; C24, 27, 31, 35, 39,§7623; C46, 50, 54,§457.25]

**1. Construction and application.**

Transfer of drainage proceedings to district court not available to one filing petition only in one county.

Glenn v. Marshall County, 1926, 201 Iowa 1003, 206 N.W. 802.

**457.26 Transcript, docket and trial.** Upon the giving of such notice the auditors shall, acting jointly, prepare and certify to the clerk of the district court a full and complete transcript of all proceedings had in such case, on or before the first day of the next succeeding term of said court. The clerk of the district court shall thereupon docket the case and the same shall be tried as in equity and the appearance term shall be the trial term. [S13,§1989-a36; C24, 27, 31, 35, 39,§7624; C46, 50, 54,§457.26]

**457.27 Decree.** The court shall enter judgment and decree dismissing the case or establishing such district and

may by proper orders and writs enforce the same. [S13, §1989-a36; C24, 27, 31, 35, 39,§7625; C46, 50, 54,§457.27]

**458.28 Law applicable.** Except as otherwise stipulated in this chapter the provisions and procedure set forth in chapter 455 shall govern and apply to the formation, establishment, and conduct of every levee or drainage district extending into two or more counties, the petition therefor, the giving or publication or service of notice therein, the appointment and duties of all officers or appraisers or commissioners, the making or filing of waivers, reports, plats, profiles, recommendations, notices, contracts and papers, the classification and apportionment and assessment of lands and all other property, the taking and hearing of appeals, the issuance and delivery of warrants, bonds and assessment certificates, the payment of taxes and assessments, the making of improvements, ditches, drains, settling basins, changes, enlargements, extensions, and repairs, the inclusion of lands, and the making or performance of every other matter or thing whatsoever relevant to or in any wise connected with such joint drainage or levee district, and the rights, privileges, and duties of all persons, landowners, officers, appellants, and courts. [S13,§1989-a37; C24, 27, 31, 35, 39,§7626; C46, 50, 54,§457.28]

**1. Annexation of lands.**

Lands in other districts could not be annexed by merely adopting resolution of necessity but required joint action of boards involved.

Farley v. Drainage Dist. No. 7 of Hamilton County v. Big Four Joint Drainage Dist., 1928, 207 Iowa 970, 221 N.W. 589.

**2. Assessments.**

Lands of district in one county could not be assessed for amount another county paid agent to sell bonds.

Haferman v. Joint Drainage Dist. No. 1, Cerro Gordo, Franklin and Hancock Counties, 1927, 204 Iowa 936, 216 N.W. 257.

**3. Review.**

Appeal from joint action of supervisors allowing damages for construction of drains properly taken by filing notice and bond with auditor of county in which land lies.

Cooper v. Calhoun County, 1911, 152 Iowa 252, 132 N.W. 40.

One who took appeal from joint order establishing drainage district was required to give notice to auditor of each county in which district was located under Code Supp. 1907, §1898 a(b).

Appeal of Head, 1908, 141 Iowa 651, 118 N.W. 884.

# CHAPTER 458

## CONVERTING INTRACOUNTY DISTRICTS INTO INTERCOUNTY DISTRICT

458.1 Intracounty districts converted into intercounty district
458.2 Benefited land only included
458.3 Appeal by landowner
458.4 Procedure on appeal
458.5 Appeal by trustees or boards

**458.1 Intracounty districts converted into intercounty district.** Whenever one or more drainage districts in one county outlet into a ditch, drain, or natural watercourse, which ditch, drain, or natural watercourse is the common carrying outlet for one or more drainage districts in another county, the boards of supervisors of such counties acting jointly may by resolution, and on petition of the trustees of any one of such districts or one or more landowners therein, in either case such petition to be accompanied by a bond as provided in section 457.1, must initiate proceedings for the establishment of an intercounty drainage district by appointing commissioners as provided in section 457.2 and by requiring a bond as provided in section 457.1 and by proceeding as provided by chapter 457 and all powers, duties, limitations, and provisions of this chapter and chapter 457, shall be applicable thereto. [C27, 31, 35,§7626-al; C39,§7626.1; C46, 50, 54,§458.1]

Cooperation with federal agencies engaged in flood control or reclamation projects, see §455.201 et seq.

**1. Construction and application.**

Lands not already in drainage district could be added to drainage district embracing lands in four counties.

Farley Drainage Dist. No. 7 of Hamilton County v. Big Four Joint Drainage Dist., 1928, 207 Iowa 970, 221 N.W. 589.

**2. Expenses.**

Cause of action of drainage district to recover from another district the latter's portion of costs of improvement in first district accrue when supervisors of first county fixed amount due from other district.

Board of Harrison County v. Board of Pigeon Creek Drainage Dist. No. 2 in Pottawattamie County, 1936, 221 Iowa 337, 264 N.W. 702.

**458.2 Benefited land only included.** Neither any land nor any previously organized drainage district shall be included within, or assessed for, the proposed new intercounty dis-

trict unless such land or unless such previously organized district shall receive special benefits from the improvements in the proposed new intercounty district. [C27, 31, 35,§7626-a2; C39,§7626.2; C46, 50, 54,§458.2]

**458.3 Appeal by landowner.** Any landowner affected by the establishment of the new intercounty district may appeal to the district court of the county where his land lies from the action of the joint boards in establishing the new district or in including his land within it. [C27, 31, 35,§7626-a3; C39,§7626.3; C46, 50, 54,§458.3]

**458.4 Procedure on appeal.** The procedure for taking such appeal and for hearing and determining it shall be that provided for similar appeals in chapter 455. [C27, 31, 35, §7626-a4; C39,§7626.4; C46, 50, 54,§458.4]

**458.5 Appeal by trustees or boards.** Trustees or boards of supervisors having charge of any previously organized district which is proposed to be included (either in whole or in part) within the new intercounty district may, in the same manner and under the same procedure appeal to the district court from the action of the joint boards in establishing the new district or in including therein the previously organized district or any part thereof. [C27, 31, 35, §7626-a5; C39,§7626.5; C46, 50, 54,§458.5]

# CHAPTER 459

## DRAINAGE DISTRICTS EMBRACING PART OR WHOLE OF CITY OR TOWN

459.1 Authority to include city
459.2 Inclusion of city—notice
459.3 Assessments—notice
459.4 Objections—appeal
459.5 Assessments—interest
459.6 Bonds, certificates, and waivers
459.7 Funding bonds
459.8 Jurisdiction relinquished
459.9 Request for relinquishment
459.10 Duty to relinquish
459.11 Jurisdiction of municipality
459.12 City council to control district

**459.1 Authority to include city.** The board of any county shall have the same power to establish a drainage district that includes the whole or any part of any incorporated town or city as they have to establish districts wholly outside of such cities and towns, including assessment of damages and benefits within such cities and towns, but no board of supervisors shall have power or authority to establish a drainage or levee district which lies wholly within the corporate limits of any city or town, nor in any case to establish any district for sewer purposes. [S13,§1989-a38; C24, 27, 31, 35, 39, §7627; C46, 50, 54,§459.1]

Cooperation with federal agencies engaged in flood control or reclamation projects, see §455.201 et seq.

**1. Construction and application.**

Beyond scope of drainage jurisdiction under §455.1 et seq. to establish sewers of town.

Town of Carpenter v. Joint Drainage Dist. No. 6, 1924, 198 Iowa 182, 197 N.W. 656, modified in other respects 198 Iowa 182, 199 N.W. 265.

Cordes v. Board of Hamilton County, 1924, 197 Iowa 136, 196 N.W. 997.

Under Code of 1873, §1207, incorporated into §455.1, power of board not territorially restricted to portions of county outside incorporated cities and towns.

Prime v. McCarthy, 92 Iowa 569, 61 N.W. 220; Elks v. Conn, 186 Iowa 48, 172 N.W. 173; Slutts v. Dana, 138 Iowa 244, 115 N.W. 1115.

Aldrich v. Paine, 1898, 106 Iowa 461, 76 N.W. 812.

Sanitary sewer could not be established under guise of establishing drainage district.

O. A. G. 1919-20, p. 332.

**2. Nature of drainage districts.**

Drainage district has no rights or powers other than found in statutes.

Board of Monona-Harrison Drainage Dist. No. 1 in Monona and Harrison Counties v. Board of Monona County, 1942, 232 Iowa 1098, 5 N.W.2d 189.

Drainage districts have characteristics all their own.

Miller v. Monona County, 1940, 229 Iowa 165, 294 N.W. 308.

**3. Record of proceedings.**

Excluding land from district conclusive as to identity of district until corrected by appropriate means.

Appeal of McLain, 1920, 189 Iowa 264, 176 N.W. 817.

**4. Contracts.**

Specifications in drainage contract regarding drains through town was function of municipality.

Town of Carpenter v. Joint Drainage Dist. No. 6, 1924, 198 Iowa 182, 199 N.W. 265.

**5. Review.**

Objection that Board had no jurisdiction to establish district because wholly within town could be first raised on appeal to district court.

Cordes v. Board of Hamilton County, 1924, 197 Iowa 136, 196 N.W. 997.

**6. Evidence failed to show excessive assessment.**

Appeal of McClain, 1920, 189 Iowa 264, 176 N.W. 817.

**459.2 Inclusion of city—notice.** Notice of the filing of the petition for such district and the time of hearing thereon, shall set forth the boundaries of the territory included within such city or town and directed to the town or city clerk and the owners and lienholders of the property within such boundaries without naming individuals, to be served in the same manner as notices where the district is wholly outside of such city or town. [S13,§1989-a38; C24, 27, 31, 35, 39,§7628; C46, 50, 54,§459.3]

Service of notice, see §455.21 et seq.

**1. Construction and application.**

Notice of establishment of district addressed to city and clerk by name and title held sufficient to sustain assessment against city.

Board of Humboldt County v. Town of Dakota City, 1923, 194 Iowa 1113, 191 N.W. 69.

**459.3 Assessments—notice.** When the streets, alleys, public ways, or parks or lots or parcels including railroad rights

of way of any incorporated town or city, or city under special charter, so included within a levee or drainage district, will be beneficially affected by the construction of any improvement in such district, it shall be the duty of the commissioners appointed to classify and assess benefits to estimate and return in their report the percentage and assessment of benefits to such streets, alleys, public ways, and parks, or lots or parcels including railroad rights of way and notice thereof shall be served upon the clerk of such incorporated town or city, irrespective of the form of government, and upon owners of lots, parcels, and railroad rights of way so assessed. [S13,§1989-a38; C24, 27, 31, 35, 39, §7629; C46, 50, 54, §459.3]

**1. Benefits, estimation of.**

False or illegal basis of assessment may not be sustained whether or not jurisdiction existed.
Appeal of McLain, 1920, 189 Iowa 264, 176 N.W. 817.

**2. Assessments.**

That town lots were assessed on same basis as agricultural lands did not render assessment illegal.
Cordes v. Board of Hamilton County, 1924, 197 Iowa 136, 196 N.W. 997.

If amount assessed is less than benefits, it will be sustained though made on false or mistaken basis.
Appeal of McLain, 1920, 189 Iowa 264, 176 N.W. 817.

**3. Streets and alleys.**

District could levy assessment for benefits to streets and alleys against town rather than the property.
Board of Humboldt County v. Town of Dakota City, 1922, 194 Iowa 1113, 191 N.W. 69.

**459.4 Objections—appeal.** The council or clerk of such town or city or individual owners may file objections to such percentage and assessment of benefits in the time and manner provided in case of landowners outside such city or town, and they shall have the same right to appeal from the finding of the board with reference to such assessment. [S13,§1989-a38; C24, 27, 31, 35, 39,§7630; C46, 50, 54,§459.4]

Objections, §455.52; appeals, §455.92 et seq.

**1. Waiver of irregularities.**

Owner of land in district could waive irregularities in city council's jurisdiction of proceedings.
Appeal of McLain, 1920, 189 Iowa 264, 176 N.W. 817.

**459.5 Assessment—interest.** Such assessment as finally made shall draw interest at the same rate and from the same time as assessment against lands. [S13,§1989-a38; C24, 27, 31, 35, 39,§7631; C46, 50, 54,§459.5]

**459.6 Bonds, certificates, and waivers.** The board of supervisors and the town or city council shall have the same power in reference to issuing improvement certificates or drainage bonds and executing waivers on account of such assessment for benefits to streets, alleys, public ways, and parks as is herein conferred upon the board of supervisors and the township trustees in reference to assessment for benefits to highways. [S13,§1989-a38; C24, 27, 31, 35, 39,§7632; C46, 50, 54,§459.6]

Certificates and bonds, §455.77 et seq.

**459.7 Funding bonds.** Such cities or towns may issue their funding bonds for the purpose of securing money to pay any assessment against it as provided by law. [C24, 27, 31, 35, 39,§7633; C46, 50, 54,§459.7]

Funding bonds, ch 408.

**459.8 Jurisdiction relinquished.** When the board of any county has heretofore established any drainage district which includes all of the platted portion of any city or town, and one-fourth or more of the total area of the said drainage district is located within the corporate limits of such city or town, and the drains thereof have been wholly or partially constructed of sewer tile and the said drain or drains are needed or used by the city or town for storm sewer and drainage purposes, said board of supervisors shall relinquish all authority or control of all of said drainage district, including the portion outside of such corporate limits, to the city or town upon request of the city or town council as provided in section 459.9. [C24, 27, 31, 35, 39,§7634; C46, 50, 54, §459.8]

**459.9 Request for relinquishment.** It is hereby made the duty of any city or town council, if it deems the same for the best interest of the said city or town, to pass, by a majority vote, a resolution requesting the board of supervisors to permit the city or town to take over and control the drains which resolution shall be certified to the board of supervisors of the county and filed by the auditor, who shall spread the same upon the records of the drainage district. [C24, 27, 31, 35, 39,§7635; C46, 50, 54,§459.9]

Referred to in §459.8 Jurisdiction relinquished; §459.10 Duty to relinquish.

**1. Construction and application.**

City council had power to establish drainage district. Appeal of McLain, 1920, 189 Iowa 264, 176 N.W. 817.

Where district wholly within city, Board of Supervisors had to relinquish all authority and control over district on passing of resolution by city requesting surrender. O. A. G. 1932, p. 273.

**2. Conclusiveness of proceedings.**

Proceedings of city council in establishing district only evidence of establishment and identity to be considered until corrected or changed by appropriate proceedings.

Appeal of McLain, 1920, 189 Iowa 264, 176 N.W. 817.

**459.10 Duty to relinquish.** Upon the request of the city or town council, as provided in section 459.9, it shall be the duty of the board to pass a resolution and have the same made a part of its proceedings, relinquishing all authority and control of the drainage district to the said city or town and that whenever said jurisdiction and control has or may hereafter be relinquished that the board of supervisors shall transfer to said city or town all funds held by the county treasurer in his hands, derived from assessments in the drainage district within the corporate limits. [C24, 27, 31, 35, 39,§7636; C46, 50, 54,§459.10]

**1. Construction and application.**

Where drainage district was wholly located in city except outlet, Board of Supervisors had mandatory duty to relinquish authority and control on passage of resolution by city council requesting surrender.

O. A. G. 1932, p. 273.

**459.11 Jurisdiction of municipality.** After the drainage district has been taken over by the city or town, it shall have complete control thereof, and may use the same for any purpose that said city or town through its city or town council deems proper and necessary for the advancement of the city or town or its health or welfare, and the city or town shall be responsible for the maintenance and upkeep of said drainage district only from and after its relinquishment by the board of supervisors to the city or town. [C24, 27, 31, 35, 39,§7637; C46, 50, 54,§459.11]

**1. Construction and application.**

City council having jurisdiction of proceedings could acquire jurisdiction in personam and rem only by appropriate procedure.

Appeal of McLain, 1920, 189 Iowa 264, 176 N.W. 817.

Where district entirely in city which requests supervisors to surrender control to city, the district ceases to be drainage district and city could not then lay drainage assessments.

O. A. G. 1932, p. 273.

**459.12 City council to control district.** The council of any city or town acting under the provisions of this chapter shall have control, supervision and management of the dis-

trict, and shall be vested with all of the powers which are now or may hereafter be conferred on the board of supervisors for the control, supervision and management of drainage districts under the laws of this state within the said district unless otherwise specifically provided. [C46, 50, 54,§459.12]

**1. Construction and application.**

Where district entirely in city which requests supervisors to surrender control to city, the district ceases to be drainage district and city could not then lay drainage assessments.

O. A. G. 1932, p. 273.

# CHAPTER 460

## HIGHWAY DRAINAGE DISTRICTS

460.1 Establishment
460.2 Powers
460.3 Initiation without petition
460.4 Engineer
460.5 Survey and report
460.6 Assessment—report
460.7 Advanced payments
460.8 Payment from road funds
460.9 Dismissal—costs
460.10 Condemnation of right of way
460.11 Laws applicable
460.12 Removal of trees from highway
460.13 Trees outside of highways

**460.1 Establishment.** Whenever, in the opinion of the board of supervisors, it is necessary to drain any part of any public highway under its jurisdiction, and any land abutting upon or adjacent thereto, it may proceed without petition or bond to establish a highway drainage district by proceeding in all other respects as provided in chapter 455. [SS15,§§1989-b,-b2,-b6,-b8,-b12,-b13; C24, 27, 31, 35, 39, §7638; C46, 50, 54,§460.1]

Cooperation with federal agencies engaged in flood control or reclamation projects, see §455.201 et seq.

**1. Construction and application.**

Paving of former dirt highway, without substantial change of grade did not necessitate establishing highway drainage district.
Grimes v. Polk County, 1949, 34 N.W.2d 767.

Joint drainage could not be formed to drain county line highway and land tributary to same drainage area lying in two or more counties.
O. A. G. 1918, p. 512.

How cost is payable.
O. A. G. 1909, p. 249.

**2. Nature of drainage districts.**

Drainage district has no rights or powers other than found in the statutes authorizing its existence.
Board of Trustees of Monona-Harrison Drainage Dist. No. 1 in Monona and Harrison Counties v. Board of Sup'rs of Monona County, Iowa, 1942, 232 Iowa 1098, 5 N.W.2d 189.

Drainage districts have characteristics peculiar to them.
Miller v. Monona County, 1940, 229 Iowa 165, 294 N.W. 308.

**3. Right to discharge water in absence of drainage district.**
Highway commission and county could discharge surface waters from highways by connecting ditch with private tile where plaintiffs' land was servient estate and prescriptive right had been acquired.
Grimes v. Polk County, 1949, 34 N.W.2d 767.

**4. Attorney, employment of**
Board of supervisors may employ county attorney or other attorney.
O. A. G. 1919-20, p. 328.

**460.2 Powers.** Such district, when established, shall have the powers granted to drainage and levee districts, and all parties interested shall have the same rights so far as applicable. [SS15,§§1989-b, -b2, -b6, -b8, -b12, -b13; C24, 27, 31, 35, 39,§7639; C46, 50, 54,§460.2]

**1. Construction and application.**
Board of supervisors may employ county attorney or other attorney.
O. A. G. 1919-20, p. 328.

**460.3 Initiation without petition.** When the board of supervisors determines on its own action to proceed to the establishment of a highway drainage district, it shall do so by the adoption of a resolution of necessity to be placed upon its records, in which it shall describe in a general way the portion of any highway or highways to be included in such district, together with the description of abutting or adjacent land and railroad rights of way to be included in such district and made subject to assessment for such improvement. [SS15,§1989-b; C24, 27, 31, 35, 39,§7640; C46, 50, 54,§460.3]

**460.4 Engineer.** The board shall appoint a competent engineer for the district. If the county engineer is appointed, he shall serve without additional compensation. In no case shall the county engineer act as a member of the assessment commission in a drainage district provided for in this chapter. [SS15,§§1989-b, -b11; C24, 27, 31, 35, 39,§7641; C46, 50, 54, §460.4]

**460.5 Survey and report.** The engineer shall make a survey of the proposed district and report the same to the board, being governed in all respects as provided by sections 455.17 and 455.18 and designate particularly any portion of the secondary road system, or the primary road system, or any portion of either or both of said systems, as well as all lands adjoining and adjacent thereto, including lands and rights of way of railway companies which in his judgment will be benefited by drainage of highways in such district, and which should be embraced within the boundaries of

such district. [SS15,§1989-b1; C24, 27, 31, 35, 39,§7642; C46, 50, 54§460.5]

**460.6 Assessment—report.** The commission for assessment of benefits and classification of the property assessed shall determine and report:

1. The separate amount which shall be paid by the county on account of the secondary road system.
2. The separate amount which shall be paid by the state on account of the primary road system.
3. The amounts which shall be assessed against the right of way or other real estate of each railway company within such district.
4. The amounts which shall be assessed against each forty-acre tract or less within such district. [SS15,§1989-b5; C24, 27, 31, 35, 39,§7643, C46, 50, 54§460.6]

**1. Railroads.**

Board of supervisors could not include railroad right of way in highway drainage district.

Great Northern Ry. Co. v. Board of Sup'rs of Plymouth County, 1923, 197 Iowa 903, 196 N.W. 284.

**2. Assessments.**

Reduction by court held equitable.

Held v. Board of Sup'rs of Plymouth County, 1925, 201 Iowa 418, 205 N.W. 529.

**460.7 Advanced payments.** The board on construction of such improvement may advance out of the secondary road construction fund or the secondary road maintenance fund, or out of both of said funds that portion to be collected by special assessment, the amount so advanced to be replaced in said road funds as the first special assessments are collected. The board may in lieu of making such advancements, issue warrants to be known as "Drainage Warrants", said warrants to draw not to exceed four percent interest per annum payable annually from the date of issue and to be paid out of the special assessments levied therefor, when the same are collected. [SS15,§1989-b7; C24, 27, 31, 35, 39,§7644; C46, 50, 54,§460.7] Change in interest rate not applicable to outstanding bonds, 49GA, ch. 263.7.

**1. Construction and application.**

Statute not retroactive in reducing interest rate and warrants stamped "not paid for want of funds" bear interest rate prescribed by law in effect that timely warrants were so stamped.

O. A. G. 1944, p. 37.

**460.8 Payment from road funds.** The amount fixed by the final order of the board to be paid:

1. On account of the primary road system, shall be payable by the state highway commission on due certification of the amount by the county treasurer to said commission out of the primary road fund.

2. On account of the secondary road system, may be payable from the secondary road construction fund, or from the secondary road maintenance fund, or from both of said funds. [SS15,§1989-b5, C24, 27, 31, 35, 39,§7645; C46, 50, 54, §460.8]

**406.9 Dismissal—costs** If such proceedings are dismissed or said improvement abandoned, all costs of such proceedings shall be paid out of the fund of the road system for the benefit of which said proceeding was initiated. [SS15,§1989-b10; C24, 27, 31, 35, 39,§7646; C46, 50, 54,§460.9]

**460.10 Condemnation of right of way.** When in the judgment of the board of supervisors, it is inadvisable to establish a drainage district but necessary to acquire right of way through private lands for the construction of ditches or drains as outlets for the drainage of highways, the board of supervisors may cause such right of way to be condemned by proceedings in the manner required for the exercise of the right of eminent domain as for works of internal improvement, except that no attorney fee shall be taxed, and pay the costs and expense of such condemnation from either or both of said secondary road funds. [S13,§1989-a43; C24, 27, 31, 35, 39,§7647; C46, 50, 54,§460.10] Condemnation procedure, ch. 472.

**1. Railroad ditches across.**

Measure of damages in proceedings to condemn right of way for drainage ditch across railroad right of way.
Chicago, B. & Q. R. Co. v. Bd. of Supervisors, 1910, 182 F. 291, 104, C. C. A. 573, 31 L. R. A., N. S., 1117.

**2. Instructions.**

Meaning of terms "establishment" and "construction".
Larson v. Webster County, 1911, 150 Iowa 344, 130 N.W. 165.

**460.11 Laws applicable.** All proceedings for the construction and maintenance of highway drainage districts except as provided for in this chapter shall be as provided for in chapters 455 to 459 inclusive. [C24, 27, 31, 35, 39,§7648; C46, 50, 54,§460.11]

Chapter 456 enacted after this section was enacted; chapter 458 was enacted as an amendment to chapter 457.

**460.12 Removal of trees from highway.** When the roots of trees located within a highway obstruct the ditches or tile drains of such highway, the board of supervisors shall

remove such trees from highways, except shade or ornamental trees adjacent to a dwelling house or other farm buildings or feed lots, or any tree or trees for windbreaks upon cultivated lands consisting of sandy or other light soils. [C24, 27, 31, 35, 39,§7649; C46, 50, 54,§460.12]

**1. Construction and application.**

Removal of trees on highway necessary in improvement not controlled by provisions of this section.

Rabiner v. Humboldt County, 1938, 224 Iowa 1190, 278 N.W. 612, 116 A. L. R. 89.

Depth of ditches within discretion of road authorities. O. A. G. 1938, p. 184.

**460.13 Trees outside of highways.** When the roots of trees and hedges growing outside a highway obstruct the ditches or tile drains of any highway, the board of supervisors may acquire the right to destroy such trees in the manner provided for taking private property for public use. Ornamental trees adjacent to any dwelling, orchard trees and trees used as windbreaks for a dwelling house, outbuildings, barn or feed lots, shall be exempt from the provisions of this section. [C24, 27, 31, 35, 39§7650; C46, 50, 54§460.13]

**1. Construction and application.**

Removal of trees on highway necessary in improvement not controlled by provisions of this section.

Rabiner v. Humboldt County, 1938, 224 Iowa 1190, 278 N.W. 612, 116 A. L. R. 89.

# CHAPTER 461

## DRAINAGE AND LEVEE DISTRICTS WITH PUMPING STATIONS

461.1 Authorization
461.2 Petition—procedure
461.3 Additional pumping station
461.4 Transfer of pumps
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461.6 Dividing districts
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461.18 Liability of treasurer—reports
461.19 Sale—application of proceeds
461.20 Levy
461.21 Scope of act
461.22 Funds available to pay bonds
461.23 Limitation of actions
461.24 Bankruptcy proceedings

**461.1 Authorization.** The board of supervisors of any county or counties in which a drainage or levee district has been organized as by law provided, may establish and maintain a pumping station or stations, when and where the same may be necessary to secure a proper outlet for the drainage of the land comprising the district or any portion thereof, and the cost of construction and maintenance of said pumping station or stations shall be levied upon and collected from the lands in the district benefited by such pumping station or stations, in the same manner as provided for in the construction and maintenance of said districts. [S13,§1989-a49,-a52; C24, 27, 31, 35, 39,§7651; C46, 50, 54,§461.1]

Cooperation with federal agencies engaged in flood control or reclamation projects, see §455.201 et seq.
Jurisdiction to establish districts, see §455.1.
Supervisors, general powers and duties, see §332.1 et seq.

**1. Validity.**

Power to levy special assessment on benefited property part of general power of taxation.

Fitchpatrick v. Brotheras, 1911, 150 Iowa 376, 130 N.W. 163, 37 L. R. A., N. S., 558, Ann. Cas. 1912D, 534.

**2. Construction and application.**

The 1911 amendment relating to petition necessary prior to erection of pumping plant does not apply to organization of district.

Mittman v. Farmer, 1913, 162 Iowa 364, 142 N.W. 991, Ann. Cas. 1915C, 1.

**3. Organization.**

Where certain benefited lands in city were not incorporated into district was not ground for setting aside organization of district.

Mittman v. Farmer, 1913, 162 Iowa 364, 142 N.W. 991, Ann. Cas. 1915C, 1.

**4. Assessment of benefits.**

Fact that owner already constructed drainage system should be given consideration in assessing benefits.

Obe v. Board of Hamilton County, 1915, 169 Iowa 449, 151 N.W. 453.

Evidence showed cost of drain and pumping plant would not be proportionally excessive to benefits conferred.

Mittman v. Farmer, 1913, 162 Iowa 364, 142 N.W. 991, Ann. Cas. 1915C, 1.

**461.2 Petition—procedure.** Such pumping station shall not be established or maintained unless a petition therefor shall be presented to the board signed by not less than one-third of the owners of lands benefited thereby. The lands benefited by such pumping station shall be determined by the board on said petition and report of the engineer, and such other evidence as it may hear. No additional land shall be taken into any such drainage district after the improvements therein have been substantially completed, unless one-third of the owners of the land proposed to be annexed have petitioned therefor or consented in writing thereto. [S13,§1989-a49; C24, 27, 31, 35, 39,§7652; C46, 50, 54, §461.2]

Eminent domain, see §§470.1 et seq., 471.1 et seq., 472.1 et seq., 473.1 et seq.

**1. Construction and application.**

The 1911 amendment relating to petition necessary prior to erection of pumping plant does not apply to organization of district.

Mittman v. Farmer, 1913, 162 Iowa 364, 142 N.W. 991, Ann. Cas. 1915C, 1.

**461.3 Additional pumping station.** After the establishment of a drainage district, including a pumping plant, and before the completion of the improvement therein, the board

or boards may, if deemed necessary to fully accomplish the purposes of said improvement, by resolution authorize the establishment and maintenance of such additional pumping station or stations as the engineer may recommend, and if a petition is filed by one-third of the owners of land within such district asking the establishment of such pumping plant or plants, the board or boards must direct the engineer to investigate the advisability of the establishment thereof and upon the report of said engineer the board or boards shall determine whether such additional pumping plant or plants shall be established. [C24, 27, 31, 35, 39, §7653; C46, 50, 54,§461.3]

**461.4 Transfer of pumps.** If the board or boards determine that additional pumping plant or plants shall be established and maintained, a pump or pumps may be removed from any pumping station already established and may be installed in any such additional plant, if such removal can be made without injuring the efficient operation of the plant from which removed. [C24, 27, 31, 35, 39,§7654; C46, 50, 54, §461.4]

**461.5 Costs.** The cost of the establishment of such additional pumping plant or plants shall be paid in the same manner and upon the same basis as is provided for the cost of the original improvement. [C24, 27, 31, 35, 39,§7655; C46, 50, 54,§461.5]

Financing, see §463.1 et seq., 464.1 et seq.
Local budget law, see §24.1 et seq.
Retention from payments on public contracts, see §§573.12-573.22.
Tax exemption, see §427.2.

**1. Excessive costs.**

Evidence showed cost of drain and pumping plant would not be proportionally excessive to benefits conferred.

Mittman v. Farmer, 1913, 162 Iowa 364, 142 N.W. 991, Ann. Cas. 1915C 1.

**461.6 Dividing districts.** When a drainage district has been created and more than one pumping plant is established therein, the board or boards of supervisors may, and upon petition of one-third of the owners of land within said district shall, appoint an engineer to investigate the advisability of dividing said district into two or more districts so as to include at least one pumping plant in each of such districts. [C24, 27, 31, 35, 39,§7656; C46, 50, 54,§461.6]

**461.7 Notice—publication.** If the engineer recommends such division the board of supervisors shall fix a time for hearing upon the question of such division and shall pub-

lish notice directed to all whom it may concern of the time and place of such hearing, for the time and in the manner as is required for the publication of notice of the establishment of said district, except that said notice need not name the owners and lienholders. [C24, 27, 31, 35, 39,§7657; C46, 50, 54,§461.7]

Notice of establishment, see §§455.20-455.26, 455.70, 455.151, 455.153-455.155, 457.5, 457.6, 460.1, 466.8, 467.6.

**461.8 Hearing—jurisdiction of divided districts.** At the time fixed, the board shall determine the advisability of such division and shall make such order with reference thereto as shall be deemed proper, having consideration for the interests of all concerned. If such division is made, the board or boards having jurisdiction of the original district shall retain jurisdiction of the new districts created by such division for the purpose of collecting assessments theretofore made and making such additional assessments as are necessary to pay the obligations theretofore contracted. For all other purposes, such division shall be under the jurisdiction of the board or boards of supervisors which would have had jurisdiction thereof if originally established as an independent district. [C24, 27, 31, 35, 39,§7658; C46, 50, 54,§461.8]

**461.9 Division in other cases.** After a levee or drainage district operating a pumping plant shall have been established and the improvement constructed and accepted, if it shall become apparent that the lands can be more effectually drained, managed, or controlled by a division thereof, then the said board or boards, or trustees, may, and if the district is divided by a stream, they shall divide the district. [C24, 27, 31, 35, 39,§7659; C46, 50, 54,§461.9]

**461.10 Assessments not affected—maintenance tax.** Each district after the division shall be conducted as though established originally as a district. Nothing herein shall affect the legality or collection of any assessments levied before the division; but the maintenance tax, if any, shall be divided in proportion to the amount paid in by each district. [C24, 27, 31, 35, 39,§7660; C46, 50, 54§461.10]

**461.11 Election and apportionment of trustees.** If said district, before the division was made, was under the control and management of trustees, then each trustee shall continue to serve in the district in which he is situated, and other trustees shall be elected in each new district. The election for said new trustees shall be called by the old board of trustees in each district within ten days after said division is made and shall be conducted as provided for the

election of trustees. [C24, 27, 31, 35, 39,§7661; C46, 50, 54, §461.11]

Election of trustees, ch 462.

**461.12 Settling basin—condemnation.** If, before a district operating a pumping plant is completed and accepted, it appears that portions of the lands within said district are wet or nonproductive by reason of the floods or overflow waters from one or more streams running into, through, or along said district and that said district or some other district of which such district shall have formed a part, shall have provided a settling basin to care for the said floods and overflow waters of said stream or watercourse, but no channel to said settling basin has been provided, said board or boards are hereby empowered to lease, buy, or condemn the necessary lands within or without the district for such channel. Proceedings to condemn shall be as provided for the exercise of the right of eminent domain. [C24, 27, 31, 35, 39,§7662; C46, 50, 54,§461.12]

Condemnation procedure, ch 472.

**461.13 Funding bonds.** When the owners of ten percent of the land in a drainage or levee district having and operating a pumping station shall petition the board of supervisors to extend the time of payment of the taxes assessed against the lands within said district for a period not exceeding twenty years, under such rules and regulations as said board may direct, the interest on such assessments to be paid annually the same as other taxes levied against the property, not less than one-twentieth of the principal of said extended tax to be paid each year until the entire tax is paid, and the lien of such tax to continue until fully paid, the board of supervisors may settle, adjust, renew, or extend the legal indebtedness of such district as shown by the assessments levied against the lands therein whether evidenced by certificates, warrants, bonds, or judgments by refunding all such indebtedness and issuing coupon bonds therefor when such indebtedness amounts to one thousand dollars or upwards, but for no other purpose. [C24, 27, 31, 35, 39,§7663; C46, 50, 54,§461.13]

Referred to in §455.88.
Refunding bonds, ch 463.
Similar provisions, §463.1.

**1. Construction and application.**

Statutes authorizing adjustment or extension of indebtedness related to indebtedness of entire district, not of particular land.
O. A. G. 1932, p. 141.

Supervisors may issue and sell funding bonds in accordance with this section, or may proceed under §463.25.

O. A. G. 1928, p. 346.

**461.14 Form of bonds.** Such bonds shall be issued in sums of not less than one hundred dollars or more than one thousand dollars each, running not more than twenty years, bearing interest not exceeding six percent per annum, payable annually or semiannually, and shall be substantially in the form provided by law for funding bonds issued for drainage purposes. [C24, 27, 31, 35, 39,§7664; C46, 50, 54, §461.14]

Form of bond, §455.82.

**461.15 Formal execution.** Such bonds shall be numbered consecutively, signed by the chairman of the board of supervisors, attested by the county auditor. The interest coupons attached thereto shall be executed in the same manner. [C24, 27, 31, 35, 39,§7665; C46, 50, 54,§461.15]

Auditor, see §333.1 et seq.
Board of supervisors, see §§331.1 et seq., 332.1 et seq.

**461.16 Resolution—requisites—record.** All bonds issued under the provisions of this chapter shall be issued pursuant to and in conformity with a resolution adopted by the board of supervisors, which shall specify the amount authorized to be issued, the purpose for which issued, the rate of interest they shall bear and whether payable annually or semiannually, the place where the principal and interest shall be payable and when it becomes due, and such other provisions not inconsistent with law in reference thereto as the board of supervisors shall think proper, which resolution shall be entered of record upon the minutes of the proceedings of the said board and a complete copy thereof printed on the back of each bond, which resolution shall constitute a contract between the drainage district and the purchasers or holders of said bonds. [C24, 27, 31, 35, 39, §7666; C46, 50, 54,§461.16]

**461.17 Registration.** When bonds have been executed as aforesaid they shall be delivered to the county treasurer and his receipt taken therefor. He shall register the same in a book provided for that purpose, which shall show the number of each bond, its date, date of sale, amount, date of maturity, and the name and address of the purchaser, and if exchanged what evidences of debt were received therefor, which record shall at all times be open to the inspection of the owners of property within the district. The treasurer shall thereupon certify on the back of each bond as follows:

"This bond duly and properly registered in my office this .....day of....., 19.....

.....
Treasurer of the County of

....."

[C24, 27, 31, 35, 39,§7667; C46, 50, 54,§461.17]

Record of bonds, see §455.89.

**461.18 Liability of treasurer—reports.** The treasurer shall stand charged on his official bond with all bonds so delivered to him and the proceeds thereof. He shall report under oath to the board of supervisors, at each first regular session thereof in each month, a statement of all such bonds sold or exchanged by him since his last report and the date of such sale or exchange and when exchanged a description of the indebtedness for which exchanged. [C24, 27, 31, 35, 39,§7668; C46, 50, 54,§461.18]

Treasurer, see §334.1 et seq.

**461.19 Sale—application of proceeds.** He shall, under a resolution and the direction of the said county board of supervisors, sell the bonds for cash on the best available terms or exchange them on like terms for a legal indebtedness of the said district evidenced by bonds, warrants, or judgments outstanding at the date of the passage of the resolution authorizing the issue thereof, and the proceeds shall be applied and exclusively used for the purpose for which said bonds are issued. In no case shall they be sold or exchanged for a less sum than their face value and all interest accrued at the date of sale or exchange. After registration the treasurer shall deliver said bonds to the purchaser thereof and when exchanged for indebtedness of said district shall at once cancel all warrants or bonds or secure proper credits therefor on judgments. [C24, 27, 31, 35, 39,§7669; C46, 50, 54, §461.19]

Sale of public bonds, see §75.2 et seq.

**461.20 Levy.** Drainage districts issuing funding or refunding bonds under this chapter shall levy taxes for the payment of the principal and interest thereof, where there has not been a prior levy covering same, in accordance with the provisions of the law relating to taxation. [C24, 27, 31, 35, 39,§7670; C46, 50, 54,§461.20]

Levies for drainage see §§455.45-455.69, 455.72, 455.74, 455.87, 455.90, 455.109, 455.137, 455.138, 455.140-455.147, 455.151, 455.18.
Local budget law, see §24.1 et seq.
Tax levies, see §444.1 et seq.

**1. Construction and application.**

Power to levy special assessment on benefited property part of general power of taxation.

Fitchpatrick v. Botheras, 1911, 150 Iowa 376, 130 N.W. 163, 37 L. R. A., N. S. 558, Ann. Cas. 1912D, 534.

**461.21 Scope of act.** Refunding bonds for the purposes set out in this chapter may be issued to pay off and take up bonds issued in payment for drainage improvements under prior laws or to refund any part thereof. Bonds thus issued shall substantially conform to the provisions of the law relating to drainage bonds and the face amount thereof shall be limited to the amount of the unpaid assessments, with interest thereon, applicable to the payment of the bonds so taken up. [C24, 27, 31, 35, 39,§7671; C46, 50, 54, §461.21]

**461.22 Funds available to pay bonds.** When refunding bonds shall be issued to pay for drainage improvements under the provisions of this chapter, all special assessments, taxes, and sinking funds applicable to the payment of such bonds previously issued shall be applicable in the same manner and the same extent to the payment of the refunding bonds issued hereunder, and all the powers and duties to levy and collect special assessments and taxes or create liens upon property shall continue until all refunding bonds shall be paid.

The drainage district shall collect the special assessments out of which the said bonds are payable and hold the same separate and apart in trust for the payment of said refunding bonds but the provisions of this chapter shall not apply to assessments or bonds adjudicated to be void. [C24, 27, 31, 35, 39,§7672; C46, 50, 54,§461.22]

**1. Protection of fund.**

Mandamus not proper remedy to require county treasurer to make restoration to drainage district bond fund for wrongful payment of bond fund to others.

Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N.W. 568.

**461.23 Limitation of actions.** No action shall be brought questioning the validity of any of the bonds authorized by this chapter from and after three months from the time the same are ordered issued by the proper authorities. [C24, 27, 31, 35, 39,§7673; C46, 50, 54,§461.23]

Similar provisions, §§408.15, 420.285, 463.23, 464.12 Limitation of action.

**461.24 Bankruptcy proceedings.** All drainage districts with pumping plant and/or levee, which have power to incur indebtedness, through action of their own governing bodies are hereby authorized to proceed under and take advantage of all laws enacted by the congress of the United States under the federal bankruptcy powers, which laws have for their object the relief of municipal indebtedness, including 48 Stat. L. ch 345, entitled "An act to amend an act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and acts amendatory thereof and supplementary thereto", approved May 24, 1934, and the officials and governing bodies of such drainage, pumping plant and/or levee districts, are authorized to adopt all proceedings and to do any and all acts necessary or convenient to fully avail such drainage, pumping plant, and/or levee districts, of the provisions of such acts of congress. [C35,§7673-g1; C39,§7673.1; C46, 50, 54,§461.24]

Composition of indebtedness of local taxing agencies, see 11 U. S. C. A. §401 et seq.
Receivership, see §455.190 et seq.

# CHAPTER 462

## MANAGEMENT OF DRAINAGE OR LEVEE DISTRICTS BY TRUSTEES

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**462.1 Trustees authorized.** In the manner provided in this chapter, any drainage or levee district in which the original construction has been completed and paid for by bond issue or otherwise, may be placed under the control and management of a board of three trustees to be elected by the persons owning land in the district that has been

assessed for benefits. [SS15, §1989-a52a,-a61; C24, 27, 31, 35, 39,§7674; C46, 50, 54§462.1]

Cooperation with federal agencies engaged in flood control or reclamation projects, see §455.201 et seq.

**1. Validity.**

Plaintiffs who signed petition for selection of trustees to secure cleaning of ditch were estopped, after completion of work, from contesting validity.

Manley v. Headington, 1921, 191 Iowa 68, 181 N.W. 781.

**2. Construction and application.**

Powers of trustees of district limited to improvement etc., of existing drains, ditches, etc.

Smith v. Monona-Harrison Drainage Dist. No. 1, 1916, 178 Iowa 823, 160 N.W. 229.

**3. Obligations, effect of change upon.**

Where action of county supervisors, in representative capacity as managers of drainage district in making repairs attacked on ground that repairs should have been made from road fund, they could, on behalf of drainage district, employ attorneys to defend action.

Kilpatrick v. Mills County, 1940, 227 Iowa 721, 288 N.W. 871.

**462.2 Petition.** A petition shall be filed in the office of the auditor signed by a majority of the persons including corporations owning land within the district assessed for benefits. [S13,§1989-a52b; SS15,§1989-a52a; C24, 27, 31, 35, 39, §7675; C46, 50, 54,§462.2]

**462.3 Election.** The board, at the next regular, adjourned, or special session shall canvass the petition and if signed by the requisite number of landowners, it shall order an election to be held at some convenient place in the district not less than forty nor more than sixty days from the date of such order, for the election of three trustees of such district. It shall appoint from the freeholders of the district who reside in the county or counties, three judges and two clerks of election. [S13,§1989-a52b; SS15,§1989-a63; C24, 27, 31, 35, 39,§7676; C46, 50, 54,§462.3]

Referred to in §462.4 Intercounty district.
Board of supervisors or trustees holding title in trust to land, right to vote, see §455.179 Voting power.
Election boards, see §49.12.
Method of conducting elections, see §49.1 et seq.
Powers of supervisors, see §332.1 et seq.

**462.4 Intercounty district.** If the district extends into two or more counties, a duplicate of the petition shall be filed in the office of the auditor of each county. The boards

of supervisors shall, within thirty days after the filing of such petition, meet in joint session and canvass the same, and if found to be signed by a majority of the owners of land in the district assessed for benefits, they shall by joint action order such election and appoint judges and clerks of election as provided in section 462.3. [S13,§1989-a52b; SS15,§1989-a62,-a63; C24, 27, 31, 35, 39,§7677; C46, 50, 54, §462.4]

**462.5 Election districts.** When a petition has been filed for the election of trustees to manage a district containing three thousand acres or more, the board, or, if the district extends into more than one county, the boards of such counties by joint action, shall, before the election, divide the district into three election districts for the purpose of securing a proper distribution of trustees in such district, and such division shall be so made that each election district will have substantially equal voting power and acreage, as nearly as may be. After such division is made there shall be elected one trustee for each of said election districts, but at such election all the qualified voters for the entire district shall be entitled to vote for each trustee. The division here provided for shall be for the purposes only of a proper distribution of trustees in the district and shall not otherwise affect said district or its management and control. [C24, 27, 31, 35, 39,§7678; C46, 50, 54,§462.5]

Referred to in §462.6 Record and plat of election districts.

**462.6 Record and plat of election districts.** At the time of making a division into election districts as provided in section 462.5, the board or boards shall designate by congressional divisions, subdivisions, metes and bounds, or other intelligible description, the lands embraced in each election district, and the auditor, or auditors if more than one county shall make a plat thereof in the drainage record of the district indicating thereon the boundary lines of each election district, numbering them, one, two, and three respectively. [C24, 27, 31, 35, 39,§7679; C46, 50, 54,§462.6]

**462.7 Eligibility of trustees.** Each trustee shall be a citizen of the United States not less than twenty-one years of age, a resident of the county, and the bona fide owner of agricultural land in the election district for which he is elected. [C24, 27, 31, 35, 39,§7680; C46, 50, 54,§462.7]

Sex no disqualification, see §39.25.

**1. Construction and application.**

A person purchasing one acre in drainage district to qualify in election as trustee held not a "bona fide owner of agricultural land."

State ex rel Pieper v. Patterson, 1955, 70 N.W. 2d 838. 246 Iowa 1129.

**462.8 Notice of election.** The board, or, if in more than one county, the boards acting jointly, shall cause notice of said election to be given, setting forth the time and place of holding the same and the hours when the polls will open and close. Such notice shall be published for two consecutive weeks in a newspaper in which the official proceedings of the board are published in the county, or if the district extends into more than one county, then in such newspaper of each county. The last of such publications shall not be less than ten days before the date of said election. [S13, §1989-a52b; SS15,§1989-a63; C24, 27, 31, 35, 39,§7681; C46, 50, 54,§462.8]

Method of conducting elections, see §49.1 et seq.

**462.9 Assessment to determine right to vote.** Before any election is held, the election board shall obtain from the county auditor or auditors a certified copy of so much of the record of the establishment of such district as will show the lands embraced therein, the assessment and classification of each tract, and the name of the person against whom the same was assessed for benefits, and the present record owner, and such certified record shall be kept by the trustees after they are elected, for use in subsequent elections. They shall, preceding each subsequent election, procure from the county auditor or auditors additional certificates showing changes of title of land assessed for benefits and the names of the new owners. [SS15,§1989-a75; C24, 27, 31, 35, 39,§7682; C46, 50, 54,§462.9]

**462.10 New owner entitled to vote.** Anyone who has acquired ownership of assessed lands since the latest certificate from the auditor shall be entitled to vote at any election if he presents to the election board for its inspection at the time he demands the right to vote evidence showing that he has title. [SS15,§1989-a75; C24, 27, 31, 35, 39,§7683; C46, 50, 54,§462.10]

**462.11 Qualifications of voters.** Each landowner over twenty-one years of age without regard to sex and any railway or other corporation owning land in said district assessed for benefits shall be entitled to one vote only, except as provided in section 462.12. [SS15,§1989-a73; C24, 27, 31, 35, 39,§7684; C46, 50, 54,§462.11]

Qualifications of voters, see §§47.18-47.20, 48.3, 49.81.
Trustees' power to vote as owners of lands acquired at tax sale, see §455.179.

**1. Construction and application.**

Tenants in common are owners and each entitled to vote.

O. A. G. 1942, p. 9.

**462.12 Votes determined by assessment.**

1. When a petition asking for the right to vote in proportion to assessments of benefits at all elections for any purpose thereafter to be held within said district, signed by a majority of the landowners owning land within said district assessed for benefits, is filed with the board of trustees, then, in all elections of trustees thereafter held within said district, any person whose land is assessed for benefits without regard to age, sex, or condition shall be entitled to one vote for each ten dollars or fraction thereof of the original assessment for benefits against the land actually owned by him in said district at the time of the election, but in order to have such ballot counted for more than one vote the voter shall write his name upon the ballot. The vote of any landowner of the district may be cast by absent voters ballot as provided in chapter 53 of this Code except that the form of the application for ballots, the voters' affidavit on the envelopes, and the indorsement of the carrier envelope for preserving the ballot shall be substantially in the form provided in subsections 2, 3 and 4, below. Application blanks, envelopes and ballots shall be provided by and submitted to the office of the county auditor in which the election is held. The cost of such blanks, envelopes, ballots and postage shall be paid by the district. For the purpose of this chapter all landowners of the district shall be considered qualified voters, regardless of their place of residence.

2. For the purpose of this chapter, applications for the ballots shall be made on blanks substantially in the following form:

Application for ballot to be voted at the.....
(Name of District)

District Election on.....
(Date)

State of .....)
)ss.
..... County)

I,....., do solemnly swear that I am
(Applicant)
a landowner in the.....District and
(Name of District)
that I am a duly qualified voter entitled to vote in said election, and that on account of .....
(business, illness, residence outside of county, etc.)
I cannot be at the polls on election day, and I hereby make application for an official ballot or ballots to be voted by me at such election, and that I will return said ballot or ballots to the officer issuing same before the day of said election.

Signed.....

Date.....
Residence (street number if any).....
City or Town ..... State .....
Subscribed and sworn to before me this.....day of
....., A. D. 19.....

3. For the purpose of this chapter, the affidavit on the reverse side of the envelope used for enclosing the marked ballots shall be substantially as follows:

State of .....)
)ss.
..... County)

I, ....., do solemnly swear that I am a landowner in the.....District and
(Name of District)
that I am a duly qualified voter to vote in the election of trustees of said district and that I shall be prevented from attending the polls on the day of election because of ..... and that
(business, illness, residence outside of the county, etc.)
I have marked the enclosed ballot in secret.

Signed.....

Subscribed and sworn to before me this.....day of ....., A. D. 19...., and that I hereby certify that the affiant exhibited the enclosed ballot to me unmarked; that he then in my presence and in the presence of no other person and in such manner that I could not see his vote, marked such ballot, enclosed and sealed the same in this envelope, and that the affiant was not solicited or advertised by me for or against any candidate or measure.

.....
.....
(Official Title)

4. For the purposes of this chapter, upon receipt of the ballot, the auditor shall at once enclose the same, unopened, together with the application made by the voter in a large carrier envelope, securely seal the same, and indorse thereon over his official signature, the following:

a. Name of the district in which the voter is a landowner.

b. Date of the election for which the ballot is cast.

c. Location of the polling place at which the ballot would be legally and properly cast if voted in person.

d. Names of the judges of the election of that polling place, and the statement that this envelope contains an absent voter's ballot and must be opened only at the polls on election day while said polls are open. [SS15,§1989-a73; C24, 27, 31, 35, 39,§7685; C46, 50, 54,§462.12]

Referred to in §462.11 Qualifications of voters; §462.13 Vote by agent.

**462.13 Vote by agent.** Except where the provisions of section 462.12, providing for vote in proportion to assess-

ment are invoked, any person or corporation owning land or right of way within the district and assessed for benefits may have his or its vote cast by his or its agent or proxy authorized to cast such vote by a power of attorney signed and acknowledged by such person or corporation, and filed before such vote is cast in the auditor's office of the county in which such election is held. Every such power of attorney shall specify the particular election for which it is to be used, indicating the day, month and year of such election, and shall be void for all elections subsequently held. [SS15, §1989-a73; C24, 27, 31, 35, 39,§7686; C46, 50, 54,§462.13]

**1. Construction and application.**

Residents eligible to vote at drainage district election but unable to do so because of illness cannot vote by agent.

O. A. G. 1942, p. 9.

**462.14 Vote of minor or insane.** The vote of any person who is a minor, insane, or under other legal incompetency shall be cast by the parent, guardian, or other legal representative of such minor, insane, or other incompetent person. The person casting such vote shall deliver to the judges and clerks of election a written sworn statement giving the name, age, and place of residence of such minor, insane, or other incompetent person, and any false statement knowingly made to secure permission to cast such vote shall render the party so making it guilty of the crime of perjury. [C24, 27, 31, 35, 39,§7687; C46, 50, 54,§462.14]

Perjury, punishment, §721.1.
Guardians for,
Insane persons, see §670.1 et seq.
Minors, see §668.1 et seq.

**462.15 Ballots.** Each elector shall write or print on a blank ballot, furnished by the election board, his choice for trustee for each election district for which a trustee is to be elected. [C24, 27, 31, 35, 39,§7688; C46, 50, 54,§462.15]

Form of ballots, see §§49.30, 49.38.

**462.16 Candidates voted for.** Each qualified voter for the whole district shall be entitled to vote for one candidate for each district for which a trustee is to be elected. [C24, 27, 31, 35, 39,§7689; C46, 50, 54,§462.16]

**462.17 Election—canvass of votes—returns.** On the day designated for said election the polls shall open at one o'clock p.m. and remain open until five o'clock p.m. If no convenient polling place is to be found within the district, the election may be held at some convenient place outside the district. The judges of election shall canvass the vote

and certify the result, and deposit with the auditor the ballots cast, together with the pollbooks showing the names of the voters; but if there is more than one county in the district, the returns shall be filed with the auditor of the county having the greatest acreage of said district. [C13, §1989-a52c; SS15,§1989-a64; C24, 27, 31, 35, 39,§7690; C46, 50, 54, §462.17; 56GA, ch 224,§§1, 2]

**1. Construction and application.**

Absent voters law does not apply to drainage district elections.

O. A. G. 1942, p. 9.

**462.18 Canvass—certificates of election.** The canvass of the returns by the board or boards of supervisors shall be on the next Monday following said election and it or they shall make a return of the results of such canvass to the auditor, who shall issue certificates to the trustees elected, and when the district extends into more than one county, then the auditor with whom the election returns were filed shall issue such certificates. [S13,§1989-a52c; SS15,§1989-a64; C24, 27, 31, 35, 39,§7691; C46, 50, 54,§462.18]

Election contests, see §62.1 et seq.

**462.19 Tenure of office.** The trustees so elected shall hold office until the fourth Saturday in January next succeeding their election and until their successors are elected and qualify. On the third Saturday in the January next succeeding their original election, an election shall be held at which three trustees shall be chosen, one for one year, one for two years, and one for three years, and each shall qualify and enter upon the duties of his office on the fourth Saturday of the same January. On the third Saturday in each succeeding January, an election shall be held to choose a successor to the trustee whose term is about to expire, and the term of his office shall be for three years and until his successor has qualified. [SS15,§1989-a52d,-a65-a67; C24, 27, 31, 35, 39,§7692; C46, 50, 54,§462.19]

**462.20 Levee and pumping station districts.** In a levee district or drainage district having a pumping station an election of trustees shall be held biennially on the third Saturday in January, at which election two trustees shall be elected for a term of three years, but the term of one shall begin one year from the fourth Saturday in January after his election. Ballots shall indicate which of said trustees is for the term beginning on the first Saturday after his election and which for the term beginning one year from such period. For the purpose of carrying out the provisions of this section the terms of trustees in any such districts shall

expire on the fourth Saturday of January, 1925, and on the third Saturday of January, 1925, an election of trustees shall be held at which there shall be two trustees elected for two years, and one for three years, and thereafter biennially two trustees shall be elected with terms of office as first above provided. [S13,§1989-a52e; SS15§1989-a52d; C24, 27, 31, 35, 39, §7693; C46, 50, 54,§462.20]

Drainage and levee districts with pumping stations, see §461.1 et seq.

**462.21 Division of districts under trustees.** In all districts already under trustee management, the board of trustees shall, prior to the election of trustees in the year 1925, divide the district for which they are trustees, into election districts, and at the election for that and each succeeding year, when a trustee is to be elected, it shall be for a specified election district within such district. [C24, 27, 31, 35, 39, §7694; C46, 50, 54,§462.21]

**462.22 Elections—how conducted.** After the first election of trustees, the trustees shall act as judges of election; the clerk of the board shall act as one of the clerks; and some owner of land in the district shall be appointed by the board to act as another clerk. The trustees shall fill all vacancies in the election board. The result of each election shall be certified to the auditor or the several county auditors if the district is located in more than one county. [SS15,§1989-a69; C24, 27, 31, 35, 39,§7695; C46, 50, 54,§462.22]

**462.23 Change of time.** The date on which said annual election shall be held may be changed by the choice of a majority of electors of such district expressed by ballot at any such annual election, and the return of such vote shall be certified in the same manner as the returns for election of trustees. [S13,§1989-a52e; C24, 27, 31, 35, 39,§7696; C46, 50, 54,§462.23]

**462.24 Vacancies.** If any vacancy occurs in the membership of the board of trustees between the annual elections, the remaining members of the board shall have power to fill such vacancies by appointment of persons having the same qualifications as themselves. The persons so appointed shall qualify in the same manner and hold office until the next annual election when their successors shall be elected. In the event that all places on the board become vacant, then a new board shall be appointed by the auditor, or if more than one county, then by the auditor of the county in which the greater acreage of the district is located. The persons so appointed shall hold office until the next annual

election and until their successors are elected and qualify. [SS15,§1989-a68; C24, 27, 31, 35, 39,§7697; C46, 50, 54,§462.24]

Vacancies in office, see §69.1 et seq.

**462.25 Bonds.** The trustees shall qualify by giving a bond in the sum of not less than one thousand dollars or more than five thousand dollars each, conditioned for the faithful discharge of their duties, said bond to be fixed and approved by the auditor of the county, and if more than one, then of the county in which the greater acreage of the district is located. [SS15,§1989-a52f,-a71; C24, 27, 31, 35, 39,§7698; C46, 50, 54,§462.25]

Official bonds, see §§64.1 et seq., 65.1 et seq.
Time and manner of qualifying, see §63.1 et seq.

**462.26 Organization.** As soon as the trustees have qualified, they shall organize by electing one of their own number as chairman and may select some other taxpayer of the district as clerk of the board who shall serve during the pleasure of the board of trustees. [SS15,§1989-a70; C24, 27, 31, 35, 39,§7699; C46, 50, 54,§462.26]

**1. Validity.**

Delay until owner received benefit of dredging estopped his attempt to prevent collection of assessment.

Manley v. Headington, 1921, 191 Iowa 68, 181 N.W. 781.

**2. Incompatible offices.**

County auditor may receive and retain compensation for services as secretary for board of trustees.

O. A. G. 1940, p. 486.

**462.27 Powers and duties of trustees.** Trustees shall have control, supervision, and management of the district for which they are elected and shall be clothed with all of the powers now conferred on the board or boards of supervisors for the control, management, and supervision of drainage and levee districts under the laws of the state, including the power to acquire lands for right of way for ditches and settling basins within or without the district and to annex lands to the district, except as provided in section 462.28. Such authority shall extend only to the district for which they are elected. [SS15,§§1989-a52f,-a71; C24, 27, 31, 35, 39, §7700; C46, 50, 54,§462.27]

Dissolution of district, power of, see §465.1 et seq.
Nepotism, see §71.1 et seq.
Preference for Iowa products and labor, see §73.1 et seq.
Public contracts, duties relative to, see §72.1 et seq.
Receivership for tax delinquent lands, see §§455.190-455.196.
Soldiers' preference, see §70.1 et seq.
Supervisors, drainage powers of, see §§455.1 et seq., 457.1 et seq., 458.1 et seq., 459.1 et seq., 460.1 et seq., 461.1 et seq.
Tax sale, powers, duties and procedure, see §§455.170-455.179.

**1. Validity.**

Delay until owner received benefit of dredging estopped his attempt to prevent collection of assessment.

Manley v. Headington, 1921, 191 Iowa 68, 181 N.W. 781.

**2. Construction and application.**

Powers of trustees of district limited to improvement etc., of existing drains, ditches, etc.

Smith v. Monona-Harrison Drainage Dist. No. 1, 1916, 178 Iowa 823, 160 N.W. 229.

This section did not give trustees right to grant lease or easement.

O. A. G. 1934, p. 609.

**3. Taxation.**

Where trustees did not question validity of tax deeds, issued for non-payment of general taxes, court properly held special assessments were extinguished by such deeds.

Shipman v. Bucher, 1941, 229 Iowa 1196, 296 N.W. 394; Shipman v. Bucher, 1941, 296 N.W. 396.

In suit to cancel tax sale certificates and restrain issuance of treasurer's deed on ground that notice of proceeding to establish district was not given, drainage record showing compliance admissible.

Whisenand v. Van Clark, 1940, 227 Iowa 800, 288 N.W. 915.

In mandamus by trustees to compel boards of supervisors to levy tax on other districts to defray cost of repairing ditch used by other districts as outlet, petition failing to allege natural watercourse was insufficient to make applicable §455.142.

Board of Monona-Harrison Drainage Dist. No. 1 v. Board of Woodbury and Monona Counties, 1924, 198 Iowa 117, 197 N.W. 82.

**4. Expenditures for services.**

Warrant for services rendered by attorneys not void because services were not fully performed when claim was allowed and warrant issued.

Kilpatrick v. Mills County, 1940, 227 Iowa 721, 288 N.W. 871.

**5. Supervisors' contracts, effect of.**

Attorneys rendering services, in defending action against county board acting in representative capacity as drainage trustees, were entitled to payment despite opposition by new trustees of district.

Kilpatrick v. Mills County, 1940, 227 Iowa 721, 288 N.W. 871.

**462.28 Costs and expenses.** All costs and expenses necessary to discharge the duties by this chapter conferred upon trustees shall be levied and collected as provided by law and such levy shall be upon certificate by the trustees to the board or boards of supervisors of the amount necessary for such levy. [SS15,§1989-a52f,-71; C24, 27, 31, 35, 39,§7701; C46, 50, 54,§462.28]

Referred to in §455.216 Districts under trustees; §462.27 Powers and duties of trustees.
Apportionment of costs, see §§455.46, 455.49.
Assessment of benefits, see §§455.45-455.56, 455.137, 455.138, 455.140, 455.143.
Collection of taxes, see §§455.1 et seq., 455.62.
Redemption from tax sale, see §447.1 et seq.
Cooperation with federal agencies engaged in flood control on reclamation projects, see §455.201 et seq.
Repairs, see §455.135-455.141.
Tax deed, see §488.1 et seq.
Tax levies, see §444.1 et seq.
Drainage, see §§455.57, 455.59, 455.146, 455.147.
Tax sale, see §446.1 et seq.

**1. Levy, necessity of.**

Holder of county warrants drawn on ditch fund may sue county on failure to levy taxes for payment of warrants, without first requesting levy.

Mills County Nat. Bank v. Mills County, 1885, 67 Iowa 697, 25 N.W. 884.

**462.29 Disbursement of funds.** Drainage and levee taxes when so levied and collected shall be kept by the treasurer of the county in a separate fund to the credit of the district for which it is collected, shall be expended only upon the orders of trustees, signed by the president of the board, upon which warrants shall be drawn by the auditor upon the treasurer. [SS15,§1989-a52f; C24, 27, 31, 35, 39,§7702; C46, 50, 54,§462.29]

Warrants
Form, see §333.6.
Issuance, see §§333.2-333.4.
Payment, see §§334.1, 334.3, 334.5-334.7.
Unpaid, see §74.1 et seq.

**1. Construction and application.**

Powers of drainage trustees limited to improvement, etc., of existing drains, ditches, etc.

Smith v. Monona-Harrison Drainage Dist. No. 1, 1916, 178 Iowa 823, 160 N.W. 229.

**2. Expenditures for services.**

Warrant for services rendered by attorneys not void because services were not fully performed when claim was allowed and warrant issued.

Kilpatrick v. Mills County, 1940, 227 Iowa 721, 288 N.W. 871.

**3. Supervisors' contracts, affect of.**

Attorneys rendering services, in defending action against county board acting in representative capacity as drainage trustees, were entitled to payment despite opposition of new trustees of district.

Kilpatrick v. Mills County, 1940, 227 Iowa 721, 288 N.W. 871.

**462.30 Certificates and bonds.** The board of trustees of any district shall have the same power to issue improvement certificates and levee and drainage bonds under the same conditions and with like tenor and effect as is provided by chapter 455 for such issuance by the board of supervisors, except that in case of the issue of levee or drainage bonds, the same shall be approved by a judge of the district court in and for the county or counties in which such district lies, which approval shall be printed upon such bonds before the same are negotiated. [SS15,§1989-a52f; C24, 27, 31, 35, 39, §7703; C46, 50, 54,§462.30]

**462.31 to 462.32, inc.** Repealed by 53 GA, ch 205, sections 4, 5.

**462.34 Report to auditor.** Such trustees shall, from time to time, and with reasonable promptness, furnish the auditor of each county in which any part of said district is situated, with a correct report of their acts and proceedings, which report shall be signed by the chairman and the clerk of the board and shall be recorded by the auditor in the drainage record, and shall be published in one official paper in the county having a general circulation in the district. [S13,§1989-a52g; SS15,§1989-a72; C24, 27, 31, 35, 39,§7707; C46, 50, 54,§462.34]

**462.35 Compensation—statements required.** The compensation of the trustees and the clerk of the board is hereby fixed at seven dollars per day and necessary expenses, to be paid out of the funds of the drainage or levee district for each day necessarily expended in the transaction of the business of the district, but no one shall draw compensation for services as trustee and as clerk at the same time. They shall file with the auditor or auditors, if more than one county, itemized, verified statements of their time devoted to the business of the district and of the expenses incurred. [SS15,§1989-a52f,-a74; C24, 27, 31, 35, 39,§7708; C46, 50, 54, §462.35]

**462.36 Change to supervisor management.** Any district which has been placed under the management of trustees may be placed back under the management of the board or boards of supervisors in the manner provided in section 462.37. [C24, 27, 31, 35, 39,§7709; C46, 50, 54,§462.36]

**462.37 Petition—canvass.** For such purposes a petition signed by a majority of persons, including corporations, owning land within the district assessed for benefits and who in the aggregate own more than one-half the acreage of such lands, may be filed in the office of the auditor and if more than one county, then a duplicate shall be filed in the office of the auditor of each county.

The trustees shall fix a date not less than ten nor more than thirty days from the date such petition is filed for the canvass of such petition, and the trustees and auditor or auditors shall canvass said petition and certify and record in the drainage record the result. [C24, 27, 31, 35, 39,§7710; C46, 50, 54,§462.37]

Referred to in §462.36 Change to supervisor management.

**462.38 Remonstrance.** Remonstrances signed by the same persons who are qualified to sign the petition may be filed in the office of the auditor and if the same persons petition and remonstrate they shall be counted on the remonstrance only. Such remonstrances shall be filed not less than five days before the time set for hearing. [C24, 27, 31, 35, 39, §7711; C46, 50, 54,§462.38]

**462.39 When change effective.** If the result of the canvass shows a majority in favor of such things, then it shall become effectual on the date at which the next annual election of trustees would be held, and on such date the trustees shall surrender and turn over to the board or boards of supervisors the full and complete management and control of such district, together with all books, contracts, and other documents relating thereto. [C24, 27, 31, 35, 39,§7712; C46, 50, 54,§462.39]

**462.40 Final report of trustees.** On or before the date such change becomes effective, the said trustees shall make and file with the auditor, or if more than one county, a duplicate with each auditor, a final report setting forth:

1. The amount of cash funds on hand or to the credit of the district.
2. The amount of outstanding indebtedness of the district, and the form thereof, whether in warrants, improvement certificates, or bonds and the amount of each.
3. Any outstanding contracts for repairs or other work to be done.
4. A statement showing the condition of the improvements of the district, and specifying any portion thereof in need of repair. [C24, 27, 31, 35, 39,§7713; C46, 50, 54,§460.40]

**462.41 Management by supervisors.** After such change is made it shall be the duty of the board or boards of supervisors to manage and control the affairs of said district as

fully and to the same extent as if it had never been under trustee management. They shall carry out any pending contracts lawfully made by the trustees as fully as if made by the board. [C24, 27, 31, 35, 39,§7714; C46, 50, 54,§462.41]

**1. In general.**

Acts outside statutory authority of district supervisors are void, and persons dealing with it are charged with knowledge of limits of its power.

Reconstruction Finance Corporation v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

# CHAPTER 463

## DRAINAGE REFUNDING BONDS

463.1 Refunding bonds
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**463.1 Refunding bonds.** The board of supervisors of any county may extend the time of the payment of any of its outstanding drainage bonds issued in anticipation of the collection of drainage assessments levied upon property within a drainage district, and may extend the time of payment of any unpaid assessment, or any installment or installments thereof, and may renew or extend the time of payment of such legal bonded indebtedness, or any part thereof, for account of such drainage district, and may refund the same and issue drainage refunding bonds therefor subject to the limitation and in the manner hereinafter provided. [C27, 31, 35,§7714-b1; C39,§7714.01; C46, 50, 54, §463.1]

Similar provisions, §461.13.

**1. Action to enforce bonds.**

Holder of bonds issued by county supervisors not entitled to judgment at law against district, the bonds

being payable only by levying and collecting special assessments on lands in the district.

Board of Worth County v. District Court of Scott County, 1930, 209 Iowa 1030, 229 N.W. 711.

**463.2 Petition for refunding.** Before the time of payment of said assessments or any installment or installments thereof shall be extended and before the board shall institute proceedings for the issuance of drainage refunding bonds, the owners of not less than fifteen per cent of the land within a drainage district as shown by the transfer books in the auditor's office upon which drainage assessments are unpaid, shall file a petition with the board requesting the extension of the time of payment of assessments levied in said drainage district or of any installment or installments thereof, setting forth the date said assessments to be extended were levied, the aggregate amount thereof unpaid, and requesting the issuance of drainage refunding bonds, stating the amount and purpose of said bonds. [C27, 31, 35,§7714-b2; C39,§7714.02; C46, 50, 54,§463.2]

**463.3 Sufficiency of petition—hearing.** Upon the receipt of any such petition the board shall, at the next regular meeting or regular adjourned meeting; determine the sufficiency thereof and fix a date of meeting of the board at which it is proposed to extend the time of payment of said unpaid assessments and to take action for the issuance of drainage refunding bonds. [C27, 31, 35,§7714-b3; C39,§7714.03; C46, 50, 54,§463.3]

**463.4 Notice.** The board shall give ten days notice of said meeting as required in relation to the issuance of bonds under chapter 23. [C27, 31, 35,§7714-b4; C39,§7714.04; C46, 50, 54,§463.4]

Referred to in §463.28 Report and hearing—appeal.

**463.5 Requirements of notice.** Said notice shall be directed to each person whose name appears upon the transfer books in the auditor's office as owner of lands within said drainage district upon which said drainage assessments are unpaid, naming him, and also to the person or persons in actual occupancy of any of said tracts of land without naming them, and shall state the amount of unpaid assessments upon each forty-acre tract of land or less, and that all of said unpaid assessments, installment or installments thereof as proposed to be extended, may be paid in cash on or before the time fixed for said hearing and that after the expiration of such time no assessments may be paid except in the manner and at the times fixed by the board

in the resolution authorizing the issuance of said drainage refunding bonds. [C27, 31, 35,§7714-b5; C39,§7714.05; C46, 50, 54,§463.5]

Referred to in §463.28 Report and hearing—appeal.

**463.6 Extending payment of assessments.** In case no appeal is taken to the issuance of said bonds as provided by chapter 23, the board may extend the time of payment of said unpaid assessment or any installment or installments thereof as requested in the petition and may issue drainage refunding bonds, or, in case of an appeal, the board may issue such bonds in accordance with the decision of the state comptroller provided said assessments, installment or installments thereof have not been entered on the delinquent tax lists and have not been previously extended. [C27, 31, 35,§7714-b6; C39,§7714.06; C46, 50, 54,§463.6]

Referred to in §463.28 Report and hearing—appeal.

**463.7 Appeal.** Any person aggrieved by the final action of the board extending the time of payment of said unpaid assessment, installment or installments thereof may appeal therefrom to the district court of the county in which such action was taken. [C27, 31, 35,§7714-b7; C39,§7714.07; C46, 50, 54,§463.7]

**463.8 Time and manner of appeal.** All appeals shall be taken in the manner provided in section 455.94 except that said appeal shall be taken within ten days after the date of the final action of the board. [C27, 31, 35,§7714-b8; C39, §7714.08; C46, 50, 54,§463.8]

**463.9 Maximum extension.** The unpaid assessments against said lands within said drainage district shall not be extended for a period exceeding forty years from the time any assessment, installment or installments thereof to be extended become due. The board shall fix the amount that shall be levied and collected each year and may issue drainage refunding bonds covering all said unpaid assessments. [C27, 31, 35,§7714-b9; C39,§7714.09; C46, 50, 54,§463.9]

**463.10 Form of bonds.** Drainage refunding bonds shall be issued in denominations of not less than one hundred dollars nor more than one thousand dollars, each, running not more than forty years, bearing interest not exceeding six percent per annum, payable semiannually, and shall be substantially in the form provided by law relating to drainage bonds, with such changes as shall be necessary to conform with this chapter. [C27, 31, 35,§7714-b10; C39,§7714.10; C46, 50, 54,§463.10]

**463.11 Numbering, signing, and attestation.** Said bonds shall be numbered consecutively, signed by the chairman of the board and attested by the county auditor with the seal of the county affixed. The interest coupons attached thereto shall be executed by the county auditor. [C27, 31, 35,§7714-b11; C39,§7714.11; C46, 50, 54,§463.11]

Auditor, see §333.1 et seq.
Chairman, see §331.13.
County seal, see §332.1.
Numbering, see §76.1.

**463.12 Resolution required.** All bonds issued under the provisions of this chapter shall be issued pursuant to and in conformity with a resolution adopted by the board of supervisors which shall specify the amount of unpaid assessments to be extended, the times when the installment or installments of extended assessments shall become due, the amount of drainage refunding bonds authorized to be issued, the purpose for which issued, the rate of interest they shall bear, the place where the principal and interest shall be payable and the time or times when they shall become due, and such other provisions not inconsistent with law in reference thereto, as the board shall deem proper. [C27, 31, 35,§7714-b12; C39,§7712.12; C46, 50, 54§463.12]

**463.13 Record of resolution.** Said resolution shall be entered of record upon the minutes of proceedings of said board and shall constitute a contract between the drainage district and the purchasers or holders of said bonds and shall be full authority for the revision of the tax rolls to accord therewith. [C27, 31, 35,§7714-b13; C39,§7714.13; C46, 50, 54,§463.13]

**463.14 Record of bonds.** When the bonds have been executed as aforesaid they shall be delivered to the county treasurer and his receipt taken therefor. He shall register said bonds in a book provided for that purpose which shall show the number of each bond, its date, date of sale, amount, date of maturity, and the name and address of the purchaser, and if exchanged what evidences of indebtedness were received therefor, which record shall at all times be open to the inspection of the owners of property within said drainage district. The treasurer shall thereupon certify on the back of each bond as follows:

"This bond duly and properly registered in my office this .....day of ....., 19.....

.....

Treasurer of the County of....."
[C27, 31, 35,§7714-b14; C39,§7714.14; C46, 50, 54,§463.14]

**463.15 Liability of treasurer—reports.** The treasurer shall stand charged on his official bond with all bonds so delivered to him and the proceeds thereof. He shall report under oath to the board, at each first regular session thereof in each month, a statement of all such bonds sold or exchanged by him since his last report and the date of such sale or exchange and when exchanged a description of the indebtedness for which exchanged. [C27, 31, 35,§7714-b15; C39,§7714.15; C46, 50, 54,§463.15]

**463.16 Sale, exchange, and cancellation.** He shall, under a resolution and the direction of the said county board of supervisors, sell the bonds for cash on the best available terms or exchange them on like terms for the legal indebtedness of the said drainage district evidenced by the outstanding drainage bonds, authorized to be refunded by the resolution authorizing the issue of said refunding bonds, and the proceeds shall be applied and exclusively used for the purpose for which said bonds are issued. In no case shall they be sold or exchanged for a less sum than their face value and all interest accrued. After registration the treasurer shall deliver said refunding bonds to the purchaser thereof and when exchanged for said bonded indebtedness of said district, shall at once cancel a like amount of said drainage bonds. [C27, 31, 35,§7714-b16; C39,§7714.16; C46, 50, 54,§463.16]

**463.17 Redemption from tax sale.** In case any land within such drainage district shall have been sold at tax sale for failure of the owner thereof to pay any drainage assessments levied thereon, and before any tax deed has been issued, then on application of the owner of such land, the board of supervisors may effect a redemption thereof for such owner out of the proceeds of any refunding bond issue and add the cost of such redemption to the amount of the unpaid assessments against such land, payment thereof to be extended in manner and as a part of the remaining unpaid assessments thereon. [C35,§7714-f1; C39,§7714.17; C46, 50, 54,§463.17]

**463.18 Effect of extension.** The extension of the time of payment of any unpaid assessments or installment or installments thereof, in the manner aforesaid shall in no way impair the lien of said assessments as originally levied or the priority thereof, nor the right, duty and power of the officers authorized by law to levy, collect, and apply the proceeds thereof to the payment of said drainage refunding bonds. [C27, 31, 35,§7714-b17; C39,§7714.18; C46, 50, 54,§463.18]

**463.19 Additional assessments.** If said assessments should for any reason be insufficient to meet the interest and prin-

cipal of said drainage refunding bonds additional assessments shall be made to provide for such deficiency. [C27, 31, 35,§7714-b18; C39,§7714.19; C46, 50, 54,§463.19]

Maturity and payment, see §76.1 et seq.

**1. Assessments, necessity.**

Drainage district bonds payable only by levying and collecting special assessments on lands in the district. Board of Supervisors of Worth County v. District Court of Scott County, 1930, 209 Iowa 1030, 229 N.W. 711.

**463.20 Applicability of funds.** All special assessments, taxes, and sinking funds applicable to the payment of the indebtedness refunded by said drainage bonds shall be applicable in the same manner and to the same extent to the payment of such refunding bonds issued hereunder, and the powers, rights, and duties to levy and collect special assessments or taxes, or create liens upon property shall continue until all refunding bonds shall be paid. [C27, 31, 35,§7714-b19; C39,§7714.20; C46, 50, 54,§463.20]

**463.21 Trust fund.** The special assessments out of which said bonds are payable shall be collected and held separate and apart in trust for the payment of said refunding bonds. [C27, 31, 35,§7714-b20; C39,§7714.21; C46, 50, 54,§463.21]

**463.22 Liens unimpaired.** When drainage refunding bonds are issued hereunder, nothing in this chapter shall be construed as impairing the lien of any unpaid drainage assessments or installments in such drainage district, the time of payment of which is not extended, nor shall this chapter be construed as impairing the priority of the lien thereof nor the right, duty, and power of the officers authorized by law to levy, collect, and apply the proceeds thereof to the payment of outstanding drainage bonds issued in anticipation of the collection thereof. [C27, 31, 35,§7714-b21; C39, §7714.22; C46, 50, 54,§463.22]

**463.23 Limitation of action.** No action shall be brought questioning the validity of any of the bonds authorized by this chapter from and after three months from the time the same are ordered issued by the proper authorities. [C27, 31, 35,§7714-b22; C39,§7714.23; C46, 50, 54,§463.23]

Similar provisions, §§408.15, 420.285, 461.23, 464.12.

**463.24 Void bonds or assessments.** The provisions of this chapter shall not apply to bonds or assessments adjudicated to be void. [C27, 31, 35,§7714-b23; C39,§7714.24; C46, 50, 54, §463.24]

**463.25 Interpretative clause.** This chapter shall be construed as granting additional power without limiting the power already existing for the extension of the time of payment of drainage assessments and the issuance of drainage bonds. [C27, 31, 35,§7714-b24; C39,§7714.25; C46, 50, 54,§463.25]

**1. Construction and application.**

Board of supervisors may issue and sell funding bonds in accordance with §461.13 without regard to provisions of ch. 463, or may proceed in accordance with such chapter.

O. A. G. 1928, p. 346.

**463.26 Composition with creditors—federal loans.** For the purpose of refinancing, adjusting, composing, and refunding in such adjusted amount the indebtedness of any drainage districts or levee districts, found to be in financial distress, the governing body thereof or board of supervisors as the case may be, upon its own motion, is authorized to enter into agreements with the creditors of said district, for the reduction and composition of its outstanding indebtedness, and to make application for and negotiate with the Reconstruction Finance Corporation, or any other loaning agency, for the borrowing of funds for such purposes. [C35,§7714-g1; C39,§7714.26; C46, 50, 54,§463.26]

Loans and advances by Reconstruction Finance Corporation, see 15 U. S. C. A. §604.

**463.27 Refinancing powers.** In order to effect such loan, the governing body of such district, or board of supervisors, is authorized to execute such agreements and contracts, and to fulfill such requirements of the loaning agency as are not inconsistent with this chapter; and to issue, and pledge or sell such bonds at their face value to the said Reconstruction Finance Corporation, or other loaning agency, furnishing the funds for such debt readjustment, in the amount required for such adjustment.

The governing body, or board of supervisors, shall also have the authority as a part of such plan of refinancing, adjusting, composing, and refunding its indebtedness to cancel the old assessments collectible against the land within the district, pledged to the payment of its outstanding indebtedness and proportionately and equitably relevy the same, with interest, over the period covered by the new bonds, in an amount sufficient to pay said new bonds and interest thereon, provided, however, that the new assessments thereby created against any tract of land within the district shall not be in excess of the unpaid assessments against such tract before the readjustment or composition is made, and provided further, that such new and extended assessment

against such tract shall fully replace the old assessment. [C35,§7714-g2; C39,§7714.27; C46, 50, 54,§463.27]

**463.28 Report and hearing—appeal.** At the direction of the governing board of such district, or board of supervisors, the county auditor of the county within which the land on which the indebtedness is being adjusted is situated, shall compile a tabulated report as to the lands with the said district, setting forth:

1. The name of the owner of such assessed tract as shown by the transfer books in his office.

2. The amount of the unpaid old assessments against each of said tracts.

3. The amount of the new assessment required to pay the new bonds to be issued, together with the installments to be paid thereon annually of principal and interest, and the maximum period of time over which such assessments shall be paid.

After such report is tabulated and filed, a hearing upon the contemplated action of the governing body of such district, or board of supervisors, to make the proposed adjustment, composition, renewal and refunding in such adjusted amount of its outstanding indebtedness, together with the issuance of bonds and the levying of assessments thereof, shall be had in the manner and upon the same notice as is prescribed in sections 463.4 to 463.6, inclusive, and appeal may be made therefrom as provided in this chapter. [C35, §7714-g3; C39,§7714.28; C46, 50, 54,§463.28]

# CHAPTER 464

## DEFAULTED DRAINAGE BONDS

464.1 Extension of payment—application.
464.2 Petition.
464.3 Hearing.
464.4 Parties—notice—service.
464.5 Jurisdiction of court.
464.6 Conservator appointed.
464.7 Report—hearing thereon.
464.8 Adjudication on report.
464.9 Refunding bonds.
464.10 Lien.
464.11 Trustees as parties.
464.12 Limitation of action.

**464.1 Extension of payment—application.** When drainage district bonds have been issued in anticipation of the collection of drainage district assessments levied on real estate within such drainage district are in default, either for failure to pay principal installments or accrued interest thereon, and funds are not on hand within thirty days after such default, ten owners of real estate in such district or the owners of not less than ten percent in amount of the outstanding drainage bonds of such district may make application to the district court of the county wherein said drainage district is located, asking for an extension of time of payment, and a reamortization of the assessments on the real estate within such drainage district, which was in default, and a new schedule of payments of the bonds and other indebtedness, and the issuance of new bonds as provided by this chapter. [C35,§7714-f2; C39,§7714.29; C46, 50, 54,§464.1]

Referred to in §464.2 Petition.

**1. Validity.**

Constitutionality upheld.

Reconstruction Finance Corporation v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

**2. Construction and application.**

Where assessments levied were insufficient to pay fully the bonds, bond holders were entitled to have deficiency assessments made.

Whitfield v. Grimes, 1940, 229 Iowa 309, 294 N.W. 346.

One fully paying his share of levy sufficient to meet bond issue is not liable for deficiencies resulting from failure of others to pay fully.

Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N.W. 568.

**3. Tax deeds, effect on drainage levy.**

Tax deeds issued for nonpayment of general taxes, if valid, extinguished lien of special drainage tax previously levied.

Reconstruction Finance Corporation v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

**4. Validity of tax deeds.**

Tax deeds for nonpayment of general taxes acquired under assignment of tax certificates by drainage district board of supervisors could pass no better title than supervisors had and it had only the right to hold such certificates in trust for the district.

Reconstruction Finance Corporation v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

**5. Powers of supervisors.**

Drainage district supervisors could not acquire tax title against landowners who were "the real parties in interest" where the board used owners funds in buying tax certificates.

Reconstruction Finance Corporation v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

**6. Remedies.**

Where tax deeds acquired under tax certificates assigned by the drainage district supervisors were void, both grantees and district were entitled to be restored to status quo.

Reconstruction Finance Corporation v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

**464.2 Petition.** Ten owners of real estate in such district, or the owners of not less than ten per cent in amount of the outstanding drainage bonds of such drainage district, may institute proceedings in the district court of the county issuing such bonds wherein the drainage district is located, by filing a petition which shall set forth the names and addresses of the ten petitioning real estate owners or the names and addresses of the petitioning owners of ten percent in amount of the drainage bonds of such district, that said bonds are in default as defined in section 464.1, that the petitioners have good reason to believe that said default cannot, or will not, be removed by payment under the present schedule of said district, and asking that the matters herein presented be reviewed by the court, and determined as provided by this chapter. [C35,§7714-f3; C39,§7714.30; C46, 50, 54,§464.2]

**464.3 Hearing.** On the filing of such petition the judge for said court, either in session, or in vacation, shall enter

an order fixing the date for hearing, which date shall be at least four weeks subsequent to the date of the filing of the order. [C35,§7714-f4; C39,§7714.31; C46, 50, 54,§464.3]

**464.4 Parties—notice—service.** The board of supervisors of such county or counties wherein the drainage district is located, shall be notified of the proceeding and hearing by original notice served in the same manner as in civil actions; notice of said hearing shall be served upon all owners of each tract of land or lot within such drainage district, as shown by the transfer books in the county auditor's office, upon each lienholder or encumbrancer of any land within the said drainage district as shown by the county records, and upon all persons holding claims against said drainage district, as shown by the county records, and also upon all other persons whom it may concern, including bondholders and actual occupants of the land within said drainage district, without naming individuals, by publication thereof, once each week for two consecutive weeks, in some newspaper of general circulation in the county or counties where said drainage district is located, the last of which publications shall be not less than twenty days prior to the date set for hearing on the said petition and when such notice is complete, it shall be deemed a sufficient notice for all hearings and proceedings under this chapter. Proof of such service shall be made by affidavit of the publisher and be on file with the county auditor on or before the date of hearing. [C35,§7714-f5; C39,§7714.32; C46, 50, 54,§464.4]

Service of original notice, R. C. P. 48, 50, and 53 et seq.

**1. Parties.**

Landowners are "the real parties in interest."

Reconstruction Finance Corporation v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

Where county treasurer was not an officer of the district, he was not a "proper party" to action in mandamus.

Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N.W. 568.

**464.5 Jurisdiction of court.** The district court shall have jurisdiction and power to adjudicate all the rights and issues between the drainage district, and the landowners, bondholders, lienholders, encumbrancers, claimants and creditors of the drainage district, and in determining the rights of the parties, shall take into consideration, the maturity of the bonds, the interest rate of the bonds, the present schedule and classification of assessments on the real estate, the ratio between the amount in default, and the amount of unpaid assessments in the drainage district, the gross amount

needed to retire the bonds now outstanding and in default, the current retirement schedule on other indebtedness of the drainage district, the general tax structure of the drainage district, the unpaid taxes in the drainage district, the default by the drainage district in the payment of its bonded indebtedness, and the current financial condition of the taxpayers. [C35,§7714-f6; C39,§7714.33; C46, 50, 54,§464.5]

**1. Validity.**

Validity upheld.

Reconstruction Finance Corporation v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

**2. Exemption from drainage tax.**

Drainage district supervisors, in transferring tax certificates, which formed basis of tax deeds acquired by individuals in violation of statutes, committed a "constructive" fraud.

Reconstruction Finance Corporation v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

**3. Delinquent general taxes.**

Grantees of tax certificates assigned to them by drainage district supervisors held bound to know law regarding breach of trust by supervisors.

Reconstruction Finance Corporation v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

**4. Actions.**

Dismissal of action in mandamus against county treasurer proper where he was not an officer of drainage district against which action was brought.

Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N.W. 568.

**464.6 Conservator appointed.** If the court finds that the necessary parties have instituted the proceedings, and that all necessary parties have been properly served with notice, and the order of the court, and that the drainage district is in default in the payment of its installment assessments, or the interest thereon, the court shall enter an order appointing the county auditor of the county in which such drainage district is located, or if such drainage district is located in more than one county, the county auditor of the county wherein the greater portion of the lands within said drainage district are located, receiver for the said drainage district, said receiver being hereafter called "conservator," and the said conservator shall be under the court's direction. The conservator shall be allowed such compensation as may be determined by the court, and said conservator may employ, under the direction and approval of the court, an

attorney, and such assistants as may be necessary to perform the duties required by him under the law, and orders of court. [C35,7714-f7; C39,§7714.34; C46, 50, 54,§464.6]

County auditor, see §333.1 et seq.
Drainage duties, see §§455.28, 455.31, 455.35-455.37, 455.89, 455.185, 455.186, 456.2, 457.1 et seq., 462.2 et seq.

**464.7 Report—hearing thereon.** The conservator shall, within thirty days from the date of his appointment, prepare and file with the clerk of the district court, a full report giving in detail, the bonded indebtedness of said drainage district, the accrued interest thereon, and any and all other indebtedness owing by said drainage district; a full and complete schedule of all lands sold at tax sale, including the amount of drainage assessments thereon; a list of all real estate within the drainage district, showing the unpaid assessments thereon; also said conservator shall set forth a schedule, under which the bonded indebtedness of said drainage district may be reamortized; also a schedule under which all other indebtedness of said drainage district may be paid or reamortized. Upon the filing of the report by the conservator, the court shall set a date for hearing thereon, which date shall not be less than ten or more than fifteen days, from the filing thereof. [C35,§7714-f8; C39,§7714.35; C46, 50, 54,§464.7]

**464.8 Adjudication on report.** At the hearing of the conservator's report, the court shall fix and determine the amount of money in the hands of the county treasurer belonging to said drainage district; the amount of the indebtedness of said drainage district; to whom said indebtedness is due, and fix and determine the time, manner and priority of payment of said indebtedness; also the court shall fix and determine the amount of unpaid assessment or assessments against each tract of land within said drainage district, and may extend the time of payment, reamortize and reallocate the said assessment upon each tract of land within said drainage district; also, if the court finds that the assessments as levied against each tract of land within said drainage district, are not sufficient to pay the indebtedness due and owing by said drainage district, the court may order the board of supervisors of the county within which the said drainage district is located, to levy an assessment against the lands within said drainage district, in an amount to pay the deficit; provided, however, that no assessment for the payment of drainage bonds or improvement certificates shall be levied against any tract of land where the owner of said land is not delinquent in payment of any assessment and provided, further, that the amount of the reassessment on a particular piece of land shall be in direct proportion to the amount of unpaid assessments on said

land and provided, further, that no assessment or expenses incidental thereto, for the payment of drainage bonds or improvement certificates under this chapter, shall be levied against any tract of land where the owner of said land had previously paid all of his assessment. Said assessment to be assessed and levied by the board of supervisors upon the lands within said drainage district, in the same proportion as the original assessment. A copy of said order entered by the court, shall be filed by the clerk of the district court with the county auditor, and the schedule of payments of the indebtedness of said drainage district as fixed and determined by the court, shall be entered upon the drainage records of the drainage district and also spread upon the tax records of the county and shall become due and payable at the same time as ordinary taxes, and shall be collected in the same manner with the same penalties for delinquency, and the same manner of enforcing collection by tax sale. Also the court may apportion the costs between the creditors of the drainage district, and the drainage district. [C35,§7714-f9; C39,§7714.36; C46, 50, 54,§464.8]

Referred to in §464.9 Refunding bonds.
Deficiency levy, see §§455.59, 455.89.

**1. Validity.**

Constitutionality upheld.

Reconstruction Finance Corporation v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

**2. Construction and application.**

Section 455.87, providing that if any levy is insufficient to meet interest and principal of outstanding bonds, additional assessments "may" be levied, the word "may" construed to be mandatory.

Whitfield v. Grimes, 1940, 229 Iowa 309, 294 N.W. 346.

One fully paying his share of levy sufficient to meet bond issue is not liable for deficiencies resulting from failure of others to pay fully.

Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N.W. 568.

**3. Deficiency levy.**

Tax deeds issued for nonpayment of general taxes, which deeds were not acquired through board of supervisors were valid and lien of drainage taxes on such lands was extinguished.

Reconstruction Finance Corporation v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

Where tax deeds extinguished special assessments the tracts so deeded could not be subjected to a deficiency levy.

Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N.W. 568.

**4. Non-delinquent lands.**

Reassessment not permitted where deficiency was due to acquisition of land which had previously been assessed, then acquired by the district.

Hartz v. Truckenmiller, 1940, 228 Iowa 819, 293 N. W. 568.

**5. Supervisors.**

Board of supervisors has only powers expressly or by necessary implication, granted to it.

Reconstruction Finance Corporation v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

**6. Pleadings and practice.**

In proceeding to compel additional levy, order sustaining demurrer to petition did not become "law of the case" on motion to dismiss substituted petition.

Whitfield v. Grimes, 1940, 229 Iowa 309, 294 N.W. 346.

**464.9 Refunding bonds.** The court shall direct the board of supervisors to issue bonds in lieu of the outstanding drainage bonds for said drainage district, and additional bonds for the accrued interest and other indebtedness of said drainage district. Said bonds shall be payable in amounts, and at the time and manner, and with priority of payments as has been determined by order of court, as provided by section 464.8, and shall be called "conservator's drainage district bonds". Each bond shall be numbered and shall state on its face that it is a conservator's drainage district bond; that it is issued in pursuance of a resolution adopted by the board of supervisors, under order of court, and giving the name of the court and the county where such court is held; that it is issued to pay indebtedness of the drainage district; shall state the county where such district is located, and the number of the drainage district for which it is issued; shall state the date of maturity of the bond, the rate of interest thereon, which rate shall not be less than three and one-half percent per annum, and that the bond is to be paid only from taxes assessed, levied and collected on the lands within the drainage district for which the bond is issued subject to the provisions of section 464.8. All bonds shall be signed by the chairman of the board of supervisors and countersigned by the conservator designated as such. The interest coupons attached to said bonds shall be attested by the signature of the conservator or a facsimile thereof. When the bonds have been executed as herein required, the conservator may sell said bonds at not less than par with accrued interest thereon, and pay the indebtedness of said drainage district, or may exchange said bonds with the creditors of said drainage district in amounts as have been fixed and determined by the court, and the

conservator shall cancel all drainage bonds, improvement certificates, warrants or other evidence of indebtedness received by him in lieu of the conservator's bonds. [C35, §7714-f10; C39,§7714.37; C46, 50, 54,§464.9]

Drainage refunding bonds, see §463.1 et seq.
Funding bonds, see §§455.88, 459.7, 461.13-461.23.
Payment from drainage taxes, see §455.82.

**464.10 Lien.** When conservator's drainage district bonds are issued hereunder, nothing herein, shall be construed as impairing the lien of all unpaid assessments upon the real estate within said drainage district, nor shall this chapter be construed as impairing the priority of the lien thereof, nor the right, duty and power of the officer authorized by law, to levy, collect and apply the proceeds thereof, to the payment of outstanding drainage bonds issued in anticipation of the collection thereof. [C35,§7714-f11; C39,§7714.38; C46, 50, 54,§464.10]

Drainage tax lien, see §455.58.

**1. Construction and application.**

Intent of legislature that bonds be payable solely from taxes assessed against lands in the district and that supervisors make assessments sufficient to pay cost of project and all bonds issued.

Whitfield v. Grimes, 1940, 229 Iowa 309, 294 N.W. 346.

**2. Extinguishment.**

Tax deeds issued for nonpayment of general taxes, which deeds were not acquired through supervisors were valid and extinguished lien of drainage taxes.

Reconstruction Finance Corporation v. Deihl, 1941, 229 Iowa 1276, 296 N.W. 385.

**464.11 Trustees as parties.** Should a drainage district in default be managed by drainage district trustees, said trustees shall also be named as proper and necessary parties defendant. [C35,§7714-f12; C39,§7714.39; C46, 50, 54,§464.11]

Management by trustees, see §462.1 et seq.

**464.12 Limitation of action.** No action shall be brought, questioning the validity of any conservator's drainage district bond issued under this chapter from and after three months from the date of the order causing the said bonds to be issued. [C35,§7714-f13; C39,§7714.40; C46, 50, 54,§464.12]

Similar provisions, §§408.15, 420.285, 461.23, 463.23.

**1. Accrual of cause of action.**

Action to compel supervisors to levy sufficient assessments to pay bonds accrued when payment was due, not when bonds were issued.

Whitfield v. Grimes, 1940, 229 Iowa 309, 294 N.W. 346.

# CHAPTER 465

## INDIVIDUAL DRAINAGE RIGHTS

465.1 Drainage through land of others—application.
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465.20 Drains on abutting boundary lines.
465.21 Boundary between two townships.
465.22 Drainage in course of natural drainage.
465.23 Drainage connection with highway.
465.24 Private drainage system—record.
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465.27 Original plat filed.
465.28 Record not part of title.
465.29 Fees for record and copies.
465.30 Lost records—hearing.
465.31 Mutual drains—establishment as district.
465.32 Appeal.
465.33 Record filed with established district.
465.34 Lost or incomplete records.
465.35 Petition to combine with established district.

**465.1 Drainage through land of others — application.** When the owner of any land desires to construct any levee, open ditch, tile or other underground drain, for agricultural or mining purposes, or for the purposes of securing more complete drainage or a better outlet, across the lands of others or across the right of way of a railroad or highway, or when two or more landowners desire to construct a drain to serve their lands, he or they may file with the township clerk of the township in which any such land or right of way is situated, an application in writing, setting forth a description of the land or other property through which he

is desirous of constructing any such levee, ditch, or drain, the starting point, route, terminus, character, size, and depth thereof. [C73,§1217; C97,§1955; S13,§1955; C24, 27, 31, 35, 39,§7715, C46, 50, 54,§465.1]

June 1929, 14 Iowa Law Review 495, 497.

**1. Validity.**

Fleming v. Hull, 1887, 73 Iowa 598, 35 N.W. 673.

**2. Construction and application.**

Landowner had no right to dam old ditch to force water along new ditch.

Allen v. Berkheimer, 1922, 194 Iowa 871, 186 N.W. 683.

Purpose of this section discussed. Trustees could not enlarge natural ditch wholly on plaintiff's land to stop flooding of applicant's land.

Cowan v. Grant Tp., Monona County, 1921, 190 Iowa 1188, 181 N.W. 637.

Remedies of dominant owner wishing to open drains across adjoining land.

Miller v. Hester, 1914, 167 Iowa 180, 149 N.W. 93.

**3. Establishment.**

Right of owner to drain water naturally to or over land of another.

Dorr v. Simmerson, 1905, 127 Iowa 551, 103 N.W. 806
Sheker v. Machovec, 1907, 110 N.W. 1055.

**4. Prescriptive right.**

Artificial channel may become natural watercourse after period of prescription has run.

McKeon v. Brammer, 1947, 238 Iowa 1113, 29 N.W.2d 518.

Assent for over 10 years gave prescriptive right of drainage.

Pascal v. Hynes, 1915, 170 Iowa 121, 152 N.W. 26.

If use is permissive no prescriptive right of drainage.

Jones v. Stover, 1906, 131 Iowa 119, 108 N.W. 112, 6 L. R. A., N. S., 154.

Defeat of claim of easement growing from adverse user.

Schofield v. Cooper, 1905, 126 Iowa 334, 102 N.W. 110.

**5. Abandonment of prescriptive right.**

Construction of new drain held not abandonment.

Pascal v. Hynes, 1915, 170 Iowa 121, 152 N.W. 26.

**6. Contracts.**

Tile line established by agreement has same status as if established by trustees.

McKeon v. Brammer, 1947, 238 Iowa 1113, 29 N.W.2d 518.

Agreement for drainage substantially benefitting property may give interest in nature of easement.
Morse v. Rhinehart, 1923, 195 Iowa 419, 192 N.W. 142.

Where contract refers to plans work must conform.
Whitsett v. Griffis, 1918, 168 N.W. 878.

Claim for insufficient capacity of drain settled by agreement.
Taylor v. Frevert, 1918, 183 Iowa 799, 166 N.W. 474.

Agreement to extend drain not waiver of pre-existing easement.
Pascal v. Hynes, 1915, 170 Iowa 121, 152 N.W. 26.

Promise to pay part cost for joint outlet supported by consideration.
Drugger v. Kelly, 1914, 168 Iowa 129, 150 N.W. 27.

Contract right to discharge water by drain over defendants land subject to extension in accordance with usages of good husbandry.
Schlader v. Strever, 1912, 158 Iowa 61, 138 N.W. 1105.

Contract to lay tile to drain both farms supported by sufficient consideration.
Fallon v. Amond, 1911, 153 Iowa 504, 133 N.W. 771.

Acquiesence by owner of drain may confer right of maintenance.
Hatton v. Cale, 1911, 152 Iowa 485, 132 N.W. 1101.

Easement for drain could not be revoked after grantee has extended money or labor thereon.
Robinson v. Luther 1909, 140 Iowa 723, 119 N.W. 146.

Evidence supported finding that parties intended to make ditch a permanent improvement.
Brown v. Honeyfield, 1908, 139 Iowa 414, 116 N.W. 731.

Right to drain could not arbitrarily be cut off.
Thompson v. Normanden, 1906, 108 N.W. 315.

**7. Easements.**

Evidence held not to warrant inference of agreement granting easement.
Lehfeldt v. Bachmann, 1916, 175 Iowa 202, 157 N.W. 456.

Easement of permanent nature passes with grant of the adjacent lands.
Brown v. Honeyfield, 1908, 139 Iowa 414, 116 N.W. 731.

**8. License.**

Right to forfeit or revoke license to extend drain not inferred unless agreement was without consideration.
Pascal v. Hynes, 1915, 170 Iowa 121, 152 N.W. 26.

Assent to construction of ditch once accepted cannot be disregarded.
Brown v. Honeyfield, 1908, 139 Iowa 414, 116 N.W. 731.

License held revocable under its term.
Thompson v. Normanden, 1907, 134 Iowa 720, 112 N.W. 188.

License without consideration is revocable at pleasure of licensor.
Jones v. Stover, 1906, 131 Iowa 119, 108 N.W. 112, 6 L. R. A., N. S. 154.

Evidence showed license to conduct waters was for terms of lease.
Hansen v. Farmers' Coop. Creamery, 1898, 106 Iowa 167, 76 N.W. 652.

**9. Abandonment, neglect, obstruction.**

Where two owners had participated in expense and work of construction of ditch neither could disregard it without consent of the other.
Vanneat v. Fleming, 1890, 79 Iowa 638, 44 N.W. 906, 8 L. R. A. 277, 18 Am. St. Rep. 387.

**10. Maintenance.**

Responsibility for maintenance.
Brown v. Honeyfield, 1908, 139 Iowa 414, 116 N.W. 731.

**11. Improvement, extension, or alteration.**

Change of course of ditch does not extinguish easement unless quantity of water will increase damage of servient estate.
Brown v. Honeyfield, 1908, 139 Iowa 414, 116 N.W. 731.

Construction.
Neuhring v. Schmidt, 1906, 130 Iowa 401, 106 N.W. 630.

Land owner not estopped to fill ditch under circumstances.
Schofield v. Cooper, 1905, 126 Iowa 334, 102 N.W. 110.

**12. Crediting value of ditch in drainage district proceedings.**

Presence of private ditch does not deprive owner of right to compensation for land taken.
Johnston v. Drainage Dist. No. 80 Palo Alto County, 1918, 184 Iowa 346, 168 N.W. 886.

Fact that owner built tile drain considered in assessing benefit.
Obe v. Board of Sup'rs of Hamilton County, 1915, 169 Iowa 449, 151 N.W. 453.

**13. Purchasers of lands, notice to.**

Notice of right of adjoining owners to use tile drain.
Morse v. Rhinehart, 1923, 195 Iowa 419, 192 N.W. 142.

**14. Injunction.**

To require removal of obstruction placed in tile line.
McKeon v. Brammer, 1947, 238 Iowa 1113, 29 N.W.2d 518.

Plaintiff must show damage.
Dullard v. Phelan, 1927, 204 Iowa 716, 215 N.W. 965.
Morse v. Rhinehart, 1923, 195 Iowa 419, 192 N.W. 142.

To restrain connection with private tile drain where flow of water would be increased to plaintiff's damage.
Hilton v. Hawthorne, 1921, 181 N.W. 259.

Where laying of tile under contract would not be advantageous.
Calhoun v. Robinson, 1917, 180 Iowa, 538, 163 N.W. 374.

Denied where new drain would cause no material increase in flowage.
Pascal v. Hynes, 1915, 170 Iowa 121, 152 N.W. 26.

Restraint of unauthorized extensions.
Randau v. Stultz, 1908, 140 Iowa 272, 115 N.W. 507.

Maintenance of ditch could not be enjoined where plaintiff had used the drain.
Grosjean v. Lulow, 1902, 118 Iowa 346, 92 N.W. 64.

Injunction not granted where plaintiff was benefited.
James v. Bondurant, 1901, 86 N.W. 274.

Action to restrain interference with rights conveyed to dig and maintain ditch.
Joslin v. Sones, 1890, 80 Iowa 534, 45 N.W. 917.

**15. Breach of contract.**

Remedy was to repair and sue for compensation.
Pascal v. Hynes, 1915, 170 Iowa 121, 152 N.W. 26.

Measure of damages for failure to construct tile drain.
Fallon v. Amond, 1911, 153 Iowa 504, 133 N.W. 771.

**16. Actions.**

Action for breach of agreement to build drain.
Robinson v. Luther, 1909, 140 Iowa 723, 119 N.W. 146.

**17. Evidence.**

Evidence showed oral agreement to erect dike for drainage.
Young v. Scott, 1933, 216 Iowa 1253, 250 N.W. 484.

Evidence held to contract for drainage.
Schlader v. Strever, 1912, 158 Iowa 61, 138 N.W. 1105.

Evidence failed to show abandonment of right to maintain drain.
Hatton v. Cale, 1911, 152 Iowa 485, 132 N.W. 1101.

**18. Instructions.**

Action on note for additional cost of putting in larger drain tile.
Rorem v. Pederson, 1925, 199 Iowa 304, 201 N.W. 784.

Recovery of balance due on contract price.
Gorton v. Moeller Bros., 1911, 151 Iowa 729, 130 N.W. 910.

**19. Damages.**

Value of growing crops—proof of.
Jefferis v. Chicago & N.W. Ry. Co., 1910, 147 Iowa 124, 124 N.W. 367.

**465.2 Notice of hearing—service.** Upon the filing of any such application, the clerk shall forthwith fix a time and place for hearing thereon before the township trustees of his township, which hearing shall be not more than ninety days nor less than thirty days from the time of the filing of such application, and cause notice in writing to be served upon the owner of each tract of land across which any such levee, ditch, or drain is proposed to be located, as shown by the transfer books in the office of the county auditor, and also upon the person in actual occupancy of any such lands, of the pendency and prayer of such application and the time and place set for hearing on the same before the township trustees, which notice, as to residents of the county and railroad companies, shall be served not less than ten days before the time set for such hearing, in the manner that original notices are required to be served. Notice to a railroad company may be served upon any station agent. [C73,§1218; C97,§1955; S13,§1955; C24, 27, 31, 35, 39, §7716; C46, 50, 54,§465.2]

Manner of service, R. C. P. 56(a).

**1. Construction and application.**

Trustees could not enlarge natural ditch wholly on plaintiff's land to stop flooding of applicant's land.
Cowan v. Grant Tp., Monona County, 1921, 190 Iowa 1188, 181 N.W. 637.

**465.3 Service upon nonresident.** In case any such owner is a nonresident of the county, such notice as to him shall be posted in three public places within the township where his land is situated at least fifteen days before the time set for such hearing, one of which places shall be upon the land of which he is the owner. [C73,§1218; C97,§1955; S13,§1955; C24, 27, 31, 35, 39,§7717; C46, 50, 54,§465.3]

**465.4 Service on omitted parties—adjournment.** If at the hearing it should appear that any person entitled to notice has not been served with notice, the trustees may postpone such hearing and fix a new time for the same, and notice of such new time of hearing may be served on such omitted persons in the manner and for the time provided by law and by fixing such new time for hearing and by adjournment to such time, the trustees shall not lose jurisdiction of the subject matter of such proceeding nor of any persons previously served with notice. [S13,§1955; C24, 27, 31, 35, 39,§7718; C46, 50, 54,§465.4]

**465.5 Claims for damages—waiver.** Any person or corporation claiming damages or compensation for or on account of the construction of any such improvement, shall file a claim in writing therefor with the township clerk at or before the time fixed for hearing on the application. A failure to file such claim at the time specified shall be deemed to be a waiver of the right to claim or recover such damage. [S13,§1955; C24, 27, 31, 35, 39,§7719; C46, 50, 54,§465.5]

**1. Construction and application.**

Failure to file claim for damages with supervisors was waiver of remedy.

O. A. G. 1919-20, p. 329.

**2. Liability for damages.**

Must be substantial increase in quantity of water discharged.

Sheker v. Machovec, 1908, 139 Iowa 1, 116 N.W. 1042.

Participation by township in construction of tile did not relieve defendant from liability.

Costello v. Pomeroy, 1903, 120 Iowa 213, 94 N.W. 490.

**3. Damages.**

Increased flow of water must harm plaintiff to be actionable for more than nominal damages.

McCormick v. Winters, 1895, 94 Iowa 82, 62 N.W. 655.

**465.6 Hearing—sufficiency of application—damages.** At the time set for hearing on the application, if the trustees shall find that all necessary parties have been served with notice as required, they shall proceed to hear and determine the sufficiency of the application as to form and substance, which application may be amended both as to form and substance before final action thereon. They shall also determine the merits of the application, all objections thereto, and all claims filed for damages or compensation, and may view the premises. The trustees may adjourn the proceedings from day to day, but no adjournment shall be for a longer period than ten days. [C73,§1219; C97,§1956; S13, §1956; C24, 27, 31, 35, 39,§7720; C46, 50, 54,§465.6]

**1. Construction and application.**

Trustees could not enlarge natural ditch wholly on plaintiff's land to stop flooding of applicant's land.

Cowan v. Grant Twp., Monona County, 1921, 190 Iowa 1188, 181 N.W. 637.

**465.7 Shall locate when—specifications.** If the trustees find that the levee, ditch, or drain petitioned for will be beneficial for sanitary, agricultural, or mining purposes, they shall locate the same and fix the points of entrance and exit on such land or property, the course of the same through each tract of land, the size, character, and depth thereof, when and in what manner the same shall be constructed, how kept in repair, what connections may be made therewith, what compensation, if any, shall be made to the owners of such land or property for damages by reason of the construction of any such improvements, and any other question arising in connection therewith. [C73,§1220; C97, §1956; S13,§1956; C24, 27, 31, 35, 39,§7721; C46, 50, 54,§465.7]

**1. Construction and application.**

Trustees could not enlarge natural ditch wholly on plaintiff's land to stop flooding of applicant's land.

Cowan v. Grant Twp., Monona County, 1921, 190 Iowa 1188, 181 N.W. 637.

**465.8 Findings—record.** The trustees shall reduce their findings, decision, and determination to writing, which shall be filed with the clerk of such township, who shall record it in the official record of the trustees proceedings, together with the application and all other papers filed in connection therewith, and he shall cause the findings and decision of the trustees to be recorded in the office of the recorder of the county in which such land is situated and said decision shall be final unless appealed from as provided in section 465.9. [C73,§1220; C97,§1956; S13,§1956; C24, 27, 31, 35, 39,§7722; C46, 50, 54,§465.8]

**1. Construction and application.**

Ditch not legally established without record showing action of trustees and that ditch was necessary for public health.

Hull v. Baird, 1887, 73 Iowa 528, 35 N.W. 613.

**465.9 Appeal—notice.** Either party may appeal to the district court from any such decision by causing to be served, within ten days from the time it was filed with the clerk, a notice in writing upon the opposite party of the taking of such appeal, which notice shall be served in the same manner as is provided for the service of original notices. If the appellant is the party petitioning for the drain, he shall also file a bond, conditioned to pay all costs of appeal

that may be assessed against him, which bond, if good and sufficient, shall be approved by the township clerk. [C73, §1223, C97,§1957; C24, 27, 31, 35, 39,§7723, C46, 50, 54,§465.9]

Referred to in §§465.8 Findings-record. 465.32 Appeal.
Manner of service, R.C.P. 56(a).
Presumption of approval of bond, §682.10.

**465.10 Transcript.** In case of appeal, the township clerk shall certify to the district court a transcript of the proceedings before the trustees, which shall be filed in said court with the appeal bond, the party appealing paying for said transcript and the docketing of said appeal, as in other cases. [C97,§1958; C24, 27, 31, 35, 39,§7724; C46, 50, 54,§465.10]

Referred to in §465.32 Appeal.
Docketing appeal, R. C. P. 181 to 356.

**465.11 Appeal—how tried—costs.** The cause shall be tried in the district court by ordinary proceedings, upon such pleading as the court may direct, each party having the right to offer such testimony as shall be admissible under the rules of law. If the appellant does not recover a more favorable judgment in the district court than he received in the decision of the trustees, he shall pay all the costs of appeal. [C97,§1957; C24, 27, 31, 35, 39,§7725; C46, 50, 54,§465.11]

Referred to in §465.32 Appeal.

**465.12 Parties—judgment—orders.** The party claiming damages shall be the plaintiff and the applicant shall be the defendant; and the court shall render such judgment as shall be warranted by the verdict, the facts, and the law upon all the matters involved, and make such orders as will cause the same to be carried into effect. [C73,§1224; C97,§1958; C24, 27, 31, 35, 39,§7726; C46, 50, 54,§465.12]

**465.13 Costs and damages—payment.** The applicant shall pay the costs of the trustees and clerk and for the serving of notices for hearing, the fees of witnessess summoned by the trustees on said hearing, and the recording of the finding of said trustees by the county recorder. [C73, §1221; C97,§1959; S13,§1959; C24, 27, 31, 35, 39,§7727; C46, 50, 54,§465.13].

Compensation, §§359.46 of trustees, 359.47 of clerks.
Recorder fee, §335.14.
Service of notice, §§337.11, 601.129.
Witness fees, §622.69 et seq.

**465.14 Construction.** Before entering on the construction of the drain, the party applying therefor shall pay to the party through whose land said drain is to be constructed the damages awarded to him, or shall pay the same to the trustees for his use. The applicant may proceed to construct said drain in accordance with the decision of the trustees, and the taking of an appeal shall not delay such work. [C97, §1959; S13,§1959; C24, 27, 31, 35, 39,§7728; C46, 50, 54,§465.14]

**1. Construction and application.**

Trustees could not enlarge natural ditch wholly on plaintiff's land to stop flooding of applicant's land.

Cowan v. Grant Tp., Monona County, 1921, 190 Iowa 1188, 181 N.W. 637.

**2. Injunction.**

Will issue to prevent construction till compensation has been ascertained and paid.

Horton v. Hoyt, 1861, 11 Iowa 496.

**465.15 Construction through railroad property.** If any such ditch or drain shall be located through or across the right of way or other land of a railroad company, the trustees shall determine the cost of constructing the same and the railroad company shall have the privilege of constructing such improvement through its property in accordance with the specifications made by the trustees and recover the costs thereof as fixed by the trustees. Such railroad company before it may exercise such privilege shall file its election to that effect with the township clerk within five days after the decision of the trustees is filed. [S13,§1959; C24, 27, 31, 35, 39,§7729; C46, 50, 54,§465.15]

**1. In general.**

Landowner could not enter railroad right of way to dig ditch to drain water discharged on his land by construction of embankment on the right of way.

Klopp v. Chicago, M. & St. P. Ry. Co., 1909, 142 Iowa 483, 119 N.W. 377.

**465.16 Deposit.** In case such election is filed the applicant shall within ten days thereafter pay to the township clerk, for the use of the railroad company, the cost of constructing the drainage improvement through its property, in addition to the amount that may be allowed as damages, and when the railroad company shall have completed the improvement through its property in accordance with such specifications it shall be entitled to demand and receive from the township clerk such cost. [S13,§1959; C24, 27, 31, 35, 39, §7730; C46, 50, 54,§465.16]

**465.17 Failure to construct.** If the railroad company shall fail to so construct the improvement for a period of thirty days after filing its election so to do, the applicant may proceed to do so and may have returned to him the cost thereof deposited with the township clerk. [S13,§1959; C24, 27, 31, 35, 39,§7731; C46, 50, 54,§465.17]

**465.18 Repairs.** In case any dispute shall thereafter arise as to the repair of any such drain, the same shall be de-

termined by said trustees upon application in substantially the same manner as in the original construction thereof. [C73,§1226; C97,§1960; C24, 27, 31, 35, 39,§7732; C46, 50, 54, §465.18]

**1. Injunction.**

Where owner never complained of dike for 20 years he was not entitled to enjoin its repair.
Dodd v. Aitken, 1939, 227 Iowa 679, 288 N.W. 898.

**465.19 Obstruction.** Any person who shall dam up, obstruct, or in any way injure any ditch or drain so constructed, shall be liable to pay to the person owning or possessing the swamp, marsh, or other low lands, for the draining of which such ditch or ditches have been opened, double the damages that shall be sustained by the owner, and, in case of a second or subsequent offense by the same person, treble such damages. [C73,§1227; C97,§1961; C24, 27, 31, 35, 39,§7733; C46, 50, 54,§465.19]

Obstructing ditches, penalty for, see §716.4.

**1. Acquiescence, ditch established by.**

Ditch cannot be obstructed by servient owner, such rights and duties pass to their grantees with the land.
Vanneat v. Fleming, 1890, 79 Iowa 638, 44 N.W. 906, 8 L. R. A. 277, 18 Am. St. Rep. 387.

**2. Cleaning of ditches.**

A ditch constructed by agreement could be cleaned by either party but neither would be compelled to clean it.
O'Mara v. Jensma, 1909, 143 Iowa 297, 121 N.W. 518.

**3. Allowing obstruction, effect.**

Bars action in damages for overflow.
Hull v. Harker, 1906, 130 Iowa 190, 106 N.W. 629.

**4. Injunction.**

Complete defense that defendants acted for land owner to prevent wrongful diversion of water on such land.
Orcutt v. Woodard, 1907, 136 Iowa 412, 113 N.W. 848.

**5. Actions.**

Evidence did not show agreement for construction of ditch.
Lehfeldt v. Bachmann, 1916, 175 Iowa 202, 157 N.W. 456.

For damage to tile for negligent exposure to frost.
Swanson v. Ft. Dodge, D. M. & S. R. Co., 1911, 153 Iowa 78, 133 N. W. 351.

Obstruction of ditch by construction of too small a tile.
Walker v. Gorman, 1911, 150 Iowa 455, 130 N.W. 393.

Where bridge constructed as to obstruct flow of high waters.

Delashmutt v. Chicago, B. & Q. R. Co., 1910, 148 Iowa 556, 126 N.W. 359.

For obstruction of drainage ditch.

Brown v. Honeyfield, 1908, 139 Iowa 414, 116 N.W. 731.

**465.20 Drains on abutting boundary lines.** When any watercourse or natural drainage line crosses the boundary line between two adjoining landowners and both parties desire to drain their land along such watercourse or natural drainage line, but are unable to agree as to the junction of the lines of drainage at such boundary line, the township trustees of the township in which said land is located shall have full power and authority upon the application of either party to hear and determine all questions arising between such parties after giving due notice to each of the time and place of such hearing, and may render such decision thereon as to said trustees shall seem just and equitable. [C97,§1962; C24, 27, 31, 35, 39,§7734; C46, 50, 54,§465.20]

Referred to in §465.21.

**465.21 Boundary between two townships.** If any controversy referred to in section 465.20 relates to a boundary line between adjoining owners which is also the boundary line between two townships, then such controversy shall be determined by the joint action of the board of trustees in said two adjoining townships, and all the proceedings shall be the same as provided in section 465.20 except that it shall be by the joint action of the boards of trustees of said two townships. [C24, 27, 31, 35, 39,§7735; C46, 50, 54§465.21]

**465.22 Drainage in course of natural drainage.** Owners of land may drain the same in the general course of natural drainage by constructing open or covered drains, discharging the same in any natural watercourse or depression whereby the water will be carried into some other natural watercourse, and when such drainage is wholly upon the owner's land he shall not be liable in damages therefor. Nothing in this section shall in any manner be construed to affect the rights or liabilities of proprietors in respect to running streams. [S13,§1989-a53; C24, 27, 31, 35, 39,§7736; C46, 50, 54,§465.22]

1. **Construction and application.**

Facts showed drainage system should be looked upon as being wholly on buyer's land.

Johannsen v. Otto, 1938, 225 Iowa 976, 282 N.W. 334.

Additional remedy provided.

Miller v. Hester, 1914, 167 Iowa 180, 149 N.W. 93.

Consent to discharge of water on one's land.
Schlader v. Strever, 1912, 158 Iowa 61, 138 N.W. 1105.

Right to conduct water into natural courses a consideration in assessing benefits under improvement.
Lyon v. Board of Sup'rs of Sac County, 1912, 155 Iowa 367, 136 N.W. 324.

Water may not be discharged contrary to natural drainage.
Valentine v. Widman, 1912, 156 Iowa 172, 135 N.W. 599.

This section declaratory only of existing law—new rights not created.
Parizek v. Hinek, 1909, 144 Iowa 563, 123 N.W. 180.

**2. Water course.**

No prescriptive right against the public.
Droegmiller v. Olson, 1950, 40 N.W.2d 292.
Hull v. Harker, 1906, 130 Iowa 190, 106 N.W. 629.
Hinkle v. Avery, 1893, 88 Iowa 47, 55 N.W. 77. 45 Am. St. Rep. 224.

What will constitute a water course.
**Chicago, B. & Q. R. Co. v. Board of Sup'rs of Appanoose County, Iowa, 1910, 182 F. 291, 104 C. C. A. 573, 31 L. R. A., N. S. 1117.**

Well defined banks not necessary.
McKeon v. Brammer, 1947, 238 Iowa 1113, 29 N.W.2d 518.
Heinse v. Thorborg, 1930, 210 Iowa 435, 230 N.W. 881.

Natural easement in every natural watercourse.
Johnson v. Chicago, B. & Q. R. Co., 1927, 202 Iowa 1282, 211 N.W. 842.

Waterway to carry water to public highway could not come natural course.
Brightman v. Hetzel, 1918, 183 Iowa 385, 167 N.W. 89.

Natural water course may be partly artificial.
Falcan v. Boyer, 1913, 157 Iowa 745, 142 N.W. 427.

Swale or depression natural course though lacking defined banks.
Parizek v. Hinek, 1909, 144 Iowa 563, 123 N.W. 180.

Eight years acquiescence established natural water course.
Sheker v. Machovec, 1907, 110 N.W. 1055.

**3. Rights and liabilities in general.**

No rights acquired against the public.
Droegmiller v. Olson, 1950, 40 N.W.2d 292.

Injury to building by water seepage from adjoining structure.
Dravis v. Sawyer, 1934, 218 Iowa 742, 254 N.W. 920.

Owner on whose land artificial ditch was constructed had duty to remove obstruction.
Miller v. Perkins, 1927, 204 Iowa 782, 216 N.W. 27.

Reasonable detention and use of water by upper riparian owner proper.
Harp v. Iowa Falls Electric Co., 1923, 196 Iowa 317, 191 N.W. 520, modified in other respects, 196 Iowa 317, 194 N.W. 353.

In every natural water course there is easement for benefit to all land naturally draining onto it.
Chicago & N. W. Ry. Co. v. Drainage Dist. No. 5 Sac County 1909, 142 Iowa 607, 121 N.W. 193.
Mason City & Ft. D. R. Co. v. Board of Sup'rs of Wright County, 1909, 144 Iowa 10, 121 N.W. 39.
Maben v. Olson, 1919, 187 Iowa 1060, 175 N.W. 512.

Right to discharge water from roof of house into street and alley.
Reynolds v. Union Savings Bank, 1912, 155 Iowa 519, 136 N.W. 529, 49 L. R. A., N. S., 194.

Right of riparian owner to have water leave his property at its lowest level.
Bramley v. Jordan, 1911, 153 Iowa 295, 133 N.W. 706.

Fences not to unreasonably interfere with drainage.
Trumbo v. Pratt, 1910, 148 Iowa 195, 126 N.W. 1122.

If natural water course owners at or near outlet must care for the water coming from above.
Jenison, 1909, 145 Iowa 215, 123 N.W. 979.

Acquisition of right by prescription, to discharge subterranean waters.
Parizek v. Hinek, 1909, 144 Iowa 563, 123 N. W. 180.

Owner must receive all natural flow from higher ground.
Pohlman v. Chicago, M. & St. P. R. Co., 1906, 131 Iowa 89, 107 N.W. 1025, 6 L. R. A., N. S., 146

**4. Drainage district as affecting rights of landowners.**

Function of drainage district on servient land.
McKeon v. Brammer, 1947, 238 Iowa 1113, 29 N.W.2d 518.

Public drainage improvement does not abridge owner's right to avail himself of natural watercourse.
Cowley v. Reynolds, 1917, 178 Iowa 701, 160 N.W. 241.

**5. Dominant and servient estates, rights and liabilities of owners.**

Owner of dominant estate—right to have water flow unobstructed on servient estate.
Cundiff v. Kopseiker, 1954, 61 N.W.2d 443.
Young v. Scott, 1933, 216 Iowa 1253, 250 N.W. 484.
Clark v. Pierce, 1938, 224 Iowa 1068, 227 N.W. 711.

Function of drainage district on servient land.
McKeon v. Brammer, 1947, 238 Iowa 1113, 29 N.W.2d 518.

Estopped owner of dominant estate to object to interference of flow of water.
Fennema v. Menninga, 1954, 236 Iowa 543, 19 N.W.2d 689.

Owner of servient estate must not obstruct flow of water in natural course.
Herman v. Drew, 1933, 126 Iowa 315, 249 N.W. 227.

Owner may drain water through natural watercourse to and over servient estate,
Parizek v. Hinek, 1909, 114 Iowa 563, 123 N.W. 180.
Board of Sup'rs of Pottawattamie County v. Board of Sup'rs of Harrison County, 1932, 214 Iowa 655, 241 N.W. 14, motion denied, 54 S.Ct. 47, appeal dismissed, 54 S.Ct. 125, 290 U. S. 595, 78 L. Ed. 523.

Owner of servient estate may not artifically prevent flow of water in natural course.
Heinse v. Thorborg, 1930, 210 Iowa 435, 230 N.W. 881.

Servient estate burdened with water naturally flowing on it.
Miller v. Perkins, 1927, 204 Iowa 782, 216 N.W. 27.

Relative elevation determines dominance of estate.
Downey v. Phelps, 1926, 201 Iowa 826, 208 N.W. 499.

Owner of dominant estate may not collect and cast water on servient estate in an unnatural manner.
Wirds v. Vierkandt, 1906, 131 Iowa 125, 108 N.W 108.

Owner of dominant estate may conduct water by tile to its natural channel.
Vanneat v. Fleming, 1890, 79 Iowa 638, 44 N.W. 906, 8 L. R. A. 277, 18 Am. St. Rep. 387.

**6. Railroads, rights and liabilities of.**

Not liable without fault or act.
Hinkle v. Chicago, R. I. & P. Ry. Co., 1929, 208 Iowa 1366, 227 N.W. 419.

Destruction of dam, restoring natural flow created no liability in railroad.
Miller v. Perkins, 1927, 204 Iowa 782, 216 N.W. 27.

Rights of natural water course are paramount to rights of railroad.

Johnson v. Chicago, B. & Q. R. Co., 1927, 202 Iowa 1282, 211 N.W. 842.

Exercise of care by plaintiff was necessary to a recovery for damage due to overflow.

Brous v. Wabash R. Co., 1913, 160 Iowa 701, 142 N.W. 416.

Abandonment of culvert and later reopening.

Brainard v. Chicago, R. I. Ry. Co., 1911, 151 Iowa 466, 131 N.W. 649.

Care required of railroad to not dam up channel.

Tretter v. Chicago Great Western Ry. Co., 1910, 147 Iowa 375, 126 N.W. 339, 140 Am. St. Rep. 304.

Where flood necessarily results from construction in the usual manner it is not actionable as it is presumed that such damages were awarded originally.

Blunck v. Chicago & N. W. Ry. Co., 1909, 142 Iowa 146, 120 N.W. 737.

Railroad company may pass down water according to laws of gravitation.

Bones v. Chicago, R. I. & P. Ry. Co., 1909, 145 Iowa 222, 120 N.W. 717.

Railroad has no right to construct solid roadbed in interference with natural drainage.

Albright v. Cedar Rapids & I. C. Ry. & Light Co., 1907, 133 Iowa 644, 110 N.W. 1052.

Responsibility of railroad for construction of bridge producing overflows.

Vyse v. Chicago, B. & Q. R. Co., 1904, 126 Iowa 90, 101 N.W. 736.

Railroad could not fill trestlework where overflow would be caused.

Noe v. Chicago, B. & Q. R. Co., 1888, 76 Iowa 360, 41 N.W. 42.

**7. Drainage through railroad right of way.**

Sluices or culverts must be constructed to conduct water in its natural course.

Hinkle v. Chicago, R. I. & P. Ry. Co., 1929, 208 Iowa 1366, 227 N.W. 419.

Purchaser not entitled to damages for obstruction for which railroad had a release.

Johnson v. Chicago B. & Q. R. Co., 1927, 202 Iowa 1282, 211 N. W. 842.

Railroad not liable for damages which would have occurred despite its act of obstruction.

McAdams v. Chicago, R. I. & P. Ry. Co., 1925, 200 Iowa 732, 205 N.W. 310.

Bridge causing overflow—railroad liable for its negligence.
Thompson v. Illinois Cent. R. Co., 1916, 177 Iowa 328, 158 N.W. 676.

Railroad may continue to drain water in its natural course.
Chicago, R. I. & P. Ry Co. v. Lynch, 1913, 163 Iowa 283, 143 N.W. 1083.

Railroad must provide for floods but not for unprecedented floods.
Estes v. Chicago, B. & Q. R. Co., 1913, 159 Iowa 666, 141 N.W. 49.

Railroad bridges must not obstruct passage of water.
Delashmutt v. Chicago, B. & Q. R. Co., 1910, 148 Iowa 556, 126 N.W. 359.

Surface waters and streams may not be diverted to damage of others.
Albright v. Cedar Rapids & Iowa City Railway & Light Co., 1878, 133 Iowa 644, 110 N.W. 1052.

Railroad liable for damages caused by insufficient culvert.
Houghtaling v. Chicago G. W. R. Co., 1902, 117 Iowa 540, 91 N.W. 811.
Sullens v. Chicago, R. I. & P. Ry. Co., 1888, 74 Iowa 659, 38 N.W. 545, 7 Am. St. Rep. 501.
Van Orsdal v. Burlington, C. R. & N. R. Co., 1881, 56 Iowa 470, 9 N.W. 379.

Railroad must take note of rainfall in the climate or country.
Cornish v. Chicago, B. & Q. R. Co., 1878, 49 Iowa 378.

**8. Highways, drainage through or across.**

Drainage through culverts in highway proper where in natural course.
Jacobson v. Camden, 1945, 236 Iowa 976, 20 N.W.2d 407.

Highway authorities may use culverts to drain waters in their natural course.
Herman v. Drew, 1933, 216 Iowa 315, 249 N.W. 277.

Supervisors could not be restrained from building culverts in natural course of drainage.
Schwartz v. Wapello County, 1929, 208 Iowa 1229, 227 N.W. 91.

Where culverts were improperly discontinued by county landowner was liable for opening them.
Martin v. Schwertley, 1912, 155 Iowa 347, 136 N.W. 218, 40 L. R. A., N. S., 160.

Right of owner to open drain on his own land which goes to public highway.
O. A. G. 1919-20, p. 330.

**9. Streets railroads, rights and liabilities of.**

May not construct embankment so as to flood land above.

Nelson v. Omaha & C. B. St. Ry. Co., 1912, 158 Iowa 81, 138 N.W. 831.

Street railway liable for removal of bridge and insertion of inadequate tile.
Hoppes v. Des Moines City Ry. Co., 1910, 147 Iowa 580, 126 N.W. 783.

**10. Municipalities, rights and liabilities of.**

Where city constructed dam prior to condemnation it was liable for flood damages.
Wheatley v. City of Fairfield, 1936, 221 Iowa 66, 264 N.W. 906.

Measure of damages.
Conklin v. City of Des Moines, 1920, 189 Iowa 181, 178 N.W. 353.

Owner could not recover from city assessment he paid on grounds that the improvement had to be made because of wrongful construction of ditch by city.
Conklin v. City of Des Moines, 1918, 184 Iowa 384, 168 N.W. 874.

Drainage of water from culvert under street to private property.
Cech v. City of Cedar Rapids, 1910, 147 Iowa 247, 126 N.W. 166.

City must not disturb natural flow of water in street improvement.
Baker v. Incorporated Town of Akron, 1909, 145 Iowa 485, 122 N.W. 926, 30 L. R. A., N. S. 619.

**11. Counties, rights and liabilities of.**

May not divert excessive volumes of water from natural course.
Anton v. Stanke, 1933, 217 Iowa 166, 251 N.W. 153.

**12. Surface waters.**

Water leaving channel of river in flood time not surface water.
Sullens v. Chicago, R. I. & P. R. Co., 1888, 74 Iowa 659, 38 N.W. 545, 7 Am. St. Rep. 501.
Moore v. Chicago, B. & Q. R. Co., 1888, 75 Iowa 263, 39 N.W. 390.

Owner cannot interfere with flow of surface water from adjoining land.

Besler v. Greenwood, 1927, 202 Iowa 1330, 212 N.W. 120.

Landowner not liable for surface waters carried off by gravitation.

Thompson v. Board of Sup'rs of Buena Vista County, 1925, 201 Iowa 1099, 206 N.W. 624.

That water diverted by defendant mingled with other water could not defeat plaintiff's right to recover.

Whitsett v. Griffis, 1918, 168 N.W. 878.

Rule that dominant owner may not artifically discharge water on lower land does not apply to natural depressions.

Miller v. Hester, 1914, 167 Iowa 180, 149 N.W. 93.

Owner cannot complain of water gate by lower owner at entrance of his land of water course because it impedes debris gathered by water on land of upper owner.

Trumbo v. Pratt, 1910, 148 Iowa 195, 126 N.W. 1122.

One who relieves his land of water must respect right of his neighbor.

Hume v. City of Des Moines, 1910, 146 Iowa 624, 125 N.W. 846, 29 L. R. A., N. S. 126, Ann. Cas. 1912B, 904.

Owner of higher land may not use device to alter natural flow of water.

Baker v. Incorporated Town of Akron, 1909, 145 Iowa 485, 122 N.W. 926, 30 L. R. A., N. S., 619.

Owner not relieved from harm caused by change in natural flow, though such water flows along highway prior to causing damage.

Sheker v. Machovec, 1908, 139 Iowa 1, 116 N.W. 1042.

If surface water has no defined channel it may be returned by owner in any direction.

Brown v. Armstrong, 1905, 127 Iowa 175, 102 N.W. 1047.

Owner of city lot may bring lot to grade although thereby diverting surface water to other lots.

City of Cedar Falls v. Hansen, 1897, 104 Iowa 189, 73 N.W. 585, 65 Am. St. Rep. 439.

Water leaving creek and being turned back by embankment into culvert not surface water.

Sullens v. Chicago, R. I. & P. Ry. Co., 1888, 74 Iowa 659, 38 N.W. 545, 7 Am. St. Rep. 501.

**13. Right to surface waters.**

Owner of upper land discharges water into its natural course on lower land.

Schwartz v. Wapello County, 1929, 208 Iowa 1229, 227 N.W. 91.

Owner may convert to his own use all surface water coming from higher ground.

Pohlman v. Chicago, M. & St. P. Ry. Co., 1906, 131 Iowa 89, 107 N.W. 1025, 6 L. R. A., N. S., 146.

**14. Drainage in course of natural drainage.**

Upper owner may drain water by a drain in natural course of drainage unless volume is materially increased to damage of lower owner.

Cundiff v. Kopseiker, 1954, 61 N.W.2d 443, 245 Iowa 179.

McKeon v. Brammer, 1947, 238 Iowa 1113, 29 N.W.2d 518.

Dorr v. Simmerson, 1905, 127 Iowa 551, 103 N.W. 806.

Sheker v. Machovec, 1907, 110 N.W. 1055.

Board of Supervisors of Pottawattamie County v. Board of Supervisors of Harrison County, 1932, 214 Iowa 655, 241 N.W. 14, motion denied, 54 S.Ct. 47, appeal dismissed, 54 S.Ct. 125, 290 U. S. 595, 78 L. Ed. 523.

Dominant owner may drain surface water from pond by ditches over course of natural drainage and more closely confine flowage.

Tennigkeit v. Ferguson, 1921, 192 Iowa 841, 185 N.W. 577.

Dominant owner may not gather large quantities of water out of ordinary and natural course of drainage and discharge same on lower owner in increased quantity.

Conklin v. City of Des Moines, 1918, 184 Iowa 384, 168 N.W. 874.

**15. Drainage other than through watercourse.**

Drainage in other than natural course to substantial damage of lower owner is actionable.

Cundiff v. Kopseiker, 1954, 61 N.W.2d 443, 245 Iowa 179.

Water discharged on lower lands may not be in place or manner different from natural water course.

Schwartz v. Wapello County, 1929, 208 Iowa 1229, 227 N.W. 91.

Beers v. Incorporated Town of Gilmore City, 1924, 197 Iowa 7, 196 N.W. 602.

Water may not be concentrated in one place and discharged in a body on lower owner.

Lessenger v. City of Harlan, 1918, 184 Iowa 172, 168 N.W. 803, 5 A. L. R. 1523.

Owner may not collect and discharge water at place other than natural course so as to increase flow on land of his neighbor.

Kaufmann v. Lenker, 1914, 164 Iowa 680, 146 N.W. 823.

Sheker v. Machovec, 1908, 139 Iowa 1, 116 N.W. 1042.

**16. Natural depression, discharge of surface water into.**

Water may be collected and discharged into natural depression unless so increased that it causes damage to lower owner.

Jontz v. Northup 1912, 157 Iowa 6, 137 N.W. 1056, Ann. Cas. 1915C, 967.

**17. Increase in flow of surface water, liability for.**

City was not liable for minor increase in flowage due street improvement.

Cole v. City of Des Moines, 1930, 212 Iowa 1270, 232 N.W. 800.

Upper owner may not collect water and discharge it, even though a water course is in an unusual manner or quantity.

Martin v. Schwertley, 1912, 155 Iowa 347, 136 N.W. 218, 40 L. R. A., N. S., 160.

Valentine v. Widman, 1912, 156 Iowa 172, 135 N.W. 599,

Lower owner may not complain unless damages are substantial due to increased flow.

Obe v. Pattat, 1911, 151 Iowa 723, 130 N.W. 903.

Upper owner may not ditch to a swale through which surface water flows.

Trumbo v. Pratt, 1910, 148 Iowa 195, 126 N.W. 1122.

The statute is declaratory of the common law.

Pohlman v. Chicago, M. & St. P. R. Co., 1906, 131 Iowa 89, 107 N.W. 1025, 6 L. R. A., N. S., 146.

There is no right to construct artificial channels to increase flow of water in unnatural manner.

Geneser v. Healy, 1904, 124 Iowa 310, 100 N.W. 66.

It is improper to gather surface water and use ditch to discharge water in a volume on other lands.

Stinson v. Fishel, 1895, 93 Iowa 656, 61 N.W. 1063.

**18. Artificial barrier to surface water.**

Servient owner cannot obstruct natural flow of water to dominant owner's detriment.

Fennema v. Menninga, 1945, 236 Iowa 543, 19 N.W. 2d 689.

Owner will be restrained from obstructing flow from adjoining land.

Besler v. Greenwood, 1927, 202 Iowa 1330, 212 N.W. 120.

Artificial barriers may not be used to prevent flow.
Pester v. Smith, 1918, 167 N.W. 580.

**19. Natural barriers to surface waters, removal of.**

No right to open or remove natural barriers to flow of water.
Lessenger v. City of Harlan, 1918, 184 Iowa 172, 168 N.W. 803, 5 A. L. R. 1523.

**20. Protection from diversion of surface water.**

Each owner must exercise his rights with due regard for rights of others.
Lamb v. Stone, 1917, 178 Iowa 1268, 160 N.W. 907.

Dikes or ditches may be used to defend against unlawful diversion of waters.
Thiessen v. Claussen, 1907, 135 Iowa 187, 112 N.W. 545.

Artificial diversion of water may be protected against.
Matteson v. Tucker, 1906, 131 Iowa 511, 107 N.W. 600.

**21. Natural water course, interference with.**

Owner may not arrest or interfere with flow to injury of another.
Fennema v. Menninga, 1945, 236 Iowa 543, 19 N.W.2d 689.

Liability where diversion results in damage due to increased quantity of flowage.
Anton v. Stanke, 1933, 217 Iowa 166, 251 N.W. 153.

Cutting through natural barrier to discharge water is prohibited.
Kaufmann v. Lenker, 1914, 164 Iowa 680, 146 N.W. 823.

Improper diversion may be restrained.
Falcon v. Boyer, 1913, 157 Iowa 745, 142 N.W. 427.

**22. Obstruction of flow of natural waterway.**

Owner of land through which non-navigable and non-meandered stream runs has a right to have such water flow without obstruction.
Watt v. Robbins, 1913, 160 Iowa 587, 142 N.W. 387.

One not entitled to obstruct flow of natural waterway.
Schlader v. Strever, 1912, 158 Iowa 61, 138 N.W. 1105.

**22. Elevations, cutting through.**

Shortening of natural water route.
Cowley v. Reynolds, 1917, 178 Iowa 701, 160 N.W. 241.

**23. Covered drains.**

Use in natural course held proper.
Besler v. Greenwood, 1927, 202 Iowa 1330, 212 N.W. 120.

**24. Tile drains.**

Claim of right to use tile drain is corroborated by long unmolested use.

Besler v. Greenwood, 1927, 202 Iowa 1330, 212 N.W. 120.

Tile could not connect with ditch artificially dug to change water course.

Lessenger v. City of Harlan, 1918, 184 Iowa 172, 168 N.W. 803, 5 A. L. R. 1523.

Owner of land may have tile outlets to natural water course.

Parizek v. Hinek, 1909, 144 Iowa 563, 123 N.W. 180.
Pascal v. Donahue, 1915, 170 Iowa 315, 152 N.W. 605.
Miller v. Hester, 1914, 167 Iowa 180, 149 N.W. 93.

Owner may substitute tile for open ditch if outlet from adjoining land is not rendered less efficient.

Valentine v. Widman, 1912, 156 Iowa 172, 135 N.W. 599.
Walker v. Gorman, 1911, 150 Iowa 455, 130 N.W. 393.

Tile should not increase flowage.

Hull v. Harker, 1906, 130 Iowa 190, 106 N.W. 629.
Plagge v. Mensing, 1905, 126 Iowa 737, 103 N.W. 152.

Where no damage other than increased flow is shown plaintiff may recover only nominal damages.

McCormick v. Winters, 1895, 94 Iowa 82, 62 N.W. 655.

Owner may construct tile to drain into a lake or other depression.

O. A. G. 1919-20, p. 102.

**25. Lakes, artificial changes in.**

Recovery for artificial changes affecting level of water.

Merrill v. Board of Sup'rs of Cerro Gordo County, 1910, 146 Iowa 325, 125 N.W. 222.

**26. Deposit of earth and sand, liability for.**

Liability for damages caused thereby.

Geneser v. Healy, 1904, 124 Iowa 310, 100 N.W. 66.

**27. Seepage or percolation.**

Liability for damages caused thereby.

Covell v. Sioux City, 1938, 224 Iowa 1060, 277 N.W. 447.

**28. Prescription.**

Prescriptive right to maintain a dam did not authorize its maintenance at greater height than old dam as used for prescriptive period.

Iowa Power Co. v. Hoover, 1914, 166 Iowa 415, 147 N.W. 858.

Right of riparian owner to natural flow of stream may be lost by prescription.
Marshall Ice Co. v. LaPlant, 1907, 136 Iowa 621, 111 N.W. 1016, 12 L. R. A., N. S., 1073.

Drainage by prescription.
Wilson v. Duncan, 1888, 74 Iowa 491, 38 N.W. 371.

**34. Easements and counter easements.**

Dominant owner may estop himself from objecting to interferance with flow of water.
Fennema v. Menninga, 1945, 236 Iowa 543, 19 N.W.2d 689.

Grantee to o. k. land burdened with permanent drainage assessment shown in chain of tile.
Ehler v. Stier, 1927, 205 Iowa 678, 216 N.W. 637.

Where owner settled for present and prospective damages for overflow created permanent easement to overflow.
Kellogg v. Illinois Cent. R. Co., 1927, 204 Iowa 368, 213 N.W. 253, rehearing denied, 204 Iowa 368, 215 N.W. 258.

Facts held to constitute notice for owner of railroad's easement in bridge for damages.
Johnson v. Chicago B. & Q. R. Co., 1927, 202 Iowa 1282, 211 N.W. 842.

Drainage rights by prescription.
Haynes v. Oyer, 1914, 164 Iowa 697, 146 N.W. 857.

**35. Levees.**

Maintenance not enjoinable because land may be possibly flooded.
Kellogg v. Hottman, 1939, 226 Iowa 1256, 286 N.W. 415.

Construction not enjoined where level would not increase land which would flood.
Black v. Escher, 1919, 186 Iowa 554, 173 N.W. 50.

Levee could not be constructed where it might cause water to accumulate on land of plaintiff.
Mumm v. Holst, 1918, 184 Iowa 821, 169 N.W. 140.

**36. Embankments.**

Where damage is partially due to overflow of creek.
Pfannebecker v. Chicago R. I. & P. Ry. Co., 1929, 208 Iowa 752, 226 N.W. 161.

Natural flow of water could not be obstructed by embankment. Means for escape of water must be provided.
Chicago, R. I. & P. Ry. Co. v. Lynch, 1913, 163 Iowa 283, 143 N.W. 1083.

For damages there must be a showing that course of flow was altered or that flow has been increased.
Steber v. Chicago & G. W. Ry. Co., 1908, 139 Iowa 153, 117 N.W. 304.

Prescriptive right to maintain embankment gained by 30 years use without objection.
Matteson v. Tucker, 1906, 131 Iowa 511, 107 N.W. 600.

Riparian owner could not embank where effect was increased discharge of water on land of another.
Keck v. Venghause, 1905, 127 Iowa 529, 103 N.W. 773, 4 Ann. Cas. 716.

Erection of railroad embankment for track was permanent damage.
Stodghill v. Chicago, B. & Q. R. Co., 1880, 53 Iowa 341, 5 N.W. 495.

**37. Dikes.**

County was entitled to enjoin owner of land from maintaining dike which altered flow under bridge across road.
Droegmiller v. Olson, 1950, 40 N.W.2d 292.

Prescriptive period may run from time dike acts as barrier to natural drainage.
Taylor v. Frevert, 1918, 183 Iowa 799, 166 N.W. 474.

Dike may not obstruct natural flow and cast water in increased quantities at different places.
Priest v. Maxwell, 1905, 127 Iowa 744, 104 N.W. 344.

Right acquired by use, to drain by use of dike.
Brown v. Armstrong, 1905, 127 Iowa 175, 102 N.W. 1047.

**38. Dams.**

Landowner could not maintain dam which held water back on highway.
Herman v. Drew, 1933, 216 Iowa 315, 249 N.W. 277.

Owner not liable for unauthorized construction of dam by tenant.
Miller v. Perkins, 1927, 204 Iowa 782, 216 N.W. 27.

Construction of dam which causes backwater onto plaintiff's land not authorized.
Healey v. Citizens' Gas & Electric Co., 1924, 199 Iowa 82, 201 N.W. 118, 38 A. L. R. 1226.

Flashboards are part of a dam and can be maintained to the highest of the old flashboard.
Watters v. Anamosa-Oxford Junction Light & Power Co., 1918, 184 Iowa 566, 167 N.W. 765.

Dam which would interfere with flow and backwaters to plaintiffs land could not be maintained.
Wharton v. Stevens, 1891, 84 Iowa 107, 50 N.W. 562, 15 L. R. A. 630, 35 Am. St. Rep. 296.

**39. Removal of natural dike or dam.**

Right to remove where no prescriptive right is shown in servient land owners.
Taylor v. Frevert, 1918, 183 Iowa 799, 166 N.W. 474.

**40. Actions in general.**

Against railroad for damages caused by overflow. Use of plans and specifications.
Kellogg v. Illinois Cent. R. Co., 1931, 239 N.W. 557.

Damages sought by purchaser for obstruction of floodwaters by railroad bridge.
Johnson v. Chicago, B. & Q. R. Co., 1927, 202 Iowa 1282, 211 N.W. 842.

Proper parties to action.
Chicago, R. I. & P. Ry. Co. v. Lynch, 1913, 163 Iowa 283, 143 N.W. 1083.

Action aginst railroad for injury to tile drain by excavation of borrow pit.
Swanson v. Ft. Dodge, D. M. & S. R. Co., 1911, 153 Iowa 78, 133 N.W. 351.

Action for flooding of land by railroad embankment.
Steber v. Chicago & G. W. Ry. Co., 1908, 139 Iowa 153 117 N.W. 304.

**41. Rights of action and defenses.**

Maintenance of barrier or ditch for 10 years or more may bar right to enjoin.
Fennema v. Menninga, 1945, 236 Iowa 543, 19 N.W.2d 689.

Recovery of damages caused by permanent embankment.
Thomas v. City of Cedar Falls, 1937, 223 Iowa 229, 272 N.W. 79.

Liability may exist for negligent construction of bridge causing damage.
Wm. Tackaberry Co. v. Simmons Warehouse Co. 1915, 170 Iowa 203, 152 N.W. 779.

Rights of person in possession of land where possesso is not holder of entire title.
Brous v. Wabash R. Co., 1913, 160 Iowa 701, 142 N.W 416.

Prescriptive right to maintain water gate.
Trumbo v. Pratt, 1910, 148 Iowa 195, 126 N.W. 1122.

That owner caused part of flooding not complete defense.

Steber v. Chicago & G. W. Ry. Co., 1908, 139 Iowa 153, 117 N.W. 304.

Owners right to recover not affected where he was not shown to have augmented flow of water into culvert.

Harvey v. Mason City & Ft. Dodge R. Co., 1906, 129 Iowa 465, 105 N.W. 958, 3 L. R. A., N. S., 973, 113 Am. St. Rep. 483.

Cutting of ditch through highway for drainage actionable.

Geneser v. Healey, 1904, 124 Iowa 310, 100 N.W. 66.

Fact that there was standing water on plaintiffs land at time of wrongful diversion of more water would not necessarily defeat recovery.

Warner v. Chicago & N.W.R. Co., 1903, 120 Iowa 159, 94 N.W. 490.

Not a defense to railroad that culvert was constructed according to plans of competent engineers.

Houghtaling v. Chicago G. W. R. Co., 1902, 117 Iowa 540, 91 N.W. 811.

To be actionable a culvert must increase quantity of water thrown on plaintiff's land.

Shrope v. Trustees of Pioneer Tp., 1900, 111 Iowa 113 82 N.W. 466.

Injury caused by increasing volume of water, or changing manner of discharge is actionable.

Williamson v. Oleson, 1894, 91 Iowa 290, 59 N.W. 267.

Estoppel without prescription.

Slocumb v. Chicago, B. & Q. Ry. Co., 1882, 57 Iowa 675, 11 N.W. 641.

**42. Injunction, right to.**

Owner of easement entitled to injunction.

McKeon v. Brammer, 1947, 238 Iowa 1113, 29 N.W.2d 518.

Where obstructions placed in artifical ditch did not hold back natural overflow injunction would not lie.

Clark v. Pierce, 1938, 224 Iowa 1068, 277 N.W. 711.

Wrongful diversion of surface waters enjoined.

Anton v. Stanke, 1933, 217 Iowa 166, 251 N.W. 153.

Owner not enjoined from constructing ditch to expedite flow of water discharged near point of natural discharge.

Fennema v. Nolin, 1927, 212 N.W. 702.

Interference with use of spring enjoined.

DeBok v. Doak, 1920, 188 Iowa 597, 176 N.W. 631.

Where damages are problematical and injunction would deprive defendant of reclaiming his own land, plaintiff's remedy was at law.
Black v. Escher, 1919, 186 Iowa 554, 173 N.W. 50.

Diversion of natural watercourse on plaintiff's land was enjoined.
Durst v. Puffett, 1917, 181 Iowa 14, 163 N.W. 201.

Diversion of percolating waters not enjoined where diversion would not materially affect plaintiff.
Thomas v. City of Grinnell, 1915, 171 Iowa 571, 153 N.W. 91.

Order that plaintiff lay tile sufficient to carry flow as before held proper.
Pascal v. Donahue, 1915, 170 Iowa 315, 152 N.W. 605.

Injunction granted to restrain diversion from stream by ditch where damage is continuing.
Falcon v. Boyer, 1913, 157 Iowa 745, 142 N.W. 427.

Interference with flow of water from plaintiff's land to his injury enjoinable.
Watt v. Robbins, 1913, 160 Iowa 587, 142 N.W. 387.

Obstruction of flow causing sediment deposit, yet not decreasing tillable area, not enjoinable.
Grimes v. Willey, 1912, 134 N.W. 574.

Plaintiff could not restrain discharge of water into natural ditch unless damage was shown.
Obe v. Pattat, 1911, 151 Iowa 723, 130 N.W. 903.

Permission to defendant to correct a drain from defendant's land to plaintiff's drain did not bring defendant within the protections of section 465.22.
Oxley v. Corey, 1908, 116 N.W. 1041.

Continued obstruction of natural flow by construction of railroad restrained.
Albright v. Cedar Rapids & Iowa City Railway & Light Co., 1907, 133 Iowa 644, 110 N.W. 1052.

Servient owner must show injury to be entitled to injunction.
Reser v. Davis, 1896, 100 Iowa 745, 69 N.W. 524.

Injunction granted to restrain maintenance of drain casting out unusual amounts of water.
Holmes v. Calhoun County, 1896, 97 Iowa 360, 66 N.W. 145.

Where plaintiff wrongfully diverted stream he could not enjoin defendant from turning the water to railroad right of way because it might thereby return to plaintiff's land.
Preston v. Hull, 1889, 77 Iowa 309, 42 N.W. 305.

**43. Pleadings.**

Railroad maintaining bridge obstructing flood waters not required to plead source of title.
Johnson v. Chicago B. & Q. R. Co., 1927, 202 Iowa 1282, 211 N.W. 842.

That drainage system was visible may be a defense in that purchaser was put on inquiry as to existing agreements for drainage.
Salinger v. Winthouser, 1925, 200 Iowa 755, 205 N.W. 309.

Petition alleging failure to disconnect drain as agreed shows no cause of action because of improper construction of new drain.
Taylor v. Frevert, 1918, 183 Iowa 799, 166 N.W. 474.

Plaintiff had to trace injury to his land to thing alleged to have caused such injury.
Watt v. Robbins, 1913, 160 Iowa 587, 142 N.W. 387.

Petition must show the interference with flow where it alleges damage due to obstruction of flow.
Hoppes v. Des Moines City Ry. Co., 1910, 147 Iowa 580, 126 N.W. 783.

Equity may restrain contemplated obstruction of flow of stream without proof of insolvency of defendant.
Moore v. Chicago, B. & Q. Ry. Co., 1888, 75 Iowa 263, 39 N.W. 390.

**44. Presumptions and burden of proof.**

Plaintiff had burden of showing damages caused by nuisance complained of.
Wheatley v. City of Fairfield, 1936, 221 Iowa 66, 264 N.W. 906.

Burden of proving oral agreement for drainage.
Young v. Scott, 1933, 216 Iowa 1253, 250 N.W. 484.

Proximate cause must be shown.
Whittington v. City of Bedford, 1926, 202 Iowa 442, 210 N.W. 460.

Owner seeking to enjoin construction of levees and ditches had burden of showing his was dominent estate.
Downey v. Phelps, 1926, 201 Iowa 826, 208 N.W. 499.

Burden on the merits in trial court and supreme court and burden of record is on plaintiff.
Schuster v. Miller, 1920, 188 Iowa 704, 176 N.W. 798.

Presumption that supply of a spring came from percolating waters.
DeBok v. Doak, 1920, 188 Iowa 597, 176 N.W. 631.

Burden of proving that plaintiff could have prevented the damage was on defendant.
Straight Bros. Co. v. Chicago, M. & St. P. Ry. Co., 1918, 183 Iowa 934, 167 N.W. 705.

**45. Evidence.**

Common knowledge that rapidly receding water does not damage growing crops as much as standing water.
Downey v. Phelps, 1926, 201 Iowa 826, 208 N.W. 499.

Servient estate benefits if flow of surface waters from dominant lands are controlled.
Kurtz v. Gramenz, 1924, 198 Iowa 222, 198 N.W. 325.

Evidence of depreciated value for rental of land admissible.
Conklin v. City of Des Moines, 1918, 184 Iowa 384, 168 N.W. 874.

Measure of damages to leasehold.
Straight Bros. Co. v. Chicago, M & St. P. Ry. Co., 1918, 183 Iowa 934, 167 N.W. 705.

Expert testimony as to customary method of bridge construction was excluded.
Thompson v. Illinois Central R. Co., 1916, 158 N.W. 676.

That railroad men went to bridge when storms occurred was admissible to show defendants knowledge of condition of the bridge.
Estes v. Chicago B. & Q. Ry. Co., 1913, 159 Iowa 666, 141 N.W. 49.

Testimony of usual crop yield on land proper.
Jefferis v. Chicago & N. W. Ry. Co., 1910, 147 Iowa 124, 124 N.W. 367.

Evidence admissible that opening for passage of water was restricted by culvert.
Houghtaling v. Chicago G. W. Ry. Co., 1902, 117 Iowa 540, 91 N.W. 811.

Testimony by engineers that more culverts would materially help in draining land was admissible.
Willitts v. Chicago, B. & K. C. Ry. Co., 1893, 88 Iowa 281, 55 N.W. 313, 21 L. R. A. 608.

Admissibility of evidence of deposits of earth where not specifically pleaded.
Hunt v. Iowa Cent. Ry. Co., 1892, 86 Iowa 15, 52 N.W. 668, 41 Am. St. Rep. 473.

Testimony as to value of land with and without use of culverts.
Van Orsdal v. Burlington, C. R. & N. R. Co., 1881, 56 Iowa 470, 9 N.W. 379.

**46. Sufficiency of evidence.**

Decree supported by the evidence.
Schwab v. Behrendt, 1944, 13 N.W.2d 692.

Evidence failed to show substantial damages.
**Johannsen v. Otto, 1938, 225 Iowa 976, 282 N.W. 334.**

Evidence held to establish natural water course
Heinse v. Thorborg, 1930, 210 Iowa 435, 230 N.W. 881.

Plaintiff must establish case by preponderance of evidence.
Schemmel v. Kramer, 1930, 228 N.W. 561.

Evidence did not prove damage was due to obstruction of flow of surface waters.
**Besler v. Greenwood, 1927, 202 Iowa 1330, 212 N.W. 120.**

Evidence held not to show defendant's land was servient to plaintiff's land.
Downey v. Phelps, 1926, 201 Iowa 826, 208 N.W. 499.

Evidence was insufficient to authorize injunctive relief.
Pleak v. Chicago, R. I. & P. Ry. Co., 1921, 191 Iowa 1018, 183 N.W. 402.

Findings that watercourse was natural and that defendant obstructed it were sustained by the evidence.
Maxson v. Cress, 1920, 189 Iowa 362, 178 N.W. 370.

Evidence was insufficient to sustain finding that defendant caused plaintiff's damage.
**Fisher v. Chicago, M. & St. P. Ry. Co., 1918, 184 Iowa 1261, 169 N.W. 635.**

Evidence held to establish prescriptive right to use flashboard of certain height.
**Watters v. Anamosa-Oxford Junction Light & Power Co., 1918, 184 Iowa 566, 167 N.W. 765.**

Evidence held to sustain finding of natural watercourse and that tiles did not change amount or course of flow.
**Pester v. Smith, 1918, 167 N.W. 580.**

Evidence held to not sustain finding that defendants act caused harm complained of.
Durust v. Puffett, 1917, 181 Iowa 14, 163 N.W. 201.

Evidence showed ditch would not discharge more water on plaintiff's land than would otherwise reach it.
Lamb v. Stone, 1917, 178 Iowa 1268, 160 N.W. 907.

Evidence in action regarding drainage contract showed paper attached to contract was part of it.
Carey v. Walker, 1915, 172 Iowa 236, 154 N.W. 425.

Evidence held to show flood was unprecedented and could not have been forseen.

Wm. Tackaberry Co. v. Simmons Warehouse Co., 1915, 170 Iowa 203, 152 N.W. 779.

Evidence that drains of defendant gathered more water and cast it differently could not be applied by theory.

Pascal v. Donahue, 1915, 170 Iowa 315, 152 N.W. 605.

Evidence did not show injuries to land were caused by flashboards subsequent to date to which his damages had been paid.

Watt v. Robbins, 1913, 160 Iowa 587, 142 N.W. 387.

Evidence held to show that defendant had duty to improve so as to avoid injury to plaintiff's crops.

Tretter v. Chicago Great Western Ry. Co., 1910, 147 Iowa 375, 126 N.W. 339, 140 Am. St. Rep. 304.

Where evidence showed negligent acts of defendant's employees plaintiff had only to show that his harm was the result.

Jefferis v. Chicago & N. W. Ry. Co., 1910, 147 Iowa 124, 124 N.W. 367.

Evidence showed damage due to very heavy rainfall rather than from acts of defendant.

Bones v. Chicago, R. I. & P. Ry. Co., 1909, 145 Iowa 222, 120 N.W. 717.

Evidence showed acts of dominant owner did not materially increase flow of waters.

Wirds v. Vierkandt, 1906, 131 Iowa 125, 108 N.W. 108.

Evidence showed actionable injury due to insufficiency of culvert.

Harvey v. Mason City & Ft. Dodge R. Co., 1906, 129 Iowa 465, 105 N.W. 958, 3 L. R. A., N. S., 973, 113 Am. St. Rep. 483.

Facts held to have shown a water course.

Hinkle v. Avery, 1893, 88 Iowa 47, 55 N.W. 77, 45 Am. St. Rep. 224.

**47. Jury questions.**

Separation of damages from natural causes and damages caused by defendant was for the jury .

Healey v. Citizens' Gas & Electric Co., 1924, 199 Iowa 82, 201 N.W. 118, 38 A. L. R. 1226.

Where there is no controversy over facts as to construction of ditch question of whether it is a watercourse is one of law.

Falcon v. Boyer, 1913, 157 Iowa 745, 142 N.W. 427.

Whether tiles were insufficient to carry off water which might reasonably be expected to accumulate.

Hoppes v. Des Moines City Ry. Co., 1910, 147 Iowa 580, 126 N.W. 783.

Question of negligence.
Jefferis v. Chicago & N. W. Ry. Co., 1910, 147 Iowa 124, 124 N.W. 367.

Whether damage arose from negligent obstruction of a stream.
Crook v. Chicago, R. I. & P. Ry. Co., 1909, 119 N.W. 696.

Question of whether plaintiff's acts tended to augment flow of water.
Harvey v. Mason City & Ft. Dodge R. Co., 1906, 129 Iowa 465, 105 N.W. 958, 3 L. R. A., N. S., 973, 113 Am. St. Rep. 483.

**48. Instructions.**

Jury's disobedience of instructions held error.
Pfannebecker v. Chicago, R. I. & P. Ry. Co., 1929, 208 Iowa 752, 226 N.W. 161.

Measure of recovery.
McAdams v. Chicago, R. I. & P. Ry. Co., 1925, 200 Iowa 732, 205 N.W. 310.

Action for damages caused by diversion of surface water to plaintiff's land.
Whitsett v. Griffis, 1918, 168 N.W. 878.

Permanent damage.
Straight Bros. Co. v. Chicago, M. & St. P. Ry. Co., 1918, 183 Iowa 934, 167 N.W. 705.

Whether injury to land was permanent or continuing.
Irvine v. City of Oelwein, 1915, 170 Iowa 653, 150 N.W. 674, L. R. A. 1916E, 990.

Reasonable care in construction of bridge.
Delashmutt v. Chicago, B. & Q. R. Co., 1910, 148 Iowa 556, 126 N.W. 359.

Action for construction of a levee and filling of a ditch.
O'Mara v. Jensma, 1909, 143 Iowa 297, 121 N.W. 518.

Substantial increase in water discharged or material change in method of discharge.
Sheker v. Machovec, 1908, 139 Iowa 1, 116 N.W. 1042.

Action for overflow alleged to have been caused by negligent construction of bridge.
Vyse v. Chicago, B. & Q. R. Co., 1904, 126 Iowa 90, 101 N.W. 736.

Measure of damages.
Mulverhill v. Thompson, 1904, 122 Iowa 229, 97 N.W. 1077.

Podhaisky v. City of Cedar Rapids, 1898, 106 Iowa 543, 76 N.W. 847.

Willitts v. Chicago B. & K. C. R. Co., 1893, 88 Iowa 281, 55 N.W. 313, 21 L. R. A. 608.

Clogging of culvert by debris.
Houghtaling v. Chicago G. W. R. Co., 1902, 117 Iowa 540, 91 N.W. 811.

Liability of owner for casting water on neighbor's land.
Mulvihill v. Thompson, 1901, 114 Iowa 734, 87 N.W. 693.

Knowledge of rights of landowner.
Olver v. Burlington, C. R. & N. R. Co., 1900, 111 Iowa 221, 82 N.W. 609.

Insufficient passage way for water of river.
Noe v. Chicago B. & W. R. Co., 1888, 76 Iowa 360, 41 N.W. 42.

Failure to construct culvert.
Van Orsdal v. Burlington, C. R. & N. R. Co., 1881, 56 Iowa 470, 9 N.W. 379.

**49. Damages.**

Damage to interest of landlord in crop and permanent injury to soil.
Straight Bros. Co. v. Chicago, M. & St. P. Ry. Co., 1918, 183 Iowa 934, 167 N.W. 705.

Recovery for damage to entire farm for flooding of a part.
Hastings v. Chicago, R. I. & P. Ry. Co., 1910, 148 Iowa 390, 126 N.W. 786.

Measure of damages resulting from insufficiency of a culvert.
Harvey v. Mason City & Ft. Dodge R. Co., 1906, 129 Iowa 465, 105 N.W. 958, 3 L. R. A., N. S. 973, 113 Am. St. Rep. 483.

Damages for flooding recoverable despite prior recovery for similar injury.
Benson v. Connors, 1884, 63 Iowa 670, 19 N.W. 812.

**50. Measure of damages.**

For flooding a part of plantiff's farm.
Thompson v. Illinois Central R. Co., 1916, 177 Iowa 328, 158 N.W. 676.
Straight Bros. Co. v. Chicago, M. & St. P. Ry. Co., 1918, 183 Iowa 934, 167 N.W. 705.

To leasehold by flooding.
Straight Bros. Co. v. Chicago, M & St. P. Ry. Co., 1918, 183 Iowa 934, 167 N.W. 705.

For turning water on growing crops.
Martin v. Schwertley, 1912, 155 Iowa 347, 136 N.W. 218, 40 L. R. A., N. S., 160.
Jefferis v. Chicago & N. W. Ry. Co., 1910, 147 Iowa 124, 124 N.W. 367.

Wilson v. Chicago, R. I. & P. Ry. Co., 1909, 144 Iowa 99, 121 N.W. 1102.

Drake v. Chicago, R. I. & P. Ry. Co., 63 Iowa 302, 19 N.W. 215, 50 Am. Rep. 746.

For flooding land.

Steber v. Chicago & G. W. Ry. Co., 1908, 139 Iowa 153, 117 N.W. 304.

Kopecky v. Benish, 1908, 138 Iowa 362, 116 N.W. 118.

Blunck v. Chicago & N. W. Ry. Co., 1908, 115 N.W. 1013, reversed on other grounds, 142 Iowa 146, 120 N.W. 737.

Sullens v. Chicago, R. I. & P. Ry. Co., 1888, 74 Iowa 659, 38 N.W. 545, 7 Am. St. Rep. 501.

**51. Waiver of right to damages.**

Rights to damages from obstruction of natural water course may be waived.

Johnson v. Chicago, B. & Q. Ry. Co., 1927, 202 Iowa 1282, 211 N.W. 842.

**52. Findings.**

Finding that equity of the case is with plaintiff is equivalent to a finding of wrongful diversion.

Benson v. Connors, 1884, 63 Iowa 670, 19 N.W. 812.

**53. Judgment or decree.**

Culvert size within discretion of officers under decree modifying injunction affecting drainage.

Ehler v. Stier, 1927, 205 Iowa 678, 216 N.W. 637.

Injunction against obstruction limited to removal of obstructions placed in water course.

Fennema v. Nolin, 1927, 212 N.W. 702.

Decree should restrain maintenance of ditch so as to cause overflows on land of plaintiff.

Mickelwait v. Wright, 1922, 194 Iowa 1265, 191 N.W. 291.

That drain be constructed adequate to prevent collection of water.

Johnson v. Ruth, 1909, 144 Iowa 693, 123 N.W. 326.

Meaning of "natural channel" and "water course".

Benson v. Connors, 1884, 63 Iowa 670, 19 N.W. 812.

**54. Review.**

Refusal to allow damages.

Harvey v. Mason City & Ft. D. Ry. Co., 1906, 129 Iowa 465, 105 N.W. 958, 3 L. R. A., N. S., 973, 113 Am. St. Rep. 483.

Verdict would not be disturbed where evidence showed no injury.
Dorr v. Simerson, 1887, 73 Iowa 89, 34 N.W. 752.

**55. Harmless error.**

Allowance of damages.
Sheker v. Machovec, 1908, 139 Iowa 1, 116 N.W. 1042.

Verdict of jury precluded prejudice to plaintiff.
Dorr v. Simerson, 1887, 73 Iowa 89, 34 N.W. 752.

**465.23 Drainage connection with highway.** When the course of natural drainage of any land runs to a public highway, the owner of such land shall have the right to enter upon such highway for the purpose of connecting his drain or ditch with any drain or ditch constructed along or across the said highway, but in making such connections, he shall do so in accordance with specifications furnished by the highway authorities having jurisdiction thereof, which specifications shall be furnished to him on application. He shall leave the highway in as good condition in every way as it was before the said work was done. [C97, §1963; C24, 27, 31, 35, 39,§7737; C46, 50, 54,§465.23]

**1. Construction and application.**

Rule that artificial ditch may become natural water course does not apply where rights of public are involved.
Droegmiller v. Olson, 1950, 40 N.W.2d 292.

County, town and school district could make tile drainage connections in highway ditches.
Grimes v. Polk County, 1949, 34 N.W.2d 767.

Right of owner to open a drain on his land going to public highway.
O. A. G. 1919-20, p. 330.

**2. Easements.**

Due to knowledge and use defendant could not deny existence of easement.
Hayes v. Oyer, 1914, 164 Iowa 697, 146 N.W. 857.

Defeat of claim of easement by adverse user.
Schofield v. Cooper, 1905, 126 Iowa 334, 102 N.W. 110.

**3. Actions.**

Liability for wrongfully changing water course.
Mulvihill v. Thompson, 1901, 114 Iowa 734, 87 N.W. 693.

**465.24 Private drainage system—record.** Any person who has provided a system of drainage on land owned by him may have the same made a matter of record in the office of

the county recorder of the county in which the drainage system is located as is hereinafter provided. [C24, 27, 31, 35, 39,§7738; C46, 50, 54,§465.24]

**465.25 Drainage plat book.** The county recorder shall be provided with a loose leaf plat book, made to a scale not larger than sixteen inches to one mile, for each section of the land within the county in which such records shall be made. Such plat book shall consist of sheets of paper interbound by sheets of tracing cloth with proper heading, margin, and binding edge. Said plat book shall be used for keeping a record of drainage systems filed by any landowner. Plats shall be made or approved only by a registered engineer. Plats so offered for record shall be drawn to scale giving distances in feet, indicate the size of tile used, lengths of mains, submains, and laterals, and location with regard to boundary lines of tract or government corners and subdivisions. [C24, 27, 31, 35, 39,§7739; C46, 50, 54, §465.25]

Referred to in §465.26.

**465.26 Record book and index.** The county recorder shall also be provided with a record book and index referring to the plats provided for in section 465.25, and which may be used to give the owner's name, description of tracts of land drained, stating the time when drainage system was established, the kind, quality, and brand of tile used, the name and place of manufacturing plant, the name of contractors who laid the tile, the name of the engineer in charge of the survey and installation, the cost of tile, delivery, installation, and engineering expense, depths, grades, outlets, connections, contracts for agreements with adjoining landowners as to connections, and any other matters or information that may be considered of value all of said said information to be furnished by the landowner or the engineer having charge of the installation of the same and certified to under oath, and shall be certified under oath by a registered engineer as being a true and accurate record [C24, 27, 31, 35, 39,§7740; C46, 50, 54,§465.26]

**465.27 Original plat filed.** In lieu of making the record as herein provided any landowner may file with the county recorder the original plat used in the establishment of said drainage system, or a copy thereof, which shall be certified by the engineer having made the same. [C24, 27, 31, 35, 39, §7741; C46, 50, 54,§465.27]

**465.28 Record not part of title.** The drainage records herein provided for shall not be construed as an essential part of the title to said lands, but may upon request be set out by abstracters as a part of the record title of said lands. [C24, 27, 31, 35, 39,§7742; C46, 50, 54,§465.28]

**465.29 Fees for record and copies.** The county recorder shall be entitled to collect fees for the filing and information heretofore provided for, and for the making of copies of such records the same as is provided for other work of a similar nature. [C24, 27, 31, 35, 39,§7743; C46, 50, 54,§465.29]

Recorder fee, §335.14.

**465.30 Lost records—hearing.** When the records of any mutual drain are incomplete or have been lost, or when the owner of any land affected by such mutual drain believes that the apportionment of costs or damages is inequitable or that repair or reconstruction is needed, such owner may petition the board of trustees for relief. The trustees shall notify all affected parties of such petition, and set a date for a hearing on the petition. The trustees may adjourn the proceedings from day to day, but no adjournment shall be for more than ten days, and may order such engineering examinations, reclassification of lands and appraisal of damages as they deem necessary. At the completion of the hearing the trustees shall re-establish the original records or establish a revised record and basis for apportionment of costs and damages as they find equitable and advisable, and may order such repairs or reconstruction as they find to be needed. All cost of such re-establishment or revisions of records, and of the needed repair or reconstruction shall be apportioned in accordance with the basis established. [C50, 54,§465.30]

**465.31 Mutual drains—establishment as district.** Whenever a landowner fails to pay the cost apportioned as provided in section 465.30, or whenever a repair or reconstruction ordered as provided in said section is not made within reasonable time, and in such other instances as the trustees desire, the trustees may transmit a copy of the records and procedures of such mutual drain to the board of supervisors of the county in which the mutual drain is located, together with a request that such mutual drain be established as a drainage district. Upon receipt of such transcript and request, the board of supervisors by resolution shall establish such mutual drain as a drainage district; all proceedings thereafter shall be as provided for other legally established districts. [C50, 54,§465.31]

Referred to in §465.32.

**465.32 Appeal.** The decisions and actions of the trustees under section 465.31 may be appealed as provided in sections 465.9, 465.10, and 465.11. [C50, 54,§465.32.]

**465.33 Record filed with established district.** When the lands served by a mutual drain are within the boundary of an established drainage district, a complete record of the

proceedings relating to such mutual drain shall be filed with and as a part of, the records of such established district. (C50, C54,§465.33)

Referred to in §465.34.

**465.34 Lost or incomplete records.** If the records referred to in section 465.33 are incomplete or have been lost, the board may re-establish such records so as to proportion future costs and damages in proportion to the benefits and damages received because of the construction of such mutual drains and improvements thereof, and may order such surveys, engineering reports, reclassification of lands and appraisal of damages as they deem necessary. All costs of such proceedings shall be assessed against the benefited lands. (C50, C54,§465.34)

Referred to in §465.35.

**465.35 Petition to combine with established district.** Upon receipt of a petition, signed by the owners of the lands served by a mutual drain, requesting that such drain be combined with an established drainage district, the board shall hold a hearing with due notice to the owners of all lands affected by said mutual drain, and if the board finds it desirable it may by resolution make such mutual drains a part of the established district. Such hearing and resolution may be continued as the board deems necessary for the collection of additional information as provided in section 465.34. Such combination with an established district shall constitute dissolution of the mutual drain, and shall be so recorded, after which such mutual drain shall be a part of the district drain in all respects. [C50, 54,§465.35]

# CHAPTER 466

## DRAINAGE DISTRICTS IN CONNECTION WITH UNITED STATES LEVEES

466.1 United States levees—co-operation of board.
466.2 Manner of co-operation.
466.3 Report of engineer—payment authorized.
466.4 Costs assessed.
466.5 Annual installments.
466.6 Collection of tax.
466.7 Cost of maintaining.
466.8 Laws applicable.

**466.1 United States levees—co-operation of board.** In any case where the United States has built or shall build a levee along or near the bank of a navigable stream forming a part of the boundary of this state, the board of supervisors of any county through which the same may pass shall have the power to aid in procuring the right of way for and maintaining said levee, and providing a system of internal drainage made necessary or advisable by the construction thereof. Such improvement shall be presumed to be conducive to the public health, convenience, welfare, or utility. [C97,§1975; C24, 27, 31, 35, 39,§7744; C46, 50, 54,§466.1]

Referred to in §466.2 Manner of co-operation; §466.7 Cost of maintaining.

**466.2 Manner of co-operation.** Any United States government levee under the conditions mentioned in section 466.1 may be taken into consideration by the board as a part of the plan of any levee or drainage district and improvements therein, and such board may, by agreement with the proper authorities of the United States government, provide for payment of such just and equitable portion of the costs of procuring the right of way and maintenance of such levee as shall be conducive to the public welfare, health, convenience, or utility. [C97,§1975; C24, 27, 31, 35, 39,§7745; C46, 50, 54,§466.2]

Referred to in §466.7 Cost of maintaining.

**466.3 Report of engineer—payment authorized.** In the proceedings to establish such a district the engineer shall set forth in his report, separately from other items, the amount of the cost for the right of way of such levee, of constructing and maintaining the same; and if the plan is approved and the district finally established in connection with such levee, the board shall make a record of any such co-operative arrangement and may use such part of the funds of the district as may be necessary to pay the amount so agreed upon toward the right of way and maintenance of

such levee. [C97,§1976; C24, 27, 31, 35, 39,§7746; C46, 50, 54, §466.3]

Referred to in §466.7 Cost of maintaining.

**466.4 Costs assessed.** If said district is established, the entire costs and expenses incurred under this chapter shall be assessed against and collected from the lands lying within such district, by the levy of a rate upon the assessable value of the land within such district, sufficient to raise the required sum; provided that where the proposed improvement is for drainage only, the board may, in their discretion, classify the land within such district and graduate the tax thereon, as provided in chapter 455. [C97,§1982; S13,§1982; C24, 27, 31, 35, 39,§7747; C46, 50, 54,§466.4]

Referred to in §§466.6, 466.7.

**466.5 Annual installments.** If the proposed improvement is the maintenance of a levee, the amount collected in any one year shall not exceed twelve and one-half mills on the dollar of the assessment valuation, which said assessment shall be levied at a level rate on the assessable value of the said lands, easements, and railroads within the district. If the amount necessary to pay for the improvement exceed said sum, it shall be levied and collected in annual installments. For all other improvements, the board shall levy a rate sufficient to pay for the same, and may, at their discretion, make the same payable in annual installments of ten or less. [C97,§1984; C24, 27, 31, 35, 39,§7748; C46, 50, 54, §466.5]

Referred to in §466.6 Collection of tax; §466.7 Cost of maintaining.

**466.6 Collection of tax.** The assessment required under sections 466.4 and 466.5 shall be made by the board of supervisors at the time of levying general taxes, after the work has been authorized, and the same shall be entered on the records of the board of supervisors, then entered on the tax books by the county auditor as drainage taxes, and shall be collected by the county treasurer at the same time, in the same manner, and with the same penalties, as general taxes; and if the same is not paid he shall sell all such lands upon which such assessment remains unpaid, at the same time, and in the same manner, as is now by law provided for the sale of lands for delinquent taxes, including all steps up to the execution and delivery of the tax deed for the same. The landowners shall take notice of and pay such assessments without other or further notice than such as is provided for in this chapter. The funds realized from such assessments shall constitute the drainage fund, as contemplated in this chapter, and shall be disbursed on warrants drawn against

that fund by the county auditor, on the order of the board of supervisors. [C97,§1983; C24, 27, 31, 35, 39,§7749; C46, 50, 54,§466.6]

Referred to in §466.7 Cost of maintaining.

**1. Construction and application.**

Power to levy assessment on benefited property is part of general power of taxation.

Fitchpatrick v. Botheras, 1911, 150 Iowa 376, 130 N.W. 163, 37 L. R. A., N. S., 558, Ann. Cas. 1912D, 534.

This section does not refer to ordinary drainage districts but refers to collection of costs of U. S. Levees.

O. A. G. 1916, p. 116.

**466.7 Cost of maintaining.** The board of supervisors shall have the right and power to keep and maintain any such levee, ditches, drains, or system of drainage, either in whole or in part, established under sections 466.1 to 466.6, inclusive, as may in their judgment be required, and to levy the expense thereof upon the real estate within such drainage district as herein provided for, and collect and expend the same; provided, however, that no such work which shall impose a tax exceeding twelve and one-half mills on the dollar on the assessable value of the lands within the district shall be authorized by them, unless the same is first petitioned for and authorized in substantially the manner required by this chapter for the inauguration of new work. [C97,§1986; C24, 27, 31, 35, 39,§7750; C46, 50, 54,§466.7]

**1. Construction and application.**

Code Supp. 1913, §1896, now this section, in limiting amount of assessment for drains applies only to levees erected by U. S. and to drainage system referred to in Acts 1896 (26 G.A.) ch. 46, incorporated in this chapter.

**466.8 Laws applicable.** In the establishment and maintenance of levee and drainage districts in co-operation with the United States as in this chapter provided, all the proceedings for said purpose in the filing and the form and substance of the petition, assessment of damages, appointment of an engineer, his surveys, plats, profiles, and report, notice of hearings, filing of claims and objections, hearings thereon, appointment of commissioners to classify lands, assess benefits, and apportion costs and expenses, report, notice and hearing thereon, the appointment of a supervising engineer, his duties, the letting of work and making contracts, payment for work, levy and collection of drainage or levee assessments and taxes, the issue of improvement certificates and drainage or levee bonds. the taking of appeals and the manner of trial thereof, and all other proceedings

relating to such district shall be as provided in chapters 455 to 465, inclusive, except as otherwise in this chapter, provided. [C97,§§1976-1989; S13,§§1976, 1977, 1979, 1981, 1982, 1984, 1985, 1985-a, 1986, 1989; C24, 27, 31, 35, 39,§7751; C46, 50, 54, §466.8]

Chapters 456, 463, 464 enacted after this section was enacted; chapter 458 was enacted as an amendment to chapter 457.

# CHAPTER 467

## INTERSTATE DRAINAGE DISTRICTS

467.1 Co-operation—procedure.
467.2 Agreements as to costs.
467.3 Contracts let by joint agreement.
467.4 Separate contracts.
467.5 Conditions precedent.
467.6 Assessments, bonds, and costs—limitation.

**467.1 Co-operation — procedure.** When proceedings for the drainage of lands bordering upon the state line are had and the total cost of constructing the improvement in this state, including all damage, has been ascertained, and the engineer in charge, before the final establishment of the district, reports that the establishment and construction of such improvement ought to be jointly done with like proceedings for the drainage of lands in the same drainage area in such an adjoining state and that drainage proceedings are pending in such state for the drainage of such lands, the said authorities of this state may enter an order continuing the hearing on the establishment of such district to a fixed date, of which all parties shall take notice. [SS15, §1989-a77; C24, 27, 31, 35, 39,§7752; C46, 50, 54,§467.1]

**467.2 Agreement as to costs.** The board shall have power, when the total cost, including damages, of constructing the improvement in such other state has been ascertained by the authorities of such other state, to enter into an agreement as to the separate amounts which the property owners of each state should in equity pay toward the construction of the joint undertaking. When such amount is thus determined, the board or boards having jurisdiction in this state shall enter the same in the minutes of their proceedings and shall proceed therewith as though such amount to be paid by the portion of the district in this state had been originally determined by them as the cost of constructing the improvement in this state. [SS15,§1989-a77; C24, 27, 31, 35, 39,§7753; C46, 50, 54,§467.2]

**467.3 Contracts let by joint agreement.** When the bids for construction are opened, unless the construction work on each side of the line can go forward independently, no contract shall be let by the authorities in this state, unless the acceptance of a bid or bids for the construction of the whole project is first jointly agreed upon by the authorities of both states. [SS15,§1989-a77; C24, 27, 31, 35, 39,§7754; C46, 50, 54,§467.3]

**467.4 Separate contracts.** The contract or contracts for the construction of that portion of the improvement within

this state shall be entirely distinct and separate from the contract or contracts let by the authorities of the neighboring state; but the aggregate amount of the contract or contracts for the construction of the work within this state shall not exceed an amount equal to the amount of the benefits assessed in this state including damages and other expenses. [SS15,§1989-a77; C24, 27, 31, 35, 39,§7755; C46, 50, 54,§467.4]

**467.5 Conditions precedent.** No contract shall be let until the improvement shall be finally established in both states, and after the final adjustment in both states of damages and benefits. No bonds shall be issued until all litigation in both states arising out of said proceedings has been finally terminated by actual trial or agreements, or the expiration of all right of appeal. [SS15,§1989-a78; C24, 27, 31, 35, 39, §7756; C46, 50, 54,§467.5]

**467.6 Assessments, bonds, and costs—limitation.** All proceedings except as provided in this chapter in relation to the establishment, construction, and management of interstate drainage districts shall be as provided for the establishment and construction of districts wholly within this state as provided in chapter 455. All such proceedings shall relate only to the lands of such district which are located wholly within this state. Boards having jurisdiction in this state may make just and equitable agreements with like authorities in such adjoining state for the joint management, repair, and maintenance of the entire improvement, after the establishment and completed construction thereof. [SS15,§1989-a77; C24, 27, 31, 35, 39,§7757; C46, 50, 54,§467.6]

# CHAPTER 467A

## SOIL CONSERVATION

467A.1 Short title.
467A.2 Declaration of policy.
467A.3 Definitions.
467A.4 State soil conservation committee.
467A.5 Creation of soil conservation districts.
467A.6 Appointment, qualifications and tenure of commissioners.
467A.7 Powers of districts and commissioners.
467A.8 Co-operation between districts.
467A.9 State agencies to co-operate.
467A.10 Discontinuance of districts.
467A.11 Report to governor.
467A.12 Statement to comptroller.

**467A.1 Short title.** This chapter may be known and cited as the "Soil Conservation Districts Law." [C39,§2603.02; C46,§160.1; C50, 54,§467A.1]

Law Review Commentaries: 34 Iowa Law Review 166.

**467A.2 Declaration of policy.** It is hereby declared to be the policy of the legislature to provide for the restoration and conservation of the soil and soil resources of this state and for the control and prevention of soil erosion and for the prevention of erosion, floodwater, and sediment damages and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist and maintain the navigability of rivers and harbors, preserve wild life, protect the tax base, protect public lands and promote the health, safety and public welfare of the people of this state. [C39,§2603.03; C46,§160.2; C50, 54,§467A.2 as amended Acts 56G.A., Ch. 225,§1]

**467A.3 Definitions.** Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

1. "District" or "soil conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with the provisions of this chapter, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

2. "Commissioner" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this chapter.

3. "Committee" or "state soil conservation committee" means the agency created in section 467A.4.

4. "Petition" means a petition filed under the provisions of subsection 1 of section 467A.5 for the creation of a district.

5. "Nominating petition" means a petition filed under the provisions of section 467A.5 to nominate candidates for the office of commissioner of a soil conservation district.

6. "State" means the state of Iowa.

7. "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

8. "United States" or "agencies of the United States" includes the United States of America, the soil conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States.

9. "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, or either of them.

10. "Landowner" includes any person, firm, or corporation who shall hold title to three or more acres of land lying outside incorporated cities or towns and within a proposed district or a district organized under the provisions of this chapter.

11. "Due notice" means notice published at least twice, with an interval of at least six days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area; or, if no such publication of general circulation be available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates. [C39,§2603.04; C46, §160.3; C50, 54,§467A.3]

**467A.4 State soil conservation committee.**

1. There is hereby established, to serve as an agency of the state and to perform the functions conferred upon it in this chapter (together with such other functions as may be hereafter assigned to it from time to time by act of the legislature), the state soil conservation committee. The committee shall consist of a chairman and six members. The following shall serve as members of the committee: The director of the state agricultural extension service, the secretary of agriculture, or a member designated by him.

Five members shall be appointed by the governor and confirmed by the senate. The five appointive members shall be bona fide farmers living on farms. The committee may invite the secretary of agriculture of the United States to appoint one person to serve with the above mentioned members, but in an advisory capacity only. The committee shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this chapter.

2. The state soil conservation committee may employ an administrative officer and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The committee may call upon the attorney general of the state for such legal services as it may require. It shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. Upon request of the committee, for the purpose of carrying out any of its functions, the supervising officer of any state agency, or of any state institution of learning shall, insofar as may be possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the committee members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the committee may request.

3. The committee shall designate its chairman, and may, from time to time, change such designation. The director of the state agricultural extension service shall hold office so long as he shall retain the office by virtue of which he shall be serving on the committee. The members appointed by the governor shall serve for a period of six years, except that those first appointed shall serve for terms of two, four and six years respectively, one member being appointed every two years thereafter. The member representing the secretary of agriculture shall serve until there is a change in the personnel of the secretary of agriculture. A majority of the committee shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for its determination. The chairman and members of the committee, not otherwise in the employ of the state, shall receive ten dollars per diem as compensation for their services in the discharge of their duties as members of the committee. The committee shall determine the number of days for which any committee member may draw per diem compensation, but the total number of days for which per diem compensation is allowed for the entire committee shall not exceed two hundred fifty days per year. They shall also be entitled to expenses, including traveling

expenses, necessarily incurred in the discharge of their duties as members of such committee. The committee shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property, shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted, and shall provide for an annual audit of the accounts of receipts and disbursements.

4. In addition to the duties and powers hereinafter conferred upon the state soil conservation committee, it shall have the following duties and powers:

*a.* To offer such assistance as may be appropriate to the commissioners of soil conservation districts, organized as provided hereinafter, and in the carrying out of any of their powers and programs.

*b.* To keep the commissioners of each of the several districts organized under the provisions of this chapter informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and co-operation between them.

*c.* To co-ordinate the programs of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation.

*d.* To secure the co-operation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts.

*e.* To disseminate information throughout the state concerning the activities and program of the soil conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable.

*f.* To render financial aid and assistance to soil conservation districts organized hereunder for the purpose of carrying out the policy stated in this chapter. [C39,§2603.05; C46, §160.4; C50, 54,§467A.4]

**467A.5 Creation of soil conservation districts.**

1. Any twenty-five owners, but in no case less than twenty percent of the owners of land lying within the limits of the territory proposed to be organized into a district may file a petition with the state soil conservation committee, asking that a soil conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

*a.* The proposed name of said district.

*b.* That there is need, in the interest of health, safety and public welfare, for a soil conservation district to function in the territory described in the petition.

*c.* A description of the territory proposed to be organized as a district, which description shall not be required to be

given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate.

*d.* A request that the state soil conservation committee duly define the boundaries for such district; that a referendum be held within the territory so defined on the question of the creation of a soil conservation district in such territory; and that the committee determine that such a district be created.

Where petitions are filed covering adjacent territory or parts of the same territory, the state soil conservation committee may consolidate all or any of such petitions.

2. Within ninety days after such petition has been formally accepted by the state soil conservation committee, it shall cause due notice by publication to be given of a proposed hearing upon the question of the desirability and necessity in the interest of health, safety and public welfare, of the creation of such district, on the question of the appropriate boundaries to be assigned to each district upon the propriety of the petition and other proceedings taken under this chapter and upon all questions relative to such inquiries.

All owners of land within the limits of the territory described in the petition and of lands within any territory considered for addition to such described territory and all other interested parties shall have the right to attend such hearings and to be heard. If it shall appear on the hearing that it shall be desirable to include within the proposed district territory outside the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given through the entire area considered for inclusion in the district, and such further hearing held. After such hearing, if the committee shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need in the interest of health, safety and public welfare, for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define the boundaries of such district. In making such determination and in defining such boundaries, the committee shall give due weight and consideration to the topography of the area considered and of the state, the character of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits which such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization under the provisions of this chap-

ter, and such other physical, geographical and economic factors as are relevant, having due regard to the legislative determinations set forth in section 467A.2. If the committee shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition.

3. After the committee has made and recorded a determination that there is need, in the interest of health, safety and public welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil conservation districts in this chapter is administratively practicable and feasible. It shall be the duty of the committee to hold a referendum within the proposed district upon the question of the creation of the district, and, at the same time, hold an election to elect the first commissioners of the district, and to cause due notice of such referendum and election to be given. Nomination petitions may be filed with the state soil conservation committee to nominate candidates for commissioners. Candidates for commissioners shall be nominated at least ten days prior to the date of the election, unless the committee extends the time within which nominating petitions may be filed. No such nominating petition shall be accepted by the committee unless it shall be subscribed by twenty-five or more landowners of such proposed district. Such landowners may sign more than one such nominating petition to nominate more than one candidate for commissioners. The referendum and election shall be held by using ballots upon which the words "For creation of a soil conservation district of the lands below described and lying in the county(ies) of ....., ....., and ....." and "Against creation of a soil conservation district of the lands below described and lying in the county(ies) of ....., ....., and ....." shall appear, with a square before each proposition, and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the committee. The names of all nominees on behalf of whom such nominating petitions have been filed within the time herein designated shall also appear upon the ballots, arranged in alphabetical order of the surnames, with a square before each name and a direction to insert an X mark in the square before any three names to indicate the voter's preference. Only owners of land within the boundaries of the territory as determined by the state soil conservation committee shall be eligible to vote in such referendum and election. After

the district is organized, the owners of land, whether living on the land or not, and operators living on farms within the district shall have the right to sign nominating petitions and to vote for election of commissioners.

4. The committee shall pay all expenses for the issuance of such notices and the conduct of such hearings, referenda and elections, and shall supervise and conduct such hearings, referenda and elections. It shall issue appropriate regulations governing the conduct of such hearings, referenda and elections, and provide for the registration, prior to the date of the referendum and election, of all eligible voters, or prescribe some other appropriate procedure for the determination of those eligible as voters in such referendum and election. No informalities in the conduct of such referendum and election or in any matters relating thereto shall invalidate said referendum and election or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum and election shall have been fairly conducted.

5. The committee shall consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible and shall publish the result of such referendum. If the committee shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and shall deny the petition for organization of a district. If the committee shall determine that the operation of such district is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination the committee shall give due regard and weight to the attitudes of the landowners and occupiers within the defined boundaries, and the number of landowners eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the income of the landowners and occupiers of the proposed district, the probable expense of carrying on erosion-control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determinations set forth in section 467A.2; provided, however, that the committee shall not have authority to determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least sixty-five percent of the votes cast in the referendum is in favor of the creation of such district.

6. If the committee shall determine that the operation of the proposed district within the defined boundaries is ad

ministratively practicable and feasible, it shall publish the results of the election of commissioners. The three candidates who shall have received the largest number, respectively, of the votes cast in such election shall be the elected commissioners for such district. The term of office of each commissioner shall be six years, except that the terms of the commissioners first elected shall be as follows: Six years for the commissioner receiving the highest number of votes in the election, four years for the commissioner receiving the second highest number of votes in the election, and two years for the commissioner receiving the third highest number of votes in the election. A commissioner shall hold office until his successor has been elected and has qualified. Vacancies shall be filled for the unexpired term. There shall be elected biennially one commissioner for the term of six years to succeed the commissioner whose term of office expires. The election of a successor to fill an unexpired term or for a full term shall be made under regulations of the state soil conservation committee and conducted by the commissioners of the district in the same manner as hereinabove provided; or, at the discretion of the committee, it may appoint a successor to fill the unexpired term of a commissioner, but only for a term extending to the date of the next election in the district held to elect a successor to a commissioner for that district.

Such district shall be a body corporate upon the taking of the following proceedings: The three commissioners shall present to the secretary of state an application signed by them, which shall set forth (and such application need contain no detail other than the mere recitals):

*a.* That a petition for the creation of the district was approved by the state soil conservation committee pursuant to the provisions of this chapter, and that they are the duly elected commissioners;

*b.* The name and official residence of each of the commissioners;

*c.* The name which is proposed for the district; and

*d.* The location of the proposed office of the commissioners of the district.

The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of this state to take and certify oaths. The application shall be accompanied by a statement by the state soil conservation committee which shall certify that a petition was filed, notice issued, and hearing held as aforesaid; that the committee did duly determine that there is need, in the interest of health, safety and public welfare, for a soil conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such

district and an election held to elect commissioners for such district, if created, and that the results of such referendum showed sixty-five percent of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the committee did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the committee, and the names of the duly elected commissioners.

The secretary of state shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the secretary of state shall find that the name proposed for the district is identical with that of any other soil conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the state soil conservation committee, which shall thereupon submit to the secretary of state a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the secretary of state shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed and recorded, as herein provided, the district shall constitute a body corporate. The secretary of state shall make and issue to the said commissioners a certificate, under the seal of the state, of the due organization of the said district, and shall record such certificate with the application and statement. The commissioners shall also cause such certificate to be recorded in the office of the county recorder of each county in which the land of the district extends. The boundaries of such district shall include the territory as determined by the state soil conservation committee as aforesaid, but in no event shall they include any area included within the boundaries of another soil conservation district organized under the provisions of this chapter.

7. After six months shall have expired from the date of entry of a determination by the state soil conservation committee that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this chapter.

8. Petitions for including additional territory within an existing district may be filed with the state soil conservation committee, and the proceedings herein provided for in the case of petition to organize a district shall be observed in the case of petitions for such inclusion. The committee

shall prescribe the form for such petition, which shall be as nearly as may be in the form prescribed in this chapter for petitions to organize a district. In referenda upon petitions for such inclusion, all landowners within the proposed area shall be eligible to vote. Where the total number of landowners in the area proposed for inclusion shall be less than twenty-five, the petition may be filed when signed by seventy-five percent of the landowners of such area, and in such case no referendum need be held.

9. In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract, proceeding, or action of the district, the district shall be deemed to have been established in accordance with the provisions of this chapter upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certificate duly certified by the secretary of state shall be admissible in evidence in any such suit, action or proceeding, and shall be proof of the filing and contents thereof. [C39,§2603.06; C46, §160.5; C50, 54,§467A.5]

Law Review Commentaries: 34 Iowa Law Review 166.

**467A.6 Appointment, qualifications and tenure of commissioners.** The governing body of the district shall consist of three commissioners who shall reside within the district or in cities or towns lying within the outside boundaries of the district. The commissioners shall designate a chairman and may, from time to time, change such designation.

The commissioners of the respective districts shall submit to the committee such statements, estimates, budgets, and other information at such times and in such manner as the committee may require.

A commissioner shall receive no compensation for his services but he may be paid expenses, including traveling expenses, necessarily incurred in the discharge of his duties, if funds are available for that purpose.

The commissioners may call upon the attorney general of the state for such legal services as they may require. The commissioners may delegate to their chairman, to one or more commissioners or to one or more agents, or employees, such powers and duties as they may deem proper. The commissioners shall furnish to the state soil conservation committee, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this chapter.

The commissioners shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted;

and shall provide for a biennial audit of the accounts of receipts and disbursements.

The commissioners may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the commissioners of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county. [C39,§2603.08, C46,§160.6; C50, 54§467A.6]

**467A.7 Powers of districts and commissioners.** A soil conservation district organized under the provisions of this chapter shall have the following powers, in addition to others granted in other sections of this chapter:

1. To conduct surveys, investigations, and research relating to the character of soil erosion and the preventive and control measures needed, to publish the results of such surveys, investigations or research, and to disseminate information concerning such preventive and control measures; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in co-operation with the Iowa agricultural experiment station located at Ames, Iowa, and pursuant to a co-operative agreement entered into between the Iowa agricultural experiment station and such district.

2. To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the consent and co-operation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner or occupier of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled; provided, however, that in order to avoid duplication of agricultural extension activities, no district shall initiate any demonstrational projects, except in co-operation with the Iowa agricultural extension service whose offices are located at Ames, Iowa, and pursuant to a co-operative agreement entered into between the Iowa agricultural extension service and such district.

3. To carry out preventive and control measures within the district, including, but not limited to, crop rotations, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in section 467A.2, on land owned or controlled by this state or any of its agencies, with the consent and co-operation of the agency administering and having jurisdiction thereof, and on any other lands within the district, upon

obtaining the consent of the owner or occupier of such lands or the necessary rights or interests in such lands. The approval of the Iowa natural resources council shall be required on any project which relates to or in any manner affects flood control.

4. To co-operate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any owner or occupier of lands within the district, in the carrying on of erosion-control and prevention operations within the district, subject to such conditions as the commissioners may deem necessary to advance the purposes of this chapter.

5. To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this chapter.

6. To make available on such terms as it shall prescribe, to landowners or occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, lime, and such other material or equipment as will assist such landowners or occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion.

7. To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter. The approval of the Iowa natural resources council shall be required on any project which relates to or in any manner affects flood control.

8. To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to publish such plans and information and bring them to the attention of owners and occupiers of lands within the district.

9. To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make,

and from time to time amend and repeal, rules and regulations not inconsistent with this chapter, to carry into effect its purposes and powers.

10. To accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations.

11. As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the commissioners may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require landowners or occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

12. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

13. After the formation of any district under the provisions of this chapter, all participation hereunder shall be purely voluntary, any provision herein contained on the contrary notwithstanding. [C39,§2603.09; C46,§160.7; C50, 54,§467A.7]

Law Review Commentaries: 34 Iowa Law Review 166.

**467A.8 Co-operation between districts.** The commissioners of any two or more districts organized under the provisions of this chapter may co-operate with one another in the exercise of any or all powers conferred in this chapter. [C39,§2603.10; C46,§160.8; C50, 54,§467A.8]

**467A.9 State agencies to co-operate.** Agencies of this state which shall have jurisdiction over, or be charged with the administration of, any state-owned lands, and of any county, or other governmental subdivision of the state, which shall have jurisdiction over, or be charged with the administration of, any county-owned or other publicly owned lands, lying within the boundaries of any district organized thereunder, may co-operate to the fullest extent with the commissioners of such districts in the effectuation of programs and operations undertaken by the commissioners under the provisions of this chapter. [C39,§2603.11; C46,§160.9; C50,§467A.9]

**467A.10 Discontinuance of districts.** At any time after five years after the organization of a district under the provisions of this chapter, any twenty-five owners of land lying within the boundaries of such district may file a petition

with the state soil conservation committee praying that the operations of the district be terminated and the existence of the district discontinued. The committee may conduct such public meetings and public hearings upon such petition as may be necessary to assist in the consideration thereof. Within sixty days after such a petition has been received by the committee, it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the ..... (name of the soil conservation district to be here inserted)" and "Against terminating the existence of the ..... (Name of the soil conservation district to be here inserted)" shall be printed, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All owners of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such landowners shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

When sixty-five percent of the landowners vote to terminate the existence of such district, the state soil conservation committee shall advise the commissioners to terminate the affairs of the district. The commissioners shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the state treasury. The commissioners shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of such district, and shall transmit with such application the certificate of the state soil conservation committee setting forth the determination of the committee that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The secretary of state shall issue to the commissioners a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or commissioners are parties, shall remain in force and effect for the period pro-

vided in such contracts. The state soil conservation committee shall be substituted for the district or commissioners as party to such contracts. The committee shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, and sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise, as the commissioners of the district would have had.

The state soil conservation committee shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions nor make determinations pursuant to such petitions in accordance with the provisions of this chapter, more often than once in five years. [C39,§2603.12; C46,§160.10; C50, 54,§467A.10]

**467A.11 Report to governor.** The committee shall submit to the governor, no later than January 1 next preceding each biennial legislative session, a report which shall state the following: The number and acreage of districts in existence or in process of organization, together with an estimate of the number and probable acreage of the districts which may be organized during the ensuing biennial fiscal period; a statement of the balances of funds, if any, available to the committee as to the sums needed for its administrative and other expenses, and for allocation among the several districts during the ensuing biennial fiscal period. [C46,§160.11; C50, 54,§467A.11)

**467A.12 Statement to comptroller.** On or before September 1 next preceding each biennial legislative session, the state soil conservation committee shall submit to the state comptroller, on official estimate blanks furnished for such purposes, statements and estimates of the expenditure requirements for each fiscal year of the ensuing biennium, and a statement of the balance of funds, if any, available to the committee, and the estimates of the committee as to the sums needed for its administrative and other expenses. [C46,§160.12; C50, 54,§467A.12]

# CHAPTER 467B

## FLOOD AND EROSION CONTROL

467B.1 Authority of board
467B.2 Federal aid
467B.3 Co-operation
467B.4 Structures or levees
467B.5 Maintenance cost
467B.6 Estimate
467B.7 Structures on private land
467B.8 Conservation commissioners
467B.9 Tax
467B.10 Assumption of obligations
467B.11 Highway law applicable
467B.12 Payments from federal government
467B.13 Allocation to secondary road construction fund
467B.14 Allocation to county board of education fund

**467B.1 Authority of board.** Whenever the federal government or any agency or department thereof shall engage in any flood or erosion control project on any watershed within the boundaries of this state and shall require as a prerequisite the co-operation of the state or other authorized taxing division, the counties in which said project may be carried on shall have the jurisdiction, power and authority through the board of supervisors to aid in the construction of said projects on lands under the control or jurisdiction of the county and to maintain the project, structures, or construction when dedicated to county use. Such flood or erosion project shall be presumed to be for the protection of the tax base of the county, for the protection of the public roads and lands and for the protection of the public health, sanitation, safety and general welfare. [C50, 54,§467B.1]

**467B.2 Federal aid.** Any county may in accordance with the provisions of this chapter accept federal funds for aid in the control of floods and soil erosion and it may assume such a portion of the cost of the project, and may assume the maintenance cost of the same on lands under the control or jurisdiction of the county as will not be discharged by the federal aid or grant. [C50, 54,§467B.2]

**467.B.3 Co-operation.** The board of supervisors of the affected counties may co-operate with each other or with other state subdivisions or instrumentalities as well as the United States government to establish, construct and maintain suitable structures or levees and controls on public roads or other public lands, or other lands granted county use. [C50, 54,§467B.3]

**467.B.4 Structures or levees.** When structures or levees necessary for flood or soil erosion control are constructed

on county roads, the cost shall be considered a part of the cost of road construction. [C50, 54,§467B.4]

**467B.5 Maintenance cost.** Where construction of projects has been completed by the federal government on private lands under an easement granted to the county, the cost of maintenance only may be assumed by the county. [C50, 54,§467B.5]

**467B.6 Estimate.** In the proceedings to establish such a project the government engineer shall set forth in his report separately from other items, the amount of the cost of construction on county property and on private lands, and his estimate of the cost of the maintenance of the same.

If the plan is approved by all co-operating agencies and the project established as a flood or erosion control project the board of supervisors shall make a written record of any such co-operative arrangement and may use such part of the funds of the county now authorized by law and by this chapter as may be necessary to pay the amount agreed upon toward the construction, maintenance and cost of such project. [C50, 54,§467B.6]

**467B.7 Structures on private land.** Any flood or erosion control structures which are built on private land with federal or other funds when dedicated to the county use shall be maintained in the same manner as its own county-owned or controlled property. [C50, 54,§467B.7]

**467B.8 Conservation commissioners.** In counties where soil conservation districts exist the commissioners in said county shall be responsible for the inspection of all flood and erosion control structures built on private land under easement to the county; shall furnish such technical assistance as they may have available in making estimates of needed repairs without cost to the county, and shall report any needed repair and the nature thereof to the county board of supervisors. [C50, 54,§467B.8]

**467B.9 Tax.** The county board of supervisors may annually levy a tax not to exceed one-quarter mill on all agricultural lands in the county, the same to be used as a maintenance fund for structures built on lands under the control or jurisdiction of the county, provided for in this chapter. [C50, 54,§467B.9]

**467B.10 Assumption of obligations.** This chapter contemplates that the actual direction of the project or projects and the actual work done in connection therewith will be assumed by the federal government and that the county or other state subdivisions or instrumentalities jointly will meet the obligations required for federal co-operation and

may make proper commitment for the care and maintenance of the project after its completion for the general welfare of the public and the residents of the respective counties. [C50, 54,§467B.10]

**467B.11 Highway law applicable.** The counties in maintaining the structures or improvements made under such a project shall do so in a like manner and under like procedure as that used in the maintenance of its highways. Any cooperative agreements with other state subdivisions or instrumentalities shall conform with such an agreement as to the proportion of maintenance cost. [C50, 54,§467B.11]

**467B.12 Payments from federal government.** Whenever there shall be payable by the federal government to counties or school districts of the state any sums of money because of the fact that such school districts or counties are entitled to a share of the receipts from the operation of the federal government of flood control projects within any county of the state, such payments shall be payable to the county treasurer of any county in which such payments become due. [C50, 54,§467B.12]

**467B.13 Allocation to secondary road construction fund.** Upon receipt of any such payments or payment by the county treasurer thirty percent of such amount shall be credited to the secondary road construction fund as provided by section 309.8. Any amount so credited to the secondary road construction fund shall be allocated for construction and maintenance or either construction or maintenance of secondary roads of the county which are principally affected by the construction of such federal flood control projects, and the board of supervisors shall determine which roads of the county are deemed to be principally affected and the amounts which shall be expended from these funds derived from the federal government on such roads. [C50, 54, §467B.13]

**467B.14 Allocation to county board of education fund.** The remaining seventy percent of any such payments or payment received from the federal government shall be credited to the county board of education fund as created by section 273.13 and the county board of education shall determine the districts of the county which are principally affected in their activities by the federal flood control project involved and shall allocate to the general fund of each said school district the amount of such federal payments paid to the county board of education fund deemed to be the equitable share of each such district and the amount allocated to each school district shall be paid over by the county board of education to the treasurer of such school district. [C50, 54,§467B.14]

# CHAPTER 467C

## SOIL CONSERVATION AND FLOOD CONTROL DISTRICTS

467C.1 Presumption of benefit
467C.2 Board of supervisors to establish districts—strip coal mining
467C.3 Combination of functions
467C.4 Old districts combined
467C.5 Approval of commissioners
467C.6 Chapters made applicable

**467C.1 Presumption of benefit.** The conservation of the soil resources of the state of Iowa, the proper control of water resources of the state and the prevention of damage to property and lands through the control of floods, the drainage of surface waters or the protection of lands from overflow shall be presumed to be a public benefit and conducive to the public health, convenience and welfare and essential to the economic well-being of the state. [C50, 54,§467C.1]

**467C.2 Board of supervisors to establish districts—strip coal mining.** The board of supervisors of any county shall have jurisdiction, power and authority at any regular, special or adjourned session to establish, subject to the provisions of this chapter, districts having for their purpose soil conservation and the control of flood waters and to cause to be constructed as hereinbefore provided, such improvements and facilities as shall be deemed essential for the accomplishment of the purpose of soil conservation and flood control. Such board shall also have jurisdiction, power and authority at any regular, special or adjourned session to establish, in the same manner that the districts hereinabove referred to are established, districts having for their purpose soil conservation in mining areas within the county, and provide that anyone engaged in removing the surface soil over any bed or strata of coal in such district for the purpose of obtaining such coal shall replace the surface soil as nearly as practicable to its original position, and provide that, upon abandonment of such removal operation, all surface soil shall be so replaced. This section shall apply only to surface soil so removed after July 4, 1949 and then only if it is essential for the accomplishment of the purpose of soil conservation and flood control within the purview of this chapter. [C50, 54,§467C.2]

**1. Construction and application.**

No authority in supervisors in connection with establishment of soil conservation district within mining area to adopt resolution imposing duties or obligations in regard to replacement of soil except as to that removed

after establishment of district and adoption of resolution requiring such replacement.
O. A. G. 1950, p. 158.

**467C.3. Combination of functions.** Such districts shall have the power to combine in their functions activities affecting soil conservation, flood control and drainage, or any of these objects, singly or in combinations with another. [C50, 54,§467C.3]

**467C.4 Old districts combined.** If any levee or drainage district or improvement established either by legal proceedings or by private parties shall desire to include in the activities of such district soil conservation or flood control projects, the board upon petition, as for the establishment of an original levee or drainage district, shall establish a new district covering and including such old district and improvement together with any additional lands deemed necessary. All outstanding indebtedness of the old levee or drainage district shall be assessed only against the lands included therein. [C50, 54,§467C.4]

**467C.5 Approval of commissioners.** No district shall be established by any board of supervisors under this chapter unless the organization of such district is approved by the commissioners of any soil conservation district established under the provisions of chapter 467A and which is included all or in part within such district, nor shall any such district be established without the approval of the state conservation commission and the Iowa natural resources council. [C50, 54,§467C.5]

**467C.6 Chapters made applicable.** In the organization, operation and financing of districts established under this chapter, the provisions of chapters 455 and 456 to 467, inclusive, shall apply.

Wherever any of the provisions of said chapters refer to the word "drainage", the word shall be deemed to include in its meaning soil erosion and flood control or any combination of drainage, flood control and soil erosion control. The term "drainage district" shall be considered to include districts having as their purpose soil conservancy or flood control or any combination thereof, and the words "drainage certificates" or "drainage bonds" shall be deemed to include certificates or bonds issued in behalf of any district organized under the provisions of this chapter; and any procedure provided by these chapters in connection with the organization, financing and operation of any drainage district shall be applicable to the organization, financing and operation of districts organized under this chapter. [C50, 54,§467C.6]

# CHAPTER 468

## DRAINAGE OF COAL AND MINERAL LANDS AND MINES

468.1 Drainage through lands of another
468.2 Lead or zinc bearing lands
468.3 Setting apart compensation
468.4 Failure to pay compensation
468.5 Notice to smelters—effect
468.6 Right of way
468.7 Condemnation
468.8 Limitation of provisions
468.9 Interpretation of codification act

**468.1 Drainage through lands of another.** Any person or corporation owning or possessing any land underlaid with coal, who is unable to mine the same by reason of the accumulation of water in or upon it, may drain the same through, over, or under the surface of land belonging to another person, and if such person or corporation and the owner of the land cannot agree as to the amount of damages that will be sustained by such owner, the parties may proceed to have the necessary right of way condemned and the damages assessed in the manner provided in the chapter on eminent domain. [C73,§1228; C97,§1967; C24, 27, 31, 35, 39,§7758; C46, 50, 54,§468.1]

**468.2 Lead or zinc bearing lands.** Any person or corporation who by machinery, or by making drains or adit levels, or in any other way, shall rid any lead or zinc bearing lands or lead or zinc mines of water, thereby enabling the owners of mineral interests in said lands to make them productive and available for mining purposes, shall receive one-tenth of all the lead and zinc taken from said lands as compensation for said drainage. [C73,§1229; C97,§1968; S13,§1968; C24, 27, 31, 35, 39,§7759; C46, 50, 54,§468.2]

**1. Validity.**

Constitutionality upheld.

Ahern v. Dubuque Lead & Level Mining Co., 1878, 48 Iowa 140.

**2. Construction.**

Act of building adit lawful.

Ahern v. Dubuque Lead & Level Mining Co., 1878, 48 Iowa 140.

**468.3 Setting apart compensation.** The owners of the mineral interests in said lands, and persons mining upon and taking lead or zinc from said lands, shall jointly and severally set apart and deliver from time to time, when

demanded, the said one-tenth of the mineral taken from said lands to the person or corporation entitled thereto, and the owners of the mineral interests therein shall allow the party entitled to such compensation and his agent at all times to descend into and examine said mines, and to enter any building occupied for mining purposes upon any of said lands and examine and weigh the mineral taken therefrom. [C73,§1230; C97,§1969; S13,§1969; C24, 27, 31, 35, 39,§7760; C46, 50, 54,§468.3]

**468.4 Failure to pay compensation.** Upon the failure or refusal of any owner of the mineral interests in said lands, or of any person taking the mineral therefrom to comply with the provisions of section 468.3, the person or corporation entitled to said compensation may recover the value of said mineral. If it shall appear that the defendant obstructed the plaintiff in the exercise of the right to examine such mines and to weigh such mineral, or concealed or secretly carried away any mineral taken from them, the court shall render judgment for double the amount proved to be due from such defendant. [C73,§1231; C97,§1970; C24, 27, 31, 35, 39,§7761; C46, 50, 54,§468.4]

**468.5 Notice to smelters—effect.** The person or corporation entitled to said drainage compensation may at any time leave with any smelter of lead or zinc mineral in this state a written notice, stating that said person or corporation claims of the persons named in said notice the amount to which said person or corporation may be entitled, which notice shall have the effect of notices in garnishment, and also require the said smelter to retain, for the use of the person entitled thereto, the one-tenth part of the mineral taken from said land and received from the person named in said notice. The payment or delivery of the one-tenth part of the mineral taken from any of said lands by any of the persons whose duty it is hereby made to pay or deliver the same, shall discharge the parties liable jointly with him, except liability to contribute among themselves. [C73,§1232; C97,§1971; S13,§1971; C24, 27, 31, 35, 39,§7762; C46, 50, 54,§468.5]

**468.6 Right of way.** Any person or corporation engaged as aforesaid in draining such mines and lead or zinc bearing lands, when he or they shall find it necessary for the prosecution of their work, may procure the right of way upon, over, or under the surface of such mineral lands and the contiguous and neighboring lands, for the purpose of conveying the water from said mineral lands by troughs, pipes, ditches, water races, or tunnels, and the right to construct and use shafts and air holes in and upon the same, doing as little injury as possible in making said improvements. [C73, §1233; C97,§1972; S13,§1972; C24, 27, 31, 35, 39,§7763; C46, 50, 54,§468.6]

**468.7 Condemnation.** If the said person or corporation engaged in draining as aforesaid, and the owner of any land upon which said right of way may be deemed necessary, cannot agree as to the amount of damages which will be sustained by the owner by reason thereof, the parties may proceed to have the same assessed in the manner provided for the exercise of the right of eminent domain as provided in chapter 472. [C73,§1234; C97,§1973; C24, 27, 31, 35, 39,§7764; C46, 50, 54,§468.7]

**1. Construction and application.**

Interest on award governed by rules applicable in other condemnation cases.

Harris v. Green Bay Levee and Drainage Dist. No. 2 Lee County, 1955, 68 N.W.2d 69.

**468.8 Limitation of provisions.** The foregoing provisions shall not be construed to require the owners of the mineral interest in any of said lands to take mineral therefrom, or to authorize any other person to take the mineral from said lands without the consent of the owners. [C73,§1235; C97,§1974; C24, 27, 31, 35, 39,§7765; C46, 50, 54,§468.8]

**468.9 Interpretation of codification act.** The amendment, revision, and codification of existing law contained in this and chapters 455 to 467, inclusive, of this title (not including chapters 456, 463, and 464) shall not affect litigation pending at the time said chapters go into effect, or the validity of the establishment, construction, or organization of any district then existing, the classification then existing of all lands, the assessment and levy of drainage taxes then made, existing contracts, and vested rights or any warrants, improvement certificates, or drainage bonds outstanding or already provided for under prior existing laws. (C24, 27, 31, 35, 39,§7766; C46, 50, 54,§468.9]

# CHAPTER 469

## MILLDAMS AND RACES

469.1 Prohibition—permit
469.2 Application for permit
469.3 Notice of hearing
469.4 Hearing
469.5 When permit granted
469.6 Certificate of approval
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469.8 Granting or refusing
469.9 Permit fee—annual license
469.10 Construction and operation
469.11 Access to works
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469.14 Action to collect fees
469.15 Unlawful combination—receivership
469.16 Nuisance
469.17 Condemnation—petition
469.18 Precept for jury—service
469.19 Guardian appointed
469.20 Lands in different counties
469.21 Oath—assessment of damages—costs
469.22 Appeal
469.23 Protection of banks
469.24 Embankments—damages
469.25 Right to utilize fall
469.26 Revocation or forfeiture of permit
469.27 Legislative control
469.28 Repealed by 53 GA, ch 203,§28
469.29 Permits for existing dams
469.30 State lands
469.31 Cities and towns

**469.1 Prohibition—permit.** No dam shall be constructed, maintained, or operated in this state in any navigable or meandered stream for any purpose, or in any other stream for manufacturing or power purposes, nor shall any water be taken from such streams for industrial purposes, unless a permit has been granted by the Iowa natural resources council to the person, firm, corporation, or municipality constructing, maintaining, or operating the same. [R60,§1264; C73,§1188; C97,§1921; C24, 27, 31, 35, 39,§7767; C46, 50, 54, §469.1]

**1. Validity**

Under Federal Power Act requiring petitioner to show compliance with state laws, an order of F.P.C. denying

permit may not be challenged where based on failure to comply with state laws.

First Hydro-Electric Co-operative v. Federal Power Commission, 1945, 80 U.S. App. D.C. 211, 151 F.2d 20.

**2. Construction and application.**

Where statutory proceedings for construction of dam were carried through, dam constructed pursuant thereto was lawfully authorized.

Nall v. Iowa Electric Co., 1955, 69 N.W.2d 529, 246 Iowa 832.

Diversion of water for power purposes is a diversion of water for "industrial" purposes.

First Hydro-Electric Co-operative v. Federal Power Commission, 1945, 80 U.S. App. D.C. 211, 151 F.2d 20.

Erection of dam which encroaches on rights of others is not justified.

Moffett v. Brewer, 1848, 1 G. Green 348.

On application for permit to construct dam, it was necessary for executive council to fix time for hearing and publish notice required by section 469.3, though city river front improvement commission had authority over river and banks within city limits.

O. A. G. 1932, p. 121.

**3. Jurisdiction over navigable streams.**

State regulatory legislation not altogether excluded.

First Hydro-Electric Co-operative v. Federal Power Commission, 1945, 80 U.S. App. D.C. 211, 151 F.2d 20.

State may exercise control over beds and banks of navigable streams and improve same subject only to superior jurisdiction of congress.

Shortell v. Des Moines Electric Co., 1919, 186 Iowa 469, 172 N.W. 649.

**4. Permits.**

Failure of applicant for Federal permit to comply with state law by securing a permit from state body having jurisdiction over highways to be flooded justified order of F.P.C. denying permit.

First Hydro-Electric Co-operative v. Federal Power Commission, 1945, 80 U.S. App. D.C. 211, 151 F.2d 20.

Where bill in equity prayed that discharge of water be restrained, it was error to order removal of dam, it having been duly licensed.

Lummery v. Braddy, 1859, 8 Iowa 33, 8 Clarke 33.

Where river was neither meandered nor navigable and dam would not be used for manufacturing or power

purposes, it was not necessary to secure permit from executive council.
O. A. G. 1934, p. 489.

Permit required for reconstruction of abandoned dam.
O. A. G. 1928, p. 333.

Exclusive power to issue permit for dam across meandered streams or lakes is in executive council.
O. A. G. 1928, p. 272.

**5. Revocation of permit.**

Executive council may revoke permit if dam is not properly used and maintained, and if abandoned council could grant to city permission to take over and maintain dam.
O. A. G. 1936, p. 109.

**6. Special acts, dams built under.**

A dam, though authorized by the legislature, may be abated as a nuisance.
State v. Moffett, 1848, 1 G. Greene, 247.

**7. Riparian owners, rights of.**

Priority of occupation and use of water of stream within estate of owner did not affect rights of owner upstream to erect and operate a mill on his own land unless by prescription the right to use the stream and back up the water had been acquired.
Gibson v. Fischer, 1885, 68 Iowa 29, 25 N.W. 914.

**8. Damages.**

In action by millowner to recover for injury from construction of a dam, measure of damages in such loss as cannot be prevented by the use of other appliances.
Decorah Woolen Mill Co. v. Greer, 1878, 49 Iowa 490.

**9. Actions.**

One seeking injunction to restrain interference with water power right has burden of establishing such right.
Wenig v. City of Cedar Rapids, 1919, 187 Iowa 40, 173 N.W. 927.

**469.2 Application for permit.** Any person, firm, corporation, or municipality making application for a permit to construct, maintain, or operate a dam in any of the waters, including canals, raceways, and other constructions necessary or useful in connection with the development and utilization of the water or water power, shall file with the Iowa natural resources council a written application, which shall contain the following information:

1. The name of the navigable, meandered, or other stream in or across which a dam is maintained or it is proposed to

construct a dam or other obstruction, and a description of the site for such dam, including the name or names of the riparian owners of the site.

2. The purpose for which the dam is maintained or for which it is proposed to maintain the same, including the use to which the water is to be put.

3. A general description of the dam, raceways, canals, and other constructions, including the specifications as to the material and plan of construction and a general description of all booms, piers, and other protection works which are constructed in connection therewith, or which it is proposed to erect in connection therewith.

4. The approximate amount of hydraulic power that the dam is capable of developing and the amount of power to be used.

5. A map or blueprint on a scale of not less than four inches to the mile, showing the lands that are or may be affected by the construction, operation, or maintenance of the dam, and the ownership of each tract of land within the affected area.

6. Such additional information as may be required by the Iowa natural resources council. [R60,§1265; C73,§§1188, 1189; C97,§1921; C24, 27, 31, 35, 39,§7768; C46, 50, 54,§469.2]

**1. Construction and application.**

Municipalities may construct and maintain dams and do other construction necessary or useful in development and utilization of water or water power for municipal purposes.

O. A. G. 1925-26, p. 466.

City which was not acting under commission form, could by complying with Code 1924, C-363, incorporated in this chapter, secure permit to construct dam and condemn lands for such purpose.

O. A. G. 1925-26, p. 466.

**2. Proceedings.**

Plaintiff held not prejudiced by order requiring it to have damages assessed, failing which dam was ordered removed.

Iowa Power Co. v. Hoover, 1914, 166 Iowa 415, 147 N.W. 858.

**3. Prior laws.**

Vendee of land flooded by dam was necessary party to a proceeding by owner of dam to obtain license.

Wapsipinicon Power Co. v. Waterhouse, 1918, 186 Iowa 524, 167 N.W. 623.

After lapse of fifteen years from the due issuance of

license, plaintiff could not proceed in equity to abate dam as nuisance and recover damages.
Wilson v. Hanthorn, 1887, 72 Iowa 451, 34 N.W. 203.

Proceeding by which owner of dam acquired license to raise same could be pleaded in bar of action for damages for harm arising after raising of dam.
Watson v. Van Meter, 1876, 43 Iowa 76.

Revision of 1860 §1265 did not require service of notice before filing petition in ad quod damnum proceedings.
Hoag v. Denton, 1866, 20 Iowa 118.

Where license was granted for dam under ad quod damnum, the proceedings amounted to a condemnation of that land as might be affected by backing of water.
Lummery v. Braddy, 1859, 8 Iowa 33, 8 Clarke 33.

Statute authorized suit for injury not foreseen by jury of inquest and not included by them in their findings.
Gammell v. Potter, 1858, 6 Iowa 548, 6 Clarke 548.

**469.3 Notice of hearing.** When any application for a permit to construct, maintain, or operate a dam from and after the passage of this chapter is received, the Iowa natural resources council shall fix a time for hearing and it shall give notice of the time and place of such hearing by publication once each week for two successive weeks in at least one newspaper in each county in which riparian lands will be affected by the dam. [R60,§§1266, 1270; C73,§1190; C97,§1922; C24, 27, 31, 35, 39,§7769; C46, 50, 54,§469.3]

**1. Construction and application.**

It was necessary for executive council to comply with this section though municipality, applying for permit to build dam, had river front improvement commission.
O. A. G. 1932, p. 121.

**469.4 Hearing.** At the time fixed for such hearing or at any adjournment thereof, the council shall take evidence offered by the applicant and any other person, either in support of or in opposition to the proposed construction. [R60, §§1267, 1268; C73,§§1192, 1193; C97,§§1924, 1925; C24, 27, 31, 35, 39,§7770; C46, 50, 54,§469.4]

**1. Grounds of opposition.**

Matters pertinent only on application to set aside findings of jury could not be assigned as cause against granting license.
Gammell v. Potter 1858, 6 Iowa 548, 6 Clarke 548.

**2. Prior laws, hearing under.**

Under prior laws, objections held not prematurely filed,

where plaintiff sought license without calling jury to assess damages.

Iowa Power Co. v. Hoover, 1914, 166 Iowa 415, 147 N.W. 858.

Facts held to show sheriff had not acted improperly in summoning jury.

Walters v. Houck, 1858, 7 Iowa 72, 7 Clarke 72.

**469.5 When permit granted.** If it shall appear to the council that the construction, operation, or maintenance of the dam will not materially obstruct existing navigation, or materially affect other public rights, will not endanger life or public health, and any water taken from the stream in connection with the project is returned thereto at the nearest practicable place without being materialy diminished in quantity or polluted or rendered deleterious to fish life, it shall grant the permit, upon such terms and conditions as it may prescribe. [R60,§1269; C73,§§1193, 1198; C97,§1930; C24, 27, 31, 35, 39,§7771; C46, 50, 54,§469.5]

**1. Validity.**

Statute was susceptible of interpretation consistent with constitutionality.

First Hydro-Electric Co-operative v. Federal Power Commission, 1945, 80 U.S. App. D.C. 211, 151 F.2d 20.

**2. Navigable streams.**

Mississippi River is navigable stream.

McManus v. Carmichael, 1856, 3 Iowa 1, 3 Clarke 1, etc.

All waters deemed navigable which are actually so, especially Mississippi River and its principal branches.

Barney v. City of Keokuk, 1876, 94 U.S. 324, 24 L.Ed. 224.

Whether Des Moines River is to be treated as navigable is a question for federal courts to determine.

Shortell v. Des Moines Electric Co., 1919, 186 Iowa 469, 172 N.W. 649.

Common law consequences of navigability attach to the legal navigability of the Mississippi.

McManus v. Carmichael, 1856, 3 Iowa 1, 3 Clarke 1.

Test of navigability is ascertained by use, or by public act or declaration.

McManus v. Carmichael, 1856, 3 Iowa 1, 3 Clarke 1.

Des Moines River is navigable stream and a public highway.

The Globe, 1854, 4 G. Greene 433.

**3. Jurisdiction over navigable streams.**

Absent legislation by congress, a state may authorize

bridges across navigable streams so long as rights of navigation are protected.

Atlee v. Union Packet Co., 1874, 88 U.S. 389, 21 Wall. 389, 22 L. Ed. 619.

Obstruction of navigable stream by authority of the state is valid until Congress sees fit to intervene.

Chicago & N.W.R. Co. v. Fuller, 1873, 84 U.S. 560, 17 Wall. 560, 21 L. Ed. 710.

Jurisdiction of federal government does not necessarily exclude altogether state regulatory legislation.

First Hydro-Electric Co-operative v. Federal Power Commission, 1945, 80 U.S. App. D.C. 211, 151 F. 2d 20.

**4. Obstruction.**

Unlicensed and unauthorized pier may be an unlawful structure.

Atlee v. Union Packet Co., 1874, 88 U.S. 389, 21 Wall. 389, 22 L. Ed. 619.

Mississippi River may not be obstructed or monopolized.

U. S. ex rel. Jones v. Fanning, 1844, Morris, 348.

**5. Federal Laws.**

Under the Federal Power Act, requiring petitioner to show compliance with state laws, an order of F.P.C. denying permit may not be challenged where based on failure to comply with state laws.

First Hydro-Electric Co-operative v. Federal Power Commission, 1945, 80 U. S. App. D. C. 211, 151 F.2d 20.

**469.6 Certificate of approval.** No permit shall be granted for the construction or operation of a dam where the water is to be used for manufacturing purposes, except to develop power, until a certificate of the state department of health has been filed with the council showing its approval of the use of the water for the purposes specified in the application. [C24, 27, 31, 35, 39,§7772; C46, 50, 54,§469.6]

**469.7 Application for certificate.** When it is proposed to use the water for manufacturing purposes, except to develop power, or for condensation purposes, application must be made to the department of health, accompanied by a description of the proposed use of the water and what, if any, substances are to be deposited in such water and chemical changes made in the same, and such other information as the department of health may require to enable it to determine the advisability of the issuance of such certificate. [C24, 27, 31, 35, 39,§7773; C46, 50, 54,§469.7]

**469.8 Granting or refusing.** If the department of health is satisfied that the use of the water in any such project will not cause polution of the same or render it materially unwholesome or impure; or deleterious to fish life, it may issue a certificate, and if it is not so satisfied, it shall refuse to issue same. [C24, 27, 31, 35, 39,§7774; C46, 50, 54,§469.8]

**469.9 Permit fee—annual license.** Every person, firm, or corporation, excepting a municipality, to whom a permit is granted to construct or to maintain and operate a dam already constructed in or across any stream for the purpose herein specified, shall pay to the Iowa natural resources council a permit fee of one hundred dollars and shall pay an annual inspection and license fee, to be fixed by the Iowa natural resources council, on or before the first day of January, 1925, and annually thereafter, but in no case shall the annual inspection and license fee be less than twenty-five dollars. All fees shall be paid into the general fund of the state treasury.

The provisions of this section shall not apply to dams already constructed having less than twenty-five horsepower capacity. [C24, 27, 31, 35, 39,§7775; C46, 50, 54,§469.9]

**1. Construction and application.**

Though permit for dam has been granted, annual inspection and license fee not due until work has been commenced on dam.

O. A. G. 1930, p. 284.

Municipalities exempt despite sale of part of surplus power.

O. A. G. 1928, p. 415.

Board of supervisors may employ county attorney or other attorney after establishment of drainage district but may not pay fees if abandoned prior to establishment.

O. A. G. 1919-20, p. 328.

**469.10 Construction and operation.** The Iowa natural resources council shall investigate methods of construction, reconstruction, operation, maintenance, and equipment of dams, so as to determine the best methods to conserve and protect as far as possible all public and riparian rights in the waters of the state and so as to protect the life, health, and property of the general public; and the method of construction, operation, maintenance, and equipment of any and all dams of any character or for any purpose in such waters shall be subject to the approval of the Iowa natural resources council. [C24, 27, 31, 35, 39,§7776; C46, 50, 54,§469.10]

**1. Construction and application.**

Executive council may revoke permit if dam is not being properly used and maintained.
O. A. G. 1936, p. 109

Title to land between original high water mark and such mark after flooding was in riparian owner where he gave only right to flood the land.
O. A. G. 1916, p. 63.

**2. Contracts for construction.**

Owner not bound by engineer's acceptance of dam and power plant where there existed gross mistake on part of engineer and contractor in materials and workmanship.
F. E. Marsh & Co. v. Light & Power Co. of St. Ansgar, 1923, 196 Iowa 926, 195 N.W. 754.

Contractor had burden of showing compliance with terms of the contract.
Hancock v. McFarland, 1864, 17 Iowa 124.

Departure from contract assented to or directed by owners did not entitle them to a set-off from the contract price.
McCausland v. Cresap, 1856, 3 G. Greene, 161.

**3. Additional compensation.**

Where contract provided that foundation to be on solid rock and did not specify depth or location, contractor could not recover for extra labor and materials on lower foundation than expected.
F. E. Marsh & Co. v. Light & Power Co. of St. Ansgar, 1923, 196 Iowa 926, 195 N.W. 754.

**4. Performance or breach of contract.**

Contractor had burden of showing compliance with the terms of the contract.
Hancock v. McFarland, 1864, 17 Iowa 124.

**5. Private nuisance.**

Construction of dam across stream by tenants in common so as to injure other tenants in common held to be a private nuisance.
Moffett v. Brewer, 1848, 1 G. Greene 348.

**6. Actions.**

Evidence held not to prove negligence of contractor in construction of dike wall.
F. E. Marsh & Co. v. Light & Power Co. of St. Ansgar, 1923, 196 Iowa 926, 195 N.W. 754.

Where dam was maintained for 60 years and right rec-

ognized by Acts 1900 (28 G.A.) ch 179, it should not be treated as an unlawful obstruction.
Shortell v. Des Moines Electric Co., 1919, 186 Iowa 469, 172 N.W. 649.

**469.11 Access to works.** Such council or any member, agent, or employee thereof shall at all times be accorded full access to all parts of any dam and its appurtenances being constructed, operated, or maintained in such waters. [C24, 27, 31, 35, 39,§7777; C46, 50, 54,§469.11]

**469.12 Duty to enforce statutes.** It shall be the duty of the council to require that all existing statutes of the state, including the provisions of this chapter, with reference to the construction of dams, shall be enforced. [C24, 27, 31, 35, 39,§7778; C46, 50, 54,§469.12]

**469.13 Violations.** The construction, maintenance, or operation of a dam for the purpose specified herein without a permit first being issued, as in this chapter provided, shall constitute a misdemeanor, and shall be punishable by a fine of not less than one hundred dollars nor more than five hundred dollars. [C24, 27, 31, 35, 39,§7779; C46, 50, 54,§469.13]

**469.14 Action to collect fees.** If any dam is constructed, operated, or maintained without the provisions of this chapter having been first complied with, including the payment of the permit fee and the annual inspection and license fee, the permit fee and the inspection and license fee may be recovered in an action brought in the name of the state, and in addition to the recovery of the amount due, there shall be collected a penalty of one thousand dollars. [C24, 27, 31, 35, 39,§7780; C46, 50, 54,§469.14]

**1. Construction and application.**

Though permit for dam has been granted, annual inspection and license fee not due till work has been commenced on dam.
O. A. G. 1930, p. 284.

**469.15 Unlawful combination—receivership.** If any dam for which a permit has been issued becomes owned, leased, trusteed, possessed, or controlled in such manner as to be controlled by any unlawful combination or trust, or forms the subject or part of the subject of any contract or agreement to limit the output of any hydraulic or hydroelectric power derived therefrom for the purpose of price fixing as to such output, the state may take possession thereof by receivership proceedings instituted by the state executive council, and such proceedings shall be conducted for the

purpose of disposing of said property for lawful use and the proceeds shall be turned over to the persons found by the court to be entitled thereto, after the payment of all expenses of the receivership. [C24, 27, 31, 35, 39,§7781; C46, 50, 54,§469.15]

**1. Rights as against persons not parties.**

Damage to land of plaintiff held to have been considered within purview of statute providing that no action might be barred unless such action was actually foreseen and estimated on inquest.

Nall v. Iowa Elec. Co., 1955, 246 Iowa 832, 69 N.W.2d 529.

**469.16 Nuisance.** If any dam is constructed, maintained, or operated for any of the purposes specified herein, in waters of this state in violation of any of the provisions of this chapter or in violation of any provisions of the law, the state may, in addition to the remedies herein prescribed, have such dam abated as a nuisance. [C24, 27, 31, 35, 39,§7782; C46, 50, 54,§4569.16]

**1. Public nuisance.**

Evidence insufficient to show that dam created a public nuisance.

Shortell v. Des Moines Electric Co., 1919, 186 Iowa 469, 172 N.W. 649.

**2. Private nuisance.**

Right to enjoin dam as a private nuisance became barred by passing of prescriptive period.

Shortell v. Des Moines Electric Co., 1919, 186 Iowa 469, 172 N.W. 649.

Abatement of dam as private nuisance must be confined to that portion which caused injury.

Moffett v. Brewer, 1848, 1 G. Greene, 348.

Act of legislature authorizing dam did not take away right of owner to abate it as nuisance.

State v. Moffett, 1848, 1 G. Greene, 247.

**3. Abatement of private nuisance.**

Legitimate origin of dam does not defeat suit for abatement when shown to constitute a nuisance.

Mills County v. Hammack, 1925, 200 Iowa 251, 202 N.W. 521.

Decree of abatement may be modified to allow owner to ascertain height at which dam may be maintained without damage to plaintiff.

Harp v. Iowa Falls Electric Co., 1923, 196 Iowa 317, 194 N.W. 353.

Lower owner may not back up water to injury of upper owner.

Harp v. Iowa Falls Electric Co., 1923, 196 Iowa 317, 191 N.W. 520, modified in other respects 196 Iowa 317, 194 N.W. 353.

One assisting in dam construction and thereafter purchasing land thereby flooded cannot treat the dam as a nuisance.

Irvine v. City of Oelwein, 1915, 170 Iowa 653, 150 N.W. 674, L. R. A. 1916 E, 990.

Actual experiments relied on in determining height at which dam should be allowed instead of conclusions drawn from surveys.

Decorah Woolen Mill Co. v. Greer, 1882, 58 Iowa 86, 12 N.W. 128.

Abatement to be confined to that portion of dam causing the drainage.

Moffett v. Brewer, 1848, 1 G. Greene, 348.

**4. Damages.**

Damages caused to mill by dam downstream are those which cannot be prevented by use of other appliances.

Decorah Woolen Mill Co. v. Greer, 1878, 49 Iowa 490.

Plaintiff was entitled to recover on proof of damages to his premises resulting from backwater.

Close v. Samm, 1869, 27 Iowa 503.

**5. Indictment.**

Indictment held to sufficiently charge nuisance under statute.

State v. Close, 1873, 35 Iowa 570.

**6. Action for damages.**

Plaintiff was entitled to recover lost profits.

Gibson v. Fischer, 1885, 68 Iowa 29, 25 N.W. 914.

**7. Injunction suits by private parties.**

Cost to lower owner of reconstructing dam held not so disproportionate to damage caused upper owner as to defeat right to injunction.

Harp v. Iowa Falls Electric Co., 1923, 191 N.W. 520, modified in other respects 196 Iowa 317, 194 N.W. 353.

Defendants held to have acquired prescriptive right to maintain dam at original height.

Shortell v. Des Moines Electric Co., 1919, 186 Iowa 469, 172 N.W. 649.

Continuance of dam restrained.

Bramley v. Jordan, 1911, 153 Iowa 295, 133 N.W. 706.

Allegation of ownership of land upon which dam is

situated and long continued maintenance of the dam is sufficient allegation of the right to maintain the dam.

Marshall Ice Co. v. La Plant 1907, 136 Iowa 621, 111 N.W. 1016, 12 L. R. A., N. S., 1073.

Erection of dam on non-navigable stream held not unreasonable use as to entitle an injunction where it held up flow only two days and a night.

Gehlen v. Knorr, 1897, 101 Iowa 700, 70 N.W. 757, 63 Am. St. Rep. 416.

Where dam was constructed on land of third party, that defendants would be trespassers was no ground for objection of injunction against them to remove the dam.

Troe v. Larson, 1892, 84 Iowa 649, 51 N.W. 179, 35 Am. St. Rep. 336.

Decree restricting right to dam was not warranted either by pleadings or evidence.

Spence v. McDonough, 1889, 77 Iowa 460, 42 N.W. 371.

Action to abate dams as nuisance properly dismissed where evidence showed overflow would continue after removal of dams.

Langdon v. Chicago, B. & Q. R. Co., 1878, 48 Iowa 437.

Error to order removal of dam where petition did not ask for removal.

Lummery v. Braddy, 1859, 8 Iowa 33, 8 Clarke 33.

**8. Review.**

Finding that plaintiff was not entitled to damages not disturbed on appeal where evidence as to cause of damage was conflicting and there was evidence that after dam was torn down overflows still occurred.

Van Sternburg v. Milford Water Power Imp. Co., 1884, 64 Iowa 711, 21 N.W. 155.

**469.17 Condemnation—petition.** Any person, firm, corporation, or municipality owning land on one or both sides of a watercourse, desiring to construct or heighten any dam in such watercourse or to construct or enlarge a raceway, canal, or other construction necessary for the development or utilization of the water or water power for any of the purposes specified in this chapter therefrom for the purpose of propelling any mill or machinery or developing any power by the use of the water, and to whom a permit has been granted as in this chapter provided, may file in the office of the clerk of the district court of the county in which such dam is, or is to be erected or heightened, a petition designating himself as plaintiff and the owners of the lands affected, or that will be affected, as defendants, and describing with reasonable certainty the locality where such dam is to be erected or improved, and also of the lands that will

be overflowed or otherwise affected thereby. [R60,§§1264, 1265, 1274; C73,§§1188, 1189; C97,§1921; C24, 27, 31, 35, 39, §7783; C46, 50, 54,§469.17]

**1. Validity.**

Constitutionality upheld.

Burnham v. Thompson, 1872, 35 Iowa 421.

**2. Construction and application.**

City not acting under commission form of government, could secure permit for construction of dam and could condemn lands for such purpose.

O. A. G. 1925-26, p. 466.

**3. Lands flooded prior to condemnation proceedings.**

Where dam was constructed and adjacent land flooded as a result city was trespasser and liable to owner as damages occurred is "occupational damages" or in a lump sum is "original damages" to the farm itself.

Wheatley v. City of Fairfield, 1936, 221 Iowa 66, 264 N.W. 906.

**4. Consent to use of land.**

When consent to use of land to construct a mill-race is given, and thereon, money is expended on the strength of the consent, an easement is created which is irrevocable.

Decorah Woolen Mill Co. v. Greer, 1878, 49 Iowa 490.

**5. Easements appurtenant.**

Conveyance expressly giving grantee privilege of damming river does not make such right to dam river an easement appurtenant.

Decorah Woolen Mill Co. v. Greer, 1878, 49 Iowa 490.

**6. Proceedings.**

Submission of but one question in condemnation proceedings as to amount of damage held not erroneous.

Millard v. Northwestern Mfg. Co., 1926, 200 Iowa 1063, 205 N.W. 979.

Where plaintiff sued to obtain writ to condemn property and thereafter sold his interest, an action by the grantee for same purpose should be consolidated with the original action.

Forney v. Ralls, 1870, 30 Iowa 559.

**7. Parties.**

One whose land was very remote from point where dam was to be constructed was not one whose land will be overflowed or otherwise affected thereby.

Wilson v. Hanthorn, 1887, 72 Iowa 451, 34 N.W. 203.

**8. Petition.**

Act authorizing erection of mill dams did not require petition be sworn to.

Gammell v. Potter, 1856, 2 Iowa 562, 2 Clarke 562.

**9. Sale of mill pending proceedings.**

Sale and transfer of mill during pendency of proceedings to assess damages did not abate the proceeding.

Forney v. Ralls, 1870, 30 Iowa 559.

**10. Payment of award.**

Payment held to be prerequisite to entering possession of land to exercise power of eminent domain.

Scott v. Price Bros. Co., 1927, 207 Iowa 191, 217 N.W. 75.

**11. Rights acquired.**

Condemnation of right to maintain dam gives no right which was not enjoyed by riparian owners as against upper landowner to whom no damages were awarded.

Gehlen v. Knorr, 1897, 101 Iowa 700, 70 N.W. 757, 36 L. R. A. 697, 63 Am. St. Rep. 416.

**12. Rights as against persons not parties.**

Right to back up water gained by condemnation was only as against those made parties to such proceeding.

Healey v. Citizens' Gas & Electric Co., 1924, 199 Iowa 82, 201 N.W. 118, 38 A. L. R. 1226.

**469.18 Precept for jury—service.** The clerk shall thereupon issue an order, with a copy of the petition attached, directed to the sheriff, commanding him to summon a jury of twelve disinterested electors of his county to meet on a day fixed therein, and upon the lands described, which order, including the copy of the petition, shall be served on the defendants in the same manner and for the same length of time previous to the day fixed in the order as is required for the service of original notices. Where the owner of any land affected is a nonresident of the state, service shall be made of the notice by publication in a newspaper in the county once each week for three successive weeks. [R60, §1266; C73,§1190; C97,§1922; C24, 27, 31, 35, 39,§7784; C46, 50, 54,§469.18]

**1. Validity.**

Constitutionality upheld.

Burnham v. Thompson 1872, 35 Iowa 421.

**2. Construction.**

Objections to granting of permit for construction of

dam were not prematurely filed where license was being sought without calling sheriff's jury to assess damages.

Iowa Power Co. v. Hoover, 1914, 166 Iowa 415, 147 N.W. 858.

**3. Summoning of jury.**

Facts held to not show sheriff had acted improperly in summoning jury.

Walters v. Houck, 1858, 7 Iowa 72, 7 Clarke 72.

**4. Notice under prior laws.**

Under Act Jan. 24, 1855, it was necessary that notice with copy of petition be served on defendant before filing, and that an affidavit of service be filed with the petition.

Gammell v. Potter, 1856, 2 Iowa 562, 2 Clarke 562.

**5. Writ of ad quod damnum.**

Writ of ad quod damnum could properly issue after work had been started.

Burnham v. Thompson, 1872, 35 Iowa 421.

**469.19 Guardian appointed.** When service is made upon a minor or insane person having no guardian, the clerk at the time of issuing the order shall, by indorsement made thereon, appoint a suitable person to make defense for him. [C73,§1190; C97,§1922; C24, 27, 31, 35, 39,§7785; C46, 50, 54,§469.19]

**469.20 Lands in different counties.** If any of the lands are situated in a different county than that in which the petition is required to be filed, the proceedings shall apply thereto to the same extent as if such lands were situated in the county where it is filed. [R60,§1270; C73,§1191; C97,§1923; C24, 27, 31, 35, 39,§7786; C46, 50, 54,§469.20]

**469.21 Oath—assessment of damages—costs.** The jury shall be sworn, impartially and to the best of their skill and judgment, to view the lands described in the petition, and ascertain and appraise the damages each of the defendants will sustain by reason of such lands being overflowed or otherwise injuriously affected by the dam or raceway or heightening or enlarging the same. They may, in addition to examining the premises, examine witnesses, and shall determine the amount of damages to which each of the defendants are, in their judgment, entitled, by reason of the construction or improvement of the dam or raceway, and shall report their findings in writing, attaching the same to the order and returning it to the sheriff. All costs and fees in connection with the assessment of damages under this chap-

ter shall be the same as in condemnation cases and shall be paid by the plaintiff. [R60,§§1267, 1273; C73,§§1192, 1193, 1203; C97,§§1924, 1925, 1935; C24, 27, 31, 35, 39,§7787; C46, 50, 54, §469.21]

**1. Construction and application.**

Nothing in the statute authorized the creation of a nuisance.

State v. Close, 1872, 35 Iowa 570.

Mill owner could discontinue action without consent of landowner.

Hunting v. Curtis, 1859, 10 Iowa 152.

Until verdict of jury summoned was set aside, their ascertainment of damages was conclusive.

Gammell v. Potter, 1858, 6 Iowa 548, 6 Clarke 548.

**2. Oath.**

Sheriff's return of writ of ad quod damnum should have set out specific oath administered to jury.

Walters v. Houck, 1858, 7 Iowa 72, 7 Clarke 72.

**3. Objections.**

In proceeding to obtain license for a dam objections held not prematurely filed where plaintiff was attempting to obtain license without having damages assessed.

Iowa Power Co. v. Hoover, 1914, 166 Iowa 415, 147 N.W. 858.

**4. Estoppel.**

Owner estopped by laches from questioning power to build dam.

Hagerla v. Mississippi River Power Co., D. C. 1913, 202 F. 776.

**5. Questions for jury.**

Decision of jury impaneled to assess damages deemed as conclusive upon matters submitted to them.

Gammell v. Potter, 1858, 6 Iowa 548, 6 Clarke 548.

**6. Verdict and findings.**

Facts as to reasonableness of application not necessarily involved in findings of jury are decided by the court.

Gammell v. Potter, 1858, 6 Iowa 548, 6 Clarke 548.

Inquisition by jury held technically and formally correct.

Gammell v. Potter, 1856, 2 Iowa 562, 2 Clarke 562.

**7. Setting aside verdict.**

If jury failed to estimate all loss and inconvenience, owner could take his objection in an application to set aside verdict or rely on right of action against applicant for damage not foreseen by jury.

Gammell v. Potter, 1858, 6 Iowa 548, 6 Clarke 548.

**8. New proceedings, grounds for.**

Newly discovered evidence of materiality on quantum of damages allowable by jury held to warrant a new trial.

Millard v. Northwestern Mfg. Co., 1925, 200 Iowa 1063, 205 N.W. 979.

Misconduct of plaintiff and jury cause for setting aside inquisition and award of new writ of ad quod damnum.

Gammell v. Potter, 1858, 6 Iowa 548, 6 Clarke 548.

**9. Payment of award.**

Public corporation must pay award prior to entering into possession of the land.

Scott v. Price Bros. Co., 1927, 207 Iowa 191, 217 N.W. 75.

**10. Rights as against persons not parties.**

Rights not acquired against property of persons not made parties.

Healey v. Citizens' Gas & Electric Co., 1924, 199 Iowa 82, 201 N.W. 118, 38 A. L. R. 1226.

**11. Damages.**

Measure of damages in condemnation proceedings in construction of dam stated.

Millard v. Northwestern Mfg. Co., 1925, 200 Iowa 1063, 205 N.W. 979 .

In case of permanent dam measure of damages is market value of flooded land before and after construction.

Wapsipinicon Power Co. v. Waterhouse, 1918, 186 Iowa 524, 167 N.W. 623.

One whose lands have been overflowed by raising of dam is entitled to at least nominal damages.

Watson v. Van Meter, 1876, 43 Iowa 76.

**12. Remedies of landowners.**

Landowner retained previous remedies.

Hunting v. Curtis, 1859, 10 Iowa 152.

If jury failed to estimate all loss and inconvenience, owner could take his objection in an application to set aside verdict or rely on right of action against applicant for damage not foreseen by jury.

Gammell v. Potter, 1858, 6 Iowa 548, 6 Clarke 548.

**13. Injunction.**

By abandoning condemnation proceedings and constructing dam 300 feet downstream, payment of previous award could not be evaded.

Scott v. Price Bros. Co., 1927, 207 Iowa 191, 217 N.W. 75.

Owners of land could by injunction seek relief till damages were paid.
Iowa Power Co. v. Hoover, 1914, 166 Iowa 415, 147 N.W. 858.

Owner must show that dam interferes with his legal rights to be entitled to an injunction.
Matthews v. Metcalf, 1896, 97 Iowa 742, 66 N.W. 189.

**14. Action for damages.**

Where permanent dam was constructed without license, cause of action for flooding accrued immediately and did not pass under warranty deed.
Wapsipinicon Power Co. v. Waterhouse, 1917, 186 Iowa 524, 167 N.W. 623.

Remote and speculative damages excluded.
Wissmath Packing Co. v. Mississippi River Power Co., 1917, 179 Iowa 1309, 162 N.W. 846, L. R. A. 1917F, 790.

Contract purchaser having paid nothing could not recover for overflow where dam owner had license from owner.
Clark v. Close, 1876, 43 Iowa 92.

Proceedings by which dam was licensed to be raised could be pleaded in bar of action for damages though jury in such proceeding allowed no damages.
Watson v. Van Meter, 1876, 43 Iowa 76.

**15. Evidence.**

Evidence held to show excessive height of dam.
Watters v. Anamosa-Oxford Junction Light & Power Co., 1918, 184 Iowa 566, 167 N.W. 765.

Evidence held to show plaintiff's grantor had waived or settled for damages.
Wapsipinicon Power Co. v. Waterhouse, 1918, 186 Iowa 524, 167 N.W. 623.

Where it was alleged that healthfulness of property was impaired evidence on comparative healthfulness before and after was material.
Watson v. Van Meter, 1876, 43 Iowa 76.

**16. Trial.**

Instruction in condemnation proceeding as to ascertaining of market value held erroneous under evidence.
Millard v. Northwestern Mfg. Co., 1925, 200 Iowa 1063, 205 N.W. 979.

Separation of damages caused naturally and those caused by act complained of was question for jury.
Healey v. Citizens' Gas & Electric Co., 1924, 199 Iowa 82, 201 N.W. 118, 38 A. L. R. 1226.

Under the facts, nature of plaintiff's possession of the land was proper.
Clark v. Close, 1876, 43 Iowa 92.

**17. Judgment or decree.**

Decree that dam could be maintained at present height held to authorize replacement of flash boards with concrete.
Mills v. Wapsipinicon Power Co., 1921, 192 Iowa 156, 183 N.W. 454.

Decree held to forbid increase in height of dam by flashboards or by any other means.
Robbins v. District Court of Iowa in and for Sac County, 1914, 170 Iowa 223, 150 N.W. 244.

Decree ordering sheriff to remove part of dam built without authority not erroneous as failing to tell sheriff what to do.
Iowa Power Co. v. Hoover, 1914, 166 Iowa 415, 147 N.W. 858.

Judgment for damages which were unforeseen by jury at inquest affords no ground for injunction nor does it affect his rights under his license.
Lummery v. Braddy, 1859, 8 Iowa 33, 8 Clarke 33.

**469.22 Appeal.** Either party may appeal from such assessment to the district court within thirty days after the assessment is made and such appeal and all further proceedings in connection with such matter, whether as to an appeal or the payment of damages and costs, and all other matters connected with the proceedings, shall be the same as provided by law for assessment of damages in taking property for works of internal improvement. [C73,§1194; C97,§1926; C24, 27, 31, 35, 39,§7788; C46, 50, 54,§469.22]

**1. In general.**

Appeal from order overruling motion to set aside verdict and quash writ in proceeding ad quod damnum.
Burnham v. Thompson, 1872, 35 Iowa 421.

**469.23 Protection of banks.** Where the water backed up by any dam belonging to any mill or machinery is about to break through or over the banks of the stream or raceway, or to wash a channel, so as to turn the water of such stream or raceway, or any part thereof, out of its ordinary channel, whereby such mill or machinery will be materially injured or affected, the owner or occupant of such mill or machinery, if he does not own such banks or the land lying contiguous thereto, may, if necessary, enter thereon and erect and keep in repair such embankments and other works as may be necessary to prevent such water from breaking through or

over the banks, or washing a channnel as aforesaid; such owner or occupier committing thereon no unnecessary waste or damage, and being liable to pay all damages which the owner of the lands may actually sustain by reason thereof. [R60,§§1275, 1276; C73,§1204; C79,§1936; C24, 27, 31, 35, 39, §7789; C46, 50, 54,§469.23]

**1. Conveyances.**

Where dam owners sold land bordering stream for use in ice business, the conveyance implied an easement by which grantees could insist on water level being maintained by dam owners.

Marshall Ice Co. v. La Plant, 1907, 136 Iowa 621, 111 N.W. 1016, 12 L. R. A., N. S. 1073.

**469.24 Embankments—damages.** If any person shall injure, destroy, or remove any such embankment or other works, the owner or occupier of such mill or machinery may recover of such person all damages he may sustain by reason thereof. [R60,§1277; C73,§1205; C97,§1937; C24, 27, 31, 35, 39,§7790; C46, 50, 54,§469.24]

**469.25 Right to utilize fall.** Any person owning and using a water power for the purpose of propelling machinery shall have the right to acquire, maintain, and utilize the fall below such power for the purpose of improving the same, in like manner and to the same extent as provided in this chapter for the erection or heightening of milldams. After such has been acquired, the fall shall be considered part and parcel of said water power or privilege, and the deepening or excavating of the stream, tail, or raceway, as herein contemplated, shall in no way affect any rights relating to such water power acquired by the owner thereof to such damage. [C73,§1206; C97,§1938; C24, 27, 31, 35, 39,§7791; C46, 50, 54, §469.25]

**1. Conveyances.**

Various owners of water rights in connection with mill dam had right to the same head of water as conditions allow.

Forrest Milling Co. v. Cedar Falls Mill Co., 1897, 103 Iowa 619, 72 N.W. 1076.

Where operation of mill was impaired by dam below measure of damages held to be only such loss as cannot be prevented by use of other appliances.

Decorah Woolen Mill Co. v. Greer, 1878, 49 Iowa 490.

**2. Riparian owners' rights.**

Right to reasonable use of river water does not author-

ize lower owner to build dam and back water on upper owner's property.

Healey v. Citizens' Gas & Electric Co., 1924, 199 Iowa 82, 201 N.W. 118, 38 A. L. R. 1226.

Though a riparian owner may acquire a prescriptive right against a lower owner to have dam maintained at its existing level, he may have no right to maintain that level as against upper owner.

Harp v. Iowa Falls Electric Co., 1923, 196 Iowa 317, 191 N.W. 520, modified in other respects, 196 Iowa 317, 194 N.W. 353.

Right to natural, unobstructed flow of stream may be lost by prescription.

Marshall Ice Co. v. La Plant, 1907, 136 Iowa 621, 111 N.W. 1016, 12 L. R. A., N. S. 1073.

Owner of one bank may erect dam across non-navigable river, but not in such manner as to injure any of the tenants in common of the stream.

Moffett v. Brewer, 1848, 1 G. Greene, 348.

**3. Consent to use of land.**

When consent is given to the use of land for construction of mill race the use, from its nature, must be regarded as permanent.

Decorah Woolen Mill Co., v. Greer, 1878, 49 Iowa 490.

**4. Adverse possession.**

Purchaser of lot, knowing that dam and water power rights appurtenant thereto had been conveyed, and who used water power with consent as a matter of favor acquired no title to use of dam by adverse possession.

Wenig v. City of Cedar Rapids, 1919, 187 Iowa 40, 173 N.W. 927.

**5. Damages.**

For obstruction of water power mill owner may recover only what it would have cost to furnish other power sufficient for his uses.

Decorah Woolen Mill Co. v. Greer, 1878, 49 Iowa 490.

**6. Abatement actions.**

True height of dam, at which it should stand, determined by experiment rather than by theoretical conclusions drawn by surveys.

Decorah Woolen Mill Co. v. Greer, 1882, 58 Iowa 86, 12 N.W. 128.

**7. Injunction.**

Cost of reconstruction held not so disproportionate to damage caused upper owner as to defeat upper owner's right to injunction.

Harp v. Iowa Falls Electric Co., 1923, 196 Iowa 317, 191 N.W. 520, modified in other respects, 196 Iowa 317, 194 N.W. 353.

Reasonable use of river by upper owner will not entitle lower mill owner to an injunction.

Gehlen Bros. v. Knorr, 1897, 101 Iowa 700, 70 N.W. 757, 36 L. R. A. 697, 63 Am. St. Rep. 416.

**469.26 Revocation or forfeiture of permit.** If the person to whom a permit is issued under the provisions of this chapter does not begin the construction or the improvement of the dam or raceway within one year from the date of the granting of the permit, his permit may be revoked by the Iowa natural resources council, and if any permit holder does not finish and have in operation the plant for which the dam is constructed within three years after the granting of the permit, unless for good cause shown the council has extended the time for completion, such permit shall be forfeited. [R60,§1269; C73,§1199; C97,§1931; C24, 27, 31, 35, 39, §7792; C46, 50, 54,§469.26]

**1. Construction and application.**

Executive council has power to revoke permit for improper use and maintenance of dams, and if abandoned by present owner, the council could grant city permission to take it over and maintain it.

O. A. G. 1936, p. 109.

Executive council may cancel permit for construction of dam on application of permit holder and tender of permit issued.

O. A. G. 1930, p. 77.

**469.27 Legislative control.** No permit granted or rights acquired hereunder shall be perpetual, but they shall be subject to restriction, cancellation, and regulation by legislative action, and subject to all the provisions of this chapter. [C24, 27, 31, 35, 39,§7793; C46, 50, 54,§469.27]

**1. Construction and application.**

Executive council has power to revoke permit for improper use and maintenance of dam.

O. A. G. 1936, p. 109.

**469.28** Repealed by 53 GA, ch 203, §28. See §469.29.

**469.29 Permits for existing dams.** All licenses and permits issued by the state executive council prior to April 17, 1949 are hereby declared to be in full force and effect and all of the powers of administration relating to licenses or

permits heretofore issued are hereby vested in the Iowa natural resources council. [C24, 27, 31, 35, 39,§§7794, 7795; C46,§§469.28, 469.29; C50, 54,§469.29]

**1. Construction and application.**

Permit to construct dam did not relieve dam owner for liability for backing water on upper owner's land. Healey v. Citizens' Gas & Electric Co., 1924, 199 Iowa 82, 201 N.W. 118, A. L. R. 1226.

**469.30 State lands.** Whenever the erection of any such dam will affect highways or state-owned lands, the applicant shall as a condition precedent secure a permit from the board, commission, or other official body charged with jurisdiction over and control of said highways or state-owned lands. [C24, 27, 31, 35, 39,§7796; C46, 50, 54,§469.30.]

**1. Construction and application.**

Failure of applicant for Federal permit to comply with state law by securing a permit from state body having jurisdiction over highways to be flooded justified order of F. P. C. denying permit.
First Hydro-Electric Co-operative v. Federal Power Commission, 1945, 80 U. S. App. D. C. 211, 151 F.2d 20.

**469.31 Cities and towns.** Cities and towns shall have the authority and power, by complying with the provisions of this chapter and the statutes relating to municipalities, to construct dams for recreational purposes and to acquire lands that may be necessary in the construction thereof, which may be obtained by condemnation or otherwise. [C27, 31, 35,§7796-b1; C39,§7796.1; C46, 50, 54,§469.31]

# CHAPTER 469A

## HYDROELECTRIC PLANTS

469A.1 Certificate of convenience and necessity.
469A.2 Public hearing.
469A.3 Public welfare promoted.
469A.4 Rules and regulations imposed.
469A.5 Costs advanced.
469A.6 Amendment or revocation.
469A.7 Penalty.

**469A.1 Certificate of convenience and necessity.** It shall be unlawful for any person, firm, association or corporation to engage in the business of constructing, maintaining or operating within this state any hydroelectric generating plant or project without first having obtained from the executive council of Iowa a certificate of convenience and necessity declaring that the public convenience and necessity require such construction, maintenance or operation. [C50,54, §469A.1]

**1. Construction and application.**

Applicant not required to secure Federal license to present evidence of compliance with state statutes for a state permit.

State of Iowa v. Federal Power Commission C. A. 1950, 178 F.2d 421, certiorari denied 70 S. Ct. 1024, 339 U. S. 979, 94 L. Ed. 1383.

**469A.2 Public hearing.** No certificate of convenience and necessity shall be issued by the executive council except after a public hearing thereon. The executive council shall, upon the filing of an application for such a certificate, fix the time of the public hearing thereon and shall prescribe the notice which shall be given by the applicant. Any interested person, firm, association, corporation, municipality, state board or commission may intervene and participate in such proceeding and at such hearing. [C50, 54,§469A.2]

**469A.3 Public welfare promoted.** Before the executive council shall issue a certificate of convenience and necessity, it shall first be satisfied that the public convenience and necessity will be promoted thereby, that the applicant has the financial ability to carry out the terms and conditions imposed, and the applicant has in writing agreed to accept, abide by and comply with such reasonable terms and conditions as the executive council may require and impose. [C50, 54,§469A.3]

**469A.4 Rules and regulations imposed.** The executive council shall prescribe such rules and regulations as it may

determine necessary for the administration of the provisions of this chapter and may amend such regulations at any time. [C50, 54,§469A.4]

**469A.5 Costs advanced.** The executive council shall, upon the filing of an application, require the applicant to deposit with the secretary of the executive council such amount as the council shall determine, to pay the expenses to be incurred by the executive council in its investigations and in conducting the proceedings, and the executive council may, from time to time as it deems necessary, require the deposit of additional amounts for such purpose. [C50, 54,§469A.5]

**469A.6 Amendment or revocation.** The executive council may at any time for just cause or upon the failure of the applicant to comply with and to obey the terms and conditions attached to the issuance of any certificate, or when the public convenience and necessity demands, alter, amend or revoke any certificate issued under the provisions of this chapter. [C50, 54,§469A.6]

**469A.7 Penalty.** Any person, firm, association or corporation who shall violate the provisions of section 469A.1, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or shall be imprisoned in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment. Each separate day that a violation occurs shall constitute a separate offense. [C50, 54,§469A.7]

# CHAPTER 470

## WATER-POWER IMPROVEMENTS

470.1 Eminent domain.
470.2 Use of highways.
470.3 Public lands.
470.4 Powers generally.
470.5 Completion of work.
470.6 Legislative control.

**470.1 Eminent Domain.** Any person, or any corporation organized for the purpose of utilizing and improving any water power within this state, or in the streams lying upon the borders thereof, may take and hold so much real estate as may be necessary for the location, construction, and convenient use of its canals, conduits, mains, and waterways, or other means employed in the utilization of such water power, and for the construction of such buildings and their appurtenances as may be required for the purposes aforesaid. Such person or corporation may also take, remove and use, for the construction and repair of its said canals, waterways, buildings, and appurtenances, any earth, gravel, stone, timber or other materials on or from the land so taken. Compensation shall be made for the lands and materials so taken and used by such person or corporation, to the owner, in the manner provided for taking private property for works of internal improvement. [C73,§1236; C97,§1990; C24, 27, 31, 35, 39,§7797; C46, 50, 54,§470.1]

**1. Power of eminent domain.**

A corporation, although without power of eminent domain in state of its creation, may acquire such powers if vested therewith by statutes of another state.

Hagerla v. Mississippi River Power Co., D. C. 1913, 202 F. 776.

**470.2 Use of highways.** Such person or corporation may use, raise, or lower any road for the purpose of having its said canals, waterways, mains, and pipes pass over, along, or under the same, and in such case shall put such road, as soon as may be, in good repair and condition for the safe and convenient use of the public. Any such person or corporation may construct and carry its canals, conduits, waterways, mains, or water pipes across, over, or under any railway, canal, stream, or watercourse, when it shall be necessary for the construction or operation of the same, but shall do so in such manner as not to impede the travel, transportation, or navigation upon, or other proper use of, such railway, canal, or stream. The powers conferred in this section

can only be exercised in cities and towns with the consent and under the control of the council. [C73,§1237; C97,§1991; C24, 27, 31, 35, 39,§7798; C46, 50, 54,§470.2]

**470.3 Public lands.** Such person or corporation is authorized to pass over, occupy, and enjoy any of the school, university, and saline or other lands of this state, whereof the fee or any use, easement, or servitude therein is in the public, making compensation therefor. No more of such land shall be taken than is required for its necessary use and convenience. [C73,§1238; C97,§1992; C24, 27, 31, 35, 39, §7799; C46, 50, 54,§470.3]

**470.4 Powers generally.** Such corporation, in addition to other powers, shall have the following: To borrow money for the purpose of constructing, renewing, or repairing its works; to make, execute, and deliver contracts, bonds, notes, bills, mortgages, deeds of trust, and other conveyance charging or encumbering its property, including its franchises, or any part or parcel thereof; to erect, maintain, and operate canals, conduits, mains, waterways, mills, factories, and other buildings and machinery, including waterways, sluices, and conduits for the purpose of carrying waste water off from said premises to the stream from which the same was taken, or other convenient place; to let, lease, or sell and convey, any portion of their water supply, and any of the buildings, mills, or factories, or machinery, for such sums, prices, rents, tolls, and rates as shall be agreed upon between the parties; and to lay down, maintain, and operate such water mains, conduits, leads, and service pipes as shall be necessary to supply any building, village, town, or city with water; and the grantee of any such person or corporation, or purchaser of said property, franchise, right, and privileges under and by virtue of any judicial sale, shall take and hold the same as fully as the same were held and enjoyed by such person or corporation. [C73,§1239; C97, §1993; C24, 27, 31, 35, 39,§7800; C46, 50,54,§470.4]

**470.5 Completion of work.** Such person or corporation shall take, hold and enjoy the privilege of utilizing and improving the water power and the rights, powers, and privileges aforesaid, and shall proceed in good faith to make the improvements and employ the powers above conferred, and shall, within two years from the date of acquiring such powers, provide the necessary capital, complete the preliminary surveys, and actually commence the work of improving and utilizing the water power and furnishing the supply of water as contemplated; and said waterworks and canals shall be completed within five years thereafter. [C73, §1240; C97,§1994; C24, 27, 31, 35, 39,§7801; C46, 50, 54,§470.5]

**1. Construction and application.**

Conditions subsequent recited in this section are not self-forfeiting but are only grounds for such.

Hagerla v. Mississippi R. Pow. Co., D. C. 1913, 202 F. 776.

**470.6 Legislative control.** The rights, powers, and privileges conferred by this chapter shall be at all times subject to legislative control. [C73,§1240; C97,§1994; C24, 27, 31, 35, 39,§7802; C46, 50, 54,§470.6]

# CHAPTER 471

## EMINENT DOMAIN

471.1 Exercise of power by state.
471.2 On behalf of federal government.
471.3 Conveyance by state to federal government.
471.4 Right conferred.
471.5 Right to purchase.
471.6 Railways.
471.7 Cemetery lands.
471.8 Limitation on right of way.
471.9 Additional purposes.
471.10 Finding by commerce commission.
471.11 Lands for water stations—how set aside.
471.12 Access to water—overflow limited.
471.13 Change in streams.
471.14 Unlawful diversion prohibited.
471.15 Abandonment of right of way.
471.16 Right to condemn abandoned right of way.
471.17 Procedure to condemn.
471.18 Parties entitled to damages.
471.19 Interpretative clause.

**471.1 Exercise of power by state.** Proceedings may be instituted and maintained by the state of Iowa, or for the use and benefit thereof, for the condemnation of such private property as may be necessary for any public improvement which the general assembly has authorized to be undertaken by the state, and for which an available appropriation has been made. The executive council shall institute and maintain such proceedings in case authority to so do be not otherwise delegated. [C73,§1271; C97,§2024; S13,§2024-d; C24, 27, 31, 35, 39,§7803; C46, 50, 54,§471.1]

State parks and highways connecting therewith, §§111.7, 111.8.
May 1917, 3 Iowa Law Bulletin 185.
Julius R. Bell, March 1932, 17 Iowa Law Review 374.

**1. Construction and application.**

Destruction or interference with access a direct injury.
Liddick v. City of Council Bluffs, 1942, 232 Iowa 197, 5 N.W.2d 361.
O. A. G., 1953, p. 84.

Flooding or overflowing of private property constitutes a taking.
Lage v. Pottawattamie County, 1942, 232 Iowa 944, 5 N.W.2d 161.

Necessity for just compensation.
Maxwell v. Iowa State Highway Commission, 1937, 223 Iowa 159, 271 N.W. 883, 118 A. L. R. 862.

Private property may not be taken without just compensation.

Board of R. R. Com'rs of State of Iowa v. Stanolind Pipe Line Co., 1933, 216 Iowa 436, 249 N.W. 366, certiorari denied, 54 S.Ct. 120, 290 U. S. 684, 78 L. Ed. 589.

**2. Other powers distinguished.**

Establishment of drainage district is exercise of taxing power.

Chicago & N. W. Ry. Co. v. Board of Sup'rs of Hamilton County, 1917, 182 Iowa 60, 162 N.W. 868, modified on other grounds, 182 Iowa 60, 165 N.W. 390.

**3. Public use or benefit.**

"Public use" and "public benefit" defined.

Ferguson v. Illinois Cent R. Co., 1926, 202 Iowa 508, 210 N.W. 604, 54 A. L. R. 1.

Where public use is declared by the legislature courts will ordinarily hold the use public.

Bankhead v. Brown, 1868, 25 Iowa 540.

**4. Property and rights subject to appropriation.**

City does not have power to condemn with reference to acquisition of access, light and air for viaduct.

O. A. G. 1949, p. 11.

Right of ingress and egress.

Dawson v. McKinnon, 1939, 226 Iowa 756, 285 N.W. 258.

Littoral owner was not entitled to compensation where state proposed to erect public dock on shore of navigable lake.

Peck v. Alferd Olsen Const. Co., 1932, 216 Iowa 519, 245 N.W. 131, 89 A. L. R. 1147.

Private property subject to taking unless exempted by statute.

Hoover v. Iowa State Highway Commission, 1930, 210 Iowa 1, 230 N.W. 561.

Land owned jointly by individual and corporation engaged in transportation was not exempt from condemnation.

Diamond Jo Line Streamers v. City of Davenport, 1901, 114 Iowa 432, 87 N.W. 399, 54 L. R. A. 859.

**5. Property previously devoted to public use.**

Generally property devoted to public use is exempted.

Lage v. Pottawattamie County, 1942, 232 Iowa 944, 5 N.W.2d 161.

If two uses of private land for public purposes are not inconsistent authority for the second use may be implied from a general grant.

Town of Alvord v. Great Northern Ry. Co., 1917, 179 Iowa 465, 161 N.W. 467.

**6 Necessity for taking.**

Determination of necessity is legislative function.

Porter v. Board of Sup'rs of Monona County, 1947, 238 Iowa 1399, 28 N.W.2d 841.

Test for right to condemn is public convenience.

Minear v. Plowman, 1924, 197 Iowa 1188, 197 N.W. 67.

If use is public its extent is immaterial.

Dubuque & S. C. R. Co. v. Ft. Dodge, D. M. & S. R. Co., 1910, 146 Iowa 666, 125 N.W. 672.

Determination of necessity is legislative function.

Bankhead v. Brown, 1868, 25 Iowa 540.

Condemnation of land to widen highways is proper where such action is shown to be advisable.

O. A. G. 1919-20, p. 261.

**7. Property and rights subject of compensation.**

Lessee under the contract of lease had no property rights in the land as would entitle it to a portion of condemnation award.

Chicago, M., St. P. & P. R. Co. v. Chicago, R. I. & P. Ry. Co., C. C. A. 1943, 138 F.2d 268, certiorari denied, 64 S.Ct. 437, 320 U. S. 804, 88 L. Ed. 486.

Right of access a subject of compensation.

Liddick v. City of Council Bluffs, 1942, 232 Iowa 197, 5 N.W.2d 361.

Public property of state may sometimes be exempted.

State ex. rel. Board of R. R. Com'rs of State of Iowa v. Stanolind Pipe Line Co., 1933, 216 Iowa 436, 249 N.W. 366, certiorari denied, 54 S.Ct. 120, 290 U. S. 684, 78 L. Ed. 589.

Right to free flow of waters.

McCord v. High, 1868, 24 Iowa 336.

**8. Title or rights acquired.**

Rights acquired to improve road by use of cuts and fills.

Pillings v. Pottawattamie County, 1920, 188 Iowa 567, 176 N.W. 314.

State may obtain good title to property by condemnation where same is desired for addition to fairgrounds.

O. A. G. 1911-12, p. 653.

**471.2 On behalf of federal government.** The executive council may institute and maintain such proceedings when private property is necessary for any use of the government of the United States. [S13,§2024-a; C24, 27, 31, 35, 39,§7804; C46, 50, 54,§471.2]

Condemnation by federal government, §1.4.
United States, eminent domain proceedings, §§1.4, 1.8, 1.9, 40 U. S. C. A. §257-258f.
Irrigation projects, 43 U. S. C. A. §421.
Mississippi river flood control, 33 U. S. C. A. §702c et seq.
National Cemeteries, 24 U. S. C. A. §271.
National defense, 50 U. S. C. A. §171 et seq.
Water-power projects, license for construction of, 16, U. S. C. A. §8184.
May 1939, 24 Iowa Law Review 779.

**1. Construction and application.**

Federal government, to aid navigation, may not permanently convert to public use, by use of dams, land of riparian owners above mean high water line without just compensation.

Goodman v. U. S., C. C. A. 1940, 113 F.2d 914.

If biological survey desires land not under some state board or commission it may condemn.

O. A. G. 1934, p. 667.

**471.3 Conveyance by state to federal government.** When land or any easement therein is condemned by the state for the use and benefit of the United States, the governor, after the land has been finally acquired, shall have power to convey, to the United States, the easement or lands so acquired and all rights of the state therein. [S13,§2024-b; C24, 27, 31, 35, 39,§7805; C46, 50, 54,§471.3]

**471.4 Right conferred.** The right to take private property for public use is hereby conferred:

1. *Counties.* Upon all counties for such lands as are reasonable and necessary for the erection of courthouses or jails and the construction, improvement or maintenance of highways.

2. *Agricultural societies.* Upon all incorporated county fair societies, and county or district agricultural associations, when the property sought to be taken is necessary in order to enable such society or association to carry out the authorized purposes of its incorporation.

3. *Corporations or persons in certain cases.* Upon any corporation or person desiring to construct a canal, road, or bridge as a work of public utility, but the land taken shall not exceed one hundred feet in width.

4. *Owners of land without way thereto.* Upon the owner or lessee of lands which have no public or private way thereto, for the purpose of providing a public way, not exceeding forty feet in width, which will connect with some existing public road. Such condemned roadway shall be located

on a division, subdivision or "forty" line (or immediately adjacent thereto), and along the line which is the nearest feasible route to an existing public road. Such road shall not interfere with buildings, orchards, or cemeteries. When passing through inclosed lands, such roads shall be fenced on both sides thereof by the condemnor.

5. *Owners of mineral lands.* Upon all owners, lessees, or possessors of land, for a railway right of way thereto not exceeding one hundred feet in width and located wherever necessary or practical, when such lands have no railway thereto and contain coal, stone, gravel, lead, or other minerals and such railway is necessary in order to reach and operate any mine, quarry, or gravel bed on said land and transport the products thereof to market. Such right of way shall not interfere with buildings, orchards, or cemeteries, and when passing through inclosed lands, fences shall be built and maintained on both sides thereof by the party condemning the land and by his assignees. The jury, in the assessment of damages, shall consider the fact that a railway is to be constructed thereon.

6. *Cemetery associations.* Upon any private cemetery or cemetery association which is incorporated under the laws of this state relating to corporations not for pecuniary profit, and having its cemetery located outside the limits of a city or town, for the purpose of acquiring necessary grounds for cemetery use or reasonable additions thereto. The right granted in this subsection shall not be exercised until the board of supervisors, of the county in which the land sought to be condemned is located, has, on written application and hearing, on such reasonable notice to all interested parties as it may fix, found that the land, describing it, sought to be condemned, is necessary for cemetery purposes. The association shall pay all costs attending such hearing.

1. [S13,§2024-f; C24, 27, 31, 35, 39,§7806; C46, 50, 54, §471.4; 54 GA, ch 103,§24]
2. [C24, 27, 31, 35, 39,§7806; C46, 50, 54,§471.4]
3. [C51,§759; R60,§§1278-1288; C73,§1269; C97,§2023; C24, 27, 31, 35, 39,§7806; C46, 50, 54,§471.4]
4. [C97,§2028; S13,§2028; C24, 27, 31, 35, 39,§7806; C46, 50, 54,§471.4]
5. C97,§§2028, 2031; S13,§2028; C24, 27, 31, 35, 39,§7806; C46, 50, 54,§471.4]
6. [S13,§1644-a-e; C24, 27, 31, 35, 39,§7806; C46, 50, 54, §471.4]

Mines, etc., tracks to, §471.9.
April 1928, 13 Iowa Law Review 349.
May 1924, 9 Iowa Law Bulletin 309.
Julius R. Bell, March 1932, 17 Iowa Law Review 374.
Nov. 1924, 10 Iowa Law Bulletin 72.
May 1939, 24 Iowa Law Review 779.

**1. Validity.**

Right of way condemned to a mine by owner for purpose of railway is not a taking for private use.
Morrison v. Thistle Coal Co., 1903, 119 Iowa 705, 94 N.W. 507.

Acts authorizing public ways to mineral lands valid.
Phillips v. Watson, 1874, 63 Iowa 28, 18 N.W. 659.

Act providing for power of condemnation for private roads was void.
Bankhead v. Brown, 1868, 25 Iowa 540.

**2. Construction and application.**

Constitutional provisions concerning eminent domain are not grants of power but limitations on its exercise.
Liddick v. City of Council Bluffs, 1942, 232 Iowa 197, 5 N.W.2d 361.

Compensation required for damage for overflow caused by cutting banks of drainage ditch in completing road improvement.
Lage v. Pottawattamie County, 1942, 232 Iowa 944, 5 N.W.2d 161.

Revision 1860, section 1278, to be strictly construed.
Sandford v. Martin, 1870, 31 Iowa 67.

County could acquire lawfully constructed dam only by condemnation proceedings.
O. A. G. 1925-26, p. 124.

**3. Public use and necessity for taking.**

Weight given to determination of bodies organized for public purposes concerning necessity for taking.
In re Primary Road No. U. S. 30, 1941, 230 Iowa 1069, 300 N.W. 287.

Dealer selling items to public bodies has no right of condemnation.
Ferguson v. Illinois Cent. R. Co., 1926, 202 Iowa 508, 210 N.W. 604, 54 A. L. R. 1.

**4. Particular uses or purposes.**

Must be a public purpose.
Carroll v. City of Cedar Falls, 1935, 221 Iowa 277, 261 N.W. 652.

Under statutes authorizing appropriation of land for railroad right of way land of individual could not be taken for ferry landing.
Sandford v. Martin, 1870, 31 Iowa 67.

**5. Property and rights subject of compensation.**

Easement for cattle pass under road may not be taken without just compensation.
Licht v. Ehlers, 1944, 234 Iowa 1331, 13 N.W.2d 688.

Overflow of land due to road construction was a taking.
Lage v. Pottawattamie County, 1942, 232 Iowa 944, 5 N.W.2d 161.

Tenant for years entitled to compensation.
Des Moines Wet Wash Laundry v. City of Des Moines, 1924, 197 Iowa 1082, 198 N.W. 486, 34 A. L. R. 1517.

Easement in land must be compensated for.
O. A. G. 1928, p. 112.

**6. Courthouses and jails.**

Selection of site in discretion of supervisors.
Wells v. Boone County, 1915, 171 Iowa 377, 153 N.W. 220.

**7. Road to private property.**

Right of owner of farm to condemn a way to the highway.
Anderson v. Lee, 1921, 191 Iowa 248, 182 N.W. 380.

Party seeking to condemn way to highway must show he has no public or private way from his land to a street or highway.
Strawberry Point Dist. Fair Soc. v. Ball, 1920, 189 Iowa 605, 177 N.W. 697.

Where one opened road over land of another with consent of owner, the former has powers of public official concerning disposal of wood, grass and fences.
Wrede v. Grothe, 1918, 183 Iowa 60, 166 N.W. 686.

Damages payable.
Miller v. Kramer, 1910, 148 Iowa 460, 126 N.W. 931.

Statutes providing for public way over land of another contemplated unobstructed way.
Carter v. Barkley, 1908, 137 Iowa 510, 115 N.W. 21.

Where one has no public way to his land he may acquire one by condemnation.
Perry v. Board of Sup'rs of Clarke County, 1907, 133 Iowa 281, 110 N.W. 591.

Railroad right of way as laid substantially complied with requirement that it should be on or immediately adjacent to division line.
Morrison v. Thistle Coal Co., 1903, 119 Iowa 705, 94 N.W. 507.

Private way cannot be established by supervisors wholly on land of one to serve another having access to public highway.
Richards v. Wolf, 1891, 82 Iowa 358, 47 N.W. 1044, 31 Am. St. Rep. 501.

Road condemned to a mine became public way.
Jones v. Mahaska County Coal Co., 1877, 47 Iowa 35.

Road could have been established under general law.
Bankhead v. Brown, 1868, 25 Iowa 540.

Where outlet to highway is lost by vacation owner may secure right of way by condemnation.
O. A. G. 1932, p. 100.

Way established becomes public highway.
O. A. G. 1922, p. 207.

**8. Mineral lands.**

Mining company having private way to highway could not condemn way for establishment of railroad switch.
Fisher v. Maple Block Coal Co., 1915, 171 Iowa 486, 151 N.W. 823.

Right of way for railway to mine may be public way.
Morrison v. Thistle Coal Co., 1903, 119 Iowa 705, 94 N.W. 507.

**9. Foreign corporations.**

Corporations not having power of eminent domain in state of its creation may exercise such power in another state if vested therewith by statutes of such state.
Hagerla v. Mississippi River Power Co., D. C. 1913, 202 F. 776.

**10. Waiver or estoppel as to compensation.**

Contract by which land for borrow pit was sold construable as contract for sale of the land involved and as not including damages accruing by cutting through drainage ditch in which owner did not have the fee.
Lage v. Pottawattamie County, 1942, 232 Iowa 944, 5 N.W.2d 161.

**471.5 Right to purchase.** Whenever the power to condemn private property for a public use is granted to any officer, board, commission, or other official, or to any county, township, or municipality, such grant shall, unless otherwise declared, be construed as granting authority to the officer, board or official body having jurisdiction over the matter, to acquire, at its fair market value, and from the parties having legal authority to convey, such right as would be acquired by condemnation. [R60,§1317; C73, §§1244, 1247; C97,§§1999, 2002, 2014, 2029; S13,§1644-a; C24, 27, 31, 35, 39,§7807; C46, 50, 54,§471.5]

**1. Construction and application.**

Though husband forged name of wife to deed of land to city for park purposes, the city could hold against her dower, land being subject to power of eminent domain.
Caldwell v. City of Ottumwa, 1924, 198 Iowa 666, 200 N.W. 336.

Authority of supervisors to condemn—procedure.
O. A. G. 1919-20, p. 289.

**2. Contract to convey.**

Agreement to leave to railroad engineers to determine whether or not undercrossing was advisable bound owner.

Coy v. Minneapolis & St. L. R. Co., 1902, 116 Iowa 558, 90 N.W. 344.

Stipulation of time in contract held to refer to running of trains not to construction of depot.

Minneapolis & St. L. R. Co. v. Cox, 1888, 76 Iowa 306, 41 N.W. 24, 14 Am. St. Rep. 216.

Contract to convey right of way held sufficiently certain in regard to description to be specifically enforced.

Ottumwa, C. F. & St. P. R. Co. v. McWilliams, 1887, 71 Iowa 164, 32 N.W. 315.

**3. Specific performance.**

Effect of pending action by heir against railroad for building road over decedent's land where railroad sues widow in specific performance of her contract to convey right of way.

Waterloo, C. F. & N. Ry. Co. v. Harris, 1917, 180 Iowa 149, 161 N.W. 69.

Petition held sufficient in action for specific performance.

Wisconsin, I. & N. R. Co. v. Braham, 1887, 71 Iowa 484, 32 N.W. 392.

Specific performance not refused because value of land taken exceeded agreed sum.

Ottumwa, C. F. & St. P. R. Co. v. McWilliams, 1887, 71 Iowa 164, 32 N.W. 315.

Substantial compliance on part of railroad was found entitling it to specific performance.

Fitzgerald v. Britt, 1876, 43 Iowa 498.

After lapse of 14 years railroad could not enforce contract without making certain showings.

Larimer v. Chicago, R. I. & P. R. Co., 1874, 38 Iowa 679.

Railroad could compel specific performance where it had complied with the conditions of its contract.

Chicago & S. W. R. Co. v. Swinney, 1874, 38 Iowa 182.

**4. Waiver or estoppel.**

Heir not estopped where after learning of widow's contract for right of way he made no objection during construction of railroad.

Waterloo, C. F. & N. Ry. Co. v. Harris, 1917, 180 Iowa 149, 161 N.W. 69.

Under facts vendor estopped to claim non-compliance on part of purchaser.

Coy v. Minneapolis & St. L. R. Co., 1902, 116 Iowa 558, 90 N.W. 344.

**5. Property and rights subject of compensation.**

Easement in land is a right subject to payment of compensation.

O. A. G. 1928, p. 112.

Supervisors cannot secure clear title to land until all lien holders are provided for.

O. A. G. 1923-24, p. 179.

**471.6 Railways.** Any railway, incorporated under the laws of the United States or of any state thereof, may acquire by condemnation or otherwise so much real estate as may be necessary for the location, construction, and convenient use of its railway. Such acquisition shall carry the right to use for the construction and repair of said railway and its appurtenances any earth, gravel, stone, timber, or other material, on or from the land so taken. [R60,§1314; C73,§1241; C97,§1995; S13,§1995; C24, 27, 31, 35, 39,§7808; C46, 50, 54,§471.6]

Indian lands, see 25 U. S. C. A. §314.
Interurban railways, §§484.7, 484.10, 484.21-484.26.
Riparian owners' rights to use of Mississippi and Missouri rivers, obstructions, §477.4.
Spur tracks, §§481.3, 481.4.
Union depots, §§482.2, 482.3.
Viaducts at crossings, §§387.3-387.6.
May 1917, 3 Iowa Law Bulletin 185.

**1. Construction and application.**

Power of eminent domain to be exercised with due respect for constitutional rights.

Chicago, R. I. & P. R. Co. v. Kay, D. C. 1952, 107 F. Supp. 895, affirmed in part and reversed in part on other grounds, 204 F.2d 116, rehearing denied, 204 F.2d 954, affirmed, 74 S.Ct. 290, 346 U. S. 574, 98 L. Ed. 338, rehearing denied, 74 S.Ct. 512, 347 U. S. 924, 98 L. Ed. 1078.

This section and certain others constitute a legislative determination that certain uses are public.

Reter v. Davenport, R. I. & N. W. Ry. Co., 1952, 243 Iowa 1112, 54 N.W.2d 863, 35 A. L. R.2d 1306.

Condemnation documents having been lost, the fact of condemnation and payment were sufficiently established by other evidence.

Marling v. Burlington C. R. & N. Ry. Co., 1885, 67 Iowa 331, 25 N.W. 268.

Fair presumption that railroad has easement by purchase or condemnation to land it occupies.

Drake v. Chicago, Rock Island & Pacific R. Co., 1884, 63 Iowa 302, 19 N.W. 215, 50 Am. Rep. 746.

Restriction as to what is "necessary" applies to quantity of land to be taken, not to quantity of materials that may be removed from the land.

Winklemans v. Des Moines N. W. R. Co., 1883, 62 Iowa 11, 17 N.W. 82.

Agreement that for a consideration a railroad will adopt a certain line instead of one already surveyed is not contrary to public policy.

Cedar Rapids & St. P. R. Co. v. Spafford, 1875, 41 Iowa 292.

**2. Right to acquire or condemn land.**

Test of public character of use.

Reter v. Davenport R. I. & N. W. Ry. Co., 1952, 243 Iowa 1112, 54 N.W.2d 863, 35 A. L. R.2d 1306.

Nothing can be acquired by condemnation without authority to condemn the particular place condemned.

Chicago, M. & St. P. Ry. Co. v. Des Moines Union Ry. Co., 1913, 165 Iowa 35, 144 N.W. 54.

If agreement can be reached condemnation should not be had.

Minneapolis & St. L. R. Co. v. Chicago, M. & St. P. R. Co., 1902, 116 Iowa 681, 88 N.W. 1082.

Consent of railroad commissioners was not necessary to acquisition of right of way by railroad.

Morgan v. Des Moines Union R. Co., 1901, 113 Iowa 561, 85 N.W. 902.

Statute did not prevent condemnation of additional right of way for construction of an additional lateral road.

Lower v. Chicago, B. & Q. R. Co., 1882, 59 Iowa 563, 13 N.W. 718.

That company owns land adjacent to that it seeks to condemn does not restrict its right of condemnation.

Stark v. Sioux City & P. R. Co., 1876, 43 Iowa 501.

Right to condemn based on ground that object is public one, for public use, within constitution.

Stewart v. Board of Sup's of Polk County, 1870, 30 Iowa 9, 1 Am. Rep. 238.

**3. Conflicting interests of companies.**

Railroad could not, by purchase and laying of track, debar another company which had previously surveyed and staked out a branch line thereon.

Sioux City & D. M. Ry. Co. v. Chicago M. & St. P. Ry. Co., C. C. 1886, 27 F. 770.

Railroad which purchased is not affected by condemnation proceedings against grantor by another company.
Minneapolis & St. L. R. Co. v. Chicago M. St. P. R. Co., 1902, 116 Iowa 681, 88 N.W. 1082.

Right of condemnation against another company whose property is in the public use.
Diamond Jo Line Steamers v. City of Davenport, 1901, 114 Iowa 432, 87 N.W. 399, 54 L. R. A. 859.

Construction of crossings so as to interfere with right of way of other company.
Chicago, I. & D. R. Co. v. Cedar Rapids, I. F. & N. W. R. Co., 1892, 86 Iowa 500, 53 N.W. 305.

**4. Foreign corporations.**

Foreign railroad has no power to acquire or possess right of way in Iowa.
Holbert v. St. Louis, K. C. & N. R. Co., 1877, 45 Iowa 23.

**5. Right of way in general.**

Evidence showed right of way obtained for company under which plaintiff claimed.
Chicago M. & St. P. Ry. Co. v. Des Moines Union Ry. Co., 1913, 165 Iowa 35, 144 N.W. 54.

Methods of acquisition of right of way.
Clark v. Wabash R. Co., 1906, 132 Iowa 11, 109 N.W. 309.

**6. Trespassing on or occupying unacquired land.**

Trespasser may not plead statute of limitations against proceeding to assess damages.
Gates v. Colfax Northern Ry. Co., 1916, 177 Iowa 690, 159 N.W. 456.

That railroad was constructed on land to which company had not acquired title did not make it property of landowner.
Chicago, M. & St. P. Ry. Co. v. Des Moines Union Ry. Co., 1913, 165 Iowa 35, 144 N.W. 54.

Remedies of owner of land on which railroad is situated.
Clark v. Wabash R. Co., 1906, 132 Iowa 11, 109 N.W. 309.

Where railroad uses land outside its right of way plaintiff must show absolute freehold title.
Wattemeyer v. Wisconsin, I. & N. R. Co., 1887, 71 Iowa 626, 33 N.W. 140.

Remedies of landowner against railroad occupying part of his land.
Birge v. Chicago M. St. P. Ry. Co., 1884, 65 Iowa 440, 21 N.W. 767.

Owners rights to recover damages for trespass as well as damages of permanent nature.
Drady v. Des Moines & Ft. D. R. Co., 1881, 57 Iowa 393, 10 N.W. 754.

Consent of all tenants in common necessary.
Rush v. Burlington C. R. & N. R. Co., 1881, 57 Iowa 201, 10 N.W. 628.

Right of owner to bring action for possession.
Jackson v. Centerville, M. & A. Ry. Co., 1884, 64 Iowa 292, 20 N.W. 442.

Stature of railroad entering without permission or condemnation is that of trespasser.
Hibbs v. Chicago & S. W. R. Co., 1874, 39 Iowa 340.

Remedies against taking of property without tender of compensation.
Daniels v. Chicago & N. W. R. Co., 1872, 35 Iowa 129, 14 Am. Rep. 490.

**7. Possession, payment or deposit condition precedent.**

Where railroad condemned certain property subsequent acts did not render it liable to pay the award.
Dimmick v. Council Bluffs & St. L. R. Co., 1882, 58 Iowa 637, 12 N.W. 710.

Occupancy by railroad during appeal from assessment was proper.
Peterson v. Ferreby, 1870, 30 Iowa 327.

Company is given right to enter upon payment of sum assessed.
Gear v. Dubuque & S. C. R. Co., 1866, 20 Iowa 523, 89 Am. Dec. 550.

Legislature could not authorize taking for use till compensation was made to owner.
Henry v. Dubuque & P. R. Co., 1859, 10 Iowa 540.

**8. Contracts to convey.**

For annotations, see I. C. A., this section.

**9. Conveyances and gifts.**

Grant of right of way gave strip of full statutory width.
Iowa Ry. & Light Co. v. Chicago, M. & St. P. Ry. Co., 1917, 241 F. 581, 154 C. C. A. 357.

Liberal construction of deeds of right of way to railroad.
Keokuk County v. Reinier, 1939, 227 Iowa 499, 288 N.W. 676.

Company acquires land by purchase where it takes deed prior to assessment of damages in condemnation proceedings.
Minneapolis & St. L. R. Co. v. Chicago, M. & St. P. R. Co., 1902, 116 Iowa 681, 88 N.W. 1082.

Grant to railroad held binding on subsequent purchaser.
Hileman v. Chicago G. W. R. Co., 1901, 113 Iowa 591, 85 N.W. 800.

Landowner, under the circumstances, could not restrain operation of railroad till damages had been assessed and paid.
Bentley v. Wabash, St. L. R. Co., 1883, 61 Iowa 229, 16 N.W. 104.

Proceedings to condemn strip wider than that conveyed by deed do not affect the deed.
Gray v. Burlington & M. R. Co., 1873, 37 Iowa 119.

Deed held valid despite question of uncertainty of description.
Barlow v. Chicago, R. I. & P. R. Co., 1870, 29 Iowa 276.

**10. Conditions and covenants by company.**

For annotations see I. C. A. §471.6.

**11. Roads, streets, bridges, etc., occupying.**

Railroad constructed with consent of city not enjoined from continuing operation as public nuisance.
Milburn v. City of Cedar Rapids, 1861, 12 Iowa 246.
Hughes v. Mississippi & M. R. Co., 1861, 12 Iowa 261.

"Along", "on" and "over" defined.
Heath v. Des Moines & St. L. R. Co., 1883, 61 Iowa 11, 15 N.W. 573.

Laying of second track through city not necessarily a nuisance.
Davis v. Chicago & N. W. Ry. Co., 1877, 46 Iowa 389.

Imposing of conditions on railroad by ordinance.
City of Council Bluffs v. Kansas City, St. J. & C. B. R. Co., 1876, 45 Iowa 338, 24 Am. Rep. 773.

Railway laying track on highway bound to put highway in as good repair.
Gear v. C. C. & D. R. Co., 1876, 43 Iowa 83.

Railway could be laid on city street without consent of city authorities.
Hine v. Keokuk & D. M. R. Co., 1876, 42 Iowa 636.

Right to lay tracks on bridge discussed.
City of Des Moines v. Chicago, R. I. & P. R. Co., 1875, 41 Iowa 569.

City could grant same rights to occupy streets as company could acquire under statute.
Ingram v. Chicago D. & M. R. Co., 1874, 38 Iowa 669.

Power of city to grant rights conferred by ordinance.
Slatten v. Des Moines Valley R. Co., 1870, 29 Iowa 148, 4 Am. Rep. 205.

**12. Amount of land acquired or taken.**

Company may anticipate growth and development.

Town of Alvord v. Great Northern Ry. Co., 1917, 179 Iowa 465, 161 N.W. 467.

**13. Right to compensation.**

Where city held title to land dedicated for public use, adverse possession could not run in favor of individual so as to give him right to recover damages for construction of depot.

Simplot v. Chicago M. & St. P. Ry. Co., C. C. 1883, 16 F. 350.

Where strip condemned separated buildings from rest of farm, owners refusal to move them not basis for denying damages for separation.

Wilson v. Fleming, 1948, 31 N.W.2d 393, motion denied, 32 N.W.2d 798.

That an act is authorized by statute does not mean company may act without liability for damage to property owners.

Wulke v. Chicago, M. & St. P. Ry Co., 1920, 189 Iowa 722, 178 N.W. 1009.

Construction of embankment destroying use of avenue creates liability.

Dairy v. Iowa Cent. Ry. Co., 1900, 113 Iowa 716, 84 N.W. 688.

Damages could not be claimed on a change of law.

Merchants' Union Barb Wire Co. v. Chicago R. I. & P. Ry. Co., 1886, 70 Iowa 105, 28 N.W. 494, rehearing denied, 70 Iowa 105, 29 N.W. 822.

Where track was laid on street where owners kept the fee damages were payable to owners.

Kucheman v. C. C. & D. Ry. Co., 1877, 46 Iowa 366.

Owner of adjacent property has interest in street entitling him to maintain action against railway for location of track on street.

Cadle v. Muscatine Western R. Co., 1876, 44 Iowa 11.

Interference with access renders company liable to pay damages.

Park v. Chicago & S. W. Ry. Co., 1876, 43 Iowa 636.

Owner of private way may recover damages for its occupancy by railroad.

Gear v. C. C. & D. Ry Co., 1874, 39 Iowa 23.

Where city owns fee in street, owner of lot has no interest entitling him to sue for damages for the use of street by railroad.

City of Davenport v. Stevenson, 1872, 34 Iowa 225.

Construction of railway along bank of navigable stream, between high and low water marks did not make railroad liable in damages to one deprived of access of stream.

Tomlin v. Dubuque, B. & M. Ry. Co., 1871, 32 Iowa 106, 7 Am. Rep. 176.

Where railroad appeals from condemnation award right of landowner to receive amount suspended till hearing of appeal.

Peterson v. Ferreby, 1870, 30 Iowa 327.

Streets not private property of city in such sense as to entitle it to compensation for additional public use by railroad.

City of Clinton v. Cedar Rapids & M. R. R. Co., 1868, 24 Iowa 455.

**14. Estoppel, forefeiture, waiver, and other defenses to claim.**

Even unauthorized improvements could not be taken without compensation.

Davenport & N. W. Ry. Co. v. Renwick, 1880, 102 U. S. 180, 26 L. Ed. 51.

Acceptance of award on condition created no estoppel.

Mason v. Iowa Cent. Ry. Co., 1906, 131 Iowa 468, 109 N.W. 1.

Where railroad was not built along line specified in contract railroad was liable for damages for land taken.

Hartley v. Keokuk & N. W. R. Co., 1892, 85 Iowa 455, 52 N.W. 352.

Consent of other co-tenant of plaintiff's lot was not essential to render waiver effective as to his interest in the lot.

Merchants' Union Barb-Wire Co. v. Chicago, R. I. & P. R. Co., 1890, 79 Iowa 613, 44 N.W. 900.

Where railroad put right of way over land not granted to it by owner he could bring action for damages.

Chicago, I. & D. R. Co. v. Estes, 1887, 71 Iowa 603, 33 N.W. 124.

Even unauthorized improvements could not be taken without compensation.

Renwick v. Davenport & N. W. R. Co., 1878, 49 Iowa 664, affirmed, 102 U. S. 180, 26 L. Ed. 51.

Fact that city granted right to lay track on city street does not deprive owner from maintaining action where he suffers special injury.

Frith v. City of Dubuque, 1877, 45 Iowa 406.

Acceptance of award by one of the tenants in common does not conclude the other.

Ruppert v. Chicago, O. & St. J. R. Co., 1876, 43 Iowa 490.

Where owner permitted construction of railway on his land he was not estopped to maintain ejectment.
Conger v. Burlington & S. W. R. Co., 1875, 41 Iowa 419.

Owner could not maintain injunction against lessee company where he donated right of way to lessor company.
Holbert v. St. Louis, K. C. & N. Ry. Co., 1874, 38 Iowa 315.

**15. Persons entitled to compensation.**

Mortgagee has claim prior to that of attachment.
Sawyer v. Landers, 1881, 56 Iowa 422, 9 N.W. 341.

**16. Damages.**

Instructions that in connection with testimony jury could use own judgment was not error.
Hoyt v. Chicago, M. & St. P. R. Co., 1902, 117 Iowa 296, 90 N.W.724.

Damages held not excessive.
Dudley v. Minnesota & N. W. R. Co., 1889, 77 Iowa 408, 42 N.W. 359.

Ball v. Keokuk & N. W. Ry. Co., 1888, 74 Iowa 132, 37 N.W. 110.

**17. Measure of damages.**

Where part of tract is taken measure is difference in market value of tract as a whole before the taking and afterwards.
Watkins v. Wabash R. Co., 1907, 137 Iowa 441, 113 N.W. 924.

Klopp v. Chicago, M. & St. P. Ry. Co., 1909, 142 Iowa 474, 119 N.W. 373.

Fair and just compensation of value of whole tract before and after improvement is made.
Henry v. Dubuque & P. R. Co., 1855, 2 Iowa 288, 2 Clarke 288.

Ham v. Wisconsin I. & N. R. Co., 1883, 61 Iowa 716, 17 N.W. 157.

Where evidence shows farm depreciated as a whole recovery not limited to value of land taken.
Watkins v. Wabash R. Co., 1907, 137 Iowa 441, 113 N.W. 924.

Measure of damages to leasehold.
Werthman v. Mason City & Ft. D. R. Co., 1905, 128 Iowa 135, 103 N.W. 135.

Damages awarded as of time of entry by railroad.
Van Husan v. Omaha Bridge & Terminal R. Co., 1902, 118 Iowa 366, 92 N.W. 47.

Difference between fair market value of farm before and after the taking exclusive of any benefits.
Lough v. Minneapolis & St. L. R. Co., 1902, 116 Iowa 31, 89 N.W. 77.

Value of land at time of assessment not at time of appeal governs.
Ellsworth v. Chicago & I. W. R. Co., 1895, 91 Iowa 386, 59 N.W. 78.
Kitterman v. Chicago M. & St. P. R. Co., 1886, 69 Iowa 440, 30 N.W. 174.

Damages properly awarded on basis of market value of land there being no evidence of minerals.
Hollingsworth v. Des Moines & St. L. R. Co., 1884, 63 Iowa 443, 19 N. W. 325.

Instruction did not raise inference that court meant forced sales in instructing on measure of damages.
Everett v. Union Pac. R. Co., 1882, 59 Iowa 243, 13 N.W. 109.

Measure of damages to leasehold.
Renwick v. Davenport & N. W. R. Co., 1878, 49 Iowa 664, affirmed, 102 U. S. 180, 26 L. Ed. 51.

Damages measured as of time of appropriation.
Daniels v. C. I. & N. R. Co., 1875, 41 Iowa 52.

Owner entitled to only what will compensate him for appropriation of his land
Gear v. C. C. & D. R. Co., 1874, 39 Iowa 23.

Instruction held not erroneous.
Harrison v. Iowa Midland R. R. Co., 1873, 36 Iowa 323.

Jury not to consider benefits.
Henry v. Dubuque & P. R. Co., 1858, 5 Iowa (Cole Ed.) 576.

**18. Land as entity, and separate lots, parts or tracts, damages.**

Instructions on consideration of each quarter section as an entire farm were not misleading.
McCaskey v. Ft. Dodge, D. M. & S. Ry. Co., 1912, 154 Iowa 652, 135 N. W. 6.

Platted area not built up, owned by one person could be assessed as a whole.
Gray v. Iowa Cent. R. Co., 1905, 129 Iowa 68, 105 N.W. 359.

Diminution of value of farm estimated on basis of entire farm.
Parrott v. Chicago Great Western R. Co., 1905, 127 Iowa 419, 103 N. W. 352.

Recovery for damages to farm as entirety.
Cook v. Boone Suburban Electric R. Co., 1904, 122 Iowa 437, 98 N. W. 293.

Acreage held to not be part of farm.
Hoyt v. Chicago, M. & St. P. R. Co., 1902, 117 Iowa 296, 90 N.W. 724.

Owner was entitled to have his farm valued as a whole.
Lough v. Minneapolis & St. L. R. Co., 1902, 116 Iowa 31, 89 N.W. 77.

Instruction on determining if several tracts constituted one farm.
Westbrook v. Muscatine N. & S. R. Co., 1901, 115 Iowa 106, 88 N.W. 202.

Whether all tracts should be treated as an entire farm a question for the jury.
Ellsworth v. Chicago & I. W. R. Co., 1894, 91 Iowa 386, 59 N.W. 78.

Where railroad took city lots, measure of damages to owner of block is measured by the whole block.
Cox v. Mason City & Ft. D. R. Co., 1889, 77 Iowa 20, 41 N.W. 475.

Charge that only tract covered by right of way was damaged, as opposed to whole farm, properly refused.
Doud v. Mason City & F. D. R. Co., 1888, 76 Iowa 438, 41 N.W. 65.

Village property taken and adjacent farm property considered separately.
Haines v. St. Louis, D. M. & N. R. Co., 1884, 65 Iowa 216, 21 N.W. 573.

Injury to farm as a whole was proper measure though farm was separated by a highway and railroad took only along one tract.
Ham v. Wisconsin, Iowa and Nebraska Ry. Co., 1883, 61 Iowa 716, 17 N.W. 157.

Testimony offered as to damage to separate portions of farm properly excluded.
Winklemans v. Des Moines N. W. Ry. Co., 1883, 62 Iowa 11, 17 N.W. 82.

Farm as a whole should be considered.
Hartshorn v. Burlington, C. R. & N. R. Co., 1879, 52 Iowa 613, 3 N.W. 648.

Jury should consider injury to entire leasehold.
Renwick v. Davenport & N. W. R. Co., 1878, 49 Iowa 664, affirmed, 102 U. S. 180, 26 L. Ed. 51.

Value of acreage taken as well as that cut off from farm may be considered.
Harrison v. Iowa Midland R. Co., 1873, 36 Iowa 323.

Separate lots measured separately.
Fleming v. Chicago, D. & M. R. Co., 1872, 34 Iowa 353.

**19. Construction and operation of railroad, damages.**
For annotations see I. C. A., §471.6.

**20. Evidence as to damages.**

Error to limit witness testimony on value of farm to consideration of one particular type of use.
Lough v. Minneapolis & St. L. R. Co., 1902, 116 Iowa 31, 89 N.W. 77.

Cross examination improper on per acre value where on direct examination testimony to that effect was objected to and objection sustained.
Westbrook v. Muscatine N. & S. R. Co., 1901, 115 Iowa 106, 88 N.W. 202.

Evidence of value per acre of land taken admissible.
Pingrey v. Cherokee & D. R. Co., 1889, 78 Iowa 438, 43 N.W. 285.

Evidence of value per acre before and that land was worth a number of dollars less per acre after was not prejudicial error.
Ball v. Keokuk & N. W. Ry. Co., 1888, 74 Iowa 132, 37 N.W. 110.

Evidence on damage per acre, without definite proof of acreage should not be allowed.
Ball v. Keokuk & N. W. R. Co., 1887, 71 Iowa 306, 32 N.W. 354.

Speculative use of land not admitted.
La Mont v. St. Louis, D. M. & N. R. Co., 1883, 62 Iowa 193, 17 N.W. 465.

Where spring was destroyed by right of way, not error to allow witness that testified to damage to be cross examined as to how much damage destruction of spring of certain capacity would be.
Winklemans v. Des Moines N. W. Ry. Co., 1883, 62 Iowa 11, 17 N.W. 82.

In action to recover for damage for right of way through farm it was not allowable to ask witness to give his opinion of damages sustained by the taking.
Harrison v. Iowa Midland R. Co., 1873, 36 Iowa 323.

Price at which right of way was purchased through adjoining tracts not admissible.
King v. Iowa Midland R. Co., 1872, 34 Iowa 458.

**21. Interest as damages.**

Where plaintiff sued to recover value of right of way he

was entitled to interest from date he acquired title to the property.
Clark v. Wabash R. Co., 1906, 132 Iowa 11, 109 N.W. 309.

Interest in condemnation awarded as of date railroad takes possession and cannot be awarded in absence of testimony as to when it took possession.
Guinn v. Iowa & St. L. Ry. Co., 1906, 131 Iowa 680, 109 N.W. 209.

**22. Assignment of damages.**

Vendor of property involved could not assign damages.
Clark v. Wabash R. Co., 1906, 132 Iowa 11, 109 N.W. 309.

**23. Matters considered in determining damages.**

It is proper to consider effect the use of land taken may have on entire tract.
Lewis v. Omaha & C. B. S. Ry. Co., 1912, 158 Iowa 137, 138 N. W. 1092.

Adequacy and quality of crossings.
Quinn v. Iowa & St. L. Ry. Co., 1906, 131 Iowa 680, 109 N. W. 209.

Instruction that jury could consider every element of annoyance and disadvantage resulting from railroad was erroneous.
Simons v. Mason City & Ft. D. R. Co., 1905, 128 Iowa 139, 103 N. W. 129.

Fact that railroad allowed telegraph company to erect poles on the right of way did not entitle an accounting for rents and profits received from telegraph company.
Chicago, M. & St. P. R. Co. v. Snyder, 1903, 120 Iowa 532, 95 N. W. 183.

Adequacy and quality of crossing.
Lough v. Minneapolis & St. L. R. Co., 1902, 116 Iowa 31, 89 N. W. 77.

Jury may consider prospective location of depot thereon at time of taking.
Snouffer v. Chicago & N. W. R. Co., 1898, 105 Iowa 681, 75 N.W. 501.

Effect of construction on farming operations admissible.
Ellsworth v. Chicago & I. W. R. Co., 1894, 91 Iowa 386, 59 N. W. 78.

Evidence showing fences maintained by company, crossings, value, and convenience of use is admissible.
Bell v. Chicago B. & Q. R. Co., 1888, 74 Iowa 343, 37 N. W. 768.

That it was valuable for residences before and that afterwards it was not admissible.
McClean v. Chicago, I. & D. R. Co., 1885, 67 Iowa 568, 25 N. W. 782.

Defendant was estopped to claim buildings on land condemned by it did not become its property.
Hollingsworth v. Des Moines & St. L. Ry. Co., 1884, 63 Iowa 443, 19 N. W. 325.

Proper to consider that track will lie in a cut.
Cummins v. Des Moines & St. L. R. Co., 1884, 63 Iowa 397, 19 N.W. 268.

Evidence relating to effects on farm and stream and access thereto, grades, depth of ditches is admissible.
Dreher v. Iowa S. W. R. Co., 1882, 59 Iowa 599, 13 N. W. 754.

Value is what it is worth in condition at time condemned, not prospective value as city lots when not in fact so laid out.
Everett v. Union Pac. R. Co., 1882, 59 Iowa 243, 13 N. W. 109.

Owner could introduce plat though not recorded.
Hartshorn v. Burlington C. R. & N. R. Co., 1879, 52 Iowa 613, 3 N. W. 648.

Remote and contingent consequences must not be considered.
Fleming v. Chicago, D. & M. R. Co., 1872, 34 Iowa 353.

All circumstances immediately depreciating value of premises by taking are proper for consideration.
Henry v. Dubuque & P. R. Co., 1855, 2 Iowa 288, 2 Clarke 288.

**24. Crops, springs, minerals, matters considered in determining damages.**

Evidence that the land contains coal beds admissible.
Doud v. Mason City & F. D. R. Co., 1888, 76 Iowa 438, 41 N. W. 65.

Destruction of valuable spring should be considered in estimating damages.
Winklemans v. Des Moines N. W. Ry. Co., 1883, 62 Iowa 11, 17 N. W. 82.

Value of growing crops destroyed by construction are an element of damages.
Lance v. Chicago, M. & St. P. R. Co., 1882, 57 Iowa 636, 11 N. W. 612.

**25. Fences and cattle guards, matters considered in determining damages.**

Additional fencing required due to construction not proper matter to consider in estimating compensation.

Henry v. Dubuque & P. R. Co., 1855, 2 Iowa 288, 2 Clarke 288.

Kennedy v. Dubuque & P. R. Co., 1856, 2 Iowa 521, 2 Clarke 521.

Failure of company to erect cattle guards could not be considered in estimation of damages.

King v. Iowa Midland R. Co., 1872, 34 Iowa 458.

While jury cannot allow for fencing as such it can consider that the land would be thrown open and left unfenced.

Henry v. Dubuque & P. R. Co., 1858, 5 Iowa (Cole Ed.) 576.

Where land was fenced and the taking opened it, this fact could be considered.

Henry v. Dubuque & P. R. Co., 1855, 2 Iowa 288, 2 Clarke 288.

**26. Inconveniences, obstructions, annoyances, and danger of fire, matters considered in determining damages.**

Damage resulting from obstruction of flow of surface water.

Blunck v. Chicago & N. W. Ry. Co., 1909, 142 Iowa 146, 120 N. W. 737.

Interference with access to town.

Simons v. Mason City & Ft. D. R. Co., 1905, 128 Iowa 139, 103 N.W. 129.

Obstruction to the use of property—instruction.

Diamond Jo Line Steamers v. Davenport R. I. & N. W. R. Co., 1902, 115 Iowa 480, 88 N.W. 959.

Offer by company to show minimization of fire hazard properly refused.

Pingrey v. Cherokee & D. R. Co., 1889, 78 Iowa 438, 43 N.W. 285.

Inconvenience considered as bearing on market value.

Dudley v. Minnesota & N. W. R. Co., 1889, 77 Iowa 408, 42 N.W. 359.

Providing of crossing under trestle work.

Bell v. Chicago, B. & Q. R. Co., 1888, 74 Iowa 343, 37 N.W. 768.

Evidence as to noise, smoke and fire admissible.

Wilson v. Des Moines, O. & S. R. Co., 1885, 67 Iowa 509, 25 N.W. 754.

Obstruction of view, interference with privacy and noise are proper items to consider as bearing on damages.
Ham v. Wisconsin, Iowa & Nebraska Ry. Co., 1883, 61 Iowa 716, 17 N.W. 157.

Actual damages only are allowable.
Dreher v. Iowa S. W. R. Co., 1882, 59 Iowa 599, 13 N. W. 754.

Evidence of danger of fire.
Lance v. Chicago, M. & St. P. R. Co., 1882, 57 Iowa 636, 11 N.W. 612.

Inconvenience in cultivation or use of farm.
Hartshorn v. Burlington, C. R. & N. R. Co., 1879, 52 Iowa 613, 3 N.W. 648.

Obstruction of public highway not considered in estimating damages to which owner of adjacent land is entitled for taking of right of way by railroad.
Gear v. C. C. & D. R. Co., 1876, 43 Iowa 83.

**27. Possible use of right of way by railroad, matters considered in determining damages.**

For annotations see I. C. A., §471.6.

**28. Benefits, matters considered in determining damages.**

Instructions to not consider benefits accruing by reason of contemplated construction of depot not misleading.
Snouffer v. Chicago & N. W. R. Co., 1898, 105 Iowa 681, 75 N.W. 501.

Instruction that it was not proper to set off benefits on account of improvement was properly given.
Ball v. Keokuk & N. W. R. Co., 1888, 74 Iowa 132, 37 N.W. 110.

Appreciation in value of adjacent land belonging to same owner cannot be considered in estimating damages.
Koestenbader v. Peirce, 1875, 41 Iowa 204.

Instruction that value was to be arrived at without considering benefit which might accrue was not erroneous.
Brooks v. Davenport & St. P. R. Co., 1873, 37 Iowa 99.

**29. Title, estate, and interest acquired by railroad.**

For annotations see I. C. A., §471.6.

**30. Rights of, and use of land by railroad company.**

For annotations see I. C. A., §471.6.

**31. Use of land by former owner and successors.**

For annotations see I. C. A., §471.6.

**32. Transfers by owner.**

In action against railroad for damages by owner who bought subsequent to occupation of street, company may show plaintiff's grantor consented to construction and operation of road along street.

Pratt v. Des Moines N. W. R. Co., 1887, 72 Iowa 249, 33 N.W. 666.

Jolley v. Des Moines N. W. R. Co., 1887, 72 Iowa 759, 33 N.W. 668.

That both parties knew railroad was in operation across the land conveyed made its existence none the less a breach of covenant in the conveyance.

Barlow v. McKinley, 1867, 24 Iowa 69.

Gerald v. Elley, 1876, 45 Iowa 322.

Flynn v. White Breast Coal & Mining Co., 1887, 72 Iowa 738, 32 N.W. 471.

Defendant's title to right of way was not established.

Montgomery County v. Case, 1930, 212 Iowa 73, 232 N.W. 150.

Land conveyed for railroad right of way did not pass to second grantee when land in which right of way went through was conveyed.

Monarch Coal Co. v. Phillips Coal Co., 1916, 178 Iowa 660, 156 N.W. 297.

Deed excepting land occupied by railroad right of way excepted the soil itself, and not merely the right of way.

Hall v. Wabash R. Co., 1907, 133 Iowa 714, 110 N.W. 1039.

Deed "subject to all railroad rights of way of all railroads now located over said land" did not include railroad which was mere trespasser.

Clark v. Wabash R. Co., 1906, 132 Iowa 11, 109 N.W. 309.

Railroad right of way is incumbrance on land constituting breach of convenant of warranty.

Fierce v. Houghton, 1904, 122 Iowa 477, 98 N.W. 306.

Conveyance "subject to all right of way . . ." did not include portion claimed by railroad as depot grounds.

Mead v. Illinois Cent. R. Co., 1900, 112 Iowa 291, 83 N.W. 979.

Conveyance held to pass whatever right of reversion grantor had.

Smith v. Hall, 1897, 103 Iowa 95, 72 N.W. 427.

Purchaser charged with notice of railroad's license to operate in street fronting lot.

Merchants' Union Barb-Wire Co. v. Chicago R. I. & P. R. Co., 1890, 79 Iowa 613, 44 N.W. 900.

Breach of warranty exists where grantor conveys without reservations land on which is situated a railroad.
Flynn v. White Breast Coal Co., 1887, 72 Iowa 738, 32 N.W. 471.

Railroad right of way across land conveyed is not a breach of covenant of warranty in a deed of such lands.
Brown v. Young, 1886, 69 Iowa 625, 29 N.W. 941.

Lessee of land has no greater right to question validity of company's right of way than lessor had when lease was made.
Chicago, M. & St. P. R. Co., v. Bean, 1886, 69 Iowa 257, 28 N.W. 585.

Purchaser of trespassing railroad liable as trespasser after purchase to a grantee of prior owner of the land.
Donald v. St. Louis, K. C. & N. R. Co., 1879, 52 Iowa 411, 3 N.W. 462.

Existence of railroad is breach of covenant against incumbrances, but mere use of right of way does not show right thereto.
Jerald v. Elly, 1879, 51 Iowa 321, 1 N.W. 639.

Right of way is acquired when damages assessed are paid to sheriff, and conveyances made thereafter are subject to title of company.
Ruppert v. Chicago, O. &. St. J. R. Co., 1876, 43 Iowa 490.

**33. Transfers, mortgages, licenses, and permits by company.**

For annotations see I. C. A., §471.6.

**34. Adverse possession of right of way.**

For annotations see I. C. A., §471.6.

**35. Condemning land condemned or acquired.**

City or town cannot condemn for street purposes property already devoted to public use by railway where such taking would require removal of depot building.
Chicago, M. & St. P. Ry. Co., v. Incorporated Town of Lost Nation, D. C. 1916, 237 F. 709.

City could reopen streets by condemnation where it had previously vacated and conveyed streets to railroad.
City of Osceola v. Chicago B. & Q. R. Co., 1912, 196 F. 777, 116 C. C. A. 72.

Railroad property may be taken, under proper conditions, for public use.
Ferguson v. Illinois Cent. R. Co., 1926, 202 Iowa 508, 210 N.W. 604, 54 A. L. R. 1.

In condemnation for street purposes evidence showed railroad had not overestimated ground required in present and in future for depot.

Town of Alvord v. Great Northern Ry. Co., 1917, 179 Iowa 465, 161 N.W. 467.

**36. Proceedings in general.**

Proceeding before sheriff is administrative until appeal.

Chicago R. I. & P. R. Co. v. Stude, 1954, 74 S.Ct. 290, 346 U. S. 574, 98 L. Ed. 338, rehearing denied, 74 S.Ct. 512, 347 U. S. 924, 98 L. Ed 1078.

No error in permitting railroad to file waiver of right to claim damages because of any future street crossings.

Purdy v. Waterloo C. F. & N. Ry. Co., 1915, 172 Iowa 676, 154 N.W. 881.

Grounds for objection to condemnation proceedings.

Keokuk & N. W. R. Co. v. Donnell, 1889, 77 Iowa 221, 42 N.W. 176.

Allowance of amendment changing description of land, after verdict, in action to recover damages from railroad was proper.

Ball v. Keokuk & N. W. R. Co., 1887, 71 Iowa 306, 32 N.W. 354.

Railroad company could begin second proceeding to condemn after abandoning the first.

Corbin v. Cedar Rapids, I. F. & N. W. R. Co., 1885, 66 Iowa 73, 23 N.W. 270.

Appointment of commissioner to deed right of way on tender of proper sum, without giving party reasonable time to execute it, if irregular worked no prejudice.

Robertson v. Central Ry. Co., 1881, 57 Iowa 376, 10 N.W. 728.

Proceedings by owner to recover compensation awarded for right of way could be instituted after completion of road.

Hibbs v. Chicago & S. W. R. Co., 1874, 39 Iowa 340.

**37. Settlements, stipulations, and consent decrees.**

Where action for condemnation was settled, and consent decree entered, conferring easement, decree had same effect as deed.

Chicago, M. & St. P. R. Co., v. Snyder, 1903, 120 Iowa 532, 95 N.W. 183.

Agreement pending appeal under which court issued a stay of execution or other proceeding to collect judgment did not amount to a sale nor confer authority to enter.

Irish v. Burlington Southwestern R. Co., 1876, 44 Iowa 380.

**38. Jurisdiction.**

Statutory proceeding in state court to determine damages sustained is a suit of a civil nature at law and removable.

Kirby v. Chicago & N. W. R. Co., C. C. 1900, 106 F. 551.

Question of whether railroad could appropriate certain improvements without consent of owner or compensation was a "Federal question."

Davenport & N. W. Ry. Co. v. Renwick, 1874, 102 U. S. 180, 26 L. Ed. 51.

Where removal to federal court was erroneously denied and defendant proceeded in federal court, it was not estopped to appeal judgment of state court on jurisdictional question.

Myers v. Chicago, N. W. R. Co., 1902, 118 Iowa 312, 91 N.W. 1076.

**39. Notice of, and application for, condemnation.**

Notice did not require construction that owner was asking compensation for part of right of way not owned by him.

Hall v. Wabash R. Co., 1909, 141 Iowa 250, 119 N.W. 927.

Recital in application that plaintiff owned "part" of a certain quarter section on which railroad was located sufficiently described the property.

Gray v. Iowa Cent. R. Co., 1905, 129 Iowa 68, 105 N.W. 359.

In condemnation by railroad published notice of assessment of damages directed to a person named "and all other persons having any interest in or owning any" of the land, does not charge owner not named, but if he appeals objection is waived.

Ellsworth v. Chicago & I. W. R. Co., 1894, 91 Iowa 386, 59 N.W. 78.

Land described as certain number of feet on each side of centerline of railroad as marked and staked was sufficient description.

Lower v. Chicago, B & Q. R. Co., 1882, 59 Iowa 563, 13 N.W. 718.

Appeal to district court made it immaterial whether or not appellant had notice.

Borland v. Mississippi & M. R. Co., 1859, 8 Iowa 148, 8 Clarke 148.

**40. Parties.**

Purchaser of land who had not yet received a conveyance are owners within condemnation statute.

Wolfe v. Iowa Ry. & Light Co., 1915, 173 Iowa 277, 155 N.W. 324.

**41. Survey or location.**

Under Code 1897 no prior location or survey is necessary and if made is not commencement of condemnation proceedings.

Minneapolis & St. L. R. Co. v. Chicago, M. & St. P. R. Co., 1902, 116 Iowa 681, 88 N.W. 1082.

**42. Issues and hearing.**

Question of right to condemn is not concern of commission.

Forbes v. Delashmutt, 85, 68 Iowa 164, 26 N.W. 56.

Where notice of condemnation identifies one as owner, he need not prove ownership.

Cummins v. Des Moines & St. L. R. Co., 1884, 63 Iowa 397, 19 N.W. 268.

**43. Award.**

Damages awarded to tenants in common should be awarded separately if owners' interests can be ascertained.

Ruppert v. Chicago, O. & St. J. R. Co., 1876, 43 Iowa 490.

**44. Appeal to district court.**

Where owners and tenant took separate appeals, it was not error for court to refuse to consolidate them.

Simmons v. Mason City & Ft. D. R. Co., 1905, 128 Iowa 139, 103 N.W. 129.

Affidavit admissible to prove date award was actually made, for the purpose of showing timely appeal.

Jamison v. Burlington & W. R. Co., 1886, 69 Iowa 670, 29 N.W. 774.

Appeal does not lie from part of entire award of damages assessed on two tracts of land to one person.

Cedar Rapids, I. F. & N. W. R. Co. v. Chicago, M. & St. P. R. Co., 1882, 60 Iowa 35, 14 N.W. 76.

Partition of premises pending appeal does not have effect to dismiss it.

Ruppert v. Chicago, O. & St. J. R. Co., 1876, 43 Iowa 490.

Appearance by company to object to service of notice of appeal operates as a general appearance airing defects in service.

Robertson v. Eldora Railroad & Coal Co., 1869, 27 Iowa 245.

Acceptance of amount assessed waived right to appeal.

Mississippi & M. R. Co. v. Byington, 1863, 14 Iowa 572.

Perfection of appeal under act of January 18, 1853.

Dubuque & Pac. R. Co. v. Shinn, 1858, 5 Iowa 516, 5 Clarke 516.

**45. Parties on appeal.**

Where award is made to owner and mortgagee jointly, owner may appeal without joining mortgagee.

Lance v. Chicago, M. & St. P. R. Co., 1882, 57 Iowa 636, 11 N. W. 612.

Dixon v. Rockwell, S. & D. R. Co., 1888, 75 Iowa 367, 39 N.W. 646.

Award held not joint as to owner and tenant so as to require joint appeal.

Simmons v. Mason City & Ft. D. R. Co., 1905, 128 Iowa 139, 103 N.W. 129.

Where damages are assessed jointly to owners of land appeal must be joint.

Chicago R. I. & P. R. Co. v. Hurst, 1870, 30 Iowa 73.

**46. Notice of appeal.**

Procedure for perfecting appeal.

Dubuque & P. R. Co. v. Crittenden, 1857, 5 Iowa 514, 5 Clarke 514.

Dubuque & P. R. Co. v. Shinn, 1857, 5 Iowa 516, 5 Clarke 516.

Sheriff conducting condemnation proceedings not a part to proceedings, and is not disqualified from serving notice of appeal.

Cedar Rapids, I. F. & N. W. R. Co. v. Chicago, M. & St. P. R. Co., 1882, 60 Iowa 35, 14 N.W. 76.

Notice of appeal constitutes presumptive evidence that assessment has been made.

Hahn v. Chicago, O. & St. J. R. Co., 1876, 43 Iowa 333.

Appeal in absence of statutory regulation.

Robertson v. Eldora Railroad & Coal Co., 1869, 27 Iowa 245.

Trial of cause anew and award of damages without notice of appeal was erroneous.

Burlington & M. R. R. Co. v. Sinnamon, 1859, 9 Iowa 293.

**47. Filing papers on appeal.**

On appeal it was not required that report of jury be filed in appellate court, the notice of appeal being presumptive evidence that assessment had been made.

Hahn v. C., O. & St. J. R. Co., 1876, 43 Iowa 333.

Failure of officer to file papers until first day of next term after appeal was taken, not sufficient grounds for dismissal.

Robertson v. Eldora Railroad & Coal Co., 1869, 27 Iowa 245.

Not error to file bond with clerk instead of sheriff.

Grinnell v. Mississippi & M. R. Co., 1865, 18 Iowa 570.

**48. Pleadings on appeal.**

Motion to dismiss properly denied where based on agreement to arbitrate, since such defense should be set up by answer.

Hynes v. S. A. & D. Ry. Co., 1874, 38 Iowa 258.

Answer, on appeal, alleged delivery of deed for right of way. Plaintiff objected to admission of deed in evidence for reason that copy of deed was not attached to answer. Held objection overruled.

Taylor v. Cedar Rapids & St. P. R. Co., 1868, 25 Iowa 371.

Filing of petition in district court on an appeal did not violate statute.

Grinnell v. Mississippi & M. R. Co., 1864, 18 Iowa 570.

**49. Trial on appeal or in action for damages.**

In action for damages defendant's plea of estoppel by agreement to accept $600.00 in full settlement was adequately submitted in instructions that if jury found agreement as contended plaintiff could recover $600.00 and no more.

Darst v. Ft. Dodge, D. M. & S. Ry. Co., 1922, 194 Iowa 1145, 191 N.W. 288.

Railroad could not set up defendant's breach of agreement to donate right of way where instead of entering it condemned.

Burrell v. Waterloo, C. F. & N. Ry. Co., 1916, 173 Iowa 441, 155 N.W. 809.

Instruction that jury should not be influenced by fact that company took possession immediately after condemnation was not erroneous.

Purdy v. Waterloo, C. F. & N. Ry. Co., 1915, 172 Iowa 676, 154 N.W. 881.

If assessment of damages included a portion of land not owned by plaintiff, error could be corrected on appeal.

Hall v. Wabash R. Co., 1909, 141 Iowa 250, 119 N.W. 927.

Trial court did not abuse discretion in granting new trial where jury's verdict was excessively small.

Werthman v. Mason City & Ft. D. R. Co., 1905, 128 Iowa 135, 103 N.W. 135.

Matter for jury to consider in regard to duty of railroad keeping its track and cattle guards in proper condition.

Pingrey v. Cherokee & D. R. Co., 1889, 78 Iowa 438, 43 N.W. 285.

Plaintiff was entitled to prove damage to entire farm though it consisted of more land than was described in notice of appeal.

Dudley v. Minnesota & N. W. R. Co., 1889, 77 Iowa 408, 42 N.W. 359.

Improper for plaintiff's council to refer to amount of award appealed from, but such is not ground for discharging jury on motion of defendant.

Ball v. Keokuk & N. W. R. Co., 1888, 74 Iowa 132, 37 N.W. 110.

Where court decided it had no jurisdiction it properly refused to determine what rights of parties would have been.

Slough v. Chicago & N. W. Ry. Co., 1887, 71 Iowa 641, 33 N.W. 149.

Not competent to ask commissioners who assessed damages whether their assessment correctly expressed their judgment.

Winklemans v. Des Moines N. W. R. Co., 1883, 62 Iowa 11, 17 N.W. 82.

It was not error for court to refuse to instruct that law does not require railroad to fence its road where court indicated liability for injuries to stock from failure to fence.

Harrison v. Iowa Midland R. Co., 1873, 36 Iowa 323.

Appeal from assessment brought case before district court on its own merits.

Runner v. City of Keokuk, 1861, 11 Iowa 543.

Where case was in district court in appeal on merits, certain irregularities below were immaterial.

Mississippi & M. R. Co. v. Rosseau, 1859, 8 Iowa 373, 8 Clarke 373.

**50. Verdict, judgment and orders on appeal.**

Jury to assess damages as of date of assessment by sheriff's jury and court makes order regarding interest.

Reed v. Chicago, M. & St. P. Ry. Co., C.C. 1885, 25 F. 886.

No judgment should be entered for owner since proceedings can be abandoned with liability for costs only.

Klopp v. Chicago, M. & St. P. Ry. Co., 1909, 142 Iowa 474, 119 N.W. 373.

Judgement on pleadings properly rendered.

Burns v. Chicago, Ft. M. & D. M. R. Co., 1900, 110 Iowa 385, 81 N.W. 794.

Judgment assessing damages to be paid does not bind company to take the land and pay damages.

Gear v. Dubuque & S. C. R. Co., 1866, 20 Iowa 523, 89 Am. Dec. 550.

Judgment reversed because of improper consideration of certain items of damage by jury.

Kennedy v. Dubuque & Pac. R. Co., 1856, 2 Iowa 521, 2 Clarke 521.

**51. Review by appellate court.**

Appeal does not lie from decision of sheriff's commission in Iowa to Federal District Court.

Chicago, R I. & P. R. Co. v. Kay, D. C. 1952, 107 F. Supp. 895, affirmed in part and reversed in part on other grounds, 204 F.2d 116, rehearing denied, 204 F.2d 954, affirmed, 74 S.Ct. 290, 346 U. S. 574, 98 L. Ed. 338, rehearing denied, 74 S.Ct. 512, 347 U. S. 924, 98 L. Ed. 1078.

Contention that condemner by bringing such proceedings, estopped itself to claim plaintiff had no title may not be made for first time on appeal.

Watkins v. Iowa Cent. Ry. Co., 1904, 123 Iowa 390, 98 N.W. 910.

Where court in instruction omitted one-tenth of an acre and company offered to add value of such part to judgement, judgement should not be reversed on that ground.

Hoyt v. Chicago, M. & St. P. R. Co., 1902, 117 Iowa 296, 90 N.W. 724.

Not presumed that injuries by fire to fences and timber a mile from the tracks were considered in estimating damages.

Rodemacher v. Milwaukee & St. P. Ry. Co., 1875, 41 Iowa 297, 20 Am. Rep. 592.

Presumption that findings on question of what lands were considered by jury in making assessment was correct.

Mississippi & M. R. Co. v. Byington, 1863, 14 Iowa 572.

**52. Certiorari.**

Proceedings to condemn land not set aside upon mere allegations of petition for certiorari without further showing.

Everett v. Cedar Rapids & M. R. R. Co., 1869, 28 Iowa 417.

**53. Award or judgment, payment and enforcement.**

Where railroad refuses to pay award injunction is available to owner.

Gates v. Colfax Northern Ry. Co., 1916, 177 Iowa 690, 159 N.W. 456.

Whether land taken was for use of railroad is not determinable in equitable action to enjoin use of tracks laid.

Davis v. Des Moines & Ft. D. R. Co., 1912, 155 Iowa 51, 135 N.W. 356.

Payment by company to sheriff, without payment to owner, not a defense to action for restitution of premises on failure to pay award.

Burns v. Chicago, Ft. M. & D. M. R. Co., 1900, 110 Iowa 385, 81 N.W. 794.

Owner cannot maintain separate action to recover interest.

Jamison v. Burlington & W. R. Co., 1889, 78 Iowa 562, 43 N.W. 529.

Where landowner has received amount awarded he cannot object to fact that no notice of proceedings was given to him.

Marling v. Burlington, C. R. & N. R. Co., 1885, 67 Iowa 331, 25 N.W. 268.

Payment by company to sheriff, without payment to owner, not a defense to action for restitution of premises on failure to pay award.

White v. Wabash, St. L. & P. R. Co., 1884, 64 Iowa 281, 20 N.W. 436.

Allowing award of damages to be recorded not a tort, and no title passes thereby, so as to raise implied contract to pay amount thereof till mistake is made known to company and reasonable time elapses.

Dimmick v. Council Bluffs & St. L. R. Co., 1882, 58 Iowa 637, 12 N.W. 710.

Owner may enjoin use till compensated.

Holbert v. St. Louis, K. C. & N. R. Co., 1876, 45 Iowa 23.

Action of ejectment proper against company failing to compensate owner for right of way appropriated.

Conger v. Burlington & S. W. R. Co., 1875, 41 Iowa 419.

Injunction will lie to restrain use of land taken till compensation has been paid.

Hibbs v. Chicago & S. W. R. Co., 1874, 39 Iowa 340.

Richards v. Des Moines Val. R. Co., 1865, 18 Iowa 259.

**54. Costs and attorney's fees.**

Absent statute, attorney fees not taxable in condemnation proceedings.

Woodcock v. Wabash Ry. Co., 1907, 135 Iowa 559, 113 N.W. 347.

In proceeding to recover value of property appropriated attorney's fees allowable to plaintiff.

Clark v. Wabash R. Co., 1906, 132 Iowa 11, 109 N.W. 309.

Where company took land it was precluded from questioning constitutionality of statute imposing liabilty for attorney's fees.

Gano v. Minneapolis & St. L. R. Co., 1901, 114 Iowa 713, 87 N.W. 714, 55 L. R. A. 263, 89 Am. St. Rep. 393, affirmed, 23 S.Ct. 854, 190 U. S. 557, 47 L. Ed. 1183.

Purchaser of railroad during appeal liable for attorney's fees incurred on appeal by company from whom purchased.

Frankel v. Chicago, B. & P. R. Co., 1886, 70 Iowa 424, 30 N.W. 679, rehearing denied, 70 Iowa 424, 32 N.W. 488.

**55. Conclusiveness of proceedings.**

Where real owner is party to proceedings, the proceedings are valid against him though it is indicated commissioners thought unknown lessee also had interest therein.

Chicago, M. & St. P. Ry. Co. v. Bean, 1886, 69 Iowa 257, 28 N.W. 585.

Presumed from record of proceedings that company was duly organized under laws of Iowa.

Kostendader v. Pierce, 1873, 37 Iowa 645.

**56. Dismissal of proceedings.**

Company could dismiss proceedings where it had not entered and had not paid the award.

Burlington & M. R. Co. v. Sater, 1855, 1 Iowa 421, 1 Clarke 421.

**57. Priority.**

Where railroad commenced proceedings prior to city it had priority over city.

Connolly v. Des Moines & Cent. Iowa Ry. Co., 1955, 68 N.W.2d 320.

**471.7 Cemetery lands.** No lands actually platted, used, and devoted to cemetery purposes shall be taken for any railway purpose without the consent of the proper officers or owners thereof. [S13,§1995; C24, 27, 31, 35, 39,§7809; C46, 50, 54,§471.7]

**471.8 Limitation on right of way.** Land taken for railway right of way, otherwise than by consent of the owner, shall not exceed one hundred feet in width unless greater width is necessary for excavation, embankment, or depositing waste earth. [R60,§1314; C73,§1241; C97,§1995; S13,§1995; C24, 27, 31, 35, 39,§7810; C46, 50, 54,§471.8]

**1. Construction and application.**

Condemnation of additional independent right of way to construct and maintain original road not prevented by statute.

Lower v. Chicago B. & O. R. Co., 1882, 59 Iowa 563, 13 N.W. 718.

Judgment in form of debt construed to have no greater effect than if conforming to statute authorizing it.

Gear v. Dubuque & S. C. R. Co., 1866, 20 Iowa 523, 89 Am. Dec. 550.

**2. Buildings, land for.**

Additional realty outside of one hundred feet could not be taken.

Johnson v. Chicago, M. & St. P. Ry. Co., 1882, 58 Iowa 537, 12 N.W. 576.

**471.9 Additional purposes.** Any such corporation owning, operating, or constructing a railway may, by condemnation or otherwise, acquire lands for the following additional purposes:

1. For necessary additional depot grounds or yards.

2. For the purpose of constructing a track or tracks to any mine, quarry, gravel pit, manufactory, warehouse, or mercantile establishment.

3. For additional or new right of way for constructing double track, reducing or straightening curves, changing grades, shortening or relocating portions of the line, and for excavations, embankments, or places for depositing waste earth.

4. For the purpose of constructing water stations, dams or reservoirs for supplying its engines with water. [R60, §1314; C73,§§1241, 1242; C97,§§1995, 1996, 1998; S13,§§1995, 1998; C24, 27, 31, 35, 39,§7811; C46, 50, 54,§471.9]

Referred to in §471.10—finding by commerce commission.
Mineral lands, railway right of way to, §471.4.
Spur tracks, §§481.3, 481.4.
Union depots, §§482.2, 482.3.

**1. Validity.**

Validity upheld as not authorizing taking for private use.
Reter v. Davenport, R. I. & N. W. Ry Co., 1952, 243 Iowa 1112, 54 N.W.2d 863, 35 A. L. R.2d 1306.

Right of way to mine is public way.
Morrison v. Thistle Coal Co., 1903, 119 Iowa 705, 94 N.W. 507.

Public ways are contemplated.
Phillips v. Watson, 1874, 63 Iowa 28, 18 N.W. 659.

**2. Construction and application.**

Statute constitutes legislative determination of public use.
Reter v. Davenport, R. I. & N. W. Ry. Co., 1952, 243 Iowa 1112, 54 N.W.2d 863, 35 A. L. R.2d 1306.

Petition to condemn land did not have to show necessity.
Eikenberry v. St. Paul & K. C. S. L. R. Co., 1916, 174 Iowa 6, 156 N.W. 163.

Where railroad desired land for additional depot grounds, action of commissioners was to precede effort to condemn.
Crandall v. Des Moines, N. & W. R. Co., 1897, 103 Iowa 684, 72 N.W. 778.

**3. Depots.**

Condemnation authorized for new stations where necessary.
Jager v. Dey, 1890, 80 Iowa 23, 45 N.W. 391.

Under former statute, completed railroad could not condemn for depot.
Forbes v. Delashmutt, 1886, 68 Iowa 164, 26 N.W. 56.

**4. Spur Tracks.**

Test of public character use is whether industries are enabled thereby to be reached by public.
Reter v. Davenport, R. I. & N. W. Ry. Co., 1952, 243 Iowa 1112, 54 N.W.2d 863, 35 A. L. R.2d 1306.

Corporation organized to engage in business of generating electricity to be sold is not a "manufacturing corporation."
Hagerla v. Mississippi River Power Co., D. C. 1913, 202 F. 776.

Right of public to use spur track sufficient public use.
Dubuque & S. C. R. Co. v. Ft. Dodge, D. M. & S. R. Co., 1910, 146 Iowa 666, 125 N.W. 672.

Right of way to a mine may be a public way though it cannot be used for travel except by railway cars.
Morrison v. Thistle Coal Co., 1903, 119 Iowa 705, 94 N.W. 507.

**5. Double tracks, curves, grades, relocations, excavations, etc.**

Company building overhead crossing authorized to condemn land necessary to raising or lowering of highway.
Eikenberry v. St. Paul & K. C. S. L. R. Co., 1916, 174 Iowa 6, 156 N.W. 163.

Plaintiff could show inconvenience of being deprived of crossing.
Klopp v. Chicago, M. & St. P. Ry. Co., 1909, 142 Iowa 474, 119 N.W. 373.

**6. Water stations, etc.**

Reservation by landowners of right to use water in reservoir conveyed to railroad deemed easement appurtenant to remaining land.
McCoy v. Chicago, M. & St. P. Ry. Co., 1916, 176 Iowa 139, 155 N.W. 995.

**7. Lateral Road.**

Condemnation of land for additional road authorized for construction and maintenance of original road.
Lower v. Chicago, B. & Q. R. Co., 1882, 59 Iowa 563, 13 N.W. 718.

**471.10 Finding by commerce commission.** The company, before instituting condemnation proceedings under section 471.9, shall apply in writing to the Iowa state commerce commission for permission to so condemn. Said commission shall give notice to the landowner, and examine into the matter, and report by certificate to the clerk of the district court in the county in which the land is situated, the amount and description of the additional lands necessary for such purposes, present and prospective, of such company; whereupon the company shall have power to condemn the lands so certified by the commission. [C97,§1998; S13,§1998; C24, 27, 31, 35, 39,§7812; C46, 50, 54,§471.10]

**J. C. Pryor, Jan., 1948, 33 Iowa Law Rev. 308.**

**1. Construction and application.**

Statute authorizing condemnation strictly construed.
Chicago, R. I. & P. R. Co. v. Kay, D. C. 1952, 107 F. Supp. 895, affirmed in part and reversed in part on other grounds, 204 F.2d 116, rehearing denied, 204 F.2d 954, affirmed, 74 S.Ct. 290, 346 U. S. 574, 98 L. Ed. 338, rehearing denied, 74 S.Ct. 512, 347 U. S. 924, 98 L. Ed. 1078.

Necessity and expediency of taking may be determined by public body or agency.

Reter v. Davenport, R. I. & N. W. Ry. Co., 1952, 243 Iowa 1112, 54 N.W.2d 863, 35 A. L. R.2d 1306.

When petition showed inquiry had been made as to necessity, and was so certified by railroad commissioners, it was sufficient without showing need for embankments for which land was desired.

Eikenberry v. St. Paul & K. C. S. L. R. Co., 1916, 174 Iowa 6, 156 N.W. 163.

Where railroad desired land for additional depot grounds, action of commissioners was to precede effort to condemn.

Crandall v. Des Moines, N. & W. R. Co., 1897, 103 Iowa 684, 72 N.W. 778.

Commissioners had authority to grant certificate for condemnation for depot purposes where railroad had no depot.

Jager v. Dey, 1890, 80 Iowa 23, 45 N.W. 391.

**471.11 Lands for water stations—how set aside.** Lands which are sought to be condemned for water stations, dams, or reservoirs, including all the overflowed lands, if any, shall, if requested by the owner, be set aside in a square or rectangular shape by the Iowa state commerce commission. [C73,§1242; C97,§1996; C24, 27, 31, 35, 39,§7813; C46, 50, 54, §471.11]

**471.12 Access to water—overflow limited.** An owner of land, which has in part been condemned for water stations, dams, or reservoirs, shall not be deprived, without his consent, of access to the water, or the use thereof, in common with the company, on his own land, nor, without his consent, shall his dwelling, outhouses, or orchards be overflowed, or otherwise injuriously affected by such condemnation. [C73,§1242; C97,§1996; C24, 27, 31, 35, 39,§7814; C46, 50, 54,§471.12]

**May 1917, 3 Iowa Law Bulletin 185.**

**1. Construction and application.**

Landowner's right to use water in reservoirs conveyed to railroad deemed an easement appurtenant to remaining land.

McCoy v. Chicago, M. & St. P. Ry. Co., 1916, 176 Iowa 139, 155 N.W. 995.

**471.13 Change in streams.** When a railway company would have the right to excavate a channel or ditch and thereby change and straighten the course of a stream or watercourse, which is too frequently crossed by such railway, and thereby protect the right of way and roadbed, or promote safety and convenience in the operation of the

railway, it may, by condemnation or otherwise, acquire sufficient land on which to excavate such ditch or channel. [C97,§2014; C24, 27, 31, 35, 39,§7815; C46, 50, 54,§471.13]

**1. Validity.**

Statute authorizing change in course of stream to promote safety of travel was constitutional.

Reusch v. Chicago, B. & Q. R. Co., 1882, 57 Iowa 687, 11 N.W. 647.

**2. Construction and application.**

Where in a first suit object of plaintiff was to recover original and permanent damage he was estopped in second suit to deny such though additional damage had occurred.

Thompson v. Illinois Cent. R. Co., 1920, 191 Iowa 35, 179 N.W. 191.

Land may be taken to erect embankment instead of bridge.

Reusch v. Chicago, B. & Q. R. Co., 1882, 57 Iowa 687, 11 N.W. 647.

**471.14 Unlawful diversion prohibited.** Nothing in section 471.13 shall give such corporation the right to change the course of any stream or watercourse where such right does not otherwise exist, nor, without the owner's consent, to divert such stream or watercourse from any cultivated meadow or pasture land, when it only touches such lands at one point. [C97,§2014; C24, 27, 31, 35, 39,§7816; C46, 50, 54, §471.14]

**1. Construction and application.**

Condemnation of right of way did not give right to divert surface water to damage of landowner.

Albright v. Cedar Rapids & Iowa City Railway & Light Co., 1907, 133 Iowa 644, 110 N.W. 1052.

Stodghill v. Chicago, B. & Q. R. Co., 1876, 43 Iowa 26, 22 Am. Rep. 210.

**471.15 Abandonment of right of way.** Where a railway constructed in whole or in part has ceased to be operated for more than five years; or where the construction of a railway has been commenced and work on the same has ceased and has not, in good faith, been resumed for more than five years, and remains unfinished; or where any portion of any such railway has not been operated for four consecutive years, and the rails and rolling stock have been wholly removed therefrom it shall be treated as abandoned. [C73,§1260; C97,§2015; C24, 27, 31, 35, 39,§7817; C46, 50, 54, §471.15]

Referred to in §471.16. Right to condemn abandoned right of way and §471.17. Procedure to condemn.
Abandonment, see §§473.1, 473.2.
Jan. 1932, 17 Iowa Law Review 235.

**1. Validity.**

Constitutionality upheld.

Central Iowa R. Co. v. Moulton & A. R. Co., 1881, 57 Iowa 249, 10 N.W. 639.

Right of way for railroad is taken by state for public use and it is competent for legislature to provide for its transfer under certain conditions.

Noll v. Dubuque B. & M. R. Co., 1871, 32 Iowa 66

**2. Construction and application.**

Property in which railroad held fee title subject to assessment for sewer purposes.

Chicago I. & D. R. Co. v. Cedar Rapids, I. F. & N. W. R. Co., 1885, 67 Iowa 324, 25 N.W. 264.

Partial abandonment is possible.

Central Iowa R. Co. v. Moulton & A. R. Co., 1881, 57 Iowa 249, 10 N.W. 639.

Hastings v. Burlington & M. R. R. Co., 1874, 38 Iowa 316.

**471.16 Right to condemn abandoned right of way.** All rights of the person or corporation which constructed or operated any such railway, as is mentioned in section 475.15, over so much as remains unfinished or from which the rails and rolling stock have been wholly removed, may be entered upon and appropriated as provided in section 417.17. [C73,§1260; C97,§2015; C24, 27, 31, 35, 39,§7818; C46, 50, 54,§471.16]

May 1917, 3 Iowa Law Bulletin 185.

**1. Validity.**

Right of way for railroad, is taken by state for public use; and it is competent for legislature to provide for its transfer under certain conditions.

Noll v. Dubuque B. & M. R. Co., 1871, 32 Iowa 66.

**417.17 Procedure to condemn.** In case of abandonment, as provided in section 471.15 and 471.16, any other corporation may enter upon such abandoned work, or any part thereof, and acquire the right of way over the same, and the right to any unfinished work or grading found thereon, and the title thereto, by proceeding as near as may be in the manner provided for an original condemnation. [C73,§1261; C97, §2016; C24, 27, 31, 35, 39,§7819; C46, 50, 54,§471.17]

Referred to in §471.16 Right to condemn abandoned right of way..

**1. Validity.**

Right of way for railroad, is taken by state for public use; and it is competent for legislature to provide for its transfer under certain conditions.

Noll v. Dubuque B. & M. R. Co., 1871, 32 Iowa 66.

**471.18 Parties entitled to damages.** Parties who have previously received compensation in any form for the right of way on the line of such abandoned railway, which has not been refunded by them, shall not be permitted to recover the second time. The value of such roadbed and right of way, excluding the work done thereon, when taken for a new company, shall be assessed in the condemnation proceedings for the benefit of the former company or its legal representative. [C73,§1261; C97,§2016; C24, 27, 31, 35, 39,§7820; C46, 50, 54,§471.18]

**1. Validity.**

Right of way for railroad, is taken by state for public use; and it is competent for legislature to provide for its transfer under certain conditions.

Noll v. Dubuque, B. & M. R. R. Co., 1871, 32 Iowa 66.

**2. Construction and application.**

Where land was abandoned for over eight years and another company entered without authority it was a trespasser.

McGinnis v. Wabash R. Co., 1908, 114 N.W. 1039.

Where right of way was abandoned for over eight years another company cannot condemn without compensation to owners.

Remey v. Iowa Cent. R. Co., 1902, 116 Iowa 133, 89 N.W. 218.

Where right of way was condemned and paid for and abandoned, when acquired by defendant company by condemnation, land being sold to plaintiff before defendant's acquisition, plaintiff could not recover compensation.

Remey v. Iowa Cent. R. Co., 1900, 83 N.W. 1059.

Where right of way was condemned and owner did not take award and did not appeal, and land was not used for long time; when road was built owner could not proceed for second award for damages.

Chicago, M. & St. P. Ry. Co. v. Bean, 1886, 69 Iowa 257, 28 N.W. 585.

Grantee of owner who received compensation had no greater rights than former owner.

Dubuque & D. R. Co. v. Diehl, 1884, 64 Iowa 635, 21 N.W. 117.

**417.19 Interpretative clause.** A grant in this chapter of right to take private property for a public use shall not be construed as limiting a like grant elsewhere in the code for another and different use. [C24, 27, 31, 35, 39,§7821; C46, 50, 54,§471.19]

# CHAPTER 472

## PROCEDURE UNDER POWER OF EMINENT DOMAIN

472.1 Procedure provided.
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472.35 Sheriff to file record.
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472.37 Form of record—certificate.
472.38 Record of proceedings.
472.39 Fee for recording.
472.40 Failure to record—liability.
472.41 Presumption.

**472.1 Procedure provided.** The procedure for the condemnation of private property for works of internal improvement, and for other public uses and purposes, unless

and except as otherwise provided by law, shall be in accordance with the provisions of this chapter. [C24, 27, 31, 35, 39,§7822; C46, 50, 54,§472.1]

**1. Construction and application.**

Power of eminent domain to be exercised with due respect to constitutional right and guarantees.

Chicago, R. I. & P. R. Co. v. Kay, D. C. 1952, 107 F. Supp. 895, affirmed in part and reversed in part on other grounds, 204 F.2d 116, rehearing denied, 204 F.2d 954, affirmed, 74 S.Ct. 290, 346 U. S. 574, 98 L. Ed. 338, rehearing denied, 74 S.Ct. 512, 347 U. S. 924, 98 L. Ed. 1078.

Supervisors must proceed under Chapter 471, 472 to condemn land to provide suitable material for highway improvement.

O. A. G. 1953, p. 84.

Electric transmission poles located on private easement acquired from abutting owner must be purchased or acquired under section 306.1 or under this section.

O. A. G., 1950, p. 174.

Condemnation procedure under Code 1873 by city under special charter granted in 1853.

Arnold v. City of Council Bluffs, 1892, 85 Iowa 441, 52 N.W. 347.

Williams v. City of Council Bluffs, 1892, 85 Iowa 735, 52 N.W. 349

Power company may do what is reasonably necessary to carry out public purpose.

De Penning v. Iowa Power & Light Co., 1948, 33 N.W.2d 503.

General chapter on eminent domain does not apply where other procedure is provided by law.

Welton v. Iowa State Highway Commission, 1930, 211 Iowa 625, 233 N.W. 876.

Commencement of condemnation proceeding impliedly admits taking or contemplated taking.

Millard v. Northwestern Mfg. Co., 1925, 200 Iowa 1063, 205 N.W. 979.

In establishing drainage district damages were not assessable by sheriff's jury.

Shaw v. Board of Sup'rs of Greene County, 1923, 195 Iowa 545, 192 N.W. 525.

Under code 1873, sheriff's jury could only assess damages for land taken by railroad, not for injury to property abutting on street where railroad was laid.

Slough v. Chicago & N. W. R. Co., 1887, 71 Iowa 641, 33 N.W. 149.

Where owner agreed to accept sum to be fixed by one and sold land to another and company took no steps toward having compensation fixed, vendee was entitled to have commissioners fix compensation.

Corbin v. Wisconsin, I. & N. R. Co., 1885, 66 Iowa 269, 23 N.W. 662.

Order establishing road without provision for payment was not unconstitutional where owner made no claim for damages in method prescribed by statute.

Abbott v. Scott County Sup'rs, 1873, 36 Iowa 354.

**2. Ad quod damnum proceedings.**

Rights of purchaser at tax sale not extinguished where he had not been made a party by proper notice.

Garmoe v. Sturgeon, 1884, 65 Iowa 147, 21 N.W. 493.

Where first writ was quashed another could be granted without notice to opposite party.

Burnham v. Thompson, 1872, 35 Iowa 421.

**3. Conditions precedent.**

Land cannot be taken for state park and lake and final determination to proceed with project must await some determination of damages.

Mathiasen v. State Conservation Comm., 1955, 246 Iowa 905, 70 N.W.2d 158.

Proceedings were without jurisdiction where owner did not refuse to give deed and there was no disagreement on compensation.

Minneapolis & St. L. R. Co. v. Chicago, M. & St. P. R. Co., 1902, 116 Iowa 681, 88 N.W. 1082.

Proceedings authorized only where owner refused to grant right of way or agreement on compensation could not be reached.

Council Bluffs & St. L. R. Co. v. Bentley, 1883, 62 Iowa 446, 17 N.W. 668.

Conditions which owner must comply with prior to recovery of damages for opening of street.

Blake v. City of Dubuque, 1862, 13 Iowa 66.

Acts showed owner refused to grant right of way.

Mississippi & M. R. Co. v. Rosseau, 1859, 8 Iowa 373, 8 Clarke 373.

**4. Title of landowner.**

Owner could not recover damages from county without showing title in himself.

Montgomery County v. Case, 1930, 212 Iowa 73, 232 N.W. 150.

Facts showed title sufficiently for purpose of proceeding.
Hartley v. Keokuk & N. W. R. Co., 1892, 85 Iowa 455, 52 N.W. 352.

**5. Proceedings in general.**

Only by process of appeal does district court obtain jurisdiction, and then appellate only.
Mazzoli v. City of Des Moines, 1954, 245 Iowa 571, 63 N.W.2d 218.

Proceeding before sheriff is administrative till appeal has been taken.
Chicago, R. I. & P. R. Co. v. Stude, 1954, 74 S. Ct. 290, 346 U. S. 574, 98 L. Ed. 338, rehearing denied, 74 S.Ct. 512, 347 U. S. 924, 98 L. Ed. 1078.

That only part of land required according to approved plans, was acquired did not invalidate condemnation.
Mill v. City of Denison, 1945, 237 Iowa 1335, 25 N.W.2d 323.

Soldiers and Sailors Civil Relief Act would safeguard appeal rights of soldier-owner.
Gilbride v. City of Algona, 1945, 237 Iowa 20, 20 N.W.2d 905.

Legislative power in fixing terms and conditions on which condemnation may be made.
Richardson v. City of Centerville, 1908, 137 Iowa 253, 114 N.W. 1071.

Absent special provision so requiring there is no right to trial by jury in condemnation cases.
Bradley, 1899, 108 Iowa 476, 79 N.W. 280.

Question whether grade crossings should be allowed cannot be determined in condemnation proceedings.
Chicago, B. & Q. R. Co. v. Chicago, Ft. M. & D. M. R. Co., 1894, 91 Iowa 16, 58 N.W. 918.

Party entitled only to compensation in manner prescribed by law.
Connolly v. Griswold, 1858, 7 Iowa 416, 7 Clarke 416.

Statutory provisions must be strictly complied with.
Walters v. Houck, 1858, 7 Iowa 72, 7 Clarke 72.

**6. Action for damages.**

Location of corner established by government survey held question of fact for court sitting without jury.
Fair v. Ida County, 1927, 204 Iowa 1046, 216 N.W. 952.

County condemning land not liable to owner, not served with notice, for damages in trespass.
Gibson v. Union County, 1929, 208 Iowa 314, 223 N.W. 111.

Suit for damages was not adequate remedy to owner whose land was seized under eminent domain.
Scott v. Price Bros. Co., 1927, 207 Iowa 191, 217 N.W. 75.

Rule that failure to condemn gives owner right to elect action at law does not apply to county.
Brown v. Davis County, 1923, 196 Iowa 1341, 195 N.W. 363.

Proceeding to assess damages to land could not be collaterally attacked in action of trespass.
Carlisle v. Des Moines & K. C. R. Co., 1896, 99 Iowa 345, 68 N. W. 784.

**7. Ejectment.**

Ejectment would lie where property was taken by railroad without tender of payment.
Daniels v. Chicago & N. W. R. Co., 1872, 35 Iowa 129, Am. Rep. 490.

**8. Injunction.**

In suit to enjoin condemnation proceeding plaintiff must show equitable ground to justify interference.
Porter v. Board of Sup'rs of Monona County, 1947, 238 Iowa 1399, 28 N.W.2d 841.

Action to enjoin improvement properly dismissed where no wrongful acts or proceedings were shown.
Mill v. City of Denison, 1947, 237 Iowa 1335, 25 N.W.2d 323.

Injunction proper remedy to prevent establishment of highway through orchard and ornamental grounds.
Hoover v. State Highway Commission, 1928, 207 Iowa 56, 222 N.W. 438.

Equity cannot enjoin or impose conditions precedent to prosecution of condemnation proceedings.
Herman v. Board of Park Com'rs of City of Boone, 1925, 200 Iowa 1116, 206 N.W. 35.

Injunction arresting proceedings before stage of assessment of damages and prior to appeal was improperly invoked.
Minear v. Plowman, 1924, 197 Iowa 1188, 197 N.W. 67.

Certain persons were neither necessary nor proper parties in action to enjoin proceeding to establish public way.
Miller v. Kramer, 1912, 154 Iowa 523, 134 N.W. 538.

Question of waiver of objections could not be considered for first time on appeal.
Scott v. Frank, 1903, 121 Iowa 218, 96 N.W. 764.

Since objection can be made that property sought is already devoted to public use no action will lie to enjoin condemnation.

Waterloo Water Co. v. Hoxie, 1893, 89 Iowa 317, 56 N.W. 499.

Grounds insufficient for injunction against proceedings.

Keokuk & N. W. R. Co. v. Donnell, 1889, 77 Iowa 221, 42 N.W. 176.

Owner could not maintain suit in equity to have proceedings declared void for irregularity since he had statutory right of appeal.

Phillips v. Watson, 1884, 63 Iowa 28, 18 N.W. 659.

Railway could compel specific performance of contract to convey right of way after complying with conditions and enjoin condemnation proceedings.

Chicago & S. W. R. Co. v. Swinney, 1874, 38 Iowa 182.

**9. Mandamus.**

Mandamus will lie to compel condemnation where land has been taken without authority and without compensation.

Baird v. Johnston, 1941, 230 Iowa 161, 297 N.W. 315.

Under the facts plaintiff was entitled to compel assessment of damages.

Dawson v. McKinnon, 1939, 226 Iowa 756, 285 N.W. 258.

**10. Agreements, settlements, stipulations, and waiver.**

If damages may be avoided by waiver or stipulation, which will fully protect all parties concerned such waiver should be received and acted upon.

De Penning v. Iowa Power & Light Co., 1948, 33 N.W.2d 503.

Evidence insufficient to authorize finding that there has been a settlement or compromise.

Mason v. Iowa Cent. Ry. Co., 1906, 131 Iowa 468, 109 N.W. 1.

**11. Property, estates, or interests subject to eminent domain.**

City lacks power of eminent domain with reference to acquisition of light, air and view affecting properties abutting on street in area to be occupied by viaduct.

O. A. G., Jan. 14, 1949, p. 11.

Dower right subordinate to right of eminent domain.

Caldwell v. City of Ottumwa, 1924, 198 Iowa 666, 200 N.W. 336.

**12. Payment.**

Payment of damages to be in money.

De Penning v. Iowa Power & Light Co., 1948, 33 N.W.2d 503.

**13. Title, estate, interest, or rights acquired.**

Power company condemning strip acquired easement.

De Penning v. Iowa Power & Light Co., 1948, 33 N.W.2d 503.

**14. Foreign corporations.**

Foreign corporation lacks power of eminent domain and owner cannot maintain such proceeding against such corporation.

Holbert v. St. Louis, K. C. & N. R. Co., 1876, 45 Iowa 23.

**472.2 By whom conducted.** Such proceedings shall be conducted:

1. By the attorney general when the damages are payable from the state treasury.

2. By the county attorney, when the damages are payable from funds disbursed by the county, or by any township, or school district.

3. By the city attorney, when the damages are payable from funds disbursed by the city or town.

This section shall not be construed as prohibiting any other authorized representative from conducting such proceedings. [C73,§1271; C97,§2024; S13,§§2024-a,-d,-f; C24, 27, 31, 35, 39,§7823; C46, 50, 54,§472.2]

12 Iowa Law Review 286.

**472.3 Application for condemnation.** Such proceedings shall be instituted by a written application filed with the sheriff of the county in which the land sought to be condemned is located. Said application shall set forth:

1. A description of all the property in the county, affected or sought to be condemned, by its congressional numbers, in tracts not exceeding one-sixteenth of a section, or, if the land consists of lots in a city or town, by the numbers of the lot and block, and plat designation.

2. A plat showing the location of the right of way or other property sought to be condemned with reference to such description.

3. The names of all record owners of the different tracts of land sought to be condemned, or otherwise affected by such proceedings, and of all record holders of liens and encumbrances on such lands; also the place of residence of all such persons so far as known to the applicant.

4. The purpose for which condemnation is sought.

5. A request for the appointment of a commission to appraise the damages. [R60,§1230; C73,§1247; C97,§2002; C24, 27, 31, 35, 39,§7824; C46, 50, 54,§472.3]

Milldams and races, petition in condemnation proceedings, §469.17.

**1. Construction and application.**

Only by process of appeal does district court obtain jurisdiction, and then appellate only.

Mazzoli v. City of Des Moines, 1954, 245 Iowa 571, 63 N.W.2d 218.

Proceeding before sheriff is administrative till appeal has been taken.

Chicago, R. I. & P. R. Co. v. Stude, 1954, 74 S. Ct. 290, 346 U. S. 574, 98 L. Ed. 338, rehearing denied, 74 S.Ct. 512, 347 U. S. 924, 98 L. Ed. 1078.

Compliance with statutes gave jurisdiction of proceedings to assess damages whether or not equitable owners were properly joined as plaintiffs.

Longstreet, 1925, 200 Iowa 723, 205 N.W. 343.

Prior survey, if made, is not commencement of condemnation proceedings.

Minneapolis & St. L. R. Co. v. Chicago, M. & St. P. R. Co., 1902, 116 Iowa 681, 88 N.W. 1082.

**2. Limitations.**

Right of landowner to prosecute condemnation proceedings was not cut off in five years by statute of limitations relative to injuries to real property.

Gates v. Colfax Northern Ry. Co., 1916, 177 Iowa 690, 159 N.W. 456.

**3. List of owners and parties.**

Listing of all record owners of property affected is not jurisdictional requirement.

Mill v. City of Denison, 1947, 237 Iowa 1335, 25 N.W.2d 323.

Purchaser of property sought to be condemned was real party in interest.

Millard v. Northwestern Mfg. Co., 1925, 200 Iowa 1063, 205 N.W. 979.

Compliance with statutes gave jurisdiction of proceedings to assess damages whether or not equitable owners were properly joined as plaintiffs.

Longstreet, 1925, 200 Iowa 723, 205 N.W. 343.

Company taking right of way could not complain that contract purchasers were made parties.

Wolfe v. Iowa Ry. & Light Co., 1915, 173 Iowa 277, 155 N.W. 324.

**4. Particular facts.**

Application to sheriff by landowner asking assessment of damages, need not allege that he refused to grant right of way.

Hartley v. Keokuk & N. W. R. Co., 1892, 85 Iowa 455, 52 N.W. 352.

Foreign corporation lacks power of eminent domain and owner cannot maintain such proceeding against such corporation.

Holbert v. St. Louis, K. C. & N. R. Co., 1877, 45 Iowa 23.

**5. Extent of property or rights to be taken.**

Where limited right is desired by condemner, limitations should be made part of record by placement in petition or order of condemnation.

De Penning v. Iowa Power & Light Co., 1948, 33 N.W.2d 503.

That notice stated right of way was for a "surburban and interurban line" did not prevent operation of steam trains without new condemnation.

Lewis v. Omaha & C. B. S. Ry. Co., 1912, 158 Iowa 137, 138 N.W. 1092.

**6. Damages.**

Form of application did not limit claim to damages to lots particularly described.

Cox v. Mason City & Ft. D. R. Co., 1889, 77 Iowa 20, 41 N.W. 475.

**7. Amendments.**

Petition for damages can be amended by increase in amount claimed.

Kemmerer v. Iowa State Highway Commission, 1932, 214 Iowa 136, 241 N.W. 693.

**8. Answer.**

Formal pleadings not required in condemnation proceedings.

Mason v. Iowa Cent. R. Co., 1906, 131 Iowa 468, 109 N.W. 1.

Objection can be made by answer to application.

Bennett v. City of Marion, 1898, 106 Iowa 628, 76 N.W. 844.

**472.4 Commission to assess damages.** The sheriff shall thereupon, except as otherwise provided, appoint six resident freeholders of his county, none of whom shall be interested in the same or a like question, who shall consti-

tute a commission to assess the damages to all real estate desired by the applicant and located in the county. [R60, §§1317, 1318; C73,§§1244, 1245; C97,§§1999, 2029; C24, 27, 31, 35, 39,§7825; C46 50, 54,§472.4]

Referred to in §472.5 Vacancies.
Milldams and races, jury in condemnation proceedings for, §469.18.
Sheriff's fee, §337.11.

**1. Validity.**

No deprivation of jury trial since such can be had on appeal.

Tharp v. Witham, 1885, 65 Iowa 566, 22 N.W. 677.

**2. Construction and application.**

Proceeding is administrative till appeal has been taken to district court.

Chicago, R. I. & P. R. Co. v. Stude, 1954, 74 S. Ct. 290, 346 U. S. 574, 98 L. Ed. 338, rehearing denied, 74 S.Ct. 512, 347 U. S. 924, 98 L. Ed. 1078.

Sheriff's commission is in no sense a judicial tribunal.

Chicago, R. I. & P. R. Co. v. Kay, D. C. 1952, 107 F. Supp. 895, affirmed in part and reversed in part on other grounds, 204 F.2d 116, rehearing denied, 204 F.2d 954, affirmed, 74 S.Ct. 290, 346 U. S. 574, 98 L. Ed. 338, rehearing denied, 74 S.Ct. 512, 347 U. S. 924, 98 L. Ed. 1078.

After return admits appointment of commissioners respondents may not except for failure of realtors to allege and show qualification and due appointment.

State ex rel Hiatt v. City of Keokuk, 1859, 9 Iowa 438.

Procedure where county would condemn for gravel pits.

O. A. G. 1919-20, p. 289.

**3. Qualified persons.**

That five of six members of commission, though freeholders of county, were not freeholders of city, was no basis for action to set aside proceedings.

Mill v. City of Denison, 1947, 237 Iowa 1335, 25 N.W.2d 323.

Commissioners could be reappointed after injunction was dissolved.

Miller v. Kramer, 1912, 154 Iowa 523, 134 N.W. 538.

Code 1897 did not require jury to assess damages to be composed of same members as in previous years.

Gray v. Iowa Cent. R. Co., 1905, 129 Iowa 68, 105 N.W. 359.

Party had right to have compensation determined by competent tribunal.

Ragatz v. City of Dubuque, 1857, 4 Iowa 343, 4 Clarke 343.

**4. Bias or prejudice.**

Bias or prejudice of commissioners to assess damages from their previous services as such did not vitiate the proceedings.

Price v. Town of Earlham, 1916, 175 Iowa 576, 157 N.W. 238.

On appeal it is immaterial whether sheriff was agent of railroad, or whether jury expressed opinions adverse to rights of owners.

Mississippi & M. R. Co. v. Rosseau, 1859, 8 Iowa 373, 8 Clarke 373.

**5. Fees and costs.**

Compensation of sheriff.

Robb v. A. K. & D. M. R. Co., 1876, 44 Iowa 440.

**6. Settlement.**

Where easement had been taken by condemnation and land was entered into, alleged settlement of damages was not contract involving real estate within statute of frauds, and trial court properly admitted evidence of claimed settlement.

Cunningham v. Iowa-Illinois Gas & Elec. Co., 1952, 243 Iowa 1377, 55 N.W.2d 552.

**472.5 Vacancies.** In case any appointee under section 472.4 fails to act, the sheriff shall summon some other freeholder, possessing the required qualifications, to complete the membership. [R60,§1319; C73,§1251; C97,§2006; C24, 27, 31, 35, 39,§7826; C46, 50, 54,§472.5]

**472.6 Commission when state is applicant.** When the damages are payable out of the state treasury, the sheriff, immediately upon receipt of the application, shall notify the chief justice of the supreme court of the filing of such application. Thereupon the chief justice shall appoint six resident freeholders of the state to assess all said damages. No commissioner, so appointed, shall be interested in the same or a like question. No two members of such commission shall be residents of the same county. The names and places of residence of such commissioners shall be returned by said chief justice to, and filed with, the sheriff. The chief justice shall fill all vacancies which may occur in the commission appointed under this section. [S13,§2024-d; C24, 27, 31, 35, 39,§7827; C46, 50, 54,§472.6]

March 1945, 30 Iowa Law Review 453.

**472.7 Commissioners to qualify.** Before proceeding with the assessment all commissioners shall qualify by filing with the sheriff a written oath that they will to the best of

their ability faithfully and impartially assess such damages and make written report to the sheriff. [C24, 27, 31, 35, 39, §7828; C46, 50, 54,§472.7]

Milldams and races, jury oath in condemnation proceedings, §469.21.

**472.8 Notice of assessment.** The applicant, or the owner or any lienholder or encumbrancer of any land described in the application, may, at any time after the appointment of the commissioners, have the damages to the lands of any such owner assessed by giving the other party, if a resident of this state, ten days notice, in writing. Such notice shall specify the day and the hour when the commissioners will view the premises, and be served in the same manner as original notices. [R60,§1318; C73,§1245; C97,§2000; C24, 27, 31, 35, 39,§7829; C46, 50, 54,§472.8]

Milldams and races, jury to meet on day fixed, order served, §469.18.
Service of original notices, Rules of Civil Procedure, Rule 56.
Allan D. Vestal, Spring 1953, 38 Iowa Law Review 439, 442.

**1. Construction and application.**

Notice in condemnation proceedings is commencement of the action.

Gilbride v. City of Algona, 1946, 237 Iowa 20, 20 N.W.2d 905.

Compliance with statutes as to application for appointment of jury and notice of time of viewing premises gave jurisdiction.

Longstreet, 1925, 200 Iowa 723, 205 N.W. 343.

Where application and notice were duly made and owner was present at viewing, took part, and made statements as to value, freeholders had jurisdiction to assess damages.

Carlile v. Des Moines & K. C. R. Co., 1896, 99 Iowa 345, 68 N.W. 784.

**2. Persons entitled to notice.**

Mortgagee entitled to notice.

Severin v. Cole, 1874, 38 Iowa 463.

**3. Necessity of notice.**

Owner on whom no notice was served was not bound.

Gibson v. Union County, 1929, 208 Iowa 314, 223 N.W. 111.

Where appeal is made on merits it is immaterial whether notice was given.

Borland v. Mississippi & M. R. Co., 1859, 8 Iowa 148, 8 Clarke 148.

**4. Effect of notice.**

By suitable statements in application condemnor may limit rights to be acquired.

De Penning v. Iowa Power & Light Co., 1948, 33 N.W.2d 503.

**5. Waiver of notice or defects.**

Owner not named in notice is not charged with notice of proceedings, but, if he appeals, such objection is waived.

Ellsworth v. Chicago & I. W. R. Co., 1894, 91 Iowa 386, 59 N.W. 78.

**472.9 Form of notice.** Said notice shall be in substantially the following form, with such changes therein as will render it applicable to the party giving and receiving the notice, and to the particular case pending, to wit:

"To ..... (here name each person whose land is to be taken or affected and each record lienholder or encumbrancer thereof) and all other persons, companies, or corporations having any interest in or owning any of the following described real estate:

(Here describe the land as in the application.)

You are hereby notified that ..... (here enter the name of the applicant) desires the condemnation of the following described land: (Here describe the particular land or portion thereof sought to be condemned, in such manner that it will be clearly identified.)

That such condemnation is sought for the following purpose: (Here clearly specify the purpose.)

That a commission has been appointed as provided by law for the purpose of appraising the damages which will be caused by said condemnation.

That said commissioners will, on the ..... day of ....., 19...., at ..... o'clock.... m, view said premises and proceed to appraise said damages, at which time you may appear before the commissioners if you care to do so.

.....
Applicant."

[R60,§1320; C73,§1247; C97,§2002; C24, 27, 31, 35, 39,§7830; C46, 50, 54,§472.9]

**1. Construction and application.**

Company could, by reservation in application and notice, limit condemnation, but failure to do so was not fatal to right of company to have matter considered on appeal.

De Penning v. Iowa Power & Light Co., 1948, 33 N.W.2d 503.

Compliance with statutes as to application for appointment of jury and notice of time of viewing premises gave jurisdiction.
Longstreet, 1925, 200 Iowa 723, 205 N.W. 343.

**2. Naming persons.**

Persons must be named if their land is to be taken.
Birge v. Chicago M. & St. P. R. Co., 1884, 65 Iowa 440, 21 N.W. 767.

**3. Description of land.**

Notice describing land to be taken as a certain number of feet on each side of center line of railroad "as same is located, staked and marked," was sufficient.
Lower v. Chicago B. & Q. R. Co., 1882, 59 Iowa 563, 13 N.W. 718.

**472.10 Signing of notice.** The notice may be signed by the applicant, by his attorney, or by any other authorized representative. [R60,§1320; C73,§1247; C97,§2002; C24, 27, 31, 35, 39,§7831; C46, 50, 54,§472.10]

**472.11 Filing of notices and return of service.** Notices, immediately after the service thereof, shall, with proper return of service indorsed thereon or attached thereto, be filed with the sheriff. The sheriff shall at once cause the commissioners to be notified of the day and hour when they will be required to proceed with the appraisement. [C24, 27, 31, 35, 39,§7832; C46, 50, 54,§472.11]

Milldams and races, jury summons in condemnation proceedings for, §469.18.

**472.12 Notice to nonresidents.** If the owner of such lands or any person interested therein is a nonresident of this state, or if his residence is unknown, no demand for the land for the purposes sought shall be necessary, but the notice aforesaid shall be published in some newspaper of the county and of general circulation therein, once each week for at least four successive weeks prior to the day fixed for the appraisement, which day shall be at least thirty days after the first publication of the notice. [R60,§1320; C73, §§1247, 1248; C97,§§2002, 2003; S13,§2003; C24, 27, 31, 35, 39, §7833; C46, 50, 54,§472.12]

Milldams and races, notice to nonresidents in condemnation proceedings for, §469.18.

**1. Construction and application.**

Condemnation statutes require strict construction and strict compliance, and service of notice must comply with R. C. P. 60.
Gilbride v. City of Algona, 1946, 237 Iowa 20, 20 N.W. 2d 905.

**2. Affidavit as to personal service.**

To justify notice by publication under R. C. P. 60, an affidavit must be filed with sheriff that personal service cannot be had on owner in Iowa.

Gilbride v. City of Algona, 1946, 237 Iowa 20, 20 N.W. 2d 905.

**3. Sufficiency of notice.**

Notice by publication to holder of legal title, and "all other persons interested," did not charge holder of tax sale certificate with notice of proceedings.

Cochran v. Independent School Dist. of Council Bluffs, 1879, 50 Iowa 663.

**472.13 Service outside state.** Personal service outside the state on nonresidents in the time and manner provided for the service of original notices shall have the same force and effect as publication service within the state. [C24, 27, 31, 35, 39,§7834; C46, 50, 54,§472.13]

Milldams and races, service of order for jury in condemnation proceedings for, §469.18.
April 1927, 12 Iowa Law Review 286.

**472.14 Appraisement—report.** The commissioners shall, at the time fixed in the aforesaid notices, view, if necessary, the land sought to be condemned and assess the damages which the owner will sustain by reason of the appropriation, and file their written report with the sheriff. The appraisement and return may be in parcels larger than forty acres belonging to one person and lying in one tract, unless the agent or attorney of the applicant, or the commissioners, have actual knowledge that the tract does not belong wholly to the person in whose name it appears of record. In case of such knowledge the appraisement shall be made of the different portions as they are known to be owned. [C73, §1249; C97,§§2004, 2029; C24, 27, 31, 35, 39,§7835; C46, 50, 54, §472.14]

Milldams and races, jury's determination of damages in condemnation proceedings for, §469.21.
Sheriff's fee for attending jury, §337.11.

**1. Construction and application.**

Presence and participation of landowner at viewing conferred jurisdiction on freeholders to assess damages.

Carlisle v. Des Moines & K. C. R. Co., 1896, 99 Iowa 345, 68 N.W. 784.

**2. Proceedings in general.**

It is duty of sheriff's jury to personally examine premises.

City of Des Moines v. Layman, 1866, 21 Iowa 153.

There must be a full, intelligent and competent inquiry into question of individual loss or damage.
Walters v. Houck, 1858, 7 Iowa 72, 7 Clarke 72.

**3. Issues.**

Question of right to condemn for purposes named was not concern of commissioners.
Forbes v. Delashmutt, 1885, 68 Iowa 164, 26 N.W. 56.

**4. Damages.**

Damages arising after filing of petition in condemnation proceedings are allowable.
Burnham v. Thompson, 1872, 35 Iowa 421.

**5. Measure of damages.**

Basis of award was difference between reasonable market value of entire tract immediately before the condemnation and of the remaining portion after the taking.
Hall v. City of West Des Moines, 1954, 245 Iowa 458, 62 N.W.2d 734.

Evidence of mineral deposits is only a permissible consideration and not a yardstick for measuring damages.
Nedrow v. Michigan-Wisconsin Pipe Line Co., 1954, 245 Iowa 763, 61 N.W.2d 687.

Fair value may be more or even less than owner's investment.
Foster v. U. S., C. C. A. 1945, 145 F.2d 873.

Measure of damage to leaseholder ordinarily its market value.
Korf v. Fleming, 1948, 32 N.W.2d 85, 3 A. L. R.2d 270.

Only question involved is value before and after the taking.
Eggleston v. Town of Aurora, 1943, 233 Iowa 559, 10 N.W.2d 104.

Difference in value of entire farm should be considered.
Wheatley v. City of Fairfield, 1932, 213 Iowa 1187, 240 N.W. 628.

Damages not to be awarded by assessment of a series of specific items.
Kosters v. Sioux County, 1923, 195 Iowa 214, 191 N.W. 993.

Proper to consider effect which proper use of condemned strip will have on remainder.
Kukkuk v. City of Des Moines, 1922, 193 Iowa 444, 187 N.W. 209.

Measure of damages is value as a whole in condition it was in at date of condemnation.

Ranck v. City of Cedar Rapids, 1907, 134 Iowa 563, 111 N.W. 1027.

Benefits to owner should be excluded.

Bennett v. City of Marion, 1898, 106 Iowa 628, 76 N.W. 844.

Sater v. Burlington & Mt. P. Plank Road Co., 1855, 1 Iowa 386, 1 Clarke 386.

**6. Land as entity, or separate lots, parts, or tracts, damages to.**

Two tracts of land contiguous to each other, owned by same person and not used in connection with each other considered as separate tracts.

Hoeft v. State, 1936, 221 Iowa 694, 266 N.W. 571, 10 A. L. R. 1008.

Damages not normally measured on whole of two separately owned tracts.

Duggan v. State, 1932, 214 Iowa 230, 242 N.W. 98.

Where it appeared that plaintiff never acquired ground from which right of way over one of two tracts was taken, it was presumed that sheriff's jury took into account only appropriation over other tract.

Hall v. Wabash R. Co., 1909, 141 Iowa 250, 119 N.W. 927.

Where two lots are used as one, property owner entitled to damages for injury to property as a whole.

Cummins v. Des Moines & St. L. R. Co., 1884, 63 Iowa 397, 19 N.W. 268.

**7. Unauthorized, unlawful, or negligent acts, damages for.**

Damages resulting from unauthorized or unlawful acts or from neglect to perform duty to fence are to be redressed in proper action.

Fleming v. Chicago, D. & M. R. Co., 1872, 34 Iowa 353.

King v. Iowa Midland R. Co., 1872, 34 Iowa 458.

Jury must not permit damages for improper or unlawful use of highway.

Welton v. Iowa State Highway Commission, 1930, 211 Iowa 625, 233 N.W. 876.

Owner cannot recover damages for improper construction of improvement.

Richardson v. City of Centerville, 1908, 137 Iowa 253, 114 N.W. 1071.

**8. Amount of damages.**

Award not so excessive as to indicate passion and prejudice.

Korf v. Fleming, 1948, 32 N.W.2d 85, 3 A. L. R.2d 270.

Defining "just compensation" as sum which would make owner whole was not prejudicial error.
Witt v. State, 1937, 223 Iowa 156, 272 N.W. 419.

Award held not excessive.
Besco v. Mahaska County, 1925, 200 Iowa 684, 205 N.W. 459.

Award not so excessive as to indicate prejudice.
Kosters v. Sioux County, 1923, 195 Iowa 214, 191 N.W. 993.

**9. Matters considered in determining damages.**

Whether original purchase was too remote in determining question of value was largely court's discretion.
Hall v. City of West Des Moines, 1954, 245 Iowa 458, 62 N.W.2d 734.

Evidence of royalty income of owners and presence of mineral deposits properly admitted as bearing on value of farm.
Nedrow v. Michigan-Wisconsin Pipe Line Co., 1954, 245 Iowa 763, 61 N.W.2d 687.

Necessities of public cannot be taken into consideration in fixing value of property taken.
U. S. v. Foster, C. C. A. 1942, 131 F.2d 3, certiorari denied, 63 S.Ct. 760, 318 U. S. 767, 87 L. Ed. 1138.
U. S. v. Buescher, C. C. A. 1942, 131 F.2d 3, certiorari denied, 63 S.Ct. 760, 318 U. S. 767, 87 L. Ed. 1138.

Damages must be paid for rights appropriated though full use thereof may not be immediately contemplated.
De Penning v. Iowa Power & Light Co., 1948, 33 N.W. 2d 503.

Unusual changes or those made necessary by artificial conditions, or which inflict special damage are not presumed to have been contemplated when land was acquired from owners.
Liddick v. City of Council Bluffs, 1942, 232 Iowa 197, 5 N.W.2d 361.

Damages, when once assessed include all injuries which may result for all time to come from construction and operation of improvement.
Lage v. Pottawattamie County, 1942, 232 Iowa 944, 5 N.W.2d 161.

Decrease in value caused by percolation of water from reservoir or condemned portion may be considered.
Wheatley v. City of Fairfield, 1932, 213 Iowa 1187, 240 N.W. 628.

Damages not limited to value of land taken but includes all matters, present or future, that necessarily and proximately affect market value of tract.

Kukkuk v. City of Des Moines, 1922, 193 Iowa 444, 187 N.W. 209.

Effect on value of remaining property and extent of inconvenience may be considered.

Bennett v. City of Marion, 1898, 106 Iowa 628, 76 N.W. 844.

Value of remaining premises is not to be depreciated by heaping consequence upon consequence.

Sater v. Burlington & Mt. P. Plank Road Co., 1855, 1 Iowa 386, 1 Clarke 386.

**10. Profits, personal property, crops, buildings, matters considered in determining damages.**

Evidence of royalty income of owners and presence of mineral deposits properly admitted as bearing on value of farm.

Nedrow v. Michigan-Wisconsin Pipe Line Co., 1954, 245 Iowa 763, 61 N.W.2d 687.

Losses incident to necessity of selling personal property by owner are not elements to include in fixing fair market value.

Foster v. U. S., C. C. A. 1945, 145 F.2d 873.

Evidence that leasehold was profitable is admissible to illustrate value of premises for rent.

Korf v. Fleming, 1948, 32 N.W.2d 85, 3 A. L. R.2d 270.

Value of growing crops lost by condemnation admissible.

Bracken v. City of Albia, 1922, 194 Iowa 596, 189 N.W. 972.

Kukkuk v. City of Des Moines, 1922, 193 Iowa 444, 187 N.W. 209.

Cost of rebuilding structure to quality and condition prior to taking and loss sustained by being deprived of its use when such loss was the immediate and necessary consequence, should be considered.

Freeland v. City of Muscatine, 1859, 9 Iowa 461.

Kahn v. City of Muscatine, 9 Iowa 461.

Value of buildings on land condemned considered in determining compensation.

O. A. G. 1930, p. 184.

**11. Uses and adaptability of land matters considered in determining damages.**

Where there was evidence of industrial development in

the territory, question of adaptability for industrial uses could be considered.

Hall v. City of West Des Moines, 1954, 245 Iowa 458, 62 N.W.2d 734.

Jury may consider all uses to which land is adapted and may award compensation on basis of most advantageous and valuable use.

U. S. v. Foster, C. C. A., 1904, 131 F.2d 3, certiorari denied, 63 S.Ct. 760, 318 U. S. 767, 87 L. Ed. 1138.

Value determined by consideration of uses to which property is adapted and all circumstances that affect such value.

Korf v. Fleming, 1948, 32 N.W.2d 85, 3 A. L. R.2d 270.

Compensation payable in view of physical condition of premises, present use and improvement, and fitness and desirability for other future uses.

Hubbell v. City of Des Moines, 1918, 183 Iowa 715, 167 N.W. 619.

Owner may show property to be peculiarly adaptable to particular purpose for which taken.

Tracy v. City of Mt. Pleasant, 1914, 165 Iowa 435, 146 N.W. 78.

**12. Benefits, matters considered in determining damages.**

Appreciation in value of owner's adjacent land cannot be considered in estimating damages.

Koestenbader v. Pierce, 1875, 41 Iowa 204.

Advantages resulting to owner not to be considered.

Israel v. Jewett, 1870, 29 Iowa 475.

**13. Interest.**

Where land and possession are taken prior to payment of damages interest should be allowed on award.

Lough v. Minneapolis & St. L. R. Co., 1902, 116 Iowa 31, 89 N.W. 77.

**14. Findings, award, and report.**

Condemnor entitled, on demand, to have assessment on tract, if entitled to consequential damages, separated from assessment on tract subject to improvement.

Duggan v. State, 1932, 214 Iowa 230, 242 N.W. 98.

Assessment of damages in lump sum to two tracts taken was harmless where court directed and jury found damages to each tract separately.

Longstreet, 1925, 200 Iowa 723, 205 N.W. 343.

Damages to tenants in common should be assessed separately if their respective interests can be ascertained.

Ruppert v. Chicago, O. & St. J. R. Co., 1876, 43 Iowa 490.

Authority to set aside findings of commissioners will not be sustained on doubtful implications.
Hiatt v. City of Keokuk, 1859, 9 Iowa 438.

**15. Notice of award.**

Mailing of notice of award, properly addressed, with proper postage raised rebuttable presumption that it was received by him.
Gregory v. Kirkman Consol. Independent School Dist., 1919, 186 Iowa 914, 173 N.W. 243.

**16. Objections to commissioners and award.**

Objections could not be considered for first time on appeal.
Scott v. Frank, 1903, 121 Iowa 218, 96 N.W. 764.

Objections to jurisdiction of sheriff's jury are not waived by an appeal from their award of damages.
Slough v. Chicago & N. W. R. Co., 1887, 71 Iowa 641, 33 N.W. 149.

**472.15 Guardianship.** In all cases where any interest in lands sought to be condemned is owned by a person who is under legal disability and has no guardian of his property, the applicant shall, prior to the filing of the application with the sheriff, apply to the district court for the appointment of a guardian of the property of such person. [C24, 27, 31, 35, 39,§7836; C46, 50, 50,§472.15]

Milldams and races, guardians in condemnation proceedings for, §469.19.
Charles B. Nutting, March 1934, 19 Iowa Law Review 385, 392.

**472.16 Power of guardian.** If the owner of any lands is under guardianship, such guardian may, under the direction of the district court, or judge thereof, agree and settle with the applicant for all damages resulting from the taking of such lands, and give valid conveyances thereof. [R60,§1316; C73,§1246; C97,§2001; C24, 27, 31, 35, 39,§7837; C46, 50, 54, §412.16]

Charles B. Nutting, March 1934, 19 Iowa Law Review 385, 392.

**472.17 When appraisement final.** The appraisement of damages returned by the commissioners shall be final unless appealed from. [C24, 27, 31, 35, 39,§7838; C46, 50, 54,§472.17]

**1. Construction and application.**

Only by process of appeal does district court obtain jurisdiction.
Mazzoli v. City of Des Moines, 1954, 245 Iowa 571, 63 N.W.2d 218.

Soldiers and Sailors Civil Relief Act would safeguard appeal rights of soldier owners, if they wished to assert appeal rights.

Gilbride v. City of Algona, 1946, 237 Iowa 20, 20 N.W. 2d 905.

Damages as awarded by commissioners are final until on appeal or otherwise decision is reversed or changed.

McCrory v. Griswold, 1858, 7 Iowa 248, 7 Clarke 248.

**472.18 Appeal.** Any party interested may, within thirty days after the assessment is made, appeal therefrom to the district court, by giving the adverse party, his agent or attorney, and the sheriff, written notice that such appeal has been taken. [R60,§1317; C73,§1254; C97,§2009; S13,§2009; C24, 27, 31, 35, 39,§7839; C46, 50, 54,§472.18)

Milldams and races, appeals in condemnation proceedings for, §469.22.

**1. Construction and application.**

Appeal does not lie from decision of sheriff's commission in Iowa to the Federal District Court.

Chicago, R. I. & P. R. Co. v. Kay, D. C. 1952, 107 F. Supp. 895, affirmed in part and reversed in part on other grounds, 204 F.2d 116, rehearing denied, 204 F.2d 954, affirmed, 74 S.Ct. 290, 346 U. S. 574, 98 L. Ed. 338, rehearing denied, 74 S.Ct. 512, 347 U. S. 924, 98 L. Ed. 1078.

Appeal is taken by merely serving written notice that appeal has been taken.

O'Neal v. State, 1932, 214 Iowa 977, 243 N.W. 601.

Williams v. State, 1932, 243 N.W. 604.

If owner is aggrieved by award he should have appealed as provided by statute.

McCrory v. Griswold, 1858, 7 Iowa 248, 7 Clarke 248.

Connolly v. Griswold, 1858, 7 Iowa 416, 7 Clarke 416.

Appeal rights of soldier-owners safeguarded by Soldiers and Sailors Civil Relief Act.

Gilbride v. City of Algona, 1946, 237 Iowa 20, 20 N.W. 2d 905.

Injunction arresting condemnation proceedings prior to assessment of damages or time for appeal was improperly invoked.

Minear v. Plowman, 1924, 197 Iowa 1188, 197 N.W. 67.

Statutory provisions for appeal must be pursued.

Thorson v. City of Des Moines, 1922, 194 Iowa 565, 188 N.W. 917.

Appeal does not lie from part of entire award of damages assessed on two tracts to one person.

Cedar Rapids, I. F. & N. W. R. Co. v. Chicago, M. & St. P. R. Co., 1882, 60 Iowa 35, 14 N.W. 76.

**2. Right to appeal.**

Right to appeal is purely statutory.

Kremar v. Independent School Dist. of Cedar Rapids, 1921, 192 Iowa 734, 185 N.W. 485.

Settlement with one tenant in common does not deprive others of right of appeal.

Ruppert v. Chicago, O. & St. J. R. Co., 1876, 43 Iowa 490.

Appeal lay from action of supervisors establishing a private road.

Bankhead v. Brown, 1868, 25 Iowa 540.

**3. Persons who may or must appeal.**

No appeal from award could be taken by a purchaser of the land who had not been made a party to the proceeding before the commissioners.

Connable v. Chicago, M. & St. P. R. Co., 1882, 60 Iowa 27, 14 N. W. 75.

Cedar Rapids, I. F. & N. W. R. Co. v. Chicago, M. & St. P. R. Co., 1882, 60 Iowa 27, 14 N.W. 75.

District court did not acquire jurisdiction by appeal taken by person not a party to the proceeding.

Gibson v. Union County, 1929, 208 Iowa 314, 223 N.W. 111.

Where railroad appealed the landowner did not have to take an appeal in order to procure greater damages.

McKinnon v. Cedar Rapids & I. C. R. & Light Co., 1905, 126 Iowa 426, 102 N.W. 138.

**4. Parties on appeal.**

Party to whom land had subsequently been conveyed, could not, as an intervenor, be made a party to an appeal.

Connable v. Chicago, M. & St. P. R. Co., 1882, 60 Iowa 27, 14 N.W. 75.

Cedar Rapids, I. F. & N. W. R. Co. v. Chicago, M. & St. P. R. Co., 1882, 60 Iowa 27, 14 N.W. 75.

Where after appraisement owner died, administratrix was proper party to be substituted in his place for appeal instead of heirs.

Conklin v. City of Keokuk, 1887, 73 Iowa 343, 35 N.W. 444.

Where owner failed to claim damages before supervisors, he could not be made a party on appeal.

Hanrahan v. Fox, 1877, 47 Iowa 102.

Where damages were assessed jointly to two owners, appeal could not be taken without uniting the other or making him a party thereto.

Chicago, R. I. & P. R. Co. v. Hurst, 1870, 30 Iowa 73.

**5. Separate or joint appeals.**

Where award is made to owner and mortgagee jointly, owner may appeal without joining mortgagee.

Lance v. Chicago, M. & St. P. R. Co., 1882, 57 Iowa 636, 11 N.W. 612.

Dixon v. Rockwell, S. & D. R. Co., 1888, 75 Iowa 367, 39 N.W. 646.

Where owner and tenant were made parties in condemnation proceedings and owner alone was awarded damages, neither was bound to join the other in an appeal.

Simons v. Mason City & Ft. D. R. Co., 1905, 128 Iowa 139, 103 N.W. 129.

**6. Jurisdiction.**

Where appeal has been perfected and jurisdiction of state court is involved proceeding then can be removed to U. S. District Court by defendant.

Chicago, R. I. & P. R. Co., v. Stude, 1954, 74 S.Ct. 290, 346 U. S. 574, 98 L. Ed. 338, rehearing denied, 74 S.Ct. 512, 347 U. S. 924, 98 L. Ed. 1078.

District court had concurrent jurisdiction with circuit court of appeals.

City of Ottumwa v. Derks, 1871, 32 Iowa 506.

District court had appellate jurisdiction of causes originating in county court, justices court and appeals from condemnation awards.

Runner v. City of Keokuk, 1861, 11 Iowa 543.

Under statute city council could not set aside report of commissioners.

State ex rel. Hiatt v. City of Keokuk, 1859, 9 Iowa 438.

**7. Appeal bond.**

In case of appeal by landowner no bond was necessary.

Robertson v. Eldora Railroad & Coal Co., 1869, 27 Iowa 245.

There was no error in filing bond with clerk instead of sheriff.

Grinnell v. Mississippi & M. R. Co., 1865, 18 Iowa 570.

**8. Notice.**

R. C. P. 49, on commencement of action for purposes of computing limitations by giving notice to sheriff, is not applicable to proceeding for condemnation of leasehold interest.

Mazzoli v. City of Des Moines, 1954, 245 Iowa 571, 63 N.W.2d 218.

Notice of appeal is in no sense "original notice" for commencing civil action.

O'Neal v. State, 1932, 214 Iowa 977, 243 N.W. 601.
Williams v. State, 1932, 243 N.W. 604.

Where either party, within 30 days of time of assessment, filed with clerk of district court, his claim for appeal, with bond, appeal would not be dismissed for reason that other party did not receive notice within 30 days of the assessment.

Dubuque & P. R. Co. v. Crittenden, 1857, 5 Iowa 514, 5 Clarke 514.
Dubuque & P. R. Co. v. Shinn, 1857, 5 Iowa 516, 5 Clarke 516.

Absent statutory regulation on manner of appeal, any act sufficient to indicate intent to appeal was sufficient as notice.

Robertson v. Eldora Railroad & Coal Co., 1869, 27 Iowa 245.

Where report of commissioners was brought before district court 14 months after filing appeal bond, it was error to try cause anew and assess damages without notice of appeal to company.

Burlington & M. R. R. Co. v. Sinnamon, 1859, 9 Iowa 293.

**9. Persons named and notified.**

Notice of appeal not served on sheriff conferred no jurisdiction on district court.

Thorson v. City of Des Moines, 1922, 194 Iowa 565, 188 N.W. 917.

Notice of appeal served on sheriff was insufficient where proceedings had been instituted before county superintendent of schools.

Kremar v. Independent School District of Cedar Rapids, 1921, 192 Iowa 734, 185 N.W. 485.

That sheriff was named on notice of appeal served on defendant and sheriff did not prejudice defendant or make sheriff party of action.

Buckmiller v. Creston W. & D. M. Ry. Co., 1914, 164 Iowa 502, 146 N.W. 447.

It was proper on appeal to serve notice of appeal on county school superintendent instead of sheriff.

Haggard v. Independent School District of Algona, 1901, 113 Iowa 486, 85 N.W. 777.

Under provision permitting service on "agent", service could be made on railroad company's civil engineer.

Jamison v. Burlington & W. R. Co., 1886, 69 Iowa 670, 29 N.W. 774.

Notice of appeal accepted by deputy sheriff where directed to do so by sheriff, in writing, signed by sheriff's name, is sufficient.

Waltmeyer v. Wisconsin, I & N. R. Co., 1884, 64 Iowa 688, 21 N.W. 139.

It was not essential that service also be made on sheriff.

Hahn v. C. O., & St. J. R. Co., 1876, 43 Iowa 333.

**10. Limitations.**

Where notice was not given within time required by statute district court did not obtain jurisdiction.

Mazzoli v. City of Des Moines, 1954, 245 Iowa 571, 63 N.W.2d 218.

Time for appeal runs from time assessment is actually made and reduced to writing, and in a legitimate way brought to notice of the parties.

Jamison v. Burlington & W. R. Co., 1886, 69 Iowa 670, 29 N.W. 774.

**11. Certiorari.**

Certiorari to review proceedings to establish road was limited to steps taken after a former decree was entered.

Miller v. Kramer, 1912, 154 Iowa 523, 134 N.W. 538.

Certiorari lies to review case where appraisers had no jurisdiction.

Abney v. Clark, 1893, 87 Iowa 727, 55 N.W. 6.

Where there is remedy by appeal certiorari will not lie.

Cedar Rapids, I. F. & N. W. Ry. Co. v. Whelan, 1884, 64 Iowa 694, 21 N.W. 141.

Court will not consider errors or irregularities dependent on facts not set out in petition.

Everett v. Cedar Rapids & M. Ry. Co., 1870, 28 Iowa 417.

Where proceedings of commissioners are irregular such should be brought up for review by certiorari to district court.

Runner v. City of Keokuk, 1861, 11 Iowa 543.

Three separate owners of distinct parcels of land, could not join for writ, when object was to ascertain damages.

Chambers v. Lewis, 1859, 9 Iowa 583.

Where damages were given for removal of a road, appeal was proper remedy to obtain reversal on ground that no cause for damages known to law had been shown.

Spray v. Thompson, 1859, 9 Iowa 40.

**12. Effect of appeal.**

Condemnation proceedings are administrative in nature until appeal taken to state district court when it becomes a civil action before a judicial body.

Chicago, R. I. & P. R. Co. v. Stude, 1954, 74 S.Ct. 290, 346 U. S. 574, 98 L. Ed. 338, rehearing denied, 74 S.Ct. 512, 347 U. S. 924, 98 L. Ed. 1078.

Objections to jurisdiction of sheriff's jury not waived by appeal from award of damages.

Slough v. Chicago & N. W. R. Co., 1887, 71 Iowa 641, 33 N.W. 149.

Notice of appeal constitutes presumptive evidence that assessment has been made.

Hahn v. Chicago, O. & St. J. R. Co., 1876, 43 Iowa 333.

**13. Attorney's fees.**

Landowners were not entitled to attorney's fees for services rendered on trial under count of petition seeking such relief before trial of issue under second count as to damages to be awarded.

Reter v. Davenport, R. I. & N. W. Ry. Co., 1952, 243 Iowa 1112, 54 N.W.2d 863, 35 A. L. R.2d 1306.

**14. Federal court, removal to.**

Prior to appeal being taken in state court, railroad could not remove appeal directly to Federal Court.

Chicago, R. I. & P. R. Co. v. Kay, D. C. 1952, 107 F. Supp. 895, affirmed in part and reversed in part on other grounds, 204 F.2d 116, rehearing denied, 204 F.2d 954, affirmed, 74 S.Ct. 290, 346 U. S. 574, 98 L. Ed. 338, rehearing denied, 74 S.Ct. 512, 347 U. S. 924, 98 L. Ed. 1078.

**15. Review.**

Where district court, without objection of the parties, tried the case without a jury, its decision had effect of jury verdict and Supreme Court could not determine appeal de novo but was limited to review of claimed errors.

Cunningham v. Iowa-Illinois Gas & Electric Co., 1952, 243 Iowa 1377, 55 N.W.2d 552.

**16. Settlement.**

On appeal from assessment, trial court properly ordered contract of settlement be specifically performed.

Cunningham v. Iowa-Illinois Gas & Electric Co., 1952, 243 Iowa 1377, 55 N.W.2d 552.

**472.19 Service of notice—highway matters.** Such notice of appeal shall be served in the same manner as an original notice. In case of condemnation proceedings instituted by the state highway commission, when the owner appeals from the assessment made, such notice of appeal shall be served upon the attorney general, or the special assistant attorney general, acting as council to said commission, or the chief engineer for said commission. When service of

notice of appeal cannot be made as provided in this section, the district court of the county in which the real estate is situated, or a judge therof, on application, shall direct what notice shall be sufficient. [C39,§7839.1; C46, 50, 54,§472.19]

Service of original notices, see Rules of Civil Procedure, Rule 56.

**1. Construction and application.**

Only by process of appeal does district court obtain jurisdiction.

Mazzoli v. City of Des Moines, 1954, 245 Iowa 571, 63 N.W.2d 218.

Compliance with statute regulating appeal is sufficient.

O'Neal v. State, 1932, 214 Iowa 977, 243 N.W. 601.

Williams v. State, 1932, 243 N.W. 604.

This section furnished civilian co-owners a method of serving notice of appeal on soldier co-owners and justified denial of stay sought on ground that co-owners could not perfect appeal for inability to serve notice on soldiers.

Gilbride v. City of Algona, 1946, 237 Iowa 20, 20 N.W.2d 905.

**2. Service.**

R. C. P. 49, on commencement of action for purposes of computing limitations by giving notice to sheriff, is not applicable to proceeding for condemnation of leasehold interest.

Mazzoli v. City of Des Moines, 1954, 245 Iowa 571, 63 N.W.2d 218.

Sheriff not a party to the action.

Buckmiller v. Creston, W. & D. M. Ry. Co., 1914, 164 Iowa 502, 146 N.W. 447.

Sheriff not disqualified to serve notice of appeal.

Cedar Rapids, I. F. & N. W. R. Co. v. Chicago, M & St. P. R. Co., 1882, 60 Iowa 35, 14 N.W. 76.

**3. Return.**

Service of notice of appeal gives jurisdiction, and at any time, sheriff can amend defective return so as to give court jurisdiction.

Buckmiller v. Creston, W. & D. M. Ry. Co., 1914, 164 Iowa 502, 146 N.W. 447.

**472.20 Sheriff to file certified copy.** The sheriff, when an appeal is taken, shall at once file with the clerk of the district court a certified copy of so much of the assessment as applies to the part appealed from. In case of such appeal the sheriff shall, as soon as all other unappealed assessments are disposed of, file with the clerk all papers pertaining to the proceedings and remaining in his hands. [R60,§1317; C73,§1254; C97,§2009; S13,§2009; C24, 27, 31, 35, 39,§7840; C46, 50, 54,§472.20]

**1. Construction and application.**

Appeal from award of sheriff's jury lies only to district court of state.

Chicago, R. I. & P. R. Co. v. Kay, D. C. 1952, F. Supp. 895, affirmed in part and reversed in part on other grounds, 204 F.2d 116, rehearing denied, 204 F.2d 954, affirmed, 74 S.Ct. 290, 346 U. S. 574, 98 L. Ed. 338, rehearing denied, 74 S.Ct. 512, 347 U. S. 924, 98 L. Ed. 1078.

Sheriff need not actually file transcript until case is reached for trial.

O'Neal v. State, 1932, 214 Iowa 977, 243 N.W. 601.
Williams v. State, 1932, 243 N.W. 604.

Appellant's failure to file transcript until case reached for trial not a fatal defect.

Simons v. Mason City & Ft. D. R. Co., 1905, 128 Iowa 139, 103 N.W. 129.

Not requisite that report of jury be filed in appellate court.

Hahn v. Chicago, O. & St. J. R. Co., 1876, 43 Iowa 333.

Failure to file papers until first day of next term after appeal was taken insufficient ground for dismissal of appeal.

Robertson v. Eldora Railroad & Coal Co., 1869, 27 Iowa 245.

**472.21 Appeals—how docketed and tried.** The appeal shall be docketed in the name of the owner of the land, or of the party otherwise interested and appealing, as plaintiff, and in the name of the applicant for condemnation as defendant, and be tried as in an action by ordinary proceedings. [R60,§1317; C73,§1254; C97,§2009; S13,§§2009, 2024-h; C24, 27, 31, 35, 39,§7841; C46, 50,§472.21]

Docketing appeals, R. C. P. 181 to 356.

**1. Construction and application.**

Proceeding administrative till appeal is taken.

Chicago, R. I. & P. R. Co. v. Stude, 1954, 74 S.Ct. 290, 346 U. S. 574, 98 L. Ed. 338, rehearing denied, 74 S.Ct. 512, 346 U. S. 924, 98 L. Ed. 1078.

Provision that appeal shall be tried as ordinary proceeding is applicable to notice of appeal.

O'Neal v. State, 1932, 214 Iowa 977, 243 N.W. 601.
Williams v. State, 1932, 243 N.W. 604.

Soldiers and Sailors Civil Relief Act would amply safeguard appeal rights of soldier landowner.

Gilbride v. City of Algona, 1946, 237 Iowa 20, 20 N.W.2d 905.

Compliance with statutes gave jurisdiction.

Longstreet, 1925, 200 Iowa 723, 205 N.W. 343.

**2. Appearance.**

Appearance by company to object to service of notice of appeal operated as a general appearance.

Robertson v. Eldora Railroad & Coal Co., 1869, 27 Iowa 245.

**3. Consolidating appeals.**

Separate appeals were properly consolidated.

Genco v. Northwestern Mfg. Co., 1927, 203 Iowa 1390, 214 N.W. 545.

Where separate appeals were taken it was not error to refuse consolidation on company's refusal to agree to rendition of separate verdicts.

Simons v. Mason City & Ft. D. R. Co., 1905, 128 Iowa 139, 103 N.W. 129.

**4. Dismissal and affirmance.**

Condemnor may dismiss its appeal.

Hanley v. Iowa Electric Co., 1919, 187 Iowa 590, 174 N.W. 345.

Partition of premises pending appeal does not dismiss it.

Ruppert v. Chicago, O. & St. J. R. Co., 1876, 43 Iowa 490.

Payment of filing fees.

Robertson v. Eldora Railroad & Coal Co., 1869, 27 Iowa 245.

**5. Rejection of award.**

Court's rejection of award disposed of it as statutory award, and left it open for action as common-law award.

Bureker v. Jefferson County, 1926, 201 Iowa 251, 207 N.W. 115.

**6. Settlement of waiver of rights.**

Right acquired by condemnation may be waived during pendency of appeal to court.

De Penning v. Iowa Power & Light Co., 1948, 33 N.W.2d 503.

**7. Change of venue.**

Plaintiff was not prejudiced by overruling of motion for change of venue where when verdict was reached he did not complain.

Neddermeyer v. Crawford County, 1919, 190 Iowa 883, 175 N.W. 339.

**8. Removal of causes.**

Removal possible when requisite grounds appear.

Chicago, R. I. & P. R. Co. v. Stude, 1954, 74 S.Ct. 290, 346 U. S. 574, 98 L. Ed. 338, rehearing denied, 74 S.Ct. 512, 347 U. S. 924, 98 L. Ed. 1078.

When appeal is perfected it can be removed to Federal Court.

Hagerla v. Mississippi River Power Co., D. C. 1912, 202 F. 771.

Where cause had been appealed it was subject to removal.

Myers v. Chicago N. W. R. Co., 1902, 118 Iowa 312, 91 N.W. 1076.

**9. Issues and extent of review and relief.**

Failure to limit condemnation not fatal to right of company to have matter considered on appeal.

De Penning v. Iowa Power & Light Co., 1948, 33 N.W. 2d 503.

Where parties proceed as if damages are to be assessed separately to owner and tenant, objections to this should be raised prior to time for instructing jury.

Wilson v. Fleming, 1948, 31 N.W.2d 393, motion denied, 32 N.W.2d 798.

District Court acts in appellate capacity and its power to review is circumscribed only by presumption in favor of action of condemning body in exercising its legislative discretion.

Porter v. Board of Sup'rs of Monona county, 1947, 238 Iowa 1399, 28 N.W.2d 841.

Authority to condemn may be subject of appeal.

Town of Alvord v. Great Northern Ry. Co., 1917, 179 Iowa 465, 161 N.W. 467.

Where company did not enter, but instead condemned the property, it cannot set upon appeal, breach of agreement to donate right of way.

Burrell v. Waterloo, C. F. & N. Ry. Co., 1916, 173 Iowa 441, 155 N.W. 809.

Appeal by either party brings question of damages for review de novo.

Wolfe v. Iowa Ry. & Light Co., 1915, 173 Iowa 277, 155 N.W. 324.

Where plaintiff contested only damages he could not deny right to condemn because of his refusal to consent.

Dennis v. Independent School Dist. of Walker, 1914, 166 Iowa 744, 148 N.W. 1007.

In proceeding for license for construction of dam plaintiff was not prejudiced by order requiring it to have damages assessed.

Iowa Power Co. v. Hoover, 1914, 166 Iowa 415, 147 N.W. 858.

On appeal, issues raised are not different from those presented to sheriff's jury.

Hall v. Wabash R. Co., 1909, 141 Iowa 250, 119 N.W. 927.

Where company appealed landowner could be awarded larger damages.
McKinnon v. Cedar Rapids & I. C. R. & Light Co., 1905, 126 Iowa 426, 102 N.W. 138.

Question of whether taking right of way should be allowed not determinable by the sheriff's jury.
Chicago B. & Q. R. Co. v. Chicago, Ft. M. & D. M. R. Co., 1894, 91 Iowa 16, 58 N.W. 918.

Court having decided that it had no jurisdiction properly refused to entertain other objections and determine what rights of parties would be if properly presented to the court.
Slough v. Chicago & N. W. R. Co., 1887, 71 Iowa 641, 33 N.W. 149.

Appeal from report of commissioners took case to District Court for trial on merits of report.
Runner v. City of Keokuk, 1861, 11 Iowa 543.

When case was properly in district court on appeal, it was there for trial on the merits.
Mississippi & M. R. Co. v. Rosseau, 1859, 8 Iowa 373, 8 Clarke 373.

Appeal brought cause to district court on its merits and it became immaterial whether appellate had notice.
Borland v. Mississippi & M. R. Co., 1859, 8 Iowa 148, 8 Clarke 148.

**10. Trial.**

Court's refusal to allow plaintiff to cross-examine on matters developed on direct examination, but not in dispute, not an abuse of discretion.
Watters v. Platt, 1918, 184 Iowa 203, 168 N.W. 808.

Court could, in absence of statutory provisions, adopt a procedure not inconsistent with parties' constitutional rights.
Jones v. School Board of Liberty Tp., 1908, 140 Iowa 179, 118 N.W. 265.

On appeal defendant not prejudiced by examination of jurors on their voir dire, of amount of award by sheriff's jury, merely for purposes of identifying case.
Simons v. Mason City & Ft. D. R. Co., 1905, 128 Iowa 139, 103 N.W. 129.

Not a violation of constitution to refuse jury trial in condemnation proceeding.
In re Bradley, 1899, 108 Iowa 476, 79 N.W. 280.

Statute conferring on District Court discretion to grant or refuse new assessment by a jury was not in conflict with constitutional provisions.
City of Des Moines v. Layman, 1866, 21 Iowa 153.

Plaintiff entitled to have his damages found by a jury on appeal.

Deaton v. Polk County, 1859, 9 Iowa 594.

**11. Burden of proof.**

Owner assumes burden of proof on appeal.

Randell v. Iowa State Highway Commission, 1932, 214 Iowa 1, 241 N.W. 685.

When condemnor alleged ownership in certain persons they did not have to prove title.

Tracy v. City of Mt. Pleasant, 1914, 165 Iowa 435, 146 N.W. 78, modified on other grounds, 148 N.W. 637.

**12. Evidence.**

Objection that testimony was inadmissible must be interposed at time the testimony was admitted.

Foster v. U. S., C. C. A. 1945, 145 F.2d 873.

Admission of evidence that owner lived in another state not prejudicial.

Purdy v. Waterloo, C. F. & N. Ry. Co., 1915, 172 Iowa 676, 154 N.W. 881.

Where defendant denied plaintiff's title to part of land affected and certain questions were asked of defendant's attorney, tending to show title, their exclusion was not prejudicial error.

Pingrey v. Cherokee & D. R. Co., 1889, 78 Iowa 438, 43 N.W. 285.

**13. Questions of law or fact.**

Location of corner established by government survey was question of fact for court sitting without jury.

Fair v. Ida County, 1927, 204 Iowa 1046, 216 N.W. 952.

**14. Instructions.**

Failure of court to explain term "if necessary" in instruction, was not error where no issue as to necessity had been raised.

Hoeft v. State, 1936, 221 Iowa 694, 266 N.W. 571, 104 A. L. R. 1008.

**15. Rehearing and new trial.**

Reopening case tried to court for material testimony was not error.

Fair v. Ida County, 1927, 204 Iowa 1046, 216 N.W. 952.

**16. Review in appellate court.**

Motion for change of venue overruled.

Neddermeyer v. Crawford County, 1919, 190 Iowa 883, 175 N.W. 339.

Where court made mistake of one tenth of an acre, and company offered to add to damages value of such piece,

judgment should not be reversed on that ground.
Hoyt v. Chicago, M. & St. P. R. Co., 1902, 117 Iowa 296, 90 N.W. 724.

Judgment reversed where plaintiff claimed roadway running east, when in fact agreement was for one running west and mistake was undiscovered till after appeal.
White v. Farlie, 1885, 67 Iowa 628, 25 N.W. 837.

Appeal lies to Supreme Court from order overruling motion to set aside verdict and quash writ in condemnation proceeding.
Burnham v. Thompson, 1872, 35 Iowa 421.

**17. Jurisdiction.**

Railroad had no right of appeal to federal court directly.
Chicago, R. I. & P. R. Co. v. Stude, 1953, 204 F.2d 116, rehearing denied, 204 F.2d 954, affirmed, 74 S.Ct. 290, 346 U. S. 574, 98 L. Ed. 338, rehearing denied, 74 S.Ct. 512, 346 U. S. 924, 98 L. Ed. 1078.

**472.22 Pleadings on appeal.** A written petition shall be filed by the plaintiff on or before the first day of the term to which the appeal is taken, stating specifically the items of damage and the amount thereof. The defendant shall file a written answer to plaintiff's petition, or such other pleadings as may be proper. [C31, 35,§7841-c1; C39,§7841.1; C46, 50, 54,§472.22]

**1. Construction and application.**

Compliance with statute regulating appeals is sufficient.
O'Neal v. State, 1932, 214 Iowa 977, 243 N.W. 601.
Williams v. State, 1932, 243 N.W. 604.

Soldiers and Sailors Civil Relief Act would protect rights of soldier-owner.
Gilbride v. City of Algona, 1946, 237 Iowa 20, 20 N.W. 2d 905.

Provision that petition on appeal should specify items of damage did not alter measure of damages.
Maxwell v. Iowa State Highway Commission, 1937, 223 Iowa 159, 271 N.W. 883, 118 A. L. R. 862.

To effectuate appeal, petition provided for by statute was to be filed in appellate court, on which a report in nature of a bill of exceptions could be made.
City of Ottumwa v. Derks, 1871, 32 Iowa 506.

On appeal to district court there was no error in filing a petition in district court.
Ginnell v. Mississippi & M. R. Co., 1864, 18 Iowa 570.

**2. Limitations.**

Requirement that on owner's appeal, petition be filed on or before the first day of the term was procedural, not jurisdictional.

O'Neal v. State, 1932, 214 Iowa 977, 243 N.W. 601.

Williams v. State, 1932, 243 N.W. 604.

J. F. Wilcox & Sons v. City of Omaha, 1936, 220 Iowa 1131, 264 N.W. 5.

**3. Petition.**

Pleader required to state specifically items of damage and amount thereof.

Stoner v. Iowa State Highway Commission, 1939, 227 Iowa 115, 287 N.W. 269.

This section did not require amount of each separate item to be stated, only total amount claimed.

Maxwell v. Iowa State Highway Commission, 1937, 223 Iowa 159, 271 N.W. 883, 118 A. L. R. 862.

**4. Answer.**

Company condemning strip could waive its right of access to strip over remainder of farm by answer to petition on appeal.

De Penning v. Iowa Power & Light Co., 1948, 33 N.W. 2d 503.

Refusal to permit defendant to plead or prove matters relating to manner of construction of improvement, tending to minimize damages not error where such matters had gotten before the jury in one way or another.

Stoner v. Iowa State Highway Commission, 1939, 227 Iowa 115, 287 N.W. 269.

Affirmative defenses not pleaded could not be used.

Mason v. Iowa Cent. Ry. Co., 1906, 131 Iowa 468, 109 N.W. 1.

Objection that appellee failed to properly file transcript and pay docket fee in prescribed time, was properly submitted on motion to dismiss.

Simons v. Mason City & Ft. D. R. Co., 1905, 128 Iowa 139, 103 N.W. 129.

Where answer alleged that plaintiff had, for a consideration, made and delivered a deed for the right of way, end defendant offered deed in evidence, objection that it was neither original nor copy was properly overruled.

Taylor v. Cedar Rapids & St. P. R. Co., 1868, 25 Iowa 371.

**5. Amendments.**

Petition may be amended by increase in amount claimed.

Kemmerer v. Iowa State Highway Commission, 1932, 214 Iowa 136, 241 N.W. 693.

Owners of dam could amend petition for license to show that owner had waived right to damages or had settled.

Wapsipinicon Power Co. v. Waterhouse, 1918, 186 Iowa 524, 167 N.W. 623.

**472.23 Question determined.** On the trial of the appeal, no judgment shall be rendered except for costs, but the amount of damages shall be ascertained and entered of record. [C73,§1257; C97,§2011; C24, 27, 31, 35, 39,§7842; C46, 50, 54,§472.23]

**1. Construction and application.**

Presumption was that on trial adequate damages would be awarded.

Browneller v. Natural Gas Pipeline Co. of America, 1943, 233 Iowa 686, 8 N.W.2d 474.

In event of injustice in fixing of damages by commissioners remedy is by appeal for hearing before a jury.

Price v. Town of Earlham, 1916, 175 Iowa 576, 157 N.W. 238.

**2. Issues on appeal.**

Only appealable issue is award of damages.

Longstreet, 1925, 200 Iowa 723, 205 N.W. 343.

If sheriff's jury included in its assessment a portion of land not owned by plaintiff, error could be corrected on appeal.

Hall v. Wabash R. Co., 1909, 141 Iowa 250, 119 N.W. 927.

**3. Agreements, stipulations and waiver.**

Because evidence of agreement showed it to be a compromise it was not admissible.

Miller v. Iowa Elec. Light & Power Co., 1949, 34 N.W. 2d 627.

If damages may be avoided by waiver or stipulation, such waiver should be received and acted upon.

De Penning v. Iowa Power & Light Co., 1948, 33 N.W. 2d 503.

Acceptance of such part of award over which there is no controversy on appeal does not waive right of appeal to that part in controversy.

Globe Machinery & Supply Co. v. City of Des Moines, 1912, 156 Iowa 267, 136 N.W. 518.

**4. View of premises.**

It is within discretion of court to permit view of premises.

Draker v. Iowa Electric Co., 1921, 191 Iowa 1376, 182 N.W. 896.

It was proper to instruct that view was to better enable jury to understand testimony and more intelligently apply it to issues, that they must consider the evidence in light of such view, but determine facts from evidence alone.

Guinn v. Iowa & St. L. Ry. Co., 1906, 131 Iowa 680, 109 N.W. 209.

Action of court in refusing a view will not be disturbed on appeal where no abuse of discretion appears.

King v. Iowa Midland R. Co., 1872, 34 Iowa 458.

Jury not authorized to base verdict on view, as its object is to better enable them to apply the testimony.

Close v. Samm, 1869, 27 Iowa 503.

**5. Damages.**

Court makes proper order in regard to interest.

Reed v. Chicago, M. & St. P. Ry. Co., C. C. 1885, 25 F. 886.

"Market value" of farm is matter of approximation at best.

Cory v. State, 1932, 214 Iowa 222, 242 N.W. 100.

Owner was permitted to prove damage to entire farm though it consisted of more land than described in his notice of appeal.

Dudley v. Minnesota & N. W. R. Co., 1889, 77 Iowa 408, 42 N.W. 359.

**6. Persons entitled to damages.**

Where record title holder contracted to sell to equitable owners and all were plaintiffs on appeal instruction that issue was damages all plaintiffs were entitled to recover was not objectionable on theory that equitable owners alone were entitled to recover.

Eggleston v. Town of Aurora, 1943, 233 Iowa 559, 10 N.W.2d 104.

**7. Measure of damages.**

Right of owner to recover not to be measured by generosity, necessity or estimated advantage or fear or dislike of litigation which may have induced others to part with title to their realty.

Steensland v. Iowa-Illinois Gas & Elec. Co., 1951, 242 Iowa 534, 47 N.W.2d 162.

Inconvenience and damage to land as a whole affect value.

Schoonover v. Fleming, 1948, 32 N.W.2d 99.

Proper measure is difference in market value just before taking and market value after taking.

Korf v. Fleming, 1948, 32 N.W.2d 85, 3 A. L. R.2d 270.

Difference between reasonable value before and immediately after.

Maxwell v. Iowa State Highway Commission, 1937, 223 Iowa 159, 271 N.W. 883, 118 A. L. R. 862.

Owner may show difference in value before and after taking.

Randell v. Iowa State Highway Commission, 1932, 214 Iowa 1, 241 N.W. 685.

Where there is evidence that the taking depreciated market value of farm as a whole, value of land appropriated is not alone, measure of damages.

Watkins v. Wabash R. Co., 1907, 137 Iowa 441, 113 N.W. 924.

Permitting witnesses to state value of farm before, and that after taking it lost a value of so much per acre, was not error where witness afterwards gave a value of farm as a unit.

Ball v. Keokuk & N. W. Ry. Co., 1888, 74 Iowa 132, 37 N.W. 110.

It is proper to ask plaintiff how much less his farm was worth immediately after the taking than it was worth immediately before, not taking into account any benefits.

Harrison v. Iowa M. R. Co., 1873, 36 Iowa 323.

**8. Land as entity, or separate lots, parts or tracts, damages to.**

Where evidence was sufficient to warrant jury in finding that property consisted of either one or two tracts, permitting jury to assess against each separately not error where jury assessed against entire tract.

Hoeft v. State, 1936, 221 Iowa 694, 266 N.W. 571, 104 A. L. R. 1008.

Permitting witnesses to show valuation based on separate parcels of one farm was prejudicial error.

Welton v. Iowa State Highway Commission, 1930, 211 Iowa 625, 233 N.W. 876.

Owner entitled to recover damages to farm as a whole despite fact that only a part of farm was described in condemnation proceedings.

Cook v. Boone Suburban Electric R. Co., 1904, 122 Iowa 437, 98 N.W. 293.

Court properly refused to submit interrogatories, asking opinion of jury as to damages to separate parts of the farm.

Winklemans v. Des Moines N. W. Ry. Co., 1883, 62 Iowa 11, 17 N.W. 82.

**9. Minimizing damages.**

Owner under no duty to minimize damages.

Wilson v. Fleming, 1948, 31 N.W.2d, 393, motion denied, 32 N.W.2d 798.

Kemmerer v. Iowa State Highway Commission, 1932, 214 Iowa 136, 241 N.W. 693.

**10. Interest as damages.**

Interest computed from time of taking of possession.

Hayes v. Chicago, R. I. & P. Ry. Co., 1948, 30 N.W.2d 743.

Where amount of interest was merely matter of computation trial court could add interest to the verdict.

Beal v. Iowa State Highway Commission, 1930, 209 Iowa 1308, 230 N.W. 302.

Interest at six per cent may be allowed from time railroad was constructed, the action being in trespass.

Darst v. Ft. Dodge, D. M. & S. Ry. Co., 1922, 194 Iowa 1145, 191 N.W. 288.

Where date of possession is undisputed, question of allowance of interest was for court.

Lough v. Minneapolis & St. L. R. Co., 1902, 116 Iowa 31, 89 N.W. 77.

Where award was affirmed on appeal to supreme court and owner received award from sheriff, and costs were paid, it was then too late to have court allow interest.

Jamison v. Burlington & W. R. Co., 1893, 87 Iowa 265, 54 N.W. 242.

Where court did not mention interest it is presumed jury did not add interest to its verdict and court could allow interest on excess of verdict over commissioners award.

Hollingsworth v. Des Moines & St. L. R. Co., 1884, 63 Iowa 443, 19 N.W. 325.

Failing to raise issue of interest on appeal owner could not, after payment of amount awarded, maintain separate action for interest.

Hays v. Chicago, M. & St. P. R. Co., 1884, 64 Iowa 753, 19 N.W. 245.

Interest allowable on damages found to date of trial.

Hartshorn v. Burlington, C. R. & N. R. Co., 1879, 52 Iowa 613, 3 N.W. 648.

**11. Unlawful or negligent acts, damages for.**

Damage caused by overflow due to negligent construction of culvert cannot be deemed to have been considered when right of way was acquired.

Hunt v. Iowa Cent. R. Co., 1892, 86 Iowa 15, 52 N.W. 668, 14 Am. St. Rep. 473.

Damages for negligent construction may be recovered in later action

Miller v. Keokuk & D. M. R. Co., 1883, 63 Iowa 680, 16 N.W. 567.

**12. Matters considered in determining damages.**

Though company failed to limit its rights in condemnation it could have the matter considered on appeal.

De Penning v. Iowa Power & Light Co., 1948, 33 N.W.2d 503.

Mere purchase of other land to take place of that condemned could not be considered.

Schoonover v. Fleming, 1948, 32 N.W.2d 99.

All facts which would naturally influence a person of ordinary prudence desiring to purchase may be considered.

Korf v. Fleming, 1948, 32 N.W.2d 85, 3 A. L. R.2d 270.

Consideration of tracts as separate.

Cutler v. State, 1938, 224 Iowa 686, 278 N.W. 327.

Refusal to permit condemnor to show distance of farm from various market centers and character of roads was not error.

Moran v. Iowa State Highway Commission, 1937, 223 Iowa 936, 274 N.W. 59.

Evidence tending to show specific items of damage admissible as bearing on value.

Maxwell v. Iowa State Highway Commission, 1937, 223 Iowa 159, 271 N.W. 883, 118 A. L. R. 862.

Testimony on specific sum required to hire help to drive cattle across highway inadmissible as speculation.

Randell v. Iowa State Highway Commission, 1932, 214 Iowa 1, 241 N.W. 685.

Award of damages is conclusively presumed to include all damages, present and future resulting from proper use of condemned land.

Wheatley v. City of Fairfield, 1932, 213 Iowa 1187, 240 N.W. 628.

Refusing to permit cross-examination of value witness regarding distance of landowner's farm to market and type of road was error.

Welton v. Iowa State Highway Commission, 1931, 211 Iowa 625, 233 N.W. 876.

Evidence of location, use for which improvements were constructed, character and condition of machinery and cost of removal and installment elsewhere, admissible as descriptive of injury suffered though not to be considered as substantive elements of damage.

Des Moines Wet Wash Laundry v. City of Des Moines, 1924, 197 Iowa 1082, 198 N.W. 486, 34 A. L. R. 1517.

Testimony of witness that his valuation was partly based on appearance of place not objectionable.

Kukkuk v. City of Des Moines, 1922, 193 Iowa 444, 187 N.W. 209.

Award of damages is conclusively presumed to include all damages, present and future, resulting from proper use of condemned land.

Wissmath Packing Co. v. Mississippi River Power Co., 1917, 179 Iowa 1309, 162 N.W. 846, L. R. A. 1917F. 790.

Deducing valuation from consideration of prices of properties in the "neighborhood."

Youtzy v. City of Cedar Rapids, 1911, 150 Iowa 53, 129 N.W. 351.

Evidence that situation was well adapted to and valuable for a particular business had bearing on value of property.

Ranck v. City of Cedar Rapids, 1907, 134 Iowa 563, 111 N.W. 1027.

Hypothetical questions to witnesses to consider surrounding circumstances as they saw them after construction, and situation of farm as seen, and location of road with reference to a lake were not improper, when witnesses were directed to assume proper construction and adequate crossing.

Guinn v. Iowa & St. L. Ry. Co., 1906, 131 Iowa 680, 109 N.W. 209.

**13. Buildings and improvements, matters considered in determining damages.**

Exclusion of evidence showing farm could be more efficiently operated by removal of buildings, and such cost of removal was not reversible error.

Wilson v. Fleming, 1948, 31 N.W.2d 393, motion denied, 32 N.W.2d 798.

Refusal to permit owner to testify on separate value of dwelling house was not error.

Hayes v. Chicago, R. I. & P. Ry. Co., 1948, 30 N.W. 2d 743.

Testimony that buildings would eventually have to be moved not objectionable as immaterial and irrelevant.

Kukkuk v. City of Des Moines, 1922, 193 Iowa 444, 187 N.W. 209.

**14. Fences, bridges, crossings, cattle ways, etc., matters considered in determining damages.**

Admission of testimony as to inadequacy of cattleway not reversible error.

Kemmerer v. Iowa State Highway Commission, 1932, 214 Iowa 136, 241 N.W. 693.

Cost of removing and replacing fence cannot be recovered for as such and jury should be so instructed.

Randell v. Iowa State Highway Commission, 1932, 214 Iowa 1, 241 N.W. 685.

Instruction on damages for constructing drainage ditch not erroneous as permitting jury to consider cost of bridges.

Kerr v. Tysseling, 1931, 239 N.W. 233.

Error in admitting cost of fencing was not cured by instruction.

Dean v. State, 1930, 211 Iowa 143, 233 N.W. 36.

Error to admit cost of constructing adequate cattle pass.

Kosters v. Sioux County, 1923, 195 Iowa 214, 191 N.W. 993.

Failure or refusal to provide proper crossing not matter for consideration of jury.

Pingrey v. Cherokee & D. R. Co., 1889, 78 Iowa 438, 43 N.W. 285.

**15. Minerals, matters considered in determining damages.**

Evidence of mineral deposits admissible as bearing on value.

Doud v. Mason City & F. D. R. Co., 1888, 76 Iowa 438, 41 N.W. 65.

**16. Inconveniences, annoyances, dangers, etc., matters considered in determining damages.**

Permitting jury to consider danger to children in fixing damages, not error.

Wilson v. Fleming, 1948, 31 N.W.2d 393, motion denied, 32 N.W.2d 798.

Jury may consider annoyance, danger and inconvenience resulting in use and enjoyment.

Wheatley v. City of Fairfield, 1932, 213 Iowa 1187, 240 N.W. 628.

Testimony of danger to crops and occupants properly admitted under instruction to consider such only as affecting market value.

Evans v. Iowa Southern Utilities Co. of Delaware, 1928, 205 Iowa 283, 218 N.W. 66.

**17. Future use of land, matters considered in determining damages.**

To warrant admission of testimony of value of land taken for purposes other than for which actually used, regard must be had for conditions and wants of community as may be reasonably expected in immediate future.

U. S. v. Foster, C. C. A. 1942, 131 F.2d 3, certiorari denied, 63 S.Ct. 760, 318 U. S. 767, 87 L. Ed. 1138.

U. S. v. Buescher, C. C. A. 1942, 131 F.2d 3, certiorari denied, 63 S.Ct. 760, 318 U. S. 767, 87 L. Ed. 1138.

Damages must be paid for rights appropriated though full use thereof may not be immediately contemplated.

De Penning v. Iowa Power & Light Co., 1948, 33 N.W.2d 503.

Whether value of property for use for which condemned may be separately proven is a matter of court's discretion depending on particular facts.

Tracy v. City of Mt. Pleasant, 1914, 165 Iowa 435, 146 N.W. 78, modified on other grounds, 148 N.W. 637.

**18. Benefits, matters considered in determining damages.**

Refusal to permit defendant to cross-examine expert on value, unless question excluded benefits, was error.

Dean v. State, 1930, 211 Iowa 143, 233 N.W. 36.

Advantages resulting from improvement cannot be considered.

Israel v. Jewett, 1870, 29 Iowa 475.

**19. Amount of damages.**

Evidence sufficient to sustain award.

Miller v. Iowa Electric Light & Power Co., 1949, 34 N.W.2d 627.

Awards not excessive under evidence.

Wilson v. Fleming, 1948, 31 N.W.2d 393, motion denied, 32 N.W.2d 798.

Award not so excessive as to indicate passion and prejudice.

Kosters v. Sioux County, 1923, 195 Iowa 214, 191 N.W. 993.

Verdict indicated plaintiff did not have a fair trial.

Neddermeyer v. Crawford County, 1919, 190 Iowa 883, 175 N.W. 339.

**20. Payment of damages**

Absent a statute court could fix time within which award should be paid.

City of Des Moines, Iowa, v. Des Moines Water Co., 1916, 230 F. 570, 144 C. C. A. 624.

**21. Trial in general.**

Improper to refer to amount of award appealed from but can be remedied by instruction.

Ball v. Keokuk & N. W. R. Co., 1888, 74 Iowa 132, 37 N.W. 110.

**22. Burden of proof.**

Burden of proof on owner in appeal.

Randell v. Iowa State Highway Commission, 1932, 214 Iowa 1, 241 N.W. 685.

Millard v. Northwestern Mfg. Co., 1925, 200 Iowa 1063, 205 N.W. 979.

**23. Knowledge of jurors.**

Instruction permitting jurors to take into consideration their own knowledge of property values was prejudicial error.

Hoeft v. State, 1936, 221 Iowa 694, 266 N.W. 571, 104 A. L. R. 1008.

**24. Evidence.**

In proceeding to condemn land bordening navigable stream evidence of government surveyor's field notes showing meander lines was inadmissible; they not being legal boundaries.

Hubbell v. City of Des Moines, 1914, 166 Iowa 581, 147 N.W. 908, Ann. Cas. 1916E. 592.

Absent showing to contrary it is assumed that assessment of condemnation commissioners is in accord with his good faith judgement.

Moran v. Iowa State Highway Commission, 1937, 223 Iowa 936, 274 N.W. 59.

Incompetent evidence as to cost of constructing larger cattle pass could not be said to be harmless.

Kosters v. Sioux County, 1923, 195 Iowa 214, 191 N.W. 993.

In condemnation of land for sewer disposal plant admission of testimony concerning odors from another plant was not prejudicial.

Bracken v. City of Albia, 1922, 194 Iowa 596, 189 N.W. 972.

In proceeding to assess damages for construction of electric line, admission of cross examination of defendant's witness as to certain matters concerning electric lines, held not prejudicial.

Foley v. Iowa Electric Co., 1921, 193 Iowa 128, 185 N.W. 13.

Where witness stated what his property in neighborhood sold for, and over objection, was allowed to state

value of improvements on property, there was no prejudice to defendant where these values corresponded to price sold for.

Haggard v. Independent School District of Algona, 1901, 113 Iowa 486, 85 N.W. 777.

On appeal report of appraisers is not conclusive.

Deaton v. Polk County, 1859, 9 Iowa 594.

**25. Evidence admissible.**

Admission of testimony, that although thirty-eight properties in county were crossed it was not necessary to condemn elsewhere is prejudicial.

Steensland v. Iowa-Illinois Gas & Electric Co., 1951, 242 Iowa 534, 47 N.W.2d 162.

Answer to question of value that "we had $48,811 into it" was properly stricken as unresponsive.

Foster v. U. S., C. C. A. 1945, 145 F.2d 873.

Admissions against interest.

U. S. v. Foster, C. C. A. 1942, 131 F.2d 3, certiorari denied, 63 S.Ct. 760, 318 U. S. 767, 87 L. Ed. 1138.

U. S. v. Buescher, C. C. A. 1942, 131 F.2d 3, certiorari denied, 63 S.Ct. 760, 318 U. S. 767, 87 L. Ed. 1138.

Photographs taken of railroad cut admissible as bearing on inconvenience and damages suffered by tenant from construction in operation of farm.

Korf v. Fleming, 1948, 32 N.W.2d 85, 3 A. L. R.2d 270.

Admission of evidence offered in chief on insurance of buildings was prejudicial where offered as substantive evidence of value of property.

Maxwell v. Iowa State Highway Commission, 1937, 223 Iowa 159, 271 N.W. 883, 118 A. L. R. 862.

Assessment rolls signed by owner admissible to show value of tract.

Duggan v. State, 1932, 214 Iowa 230, 242 N.W. 98.

Admission of original petition for damages after filing of amended petition increasing claim, not prejudicial, where petitioners testified fully as to all elements of damage asserted.

Kemmerer v. Iowa State Highway Commission, 1932, 214 Iowa 136, 241 N.W. 693.

Evidence of value of land at time of trial was not incompetent because it should have been confined to time immediately after taking, where there was no showing of change in value of farm lands since taking.

Kosters v. Sioux County, 1923, 195 Iowa 214, 191 N.W. 993.

Photographs of property a distance away properly excluded for remoteness.

Hubbell v. City of Des Moines, 1914, 166 Iowa 581, 147 N.W. 908, Ann. Cas. 1916E, 592.

Where assessment record did not show value owner put on his property exclusion of return not regarded as error.

Haggard v. Independent School Dist. of Algona, 1901, 113 Iowa 486, 85 N.W. 777.

Not competent to ask commissioners whether their assessment correctly expressed their judgment; but they may be asked for their judgment at time of trial on appeal.

Winklemans v. Des Moines N. W. Ry. Co., 1883, 62 Iowa 11, 17 N.W. 82.

Where witness stated grounds of estimate of value, some of which were not proper, it was not error to refuse to exclude all as defendant could have asked jury be instructed on such.

Smalley v. Iowa Pac. R. Co., 1873, 36 Iowa 571.

**26. Evidence, prices, value of lands, and awards.**

Witness may be asked selling price of land similarly situated to test knowledge and competence as expert, but such testimony is not admissible as substantive evidence of value of property in controversy.

Watkins v. Wabash R. Co, 1907, 137 Iowa 441, 113 N.W. 924.

Maxwell v. Iowa State Highway Commission, 1937, 223 Iowa 159, 271 N.W. 883, 118 A. L. R. 862.

Evidence of value of other lots in vicinity is properly rejected where no similarity between lots and condemned property is shown.

Cummins v. Des Moines & St. L. R. Co., 1884, 63 Iowa 397, 19 N.W. 268.

Hollingsworth v. Des Moines & St. L. R. Co., 1884, 63 Iowa 443, 19 N.W. 325.

Permitting cross examination as to amount paid for farm some years theretofore not prejudicial error, in that the fact that sale was remote went to weight rather than admissibility.

Foster v. U. S., C. C. A. 1945, 145 F.2d 873.

Prices paid for realty in locality not controlling criterion of "market value" of a particular farm.

Equitable Life Assur. Soc. of U. S. v. Carmody, C. C. A. 1942, 131 F.2d 318.

Testimony of price paid by condemnor for other tracts not admissible.

U. S. v. Foster, C. C. A. 1942, 131 F.2d 3, certiorari denied, 63 S.Ct. 760, 318 U. S. 767, 87 L. Ed. 1138.

U. S. v. Buescher, C. C. A. 1942, 131 F.2d 3, certiorari denied, 63 S.Ct. 760, 318 U. S. 767, 87 L. Ed. 1138.

Exclusion on cross examination of witness to value of farm before and after taking, of how much he paid for a farm crossed by a railroad bought by him at auction, not an abuse of discretion.

Korf v. Fleming, 1948, 32 N.W.2d 85, 3 A. L. R.2d 270.

Excluding evidence that several farms intersected by railroad sold at good prices not an abuse of discretion.

Wilson v. Fleming, 1948, 31 N.W.2d 393, motion denied, 32 N.W.2d 798.

Price paid for property cannot be shown where purchase is so remote as to have no bearing on value at time of condemnation.

Hayes v. Chicago, R. I. & P. Ry. Co., 1948, 30 N.W.2d 743.

Refusal to permit witnesses, on redirect, to testify whether they were familiar with sales of similar properties in community and to state such prices not reversible error where witnesses had testified as to values generally.

Moran v. Iowa State Highway Commission, 1937, 223 Iowa 936, 274 N.W. 59.

Permitting witness who testified as to value, to testify as to sale price of other nearby farms was prejudicial error.

Maxwell v. Iowa State Highway Commission, 1937, 223 Iowa 159, 271 N.W. 883, 118 A. L. R. 862.

Evidence as to what railroad paid for other lands not similarly situated was inadmissible.

Simons v. Mason City & Ft. D. R. Co., 1905, 128 Iowa 139, 103 N.W. 129.

Hollingsworth v. Des Moines & St. L. Ry. Co., 1884, 63 Iowa 443, 19 N.W. 325.

Evidence of value of land sold 10 or 12 years before not competent to prove value at time of trial.

Everett v. Union Pac. R. Co., 1882, 59 Iowa 243, 13 N.W. 109.

It was competent to show sale of land similarly situated, at price which it sold, differences between two parcels being pointed out.

Town of Cherokee v. Sioux City & I. F. Town Lot & Land Co., 1879, 52 Iowa 279, 3 N.W. 42.

Witness cannot be asked to state at which price right of way was purchased through adjoining tracts unless uniformity in lands is shown.

King v. Iowa Midland R. Co., 1872, 34 Iowa 458.

**27. Expert testimony, hypothetical questions, and opinion evidence.**

Cross examiner may learn of ability of witness to judge in premises, and what he takes into consideration in arriving at decision.

Sater v. Burlington & Mt. P. Plank Road Co., 1855, 1 Iowa 386, 1 Clarke 386.

Henry v. Dubuque & P. R. Co., 1855, 2 Iowa 288, 2 Clarke 288.

Whether sinking of well would be helpful in operation of farm was not matter calling for expert opinion.

Korf v. Fleming, 1948, 32 N.W.2d, 85, 3 A. L. R.2d 270.

Opinion stated by witness as to whether additional trouble in driving stock over highway would affect value of farm was not prejudicial.

Stoner v. Iowa State Highway Commission, 1939, 227 Iowa 115, 287 N.W. 269.

Admission of testimony of how much less land was worth, after taking than before, was improper, as calling for opinion of witness concerning amount of damages.

Kukkuk v. City of Des Moines, 1922, 193 Iowa 444, 187 N.W. 209.

Overruling of objections to certain hypothetical questions was not prejudicial where verdict indicated that answers to such questions were treated as of no value.

Foley v. Iowa Electric Co., 1921, 193 Iowa 128, 185 N.W. 13.

Permitting witness for defendant to testify that farm was not damaged by change in highway was without prejudice.

Neddermeyer v. Crawford County, 1920, 190 Iowa 883, 175 N.W. 339.

Opinion of expert as to value based on non existent facts was of no value.

Tracy v. City of Mt. Pleasant, 1914, 148 N.W. 637.

Questions of whether cutting of certain ditches was necessary was proper subject for expert testimony.

Guinn v. Iowa & St. L. R. Co., 1904, 125 Iowa 301, 101 N.W. 94.

Where half lot was condemned, it was proper to allow witness to be asked what value of half lot in question would be worth to rest of owner's property.

Haggard v. Independent School Dist. of Algona, 1901, 113 Iowa 486, 85 N.W. 777.

Reversible error to allow witness to state what were damages caused by the taking.

Hartley v. Keokuk & N. W. R. Co., 1892, 85 Iowa 455, 52 N.W. 352.

Where persons are shown to be familiar with value of land in question they may testify as to value before and after the taking.

Britton v. Des Moines, O. & S. R. Co., 1882, 59 Iowa 540, 13 N.W. 710.

It was proper to ask witness to "state how embankments affect communication with different sides of railroad" as question did not call for opinion of witness.

Smalley v. Iowa P. R. Co., 1873, 36 Iowa 571.

Opinions as to value must be confined to premises over which right of way is taken.

Henry v. Dubuque & P. R. Co., 1855, 2 Iowa 288, 2 Clarke 288.

**28. Witnesses qualifications.**

Witness qualified to testify as to market value on showing that he was real estate broker and had grown up on a farm in vicinity and had sold 20 or 25 farms in the county.

Foster v. U. S., C. C. A. 1945, 145 F.2d 873.

Farmers and landowners competent to testify on value of land.

Evans v. Iowa Southern Utilities Co. of Delaware, 1928, 205 Iowa 283, 218 N.W. 66.

Witnesses were qualified to express opinion as to value of property in controversy.

Millard v. Northwestern Mfg. Co., 1925, 200 Iowa 1063, 205 N.W. 979.

Witness must be shown to be familiar with local conditions.

Tracy v. City of Mt. Pleasant, 1914, 165 Iowa 435, 146 N.W. 78, modified on other grounds, 148 N.W. 637.

Circumstances warranted court in finding that witnesses knew of date of location of improvement and were competent to testify.

Pingrey v. Cherokee & D. R. Co., 1889, 78 Iowa 438, 43 N.W. 285.

General objection goes to testimony not to competency of witness to express an opinion.

Ball v. Keokuk & N. W. R. Co., 1888, 74 Iowa 132, 37 N.W. 110.

Whether witness discloses sufficient knowledge to testify as to damages largely matter of discretion of court.

Smalley v. Iowa P. R. Co., 1873, 36 Iowa 571.

Personal knowledge of the land or right of way is necessary for witnesses to testify as to value.

Grinnell v. Mississippi & M. R. Co., 1864, 18 Iowa 570.

**29. Witnesses, questioning, and evidence of qualifications.**

Witness may be cross-examined as to his knowledge of sales in vicinity to test his qualifications as an expert.

U. S. v. Foster, C. C. A. 1942, 131 F.2d 3, certiorari denied, 63 S.Ct. 760, 318 U. S. 767, 87 L. Ed. 1138.

U. S. v. Buescher, C. C. A. 1942, 131 F.2d 3, certiorari denied, 63 S.Ct. 760, 318 U. S. 767, 87 L. Ed. 1138.

In testing expert's knowledge defendants had right to question expert concerning value of separate tracts in farm.

Dean v. State, 1930, 211 Iowa 143, 233 N.W. 36.

Witness may testify as to what other lands in vicinity sold for and what he heard others say as to prices they received to show his knowledge of land in vicinity.

Winklemans v. Des Moines N. W. R. Co., 1883, 62 Iowa 11, 17 N.W. 82.

**30. Witnesses, cross-examination.**

Scope of cross-examination of value witnesses largely in discretion of court, though considerable latitude is usually allowed.

Hayes v. Chicago, R. I. & P. Ry. Co., 1948, 30 N.W.2d 743.

Wilson v. Fleming, 1948, 31 N.W.2d 393, motion denied, 32 N.W.2d 798.

As to value placed on land on listing for trading purposes.

Foster v. U. S., C. C. A. 1945, 145 F.2d 873.

Cross-examination testimony of plaintiff's value witness as to whether or not he expressed opinion on reasonable value of other land before and after railroad went through, properly excluded.

Wilson v. Fleming, 1948, 31 N.W.2d 393, motion denied, 32 N.W.2d 798.

Permitting cross-examination of expert on value who had been member of condemnation commission as to whether his assessment correctly expressed his judgement as to damages sustained by plaintiff, not cause for reversal.

Moran v. Iowa State Highway Commission, 1937, 223 Iowa 936, 274 N.W. 59.

Excluding cross-examination of plaintiff on value of farm and livestock sworn to become tax assessor was error in view of plaintiffs testimony.

Welton v. Iowa State Highway Commission, 1931, 211 Iowa 625, 233 N.W. 876.

Witness who testified as to value of land for purpose condemned could be asked on cross-examination as to

purposes for which he thought the property available and its market value for such purposes.

Tracy v. City of Mt. Pleasant, 1914, 165 Iowa 435, 146 N.W. 78, modified on other grounds, 148 N.W. 637.

Where defendant's objection to evidence of value per acre was sustained, defendant could not complain that on cross-examination it was not allowed to show value per acre of land taken.

Westbrook v. Muscatine N. & S. R. Co., 1901, 115 Iowa 106, 88 N.W. 202.

Value witness may be cross-examined on value of lots in vicinity to test knowledge of values.

Snouffer v. Chicago & N. W. R. Co., 1898, 105 Iowa 681, 75 N.W. 501.

**31. Instructions.**

Instruction on measure of damages to tenant did not indicate a double recovery for damage to his interest was recoverable.

Wilson v. Fleming, 1948, 31 N.W.2d 393, motion denied, 32 N.W.2d 798.

Court need not instruct on each particular claimed element of damage.

Eggleston v. Town of Aurora, 1943, 233 Iowa 559, 10 N.W.2d 104.

Instruction that verdict could not be more than $5,000 as stated in petition was not prejudicial where witnesses of plaintiff did not testify to such high value and verdict was for $2000.

Stoner v. Iowa State Highway Commission, 1939, 227 Iowa 115, 287 N.W. 269.

Not error to charge jury that they have right to weigh and judge opinions expressed by their own judgment and experience and observation with respect to such matters.

Cutler v. State, 1938, 224 Iowa 686, 278 N.W. 327.

Instruction defining "just compensation" as payment of such sum as would make owner whole not prejudicial.

Witt v. State, 1937, 223 Iowa 156, 272 N.W. 419.

In view of proper instruction on measure of damages it was not error to instruct that real right of which owner is deprived is right to undisturbed possession, for which he is to be compensated.

Maxwell v. Iowa State Highway Commission, 1937, 223 Iowa 159, 271 N.W. 883, 118 A. L. R. 862.

Use of term "value" instead of "fair and reasonable market value" in instruction was not error in view of other instructions.

Hoeft v. State, 1936, 221 Iowa 694, 266 N.W. 571, 104 A. L. R. 1008.

Instruction to consider character of land, number of acres taken, location of highway, etc., in fixing damages, not erroneous as emphasizing speculation.

Kemmerer v. Iowa State Highway Commission, 1932, 214 Iowa 136, 241 N.W. 693.

Trial court's discrepancy in misdescribing land in submitting issue not prejudicial error.

Sherwood v. Reynolds, 1931, 213 Iowa 539, 239 N.W. 137.

Instruction as to ascertaining market value erroneous under evidence.

Millard v. Northwestern Mfg. Co., 1925, 200 Iowa 1063, 205 N.W. 979.

Instruction on saleability of land involved not erroneous.

Neddermeyer v. Crawford County, 1919, 190 Iowa 883, 175 N.W. 339.

Where judge instructed jury that it was not bound by return of sheriff jury and named the figure, and jury returned much larger verdict, there was no error.

Bell v. Chicago, B. & Q. R. Co., 1888, 74 Iowa 343, 37 N.W. 768.

Instruction assuming that owner has right to cross railroad, superior to right of railroad to use it for its purposes was properly refused.

Clayton v. Chicago, I. & D. R. Co., 1885, 67 Iowa 238, 25 N.W. 150.

Where it appears that witnesses have included in their estimate of value consequences too remote, it was duty of court to instruct jury to disregard such considerations.

Sater v. Burlington & Mt. P. Plank-Road Co., 1855, 1 Iowa 386, 1 Clarke 386.

**32. Judgment and award.**

No personal judgment rendered.

Mason City & Ft. Dodge R. Co. v. Boynton, 1907, 158 F. 599, 85 C. C. A. 421.

Where limited right is desired such should be made part of record.

De Penning v. Iowa Power & Light Co., 1948, 33 N.W.2d 503.

Refusal to require jury to award in gross and then apportion it between owner and tenant was not error.

Korf v. Fleming, 1948, 32 N.W.2d 85, 3 A. L. R.2d 270.

Separate assessment by jury to owner and tenant not error in view of other instructions.

Wilson v. Fleming, 1948, 31 N.W.2d 393, motion denied, 32 N.W.2d 798.

There was no judgment in favor of owner so as to entitle him to mandamus to compel city to levy and pay same where injunction requiring city to pay award or furnish bond in case of appeal had been issued.

Wheatley v. City of Fairfield, 1936, 221 Iowa 66, 264 N.W. 906.

It was improper to enter judgment on appeal, and it would be set aside and case stand affirmed as to award of jury and attorney fees awarded by court.

Richardson v. City of Centerville, 1908, 137 Iowa 253, 114 N.W. 1071.

Where three appeals were consolidated for trial and two were settled, the third remained unaffected.

Mason v. Iowa Cent. Ry. Co., 1906, 131 Iowa 468, 109 N.W. 1.

Where company appealed owner might properly be awarded larger damages.

McKinnon v. Cedar Rapids & I. C. R. & Light Co., 1905, 126 Iowa 426, 102 N.W. 138.

It was error to enter judgment for amount of damages.

Haggard v. Independent School District of Algona, 1901, 113 Iowa 486, 85 N.W. 777.

Order of court regarding payment did not constitute a defense to owner's action for restitution on failure of sheriff to pay award over to owner.

Burns v. Chicago, Ft. M. & D. M. R. Co., 1900, 110 Iowa 385, 81 N.W. 794.

Judgment entered in usual form of judgment in action of debt, had no greater effect than if entered in conformity to statutes.

Gear v. Dubuque & S. C. R. Co., 1866, 20 Iowa 523, 89 Am. Dec. 550.

**33. Review.**

Supreme court could disregard owner's claim to interest where such claim was not called to attention of trial court and record did not disclose date possession was entered into.

Hayes v. Chicago, R. I. & P. Ry. Co., 1948, 30 N.W.2d 743.

Court on appeal cannot review exercise of discretion of condemning body when such body acts within its authority and determination is fairly made.

Porter v. Board of Sup'rs of Monona County, 1947, 238 Iowa 1399, 28 N.W.2d 841.

Trial court has larger discretion whether to grant new trial for award of excessive damages than reviewing court.

Besco v. Mahaska County, 1925, 200 Iowa 684, 205 N.W. 459.

Answer, while improper, should have been properly objected to.

Kukkuk v. City of Des Moines, 1922, 193 Iowa 444, 187 N.W. 209.

Discretion of trial court in defining boundaries of neighborhood within which property values will be considered not reversible unless abuse is shown.

Youtzy v. City of Cedar Rapids, 1911, 150 Iowa 53, 129 N.W. 351.

Return of assessment properly excluded where it did not show what value owner put on property.

Haggard v. Independent School Dist. of Algona, 1901, 113 Iowa 486, 85 N.W. 777.

Where record of appeal did not contain description of the property it was presumed that finding of trial court on question of what lands were considered was correct.

Mississippi & M. R. Co. v. Byington, 1863, 14 Iowa 572.

**34. Damages.**

Where value is disputed and there is competent evidence from which jury could reach verdict it did, Supreme Court will not interfere.

Stoner v. Iowa State Highway Commission, 1939, 227 Iowa 115, 287 N.W. 269.

Miller v. Iowa Elec. Light & Power Co., 1949, 34 N.W. 2d 627.

Amount allowed is peculiarly within province of jury.

Longstreet, 1925, 200 Iowa 723, 205 N.W. 343.

Korf v. Fleming, 1948, 32 N.W.2d 85, 3 A. L. R.2d 270.

Verdict of jury, supported by substantial evidence, though it be conflicting, must be sustained.

Foster v. U. S., C. C. A. 1945, 145 F.2d 873.

Unless amount awarded by jury is shown to be so extravagant so as to be wholly unreasonable Supreme Court will not interfere.

Miller v. Iowa Elec. Light & Power Co., 1949, 34 N.W. 2d 627.

Damages, if sustained by evidence, will not be interfered with, in absence of indications of passion and prejudice.

Schoonover v. Fleming, 1948, 32 N.W.2d 99.

Supreme Court will not disturb verdict merely because it is liberal.

Cutler v. State, 1938, 224 Iowa 686, 278 N.W. 327.

Supreme Court will reverse for excessive damages where record clearly shows verdict to be so.

Luthi v. Iowa State Highway Commission, 1938, 224 Iowa 678, 276 N.W. 586.

Jury's verdict should not be interfered with in absence of showing of passion and prejudice.

Kemmerer v. Iowa State Highway Commission, 1932, 214 Iowa 136, 241 N.W. 693.

Award not disturbed on appeal unless wholly unfair and unreasonable.

Wheatley v. City of Fairfield, 1932, 213 Iowa 1187, 240 N.W. 628.

Reviewing tribunal will not substitute its judgment for that of jury as to amount of damages.

Millard v. Northwestern Mfg. Co., 1925, 200 Iowa 1063, 205 N.W. 979.

Where award was sustained by the evidence it could not be attacked on appeal, there being no claim of passion and prejudice.

Burgess v. Bremer County, 1920, 189 Iowa 168, 178 N.W. 389.

**472.24 Reduction of damages.** If the amount of damages awarded by the commissioners is decreased on the trial of the appeal, the reduced amount only shall be paid to the landowner. [C73,§1259; C97,§2013; C24, 27, 31, 35, 39,§7843; C46, 50, 54,§472.24]

**1. Construction and application.**

Condemner may decline to take property even after verdict on appeal.

De Penning v. Iowa Power & Light Co., 1948, 33 N.W. 2d 503.

Judgment entered in usual form of judgment for debt had no greater effect than if entered in conformity with statutes.

Gear v. Dubuque & S. C. R. Co., 1866, 20 Iowa 523. 89 Am. Dec. 550.

**2. Delay in paying compensation.**

Under this section jury may award damages for delay in making compensation and it is immaterial that such damages are denominated as "interest".

Noble v. Des Moines & St. L. R. Co., 1883, 61 Iowa 637, 17 N.W. 26.

**3. Interest.**

Where on appeal verdict was smaller owner was not allowed interest from time of taking.

Hayes v. Chicago, R. I. & P. Ry Co., 1948, 30 N.W.2d 743.

**472.25 Right to take possession of lands.** Upon the filing of the commissioners' report with the sheriff, the applicant

may deposit with the sheriff the amount assessed in favor of a claimant, and thereupon the applicant shall, except as otherwise provided, have the right to take possession of the land condemned and proceed with the improvement. No appeal from said assessment shall affect such right, except as otherwise provided. [R60,§1317; C73,§§1244, 1272; C97, §§1999, 2010, 2025, 2029; S13,§§2024-e,-g,-h; C24, 27, 31, 35, 39, §7844; C46, 50, 54§472.25]

Funds, sheriff's report on disposition, §§337.15-337.19.

**1. Validity.**

Article 1, Section 18, not violated by permitting condemner to enter pending appeal after damages assessed have been deposited with sheriff.

Peterson v. Ferreby, 1870, 30 Iowa 327.

Taking before payment cannot be authorized by legislature.

Henry v. Dubuque & P. R. Co., 1859, 10 Iowa 540.

**2. Construction and application.**

Proceeding before sheriff is administrative.

Chicago, R. I. & P. R. Co. v. Stude, 1954, 74 S. Ct. 290, 346 U. S. 574, 98 L. Ed. 338, rehearing denied, 74 S.Ct. 512, 347 U. S. 924, 98 L. Ed. 1078.

Condemnation proceedings do not afford protection, at least against temporary occupation by crossing which railroad may not have right to construct.

Chicago, B. & Q. R. Co. v. Chicago, Ft. M. & D. M. R. Co., 1894, 91 Iowa 16, 58 N.W. 918.

**3. Deposit or payment of damages.**

Payment must be in money, and a waiver of rights is not partial payment but a limitation on damages.

De Penning v. Iowa Power & Light Co., 1948, 33 N.W. 2d 503.

After having condemned and paid damages, condemner cannot assert in action for breach of agreement to convey right of way, that owner wrongfully received such damages.

Waterloo, C. F. & N. Ry. Co. v. Burrell, 1918, 184 Iowa 689, 169 N.W. 53.

Award to owner for anticipated damages gives no right to take the land until security is given on payment made.

Griffith v. Drainage Dist. No. 41 in Pocahontas County, 1918, 182 Iowa 1291, 166 N.W. 570.

Sheriff is bound to retain damages for landowner.

Bannister v. McIntire, 1900, 112 Iowa 600, 84 N.W. 707.

Under laws of 1853 payment of damages assessed was condition precedent to right of railroad to enter and appropriate land.
Henry v. Dubuque & P. R. Co., 1859, 10 Iowa 540.

**4. Possession.**

Deposit with sheriff of sum awarded owner entitled railroad to take possession and proceed with improvement.
Hayes v. Chicago, R. I. & P. Ry. Co., 1948, 30 N.W. 2d 743.

Instruction that jury should not be influenced by fact that company took possession after condemnation against will of owner was not erroneous.
Purdy v. Waterloo, C. F. & N. Ry. Co., 1915, 172 Iowa 676, 154 N.W. 881.

Agreement pending appeal held to not amount to sale by owner to railroad, nor confer authority to take possession.
Irish v. Burlington Southwestern R. Co., 1876, 44 Iowa 380.

Entering judgment in usual form of judgment for debt only gives the company right to enter upon payment of sum assessed.
Gear v. Dubuque & S. C. R. Co., 1866, 20 Iowa 523, 89 Am. Dec. 550.

Appropriation by company prior to payment rendered it a trespasser.
Henry v. Dubuque & P. R. Co., 1859, 10 Iowa 540.

**5. Injunction.**

Decree providing injunction unless award was paid or appeal taken was a "final decree", condemnor having appealed, and injunction could not issue on condemnee's motion.
City of Fairfield v. Dashiell, 1933, 217 Iowa 474, 249 N.W. 236.

Injunction proper in conditioning its operation on failure to pay owner.
Scott v. Price Bros., 1927, 207 Iowa 191, 217 N.W. 75.

Injunction will issue to prevent appropriation and use where land was condemned for unlawful purpose.
Forbes v. Delashmutt, 1885, 68 Iowa 164, 26 N.W. 56.

Injunction will issue to prevent appropriation until damages have been ascertained and paid.
Horton v. Hoyt, 1861, 11 Iowa 496.

Owner was entitled to injunction pending appeal.
Trustees of Iowa College v. City of Davenport, 1858, 7 Iowa 213, 7 Clarke 213.

Injunction will issue to prevent appropriation until damages have been ascertained and paid.
Ragatz v. City of Dubuque, 1856, 4 Iowa 343, 4 Clarke 343.

**6. Actions for deposit or payment.**
Suit against sheriff by owner for failure to pay over the award.
Bannister v. McIntire, 1900, 112 Iowa 600, 84 N.W. 707.

**7. Interest.**
Owner cannot maintain separate action to recover interest on amount deposited with sheriff by condemnor.
Jamison v. Burlington & W. R. Co., 1889, 78 Iowa 562, 43 N.W. 529.

**8. Settlement.**
Settlement of owner's damages not a contract involving realty within contemplation of statute of frauds.
Cunningham v. Iowa-Illinois Gas & Elec. Co., 1952, 243 Iowa 1377, 55 N.W.2d 552.

**472.26 Dispossession of owner.** A landowner shall not be dispossessed, under condemnation proceedings, of his residence, dwelling house, outhouse, orchard, or garden, until the damages thereto have been finally determined and paid. This section shall not apply to condemnation proceedings for drainage or levee improvements, or for public school purposes. [C24, 27, 31, 35, 39,§7845; C46, 50, 54,§472.26]

**472.27 Erection of dam—limitation.** If it appears from the finding of the commissioners that the dwelling house, outhouse, orchard, or garden of the owner of any land taken will be overflowed or otherwise injuriously affected by any dam or reservoir to be constructed as authorized by this chapter, such dam shall not be erected until the question of such overflowing or other injury has been determined in favor of the corporation upon appeal. [C73,§1250; C97,§2005; C24, 27, 31, 35, 39,§7846; C46, 50, 54,§472.27]

**472.28 Deposit pending appeal.** The sheriff shall not, after being served with notice of appeal by the applicant, pay to the claimant any deposit of damages held by the sheriff, but shall hold the same until the appeal is finally determined. [R60,§1317; C73,§1255; C97,§2010; C24, 27, 31, 35, 39,§7847; C46, 50, 54,§472.28]

**1. Construction and application.**
Right acquired by condemnation may be waived during pendency of appeal.
De Penning v. Iowa Power & Light Co., 1948, 33 N.W. 2d 503.

Sheriff who deposited award in bank did not "hold" same and bondsmen were liable on failure of bank.

Northwestern Mfg. Co. v. Bassett, 1928, 205 Iowa 999, 218 N.W. 932.

Where owner accepted award from the sheriff and condemner appealed owner could contest amount of recovery.

Burns v. Chicago, Ft. M. & D. M. R. Co., 1897, 102 Iowa 7, 70 N.W. 728.

Where condemner appeals, owners' right to receive money from sheriff is suspended pending appeal.

Peterson v. Ferreby, 1870, 30 Iowa 327.

**2. Interest.**

Owner cannot maintain separate action to recover interest on amount deposited with sheriff by condemner.

Jamison v. Burlington & W. R. Co., 1889, 78 Iowa 562, 43 N.W. 529.

**472.29 Acceptance of deposit.** An acceptance by the claimant of the damages awarded by the commissioners or of the warrant tendered by public authorities, shall bar his right to appeal. Such acceptance after an appeal has been taken by him shall abate such appeal. [R60,§1317; C73,§1256; C97,§2010; C24, 27, 31, 35, 39,§7848; C46, 50, 54,§472.29]

**1. Construction and application.**

Acceptance of award deposited with sheriff would bar owner's right of appeal.

Hayes v. Chicago, R. I. & P. Ry. Co., 1948, 30 N.W. 2d 743.

Where owner accepted award from sheriff and condemner appealed owner had right to contest amount of recovery.

Burns v. Chicago, Ft. M. & D. M. R. Co., 1897, 102 Iowa 7, 70 N.W. 728.

**472.30 Additional deposit.** If, on the trial of the appeal, the damages awarded by the commissioners are increased, the condemner shall, if he is already in possession of the property, make such additional deposit with the sheriff as will, with the deposit already made, equal the entire damages allowed. If the condemner be not already in possession, he shall deposit with the sheriff the entire damages awarded, before entering on, using, or controlling the premises. [C73,§1258; C97,§2012; C24, 27, 31, 35, 39,§7849; C46, 50, 54,§472.30]

**1. Construction and application.**

Provision of this section that if damages are increased, whole amount shall be paid or deposited with sheriff, cannot be dispensed with by giving a supersedeas bond.

Downing v. Des Moines N. W. R. Co., 1884, 63 Iowa 177, 18 N.W. 862.

**472.31 Payment by public authorities.** When damages, by reason of condemnation, are payable from public funds, the sheriff, or clerk of the district court, as the case may be, shall certify to the officer, board, or commission having power to audit claims for the purchase price of said lands, the amount legally payable to each claimant, and, separately, a detailed statement of the cost legally payable from such public funds. Said officer, board, or commission shall audit said claims, and the warrant-issuing officer shall issue warrants therefor on any funds appropriated therefor, or otherwise legally available for the payment of the same. Warrants shall be drawn in favor of each claimant to whom damages are payable. The warrant in payment of costs shall be issued in favor of the officer certifying thereto. [C73,§1272; C97,§2025; S13,§§2024-b,-e,-g; C24, 27, 31, 35, 39,§7850; C46, 50, 54,§472.31]

**472.32 Removal of condemner.** The sheriff, upon being furnished with a copy of the assessment as determined on appeal, certified to by the clerk of the district court, may remove from said premises the condemner and all persons acting for or under him, unless the amount of the assessment is forthwith paid or deposited as hereinbefore provided. [C73,§1258; C97,§2012; C24, 27, 31, 35, 39,§7851; C46, 50, 54,§472.32]

**1. Construction and application.**

Federal court to which appeal was removed, could not properly direct marshall to oust railroad until damages were paid since Code of Iowa gave injured party a remedy.

Reed v. Chicago, M. & St. P. Ry. Co., C. C. 1885, 25 F. 886.

**472.33 Costs and attorney fees.** The applicant shall pay all costs of the assessment made by the commissioners. The applicant shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial thereof the same or a less amount of damages is awarded than was allowed by the tribunal from which the appeal was taken. [R60,§1317; C73,§1252; C97,§2007; C24, 27, 31, 35, 39, 7852; C46, 50, 54,§472.33; 56 GA, ch 226, §1]

April 1927, 12 Iowa Law Review 286, 289.

**1. Validity.**

Owner could not object to classification allowing attorney's fees in certain condemnation proceedings and denying such when brought by the state.

Welton v. Iowa State Highway Commission, 1930, 211 Iowa 625, 233 N.W. 876.

Provisions authorizing attorney's fees was constitutional.

Iowa Electric Co. v. Scott, 1928, 206 Iowa 1217, 220 N.W. 333.

Where company exercised power it was precluded from questioning constitutionality of attorney's fees provision.

Gano v. Minneapolis & St. L. R. Co., 1901, 114 Iowa 713, 87 N.W. 714, 55 L. R. A. 263, 89 Am. St. Rep. 393, affirmed, 23 S.Ct. 854, 190 U. S. 557, 47 L. Ed. 1183.

**2. Costs on appeal.**

Condemner waiving some rights on appeal may be required to pay portion of costs if waiver has prejudiced plaintiff by making for smaller recovery.

De Penning v. Iowa Power & Light Co., 1948, 33 N.W. 2d 503.

Trial in district court was continuation of condemnation proceedings within Code 1897, relating to taxation of costs on offer to confess judgment.

Draker v. Iowa Electric Co., 1921, 191 Iowa 1376, 182 N.W. 896.

Where owner obtained verdict in two trials on appeal increasing award it was improper to tax him with costs in either trial.

McCaskey v. Ft. Dodge, D. M. & S. Ry. Co., 1912, 154 Iowa 652, 135 N.W. 6.

Purchaser of railway liable for costs incurred in appeals pending on date of purchase.

Frankel v. Chicago, B. & P. R. Co., 1886, 70 Iowa 424, 30 N.W. 679, rehearing denied, 70 Iowa 424, 32 N.W. 488.

Under Code 1873 costs were to be apportioned by court.

Noble v. Des Moines & St. L. R. Co., 1883, 61 Iowa 637, 17 N.W. 26.

Where award was same on appeal owner was entitled to judgment for costs.

Hanrahan v. Fox, 1877, 47 Iowa 102.

Where condemner appealed and verdict was smaller court could, under general rules of law, direct part of costs be taxed to condemner.

Jones v. Mahaska County Coal Co., 1877, 47 Iowa 35.

Where notice of appeal was served by a person other than an officer, his fees could not be taxed as costs.

Conway v. McGregor & M. R. Co., 1876, 43 Iowa 32.

**3. Attorney's fees.**

Attorney fees were not allowed for proceeding before commerce commission.

Reter v. Davenport, R. I. & N. W. Ry. Co., 1952, 243 Iowa 1112, 54 N.W.2d 863, 35 A. L. R.2d 1306.

Not taxable as costs unless authorized by statute.

Woodcock v. Wabash Ry. Co., 1907, 135 Iowa 559, 113 N.W. 347.

Wilson v. Fleming, 1948, 239 Iowa 918, 32 N.W.2d 798.

Attorney fees and expenses not within "just compensation" for land taken by eminent domain.

Welton v. Iowa State Highway Commission, 1930, 211 Iowa 625, 233 N.W. 876.

Condemner dismissing proceedings prior to trial of appeal, liable for reasonable attorney's fees incurred by owner for services rendered on appeal.

Iowa Electric Co. v. Scott, 1928, 206 Iowa 1217, 220 N.W. 333.

Code Supp. 1907, section 771 included by reference Code 1897, section 2007 providing that costs taxable against city should include costs of appeal if damages were increased.

Globe Machinery & Supply Co. v. City of Des Moines, 1912, 156 Iowa 267, 136 N.W. 518.

Owners appealing were entitled to have attorney fees for two trials taxed as costs against defendant.

McCaskey v. Fort Dodge, D. M. & S. Ry. Co., 1912, 154 Iowa 652, 135 N.W. 6.

In proceeding to recover value of property appropriated by railroad, attorney fees are allowable.

Clark v. Wabash R. Co., 1906, 132 Iowa 11, 109 N.W. 309.

Error to tax attorney fee on appeal, and apportion same between parties where verdict was much less than commissioner's award.

Wormley v. Mason City & Fort D. R. Co., 1903, 120 Iowa 684, 95 N.W. 203.

Assessment of costs against company was proper where settlement, in effect, gave owner more than did commissioners.

Heath v. Mason City & Fort D. R. Co., 1903, 94 N.W. 467.

Fees for services rendered in other suits to protect owner's property could not be allowed.
Mellichar v. City of Iowa City, 1902, 116 Iowa 390, 90 N.W. 86.

**4. Determination and amount.**

In fixing fee court may hear testimony as to value of an attorney's services.
Hall v. Wabash R. Co., 1907, 133 Iowa 714, 110 N.W. 1039.
Iowa Electric Co. v. Scott, 1928, 206 Iowa 1217, 220 N.W. 333.

Fee held to not be excessive.
Wilson v. Fleming, 1928, 239 Iowa 718, 31 N.W.2d 393, Motion denied, 239 Iowa 918, 32 N.W.2d 798.

Court, without jury, authorized to fix attorney's fees for which condemner was liable.
Iowa Electric Co. v. Scott, 1928, 206 Iowa 1217, 220 N.W. 333.

Fee may be determined by court.
Richardson v. City of Centerville, 1908, 137 Iowa 253, 114 N.W. 1071.

**5. Attorney's fees and costs, Supreme Court.**

This section does not authorize allowance of attorney's fees for services on appeal to Supreme Court.
Wilson v. Fleming, 1948, 239 Iowa 918, 32 N.W.2d 798.

District court, after affirmance of judgment on appeal, could not tax attorney's fees or costs of appeal to Supreme Court.
Woodcock v. Wabash Ry. Co., 1907, 135 Iowa 559, 113 N.W. 347.

**6. State's liability.**

State could not be assessed attorney fees on abandonment of condemnation proceedings.
Fitzgerald v. State, 1935, 220 Iowa 547, 260 N.W. 681, followed in.
Corso v. State 260 N.W. 685.

State may allow attorney's fees in some situations while withholding them in others.
Welton v. Iowa State Highway Commission, 1931, 211 Iowa 625, 233 N.W. 876.

Attorney fees not an element of just compensation.
Nichol v. Neighbour, 1926, 202 Iowa 406, 210 N.W. 281.

**7. Review.**

Where no appeal was taken from order taxing cost and attorney's fees, such could not be reviewed on appeal.
Foley v. Iowa Electric Co., 1921, 193 Iowa 128, 185 N.W. 13.

**472.34 Refusal to pay final award.** Should the applicant decline, at any time after an appeal is taken as provided in section 472.18 of this chapter to take the property and pay the damages awarded, he shall pay, in addition to the costs and damages actually suffered by the landowner, reasonable attorney fees to be taxed by the court. [C97,§2011; C24, 27, 31, 35, 39,§7853; C46, 50, 54,§472.34; 56GA, ch 226,§2]

April 1927, 12 Iowa Law Review 286.

**1. Validity.**

Authorization of attorney's fees held constitutional.

Iowa Electric Co. v. Scott, 1928, 206 Iowa 1217, 220 N.W. 333.

**2. Construction and application.**

Court, on appeal, could not render personal judgment against condemner for damages.

Mason City & Fort Dodge R. Co. v. Boynton, 1907, 158 F. 599, 85 C. C. A. 421.

Even after final determination condemner may dismiss, but must pay costs and damages suffered by owner including reasonable attorney's fees.

De Penning v. Iowa Power & Light Co., 1948, 239 Iowa 950, 33 N.W.2d 503.

Judgment assessing damages does not bind condemner to take land and pay damages assessed.

Gear v. Dubuque & S. C. R. Co., 1866, 20 Iowa 523, 89 Am. Dec. 550.

**3. Dismissal of proceedings.**

Condemner dismissing proceedings after appeal, but prior to trial was liable for reasonable attorney's fee for services rendered on appeal.

Iowa Electric Co. v. Scott, 1928, 206 Iowa 1217, 220 N.W. 333.

Company, never having paid damages or entered on land could dismiss proceedings, paying costs.

Burlington & M. R. Co. v. Sater, 1855, 1 Iowa 421, 1 Clarke 421.

**4. Abandonment of proceedings.**

Abandonment renders condemner liable for costs and damages actually suffered by landowner and reasonable attorney's fee.

Wheatley v. City of Fairfield, 1936, 221 Iowa 66, 264 N.W. 906.

This section authorizes recovery of damages and attorney fees on abandonment after appeal but prior to hearing on appeal.

Ford v. Board of Park Com'rs of City of Des Moines, 1910, 148 Iowa 1, 126 N.W. 1030, Ann. Cas. 1912B 940.

Condemner can abandon proceeding even after verdict with liability for costs.

Klopp v. Chicago, M. & St. P. Ry Co., 1909, 142 Iowa 474, 119 N.W. 373.

Right to abandon contemplates good faith and complete surrender of the project so far as land involved is concerned.

Robertson v. Hartenbower, 1903, 120 Iowa 410, 94 N.W. 857.

Where assessment exceeds value of public improvement it may be abandoned.

State ex rel. Hiatt v. City of Keokuk, 1859, 9 Iowa 438.

**5. Waiver of rights.**

A right acquired by condemnation may be waived during pendency of appeal.

De Penning v. Iowa Power & Light Co., 1948, 33 N.W.2d 503.

**6. State's liability.**

State could not be assessed attorney's fees on abandonment of proceedings.

Fitzgerald v. State, 1935, 220 Iowa 547, 260 N.W. 681 followed in

Corso v. State, 260 N.W. 685.

**7. Attorney's fees.**

Court may receive testimony as to value of attorney's services.

Iowa Electric Co. v. Scott, 1928, 206 Iowa 1217, 220 N.W. 333.

**8. Damages.**

In absence of statute and showing of unreasonable delay no action lies for abandonment of proceedings.

Ford v. Board of Park Com'rs of City of Des Moines, 1910, 148 Iowa 1, 126 N.W. 1030, Ann. Cas. 1912B, 940.

Abandonment is good defense to any claim for additional damages on appeal from award.

Hastings v. Burlington & M. R. R. Co., 1874, 38 Iowa 316.

**9. Refund to condemner.**

On abandonment land reverts to owner, and condemner is not entitled to damages awarded and paid by condemner for him to sheriff.

Hastings v. B. & M. R. R. Co., 1874, 38 Iowa 316.

**472.35 Sheriff to file record.** The sheriff, in case no appeal is taken, shall, immediately after the final determina-

tion of condemnation proceedings, and after the acquiring of the property by the condemner, file, with the county recorder of the county in which the condemned land is situated, the following papers:

1. The application for condemnation.

2. All notices, together with all returns of service indorsed thereon or attached thereto.

3. The report of the commissioners.

4. All other papers filed in said proceedings.

5. A written statement by the sheriff of all money received in payment of damages, from whom received, to whom paid, and the amount paid to each claimant. [C73, §1253; C97, §2008; C24, 27, 31, 35, 39, §7854; C46, 50, 54, §472.35]

**472.36 Clerk to file record.** The clerk of the district court, in case an appeal is taken in condemnation proceedings, shall file with the county recorder the records which the sheriff is required to file in case no appeal is taken, and in addition thereto the following:

1. A copy of the record entry of the court showing the amount of damages determined on appeal.

2. A written statement by the clerk of all money received by him in payment of damages, from whom received, to whom paid, and the amount paid to each claimant. [C24, 27, 31, 35, 39,§7855; C46, 50, 54,§472.36]

**472.37 Form of record—certificate.** Said papers shall be securely fastened together, arranged in the order named above, and be accompanied by a certificate of the officer filing the same that said papers are the original files in the proceedings and that the statements accompanying the same are true. [C24, 27, 31, 35, 39,§ 7856; C46, 50, 54,§472.37]

**472.38 Record of proceedings.** The county recorder shall record said papers, statements, and certificate in the record of deeds, properly index the same, and carefully preserve the originals as files of his office. [C73,§1253; C97,§2008; C24, 27, 31, 35, 39,§7857; C46, 50, 54,§472.38]

**472.39 Fee for recording.** The sheriff or clerk, as the case may be, shall collect from the condemner such fee as the county recorder would have legal right to demand for making such record, and pay such fee to the recorder upon presenting the papers for record. [C24, 27, 31, 35, 39,§7858; C46, 50, 54,§472.39]

Fee for recorder, §335.14.

**472.40 Failure to record—liability.** Any sheriff, or clerk of the district court, as the case may be, who fails to present said papers, statements, and certificate for record, and any

recorder who fails to record the same as above provided shall be liable for all damages caused by such failure. [C24, 27, 31, 35, 39,§7859; C46, 50, 54,§472.40]

**472.41 Presumption.** The said original papers, statements, and certificate, or the record thereof shall be presumptive evidence of title in the condemner, and shall constitute constructive notice of the right of such condemner to the lands condemned. [C73,§1253; C97,§2008; C24, 27, 31, 35, 39,§7860; C46, 50, 54,§572.41]

# CHAPTER 477

## CONSTRUCTION AND OPERATION OF RAILWAYS

477.1 Crossing railway, canal, or watercourse.
477.2 Maintenance of bridges—damages.
477.3 Rights of riparian owners.
477.4 Railroad on riparian land or lots.
477.5 Right to lay pipes.
477.6 Duty to restore natural surface.
477.7 Right of landowner.
477.8 Liability to landowner.
477.9 through 477.60, inclusive, omitted.

**477.1 Crossing railway, canal, or watercourse.** Any railroad company may build its railway across, over, or under any other railway, canal, or watercourse, when necessary, but shall not thereby unnecessarily impede travel, transportation, or navigation. It shall be liable for all damages caused by such crossing. [R60,§1325; C73,§1265; C97, §2020; C24, 27, 31, 35, 39,§7946; C46, 50, 54,§477.1]

Connecting tracks at crossing, see §478.17.
Culverts and drains in cities, see §420.18.
Interlocking switches, see §§478.33-478.36.
Right of way of steam railway crossing interurban, see §478.30.
Station houses at crossing, see §478.14.
Stopping at crossings, see §478.31.
Watercourse changed, duty of railroad, see §§455.119-455.123.
Nov. 1922, 8 Iowa Law Bulletin 12.
June 1926, 11 Iowa Law Review 354.

**1. Construction and application.**

Railroad takes franchise subject to duty of making modifications necessary to carry road bed across such public improvements as drains thereafter established.

Chicago, B. & Q. R. Co. v. Board of Sup'rs of Appanoose County, Iowa, 1910, 182 F. 291, 104 C. C. A. 573, 31 L. R. A., N. S. 1117.

Quaere on right of junior railway to cross tracks of senior railway without condemnation.

Chicago Great Western R. Co. v. Des Moines Western R. Co., 1918, 186 Iowa 270, 169 N.W. 637.

Congressional acts held permissive, not mandatory.

Richmond v. Dubuque & S. C. R. Co. 1872, 33 Iowa 422, motion denied, 82 U. S. 3, 15 Wall. 3, 21 L. Ed. 118, affirmed, 86 U. S. 584, 19 Wall. 584, 22 L. Ed. 173.

**2. Crossing another railroad.**

This section gave railroad right to cross tracks of another.

Chicago, M. & St. P. Ry. Co. v. Old Colony Trust Co., 1914, 216 F. 577, 132 C. C. A. 581.

Remedy for unfit or unsuitable railroad crossing.
Illinois Cent. Ry. Co. v. Waterloo, C. F. & N. Ry. Co., 1919, 186 Iowa 1207, 173 N.W. 288.

Right of junior company to cross tracks of senior.
Chicago Great Western R. Co. v. Des Moines Western R. Co., 1919, 186 Iowa 270, 169 N.W. 637.

Crossing railway must bear expense.
Illinois Cent. R. Co. v. Waterloo, C. F. & N. Ry. Co., 1917, 182 Iowa 550, 164 N.W. 208, modified on other grounds, 165 N.W. 993.

Grade crossing held reasonably necessary and would not "unnecessarily impede travel" on plaintiff's road.
Dubuque & S. C. R. Co. v. Ft. Dodge, D. M. & S. R. Co., 1910, 146 Iowa 666, 125 N.W. 672.

Order requiring defendant to construct under crossing was proper.
Chicago B. & Q. R. Co. v. Chicago, Ft. M. & D. M. R. Co., 1894, 91 Iowa 16, 58 N.W. 918.

Under crossing required in view of serious disadvantages of grade crossing.
Humeston & S. Ry. Co. v. Chicago, St. P. & K. C. Ry. Co., 74 Iowa 554, 38 N.W. 413.

**3. Contract for crossing.**

Railroad right of way has substantiality of fee and contract by which another road is given crossing rights is based on valuable consideration.
Chicago M. & St. P. Ry. Co. v. Old Colony Trust Co., 1914, 216 F. 577, 132 C. C. A. 581.

Cost of system of switches at crossing apportioned between affected railroads.
Manhattan Trust Co. v. Sioux City & N. R. Co., C. C. 1897, 81 F. 50.

Contract between crossing railroads obviating disputes as to expense of maintaining flagmen etc., does not lack consideration in view of this section.
Illinois Cent. R. Co. v. Waterloo, C. F. & N. Ry. Co., 1917, 182 Iowa 550, 164 N.W. 208, modified on other grounds, 165 N.W. 993.

**4. Flooding adjoining lands.**

See Notes of Decision under §477.2 Maintenance of bridges—damages.

**5. Actions in general.**

Where petition to require railway, crossing at grade, to install interlocking switch was demurred to, such had effect of admitting certain facts pleaded but did not

admit ill consequences plaintiff argued it apprehended therefrom.

Illinois Cent. Ry. Co. v. Waterloo, C. F. & N. Ry. Co., 1919, 186 Iowa 1207, 173 N.W. 288.

Where unnecessary interference with crossing exists equity may prescribe conditions of crossing.

Illinois Cent. R. Co. v. Waterloo, C. F. & N. Ry. Co., 1917, 182 Iowa 550, 164 N.W. 208, modified on other grounds, 165 N.W. 993.

Construction of overhead crossing waived right to grade crossing.

Chicago B. & Q. R. Co. v. Chicago, Ft. M. & D. M. R. Co., 1894, 91 Iowa 16, 58 N.W. 918.

**6. Injunction.**

Where, without leave to make changes, defendant constructed grade crossing, plaintiff not bound to reimburse defendant prior to securing injuction.

Humeston & S. Ry. Co. v. Chicago, St. P. & K. C. Ry. Co., 1888, 74 Iowa 554, 38 N.W. 413.

**477.2 Maintenance of bridges—damages.** Every railroad company shall build, maintain, and keep in good repair all bridges, abutments, or other construction necessary to enable it to cross over or under any canal, watercourse, other railway, public highway, or other way, except as otherwise provided by law, and shall be liable for all damages sustained by any person by reason of any neglect or violation of the provisions of this section. [R60,§§1326, 1327; C73,§§1266, 1267; C97,§2021; C24, 27, 31, 35, 39,§7947; C46, 50, 54,§477.2]

Alteration of railroad bridges by flood control project at federal expense, see 33 U. S. C. A. §701p.
Bridges included in "railroad" within Interstate Commerce Act, see 49 U. S. C. A. §1 (3).
Culverts and drains in cities, see §420.18.
Hours of service of employees on railroad bridge, see 45 U. S. C. A. §§61-66.
Navigable waters, use of railroad bridges over by other railroads, see 33 U. S. C. A. §493.
Viaducts, see §387.1 et seq.
Watercourse changed, duty of railroad, see §§455.119-455.123.

**1. Construction and application.**

Company required to keep in repair culvert through embankment for drainage ditch in natural water course across right of way, but drainage district was chargeable with expense of constructing culvert.

Mason City & Ft. D. R. Co. v. Board of Sup'rs of Wright County, 1909, 144 Iowa 10, 121 N.W. 39.

This section inapplicable where railroad has properly taken care of water in right of way and built bridge because of construction of drainage district.

Mason City & Ft. D. R. Co. v. Board of Sup'rs of

Wright County, 1908, 116 N.W. 805, reversed on other grounds, 1909, 144 Iowa 10, 121 N.W. 39.

Liability of railroad not extended for acts of persons not its agent or servants.

Callahan v. Burlington & M. R. R. Co., 1868, 23 Iowa 562.

**2. Highway bridge.**

Railroad not required to construct and maintain railing on approach to bridge strong enough to resist automobile striking it.

Medema v. Hines, C. C. A. 1921, 273 F. 52.

**3. Grade crossing.**

Duty of railroad to construct and maintain reasonably safe crossings at points where track intersects highways.

Monson v. Chicago, R. I. & P. Ry. Co., 1916, 181 Iowa 1354, 159 N.W. 679, rehearing denied and modified on other grounds, 165 N.W. 305.

**4. Flooding adjoining lands.**

See I. C. A.

**5. Duty to provide adequate water course.**

See I. C. A.

**6. Obstructing natural flow of water.**

See I. C. A.

**7. Unprecedented floods.**

See I. C. A.

**8. Cause of flooding in general.**

See I. C. A.

**9. Concurrent causes.**

See I. C. A.

**10. Easement of railroad.**

Mortgagee's lien subject to pre-existing easement of railroad maintaining bridge and embankment.

Kellogg v. Illinois Cent. R. Co., 1927, 204 Iowa 368, 213 N.W. 253, rehearing denied, 204 Iowa 368, 215 N.W. 258.

Physical facts held to constitute notice to landowner of easement of railroad in bridge for drainage.

Johnson v. Chicago, B. & Q. R. Co., 1927, 202 Iowa 1282, 211 N.W. 842.

**11. Defenses.**

In action against railroad for injury to growing crops caused by overflow due to acts of company, exercise of care by plaintiff necessary to recovery.

Brous v. Wabash R. Co., 1913, 160 Iowa 701, 142 N.W. 416.

One suing for damages for flooding his land cannot recover damages caused by himself, by construction of drains from other ponds, and such showing would merely reduce recovery.

Steber v. Chicago & G. W. Ry. Co., 1908, 139 Iowa 153, 117 N.W. 304.

Fact that plaintiff dug ditches draining water to culvert complained of would not defeat recovery unless shown he augmented flow through the culvert.

Harvey v. Mason City & Ft. Dodge R. Co., 1906, 129 Iowa 465, 105 N.W. 958, 3 L. R. A., N. S., 973, 113 Am. St. Rep. 483.

No defense to company that culvert was erected according to plans of skillful engineers.

Houghtaling v. Chicago, G. W. R. Co., 1902, 117 Iowa 540, 91 N.W. 811.

Where company fully informed of injury not necessary that it be served with notice of nuisance and demand for abatement.

Willitts v. Chicago B. & K. C. R. Co., 1893, 88 Iowa 281, 55 N.W. 313, 21 L. R. A. 608.

**12. Settlement of claims.**

See I. C. A.

**13. Actions in general.**

See I. C. A.

**14. Injunction.**

See I. C. A.

**15. Pleading.**

See I. C. A.

**17. Admissibility of evidence.**

See I. C. A.

**18. Weight and sufficiency of evidence.**

See I. C. A.

**19. Trial.**

See I. C. A.

**20. Instructions.**

See I. C. A.

**21. Measure of damages.**

See I. C. A.

**22. Construing construction as a whole.**

See I. C. A.

**23. Instructions already given.**

See I. C. A.

**24. Damages.**

In action for flooding, measure of damages was difference in market value before and after, not limiting values to part overflowed, but to farm as whole.

Thompson v. Illinois Cent. R. Co., 1916, 177 Iowa 328, 158 N.W. 676.

Straight Bros. Co. v. Chicago, M. & St. P. Ry. Co., 1918, 183 Iowa 934, 167 N.W. 705.

Measure of damages is difference in value immediately before and immediately after flooding.

Sullens. v. Chicago, R. I. & P. R. Co., 1888, 74 Iowa 659, 38 N.W. 545, 7 Am. St. Rep. 501.

Only in case of permanent injury does difference in value before and after apply to entire tract.

Thompson v. Illinois Cent. R. Co., 1920, 191 Iowa 35, 179 N.W. 191.

Measure of damages to leasehold is its difference in value before and after flooding.

Straight Bros. Co. v. Chicago, M. & St. P. Ry. Co., 1918, 183 Iowa 934, 167 N.W. 705.

Measure of damages to growing crops is value at time of injury, or value when matured less expenses of maturing and marketing same.

Brous v. Wabash R. Co., 1913, 160 Iowa 701, 142 N.W. 416.

Measure of damages for obstructing cattle passageway would be depreciation in entire farm.

Hastings v. Chicago, R. I. & P. Ry. Co., 1910, 148 Iowa 390, 126 N.W. 786.

Plaintiff entitled to fair and reasonable market value of crops destroyed.

Delashmutt v. Chicago, B. & Q. R. Co., 1910, 148 Iowa 556, 126 N.W. 359.

Measure of damages to growing crops is value at time of injury, or value when matured less expenses of maturing and marketing same.

Tretter v. Chicago Great Western Ry. Co., 1910, 147 Iowa 375, 126 N.W. 339, 140 Am. St. Rep. 304.

Measure of damages to growing crops of owner of land differs from measure of damages where crops are grown on land of another.

Jefferis v. Chicago & N. W. Ry. Co., 1910, 147 Iowa 124, 124 N.W. 367.

Rule that measure of damages is difference in fair market value of land with the crops before and value afterward does not apply to damages suffered by tenant from year to year.

Wilson v. Chicago, R. I. & P. Ry. Co., 1909, 144 Iowa 99, 121 N.W. 1102.

Loss must be determined with reference to existing conditions.

Blunck v. Chicago & N. W. Ry. Co., 1908, 115 N.W. 1013, reversed on other grounds, 142 Iowa 146, 120 N.W. 737.

Measure of damages for overflow is difference in market value of land just before and just after overflow.

Sullens v. Chicago, R. I. & P. R. Co., 1888, 74 Iowa 659, 38 N.W. 545, 7 Am. St. Rep. 501.

Measure of damages was rental value of premises.

Hull v. Chicago, B. & P. R. Co., 1885, 65 Iowa 713, 22 N.W. 940.

Growing crops regarded as part of realty, this measure applied was value of land plus growing crops.

Drake v. Chicago, R. I. & P. Ry. Co., 1884, 63 Iowa 302, 19 N.W. 215, 50 Am. Rep. 746.

**477.3 Rights of riparian owners.** All owners or lessees of lands or lots situated upon the Iowa banks of the Mississippi or Missouri rivers upon which any business is carried on which is in any way connected with the navigation of either of said rivers, or to which such navigation is a proper or convenient adjunct, are authorized to construct and maintain in front of their property, piers, cribs, booms, and other proper and convenient erections and devices for the use of their respective pursuits, and the protection and harbor of rafts, logs, floats, and watercraft, in such manner as to create no material or unreasonable obstruction to the navigation of the stream, or to a similar use of adjoining property. [C97,§2032; C24, 27, 31, 35, 39,§7948; C46, 50, 54,§477.3]

Referred to in §§420.165, 477.4 Railroad on riparian land or lots.
Interstate bridges, condemnation of property, see §383.18.
Lands granted by state to city, inapplicability of this section, see §420.165.
Streams in cities, title to bed or channel, see §§372.6, 372.7.
Jan. 1923, 8 Iowa Law Bulletin 100.

**1. Construction and application.**

Under this section fee owners of adjacent shore lands may construct piers and other convenient struc-

tures, but riparian owner holds only to high water mark.

Hagula v. Mississippi River Power Co., D. C. 1913, 202 F. 776.

"Riparian owner" is owner of land abutting river, and "littoral owner" is one whose land abuts on lake.

Peck v. Alfred Olsen Const. Co., 1932, 216 Iowa 519, 245 N. W. 131, 89 A. L. R. 1147.

**2. Control by governmental authorities.**

Authorities may build wharves and levees on bank of river below high water mark, and make other improvements without consent of, or compensation to adjacent proprietor.

Barney v. City of Keokuk, 1876, 94 U. S. 324, 24 L. Ed. 224.

Bayous and sloughs of Mississippi river, not required in interests of commerce, are subject to state or municipal control.

Ingraham v. Chicago, D. & M. R. Co., 1872, 34 Iowa 249.

**3. Rights of riparian owners.**

In suit to enjoin reconstruction of dam it was not shown to create a public nuisance.

Shortell v. Des Moines Electric Co., 1919, 186 Iowa 469, 172 N.W. 649.

**4. Structures permitted.**

Riparian proprietor had no right to erect, without legislative authority, a solid pier of masonry within navigable channel.

Northwestern Union Packet Co. v. Atlee, C. C. 1873, Fed. Cas. No. 10,341, 2 Dill. 479, 12 Am. Law Reg., N. S., 561, 7 Am. Law Rev. 752, 18 Int. Rev. Rec. 157, reversed on other grounds, 88 U. S. 389, 21 Wall. 389, 22 L. Ed. 619.

**5. Liability of riparian owner.**

Where, without authority, riparian owner erected a pier in navigable channel he was liable for sinking of barge which collided with pier in night.

Atlee v. Union Packet Co., 1874, 88 U. S. 389, 21 Wall. 389, 22 L. Ed. 619.

**477.4. Railroad on riparian land or lots.** No person or corporation shall construct or operate any railroad or other obstruction between the lots or lands referred to in section 477.3 and either of said rivers, or upon the shore or margin thereof, unless the injury and damage to owners or lessees

occasioned thereby shall be first ascertained and paid in the manner provided for taking private property for works of internal improvement. [C97,§2033; C24, 27, 31, 35, 39,§7949; C46, 50, 54,§477.4]

Condemnation procedure, ch. 472.
Condemnation by railroad, see §471.6.
Interstate bridges, condemnation of property, see §383.18.
Lands granted by state to city, inapplicability of this section, see §420.165.
Procedure for condemnation, see §472.1 et seq.
Streams in cities, title to bed or channel, see §§372.6, 372.7.
Jan. 1915. 1 Iowa Law Bulletin 48, 49.

**1. Validity.**

This section not in conflict with U. S. statutes authorizing certain construction for protection of property.

Davenport & N. W. Ry. Co. v. Renwick, 1880, 102 U. S. 180, 26 L. Ed. 51.

State could provide that railway could not appropriate land between high and low water mark without compensation to riparian owner.

Renwick v. Davenport & N. W. R. Co., 1878, 49 Iowa 664, affirmed, 102 U. S. 180, 26 L. Ed. 51.

**2. Necessity for compensating owner.**

Though improvements by riparian owner were unauthorized railroad could not appropriate such without compensation.

Davenport & N. W. Ry. Co. v. Renwick, 1880, 102 U. S. 180, 26 L. Ed. 51.

**3. Defenses to owner's claim.**

To entitle riparian owner to damages for appropriation of land on river bank of Mississippi or Missouri Rivers not necessary that he should have erected a pier or crib in front of his property.

Renwick v. Davenport & N. W. R. Co., 1878, 49 Iowa 664, affirmed, 102 U. S. 180, 26 L. Ed. 51.

Riparian owner cannot recover damages for being deprived of access to stream by construction of railroad between high and low water marks.

Tomlin v. Dubuque, B. & M. Ry. Co., 1871, 32 Iowa 106, 7 Am. Rep. 176.

**4. Actions.**

Whether improvements failing to comply with Act of Congress could be taken without compensation was "Federal question."

Davenport & N. W. Ry. Co. v. Renwick, 1880, 102 U. S. 180, 26 L. Ed. 51.

In action for damages for construction of railroad between high and low water mark jury should consider entire premises leased though divided by street.
Renwick v. Davenport & N. W. R. Co., 1878, 49 Iowa 664, affirmed, 102 U. S. 180, 26 L. Ed. 51.

**477.5 Right to lay pipes.** Such railway may lay, maintain, and repair pipes through any lands adjoining its tracks for a distance not to exceed three-fourths of a mile therefrom, in order to conduct water, for its engines, from any running stream. Said pipes shall not be laid to any spring, nor to be so used as to injuriously withdraw the water from any farm. [C73,§1243; C97,§1997; C24, 27, 31, 35, 39,§7950; C46, 50, 54,§477.5]

**477.6 Duty to restore natural surface.** It shall, without unnecessary delay after such laying or repairing, restore the surface of the land to its natural grade, and replace any fence or other improvement which it may have disturbed. [C73,§1243; C97,§1997; C24, 27, 31, 35, 39,§7951; C46, 50, 54,§477.6]

**477.7 Right of landowner.** The owner of the land through which any such pipes may be laid shall have the right to use the land in any manner which will not interfere with such pipes. [C73,§1243; C97,§1997; C24, 27, 31, 35, 39, §7952; C46, 50, 54,§477.7]

**477.8 Liability to landowner.** Said corporation shall be liable to the owner of the land for any damages occasioned by laying, maintaining, or repairing such pipes. [C73,§1243; C97,§1997; C24, 27, 31, 35, 39,§7953; C46, 50, 54,§477.8]

# CHAPTER 526

## SAVINGS BANKS

526.1-526.24 Omitted.
526.25 Investment of funds.
526.26-526.44 Omitted.

**526.25 Investment of funds.** Each savings bank shall invest its funds or capital, all moneys deposited therein, and all its gains and profits, only as follows:

**1. Federal securities.** In bonds or interest-bearing notes or certificates of the United States.

**2. Federal farm loan bonds.** In farm loan bonds issued under the act of congress approved July 17, 1916, as amended, where the corporation issuing such bonds is loaning in Iowa; and in bonds of the home owners' loan corporation, as provided for in the act of congress, approved June 13, 1933 (12 USC,§§1461-1468), or in any amendments thereto and in class "A" stock of the federal deposit insurance corporation, as provided for in the act of congress, approved June 16, 1933 (12 USC, §221a et seq.), or in any amendments thereto.

**3. State securities.** In bonds or evidences of debt of this state, bearing interest.

**4. Municipal securities.** In bonds or warrants of any city, town, county, school district, or drainage district of this state, issued pursuant to the authority of law; but not exceeding twenty-five percent of the assets of the bank shall consist of such bonds or warrants.

**5. Real estate bonds and mortgages.** In notes or bonds secured by mortgage or deed of trust upon unemcumbered real estate located in Iowa or upon unencumbered real estate in adjoining states, worth at least twice the amount loaned thereon, provided, however, that no loan shall be made upon any town or city real estate located beyond the first two tiers of counties of any adjoining state.

a. Any such loan may be made in an amount not to exceed sixty percent of the appraised value of the real estate offered as security and for a term not longer than ten years if the loan is secured by an amortized mortgage, deed of trust, or other such instrument under the terms of which the installment payments are sufficient to amortize forty percent or more of the principal of the loan within a period of not more than ten years, and

b. The foregoing limitations and restrictions shall not prevent the renewal or extension of loans heretofore made and shall not apply to real estate loans which are insured under the provisions of the national housing act, as amended;

c. Nor shall such limitations and restrictions apply to real estate loans which are guaranteed or insured by the admin-

istrator of veterans' affairs under the provisions of title III of the servicemen's readjustment act of 1944,* as amended, otherwise known as the "G.I. Bill of Rights," when such loans fully comply with the provisions of that act as amended and with all regulations promulgated thereon; provided the amount of such loans held at any one time shall not exceed in the aggregate twenty-five percent of the assets of such bank and provided further, that said loans shall be upon real estate located in Iowa or in the first two tiers of counties in bordering states adjoining Iowa.

Provided, however, that no such loan shall be made upon any real estate located west of the one-hundredth meridian line.

*58 Stat. L.291.

**6. Federal reserve and land bank stock.** An amount not exceeding ten percent of their capital stock and surplus in the capital stock of corporations chartered or incorporated under the provisions of section 25a of the federal reserve act, approved December 24, 1919 (12 USC,§§611-631), and a like amount in the capital stock of corporations organized under the laws of this state for the purpose of extending credit to those engaged in agriculture and to agricultural organizations, and an amount not in excess of fifteen percent of their capital stock and surplus in capital stock of any national mortgage association authorized under title III of the national housing act (12 USC, §§1716-1723) approved June 27, 1934, or any amendments thereto, subject, however, to the approval of the superintendent of banking; provided that said investments by savings banks shall in no event exceed in the aggregate twenty percent of the capital stock and surplus of said bank.

**7. Federal housing securities.** In bonds and notes secured by mortgage or trust deed insured by the federal housing administrator, and in debentures issued by the federal housing administrator pursuant to the national housing act, or amendments to said act, and in securities issued by national mortgage associations or similar credit institutions now or hereafter organized under title III of the national housing act, or amendments to said act; but not exceeding twenty-five percent of the assets of the bank or trust company shall consist of such investments. [C97,§1850; S13,§1850; C24, 27, 31, 35, 39,§9183; C46, 50, 54,§526.25]

Referred to in §§526.26 Inapplicable statutes, 526.32 Surplus fund —investment.

Also see §§682.23 Authorized securities, 682.45 Federal insured loans.

Investments in federal reserve and farm loan bank stock, §§528.67, 528.70.

For annotations see I.C.A.

# CHAPTER 560

## OCCUPYING CLAIMANTS

560.1-560.6 Omitted.
560.7 Option to remove improvements.

**560.7 Option to remove improvements.** Any person having improvements on any real estate granted to the state in aid of any work of internal improvement, whose title thereto is questioned by another, may remove such improvements without other injury to such real estate at any time before he is evicted therefrom, or he may have the benefit of this chapter by proceeding as herein directed. [C73, §1987; C97,§2971; C24, 27, 31, 35, 39,§10134; C46, 50, 54,§560.7]

For annotations see I.C.A.

# CHAPTER 568

## ISLANDS AND ABANDONED RIVER CHANNELS

568.1 Sale authorized.
568.2 Application by county auditor.
568.3 Application by prospective purchaser.
568.4 Form of application.
568.5 Survey.
568.6 Report of survey.
568.7 Appraisement.
568.8 Contract for survey.
568.9 Commissioners' compensation.
568.10 Sale—how effected—rights of occupants.
568.11 Lease authorized—lands readvertised—sale.
568.12 Deed or patent.
568.13 Previous survey.
568.14 Boundary commission.
568.15 How constituted.
568.16 Purchase money refunded.
568.17 Sales and leases for cash.
568.18 Good faith possession—preference.
568.19 Notice—action to determine title and value—patent.
568.20 Withholding patent—deposit money refunded.
568.21 Sale or lease authorized.
568.22 Survey—appraisement—sale.
568.23 Lease.
568.24 Sales and leases for cash—expenses.
568.25 Patent or lease.

**568.1 Sale authorized.** All land between high-water mark and the center of the former channel of any navigable stream, where such channel has been abandoned, so that it is no longer capable of use, and is not likely again to be used for the purposes of navigation, and all land within such abandoned river channels, and all bars or islands in the channels of navigable streams not heretofore surveyed or platted by the United States or the state of Iowa, and all within the jurisdiction of the state of Iowa shall be sold and disposed of in the manner hereinafter provided. [S13, §2900-a2; C24, 27, 31, 35, 39,§10221; C46, 50, 54,§568.1]

Referred to in §§568.2 Application by county auditor, 568.10 Sale —how effected—rights of occupants.

**1. Construction and application.**

A patent of land within the jurisdiction of another state is void.

Coulthard v. McIntosh, 1909, 143 Iowa 389, 122 N.W. 233.

Provisions of section 111.1 controlling where conflict with section 568.1.

O. A. G. 1938, p. 352.

**2. Abandoned channels.**

Abandoned channels meant by this section are those created by sudden avulsions, not those created by accretions or relictions.

Coulthard v. McIntosh, 1909, 143 Iowa 389, 122 N.W. 233.

**3. Islands.**

An island which washes downstream is the property of the state.

O. A. G. 1925-26, p. 143.

**4. Unabandoned channels.**

Land built by dumping dirt in Missouri river belonged to state.

Sioux City v. Betz, 1942, 232 Iowa 84, 4 N.W.2d 872.

Where river not meandered, title to bed not in state unless showing that stream navigable in fact.

O. A. G. 1925-26, p. 64.

Riparian owners own to high water mark not withstanding Congressional act.

O. A. G. 1909, p. 282.

**5. Meandered streams.**

Where stream has been meandered by U. S., title to bed is vested in state.

O. A. G. 1925-26, p. 64.

**568.2 Application by county auditor.** It shall be the duty of the county auditor to file written application with the secretary of state, asking that certain land located within the county be surveyed, appraised, and sold, whenever he is satisfied that such land is of the character contemplated by section 568.1. [S13,§2900-a3; C24, 27, 31, 35, 39,§10222; C46, 50, 54,§568.2]

**568.3 Application by prospective purchaser.** If the county auditor fails or neglects to make such application, then any person desiring to purchase such land may file a written application with the secretary of state, asking that the said land be surveyed, appraised, and sold. [S13,§2900-a3; C24, 27, 31, 35, 39,§10223; C46, 50, 54,§568.3]

**568.4 Form of application.** The said application whether made by the county auditor or by a person desiring to purchase the land, shall contain an accurate description thereof, stating whether the land is abandoned river channel, or land within such abandoned river channel, or an island or a sand bar in a navigable stream, and giving the number of township and range in which it is located, and the section numbers if possible, and also the estimated acreage. [S13,§2900-a3; C24, 27, 31, 35, 39,§10224; C46, 50, 54,§568.4]

**568.5 Survey.** Upon receiving such application, it shall be the duty of the secretary of state to order a complete survey of such land to be made by the county surveyor of the county wherein the land is situated, and in case of the refusal or inability of such county surveyor to make such survey then the secretary of state shall appoint some other competent surveyor to make such survey. [S13,§2900-a4; C24, 27, 31, 35, 39,§10225; C46, 50, 54,§568.5]

**568.6 Report of survey.** When such survey is made, a full report thereof, with field notes, shall be filed with the clerk of the state land office, which report and field notes shall constitute the official survey of such land. [S13,§2900-a4; C24, 27, 31, 35, 39,§10226; C46, 50, 54,§568.6]

**568.7 Appraisement.** Upon the filing of such report, with the accompanying field notes, the secretary of state shall thereupon appoint a commission of three disinterested freeholders of the county wherein the land is situated, to view the land and make appraisement of the value thereof, which appraisement shall be returned and filed with the clerk of the state land office in the office of the secretary of state.

The secretary of state, if he deems it necessary, may either go in person or send the clerk of the state land office into the county to make proper selection of the said commissioners. [S13,§2900-a5; C24, 27, 31, 35, 39,§10227; C46, 50, 54,§568.7]

Referred to in §568.11 Lease authorized—lands readvertised—sale.

**568.8 Contract for survey.** The secretary of state shall make a contract with some surveyor for making such survey; the surveyor to furnish all the chainmen and other attendants and pay all necessary expenses, which contract before it becomes binding shall be submitted to and approved by the executive council. [S13,§2900-a6; C24, 27, 31, 35, 39,§10228; C46, 50, 54,§568.8]

**568.9 Commissioners' compensation.** Commissioners for their services in making such appraisement shall each be entitled to receive five dollars per day for the actual time employed. [C24, 27, 31, 35, 39,§10229; C46, 50, 54,§568.9]

**568.10 Sale — how effected — rights of occupants.** Such lands shall be sold in the following manner: Any person who has in fact lived upon any such land and occupied the same, as a home, continuously for a period of three or more years immediately prior to the time of the appraisement thereof, and such occupancy has been in good faith for the purpose of procuring title thereto, whenever by law such title could be vested in him by purchase from the proper authority, or any person who has acquired possession of

such land by inheritance, or by purchase made in good faith from a former occupant, or occupants, whose occupancy dates back over a period of three years prior to the date of appraisement of the land, shall have first right to purchase such land at the appraised value; provided such bona fide occupant shall file his application for the purchase thereof at the appraised value with the secretary of state within sixty days after the day the appraisement is made, and shall accompany such application with affidavits showing proof of such bona fide occupancy. If no application has been filed by such bona fide occupant within the sixty-day period above provided, then the secretary of state shall advertise the sale of such land once each week for four consecutive weeks in two newspapers of general circulation published in the county wherein the land is situated, and proof of publication shall be filed with the secretary of state. The sale shall be made upon written bids addressed to the secretary of state and the advertisements shall fix the time when such bids will be received and opened. All bids shall be opened by the secretary of state or by the clerk of the state land office at the time fixed, and the land thereupon may be sold to the highest bidder and at not less than the appraised value.

Any such sale shall be subject to the permanent right of a utility association, company or corporation to continue in possession of a right of way for its underground and aerial plant, including cables, wires, poles, fixtures, piers and abutments, where such right of way has existed on lands which have become subject to sale under section 568.1. [S13, SS15,§2900-a7; C24, 27, 31, 35, 39,§10230; C46, 50, 54,§568.10]

Referred to in §568.11 Lease authorized—lands readvertised—sale.

**1. Construction and application.**

Provisions of section 111.1 controlling where conflict with section 568.1.

O. A. G. 1938, p. 352.

Legislature is only public body with authority to grant pipe-line crossing of meandered or navigable stream.

O. A. G. 1930, p. 364.

**568.11 Lease authorized—lands readvertised—sale.** If no application is filed for the purchase of the land within the sixty-day period by a bona fide occupant, and if no bids are received for the purchase thereof, on or before the date of the sale as advertised, then the secretary of state is authorized to lease the land for a period of from one to five years, upon as favorable terms as he can obtain. At the expiration of such lease he shall readvertise the land for sale in the manner provided in section 568.10. If no bids for the purchase of the land are received on the date of the second advertised sale, then the secretary of state shall submit the

matter to the executive council, and they may either order the land reappraised in the manner provided in section 568.7, and then advertised and sold in the manner provided in section 568.10, or if they deem it advisable, they may authorize the secretary of state to sell the land for less than the appraised value. In such event the secretary of state shall readvertise the land for sale in the manner provided in section 568.10, and such advertisement shall also state that the land will be sold to the highest bidder without restrictions as to the appraised value. [S13,§2900-a8; C24, 27, 31, 35, 39, §10231; C46, 50, 54,§568.11]

**1. Construction and application.**

Legislature is only public body with authority to grant pipe-line crossing of meandered or navigable stream.
O. A. G. 1930, p. 364.

State holds title to bed of Des Moines river and may not lease such lands so as to interfere with rights of public.
O. A. G. 1904, p. 185.

**568.12 Deed or patent.** When, upon full compliance with the conditions of this chapter, any person shall become entitled to a deed or patent for any land, a deed or patent shall thereupon be executed and delivered to such person by the governor, on behalf of the state, duly attested with the seal of the state attached thereto, which deed shall, in addition to the usual formalities, also recite the name of the party making application to have the land surveyed, appraised, and sold, the date and the amount of the appraisement, the name of the party making final payment and entitled to a deed therefor, whether as bona fide occupant or as highest bidder, and also that such deed is given for the purpose of conveying such title and interest in the land as the state may at the time own and possess, and has the right to convey. A record of such conveyance shall be made and kept by the clerk of the state land office of the secretary of state. [S13,§2900-a9; C24, 27, 31, 35, 39,§10232; C46, 50, 54,§568.12]

**1. Construction and application.**

Granting of patent by state may be rendered void by showing lack of jurisdiction.
Coulthard v. McIntosh, 1909, 143 Iowa 389, 122 N.W. 233.

**568.13 Previous survey.** When any such land shall be found to have been previously surveyed under and by virtue of any order of a court of record, and the record of such survey has been duly made and preserved, then and in that event, in the discretion of the secretary of state, a duly certified transcript of such record, together with the field notes accompanying the same, if obtainable, may be filed with the clerk of the state land office in the office of secretary of

state, and when so filed shall obviate the necessity for any further survey of such land except when such survey becomes necessary for the purpose of execution of conveyance thereof, and the record of such transcript, when filed, shall constitute the official survey of such land. [S13,§2900-a10; C24, 27, 31, 35, 39,§10233; C46, 50, 54,§568.13]

**568.14 Boundary commission.** If in any proceeding contemplated by the provisions of this chapter, it shall become necessary to determine the boundary line between this state and either of the states adjoining, the matter shall then be at once referred to the executive council, who shall thereupon proceed to confer with the proper authority of such adjoining state, and if the co-operation of the proper authority of such adjoining state shall be obtained, then the executive council shall appoint a commission of three disinterested, competent persons, who shall, in conjunction with the parties acting for such adjoining state, have authority to ascertain and locate the true boundary line between this state and such adjoining state, so far as the particular land under consideration at the time is concerned. The report of the commissioners with a statement of their findings shall be submitted to the executive council, who shall file the same with the clerk of the state land office in the office of the secretary of state. The line so ascertained and located shall constitute the true and permanent boundary line between this state and such other state to the extent such line shall be so ascertainable and located. [S13,§2900-a11; C24, 27, 31, 35, 39,§10234; C46, 50, 54,§568.14]

**1. Construction and application.**

Granting of patent by state may be rendered void by showing lack of jurisdiction.

Coulthard v. McIntosh, 1909, 143 Iowa 389, 122 N.W. 233.

**568.15 How constituted.** The members of the commission shall be selected with reference to their fitness for the duties required and at least one of them shall be a competent surveyor and civil engineer. [S13,§2900-a12; C24, 27, 31, 35, 39,§10235; C46, 50, 54,§568.15]

**568.16 Purchase money refunded.** If the grantee of the state, or his successors, administrators, or assigns, shall be deprived of the land conveyed by the state under this chapter by the final decree of a court of record for the reason that the conveyance by the state passed no title whatever to the land therein described, because title thereto had previously for any reason been vested in others, then the money so paid the state for the said land shall be refunded by the state to the person or persons entitled thereto, provided the said grantee, or his successors, administrators, or

assigns, shall file a certified copy of the transcript of the said final decree with the executive council within one year from the date of the issuance of such decree, and shall also file satisfactory proof with the executive council that the action over the title to the land was commenced within ten years from the date of the issuance of patent or deed by the state. The amount of money to be refunded under the provisions of this section shall be certified by the executive council to the state comptroller, who shall draw his warrant therefor, and the same shall be paid out of the general fund. [S13,§2900-a13; C24, 27, 31, 35, 39,§10236; C46, 50, 54,§568.16]

**568.17 Sales and leases for cash.** All sales and leases of land under the provisions of this chapter shall be for cash. All money received for such sales and leases shall be paid into the state treasury by the secretary of state. [S13,§2900-a14; C24, 27, 31, 35, 39,§10237; C46, 50, 54,§568.17]

**568.18 Good faith possession—preference.** If any lands in the present or in any former channel of any navigable river, or island therein, or any lands formed by accretion or avulsion in consequence of the changes of the channel of any such river, have been for ten years or more in the possession of any person, company, or corporation, or of his or its grantors or predecessors in interest under a bona fide claim of ownership, and the person, company or corporation so in possession, or his or its grantors or predecessors in interest, have paid state or county taxes upon said lands for a period of five years, and have in good faith and under bona fide claim of title made valuable improvements thereon, and also in any other case where, in the judgment of the executive council, the person in possession of any land subject to the provisions of this chapter, has, in equity and good conscience, a substantial interest therein, then the said lands shall be sold to the person, company, or corporation so in possesion thereof as hereinafter provided. [S13, §2900-a16; C24, 27, 31, 35, 39,§10238; C46, 50, 54,§568.18]

Referred to in §568.20 Withholding patent—deposit money refunded.

**1. Construction and application.**

Facts estop state from claiming title to land created by avulsion.

State of Iowa v. Carr, 1911; 191 F.257, 112 C.C.A. 477; State of Iowa v. John A. Creighton Real Estate & Trust Co., 1911, 191 F.270, 112 C.C.A. 496.

Provisions of section 111.1 controlling where conflict with section 568.1.

O. A. G. 1938, p. 352.

**2. Accretion or alluvion land is the property of the owner of the bank.**

Holmes v. Haines, 1942, 231 Iowa 634, 1 N.W.2d 746.

Owner of bank is owner of gradually added land along river land.

Coulthard v. Stevens, 1892, 84 Iowa 241, 50 N.W. 983, 35 Am. St. Rep. 304.

**3. Adverse possession.**

Title to bed of stream is in state and can't be acquired by adverse possession.

Wenig v. City of Cedar Rapids, 1919, 187 Iowa 40, 173 N.W. 927.

Title can't be acquired by prescription beyond high-water marks of river.

Cedar Rapids Gaslight Co. v. City of Cedar Rapids, 1909, 144 Iowa 426, 120 N.W. 966, 48 L. R. A., N. S., 1025, 138 Am. St. Rep 299, decree affirmed 32 S. Ct. 389, 223 U. S. 655, 56 L. Ed. 594.

No adverse possession rights in bed of navigable stream.

Board of Park Com'rs v. Taylor, 1906, 133 Iowa 453, 108 N.W. 927.

Where state or federal government owns bed of dried-up body of water, no claim of adverse possession can be made.

Carr v. Moore, 1903, 119 Iowa 152, 93 N.W. 52, 97 Am. St. Rep. 292.

**4. Nonnavigable streams.**

Adjoining owners own to center of nonnavigable stream.

State v. Livingston, 1914, 164 Iowa 31, 145 N.W. 91.

**568.19 Notice—action to determine title and value—patent.** When any person, company, or corporation so in possession of any such lands shall give to the secretary of state written notice of his or its claim, or whenever the executive council shall deem it advisable, it shall be the duty of the attorney general to bring an action in equity, in the district court of the county in which said lands are situated, against the party in possession thereof to determine the title of the state to such lands, and the value thereof, exclusive of improvements made thereon by the occupant or by his or its grantors or predecessors in interest. If the person, company, or corporation in possession of such land shall, after the court has determined the value thereof as herein provided, tender to the secretary of state the amount adjudged to be the value of said lands, exclusive of improvements made thereon by the occupant or by his or its grantors or predecessors in interest, a deed or patent of such land shall be executed by the governor, attested by the secretary of state, and delivered to the person, company, or corporation making such tender, as provided by law. If the per-

son, company, or corporation so in possession shall fail to pay to the state the amount so adjudged within six months after the final determination of the action so brought by the state, then said lands shall be subject to the other provisions of this chapter. [S13,§2900-a17; C24, 27, 31, 35, 39, §10239; C46, 50, 54,§568.19]

Referred to in §568.20 Withholding patent—deposit money refunded.

**568.20 Withholding patent—deposit money refunded.** If the land described in any application is covered by the provisions of sections 568.18 and 568.19, and notice thereof is given to the secretary of state as provided in section 568.19, no deed or patent of such land, or any part thereof, shall be executed or issued until the title thereto shall have been established by the court as herein provided. If the party making such application, or his assignee, does not desire to prosecute his application, or if he does not purchase the land under this chapter, then all of the money deposited by him with the secretary of state under the provisions of this chapter shall be repaid to said applicant by the secretary of state; and if any part of the money so deposited has been expended by the secretary of state, then the amount so expended shall be certified by the secretary of state to the state comptroller, who shall draw his warrant upon the general fund in favor of the person entitled thereto. [S13, §2900-a18; C24, 27, 31, 35, 39,§10240; C46, 50, 54,§568.20]

**568.21 Sale or lease authorized.** The executive council of the state is hereby authorized and empowered to sell, convey, lease, or demise any of the islands belonging to the state which are within the meandered banks of rivers in the state, and to execute and deliver a patent or lease thereof. Nothing in this and sections 568.22 and 568.25, inclusive, shall be construed to apply to islands in the Mississippi or Missouri rivers. [S13,§2900-a28; C24, 27, 31, 35, 39,§10241; C46, 50, 54,§568.21]

Referred to in §568.22 Survey—appraisement—sale.

**1. Construction and application.**

Title to bed of Des Moines river above and below Raccoon is in state.

Shortell v. Des Moines Electric Co., 1919, 186 Iowa 469, 172 N.W. 649.

Provisions of section 111.1 control where conflict with chapter 568.

O. A. G. 1938, p. 352.

**568.22 Survey—appraisement—sale.** Before a sale of any island is made under the provisions of section 568.21, the executive council shall cause a survey and plat of such

island to be made, showing its location and area, and the plat and notes of such survey shall be filed with the secretary of state. The land composing the island shall then be appraised by a commission appointed by the governor, consisting of three disinterested freeholders of the state, who shall report their appraisement to the executive council. The sale of the island shall then be advertised once each week for four consecutive weeks in some newspaper of general circulation published in the county where the island is located, and proof of such publication filed with the executive council. The sale shall be made upon written bids addressed to the executive council of the state, and the advertisement shall fix the time when such bids will be received and opened. All bids shall be opened by the executive council at the time fixed, and the island may thereupon be sold to the highest bidder and at not less than its appraised value. [S13,§2900-a29; C24, 27, 31, 35, 39,§10242; C46, 50, 54,§568.22]

Referred to in §§568.21 Sale or lease authorized, 568.23 Lease.

**568.23 Lease.** If it shall be deemed expedient to lease any such island, a lease thereof may be made upon written bids addressed to the executive council, and the island proposed to be leased shall be surveyed and platted, and notice of the leasing thereof and of the receiving and opening of bids shall be published, in the manner provided in section 568.22, but no appraisement shall be necessary. Upon the opening of the bids received by the executive council it may make a lease of such island to the highest bidder for such terms as is deemed advisable. [S13,§2900-a30; C24, 27, 31, 35, 39,§10243; C46, 50, 54,§568.23]

Referred to in §568.21 Sale or lease authorized.

**568.24 Sales and leases for cash—expenses.** All sales and leases must be for cash, and the money received therefor shall be paid into the state treasury. All expenses incurred in making the survey, plat, appraisement, sale, or lease of any such island shall be certified by the executive council to the state comptroller, who shall draw his warrant upon the state treasury for the amount, and the same shall be paid from the general fund. [S13,§2900-a31; C24, 27, 31, 35, 39,§10244; C46, 50, 54,§568.24]

Referred to in §568.21 Sale or lease authorized.

**568.25 Patent or lease.** When any sale or lease of any island belonging to the state is made by the executive council as herein provided, the governor shall execute and deliver to the purchaser or lessee a patent or a lease thereof, as the case may be, duly attested by the seal of the state. [S13,§2900-a32; C24, 27, 31, 35, 39,§10245; C46, 50, 54,§568.25)

Referred to in §568.21 Sale or lease authorized.

# CHAPTER 573

## LABOR AND MATERIAL ON PUBLIC IMPROVEMENTS

573.1 Terms defined.
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573.24 Notice of claims to highway commission.
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573.26 Public corporation—action on bond.

**573.1 Terms defined.** For the purpose of this chapter:

1. "Public corporation" shall embrace the state, and all counties, cities, towns, public school corporations, and all officers, boards, or commissions empowered by law to enter into contracts for the construction of public improvements.

2. "Public improvement" is one, the cost of which is payable from taxes or other funds under the control of the public corporation, except in cases of public improvement for drainage or levee purposes the provisions of the drainage law in cases of conflict shall govern.

3. "Construction" shall, in addition to its ordinary meaning, embrace repair and alteration.

4. "Material" shall, in addition to its ordinary meaning, embrace feed, gasoline, kerosene, lubricating oils and greases, provisions, and fuel, and the use of forms, accessories, and equipment, but shall not include personal expenses or personal purchases of employees for their individual use.

5. "Service" shall, in addition to its ordinary meaning, include the furnishing to the contractor of workmen's com-

pensation insurance and premiums and charges for such insurance shall be considered a claim for service. [C24, 27, 31, 35,§10299; C46, 50, 54,§573.1]

Cities and towns, requiring showing by contractor that subcontractors and workmen have been paid, see §368.43.
May 1942, 27 Iowa Law Review, 579, 588.

**1. Construction and application.**

Section 573.23 construed in light of whole chapter.
Sinclair Refining Co. v. Burch, 1944, 235 Iowa 594, 16 N.W.2d 359.

All sections of chapter considered in relation to entire chapter.
Hercules Mfg. Co. v. Burch, 1944, 235 Iowa 568, 16 N.W.2d 350.

"Materials" defined in subsection 4 strictly construed.
Coon River Co-op. Sand Ass'n v. McDougall Const. Co. of Sioux City, 1932, 215 Iowa 861, 244 N.W. 847.
Monona County v. O'Connor, 205 Iowa 1119, 215 N.W. 803.

"Materials" not groceries for help.
AEtna Casualty & Surety Co. v. Kimball, 206 Iowa 1251, 222 N.W. 31.
Monona County v. O'Connor, supra.

Petroleum products used in hauling materials constitute "materials."
Rainbo Oil Co. v. McCarthy Improvement Co., 212 Iowa 1186, 236 N.W. 46.

Meaning of "materials" based on established judicial interpretation.
AEtna Casualty & Surety Co. of Hartford, Conn., v. Kimball, 1928, 206 Iowa 1251, 222 N.W. 31.

**2. Settlement.**

Settlement with first subcontractor did not avoid liability to second subcontractor.
Joseph T. Ryerson & Son v. Schraag, 1930, 211 Iowa 558, 229 N.W. 733.

**3. Contract, necessity of.**

Construction of storm sewer with day labor from tax money prohibited.
O. A. G. 1928, p. 46.

**4. Evidence.**

Seller must prove use of petroleum products in hauling material.
Rainbo Oil Co. v. McCarthy Improvement Co., 1931, 212 Iowa 1186, 236 N.W. 46.

**573.2 Public improvements—bond and conditions.** Contracts for the construction of a public improvement shall, when the contract price equals or exceeds one thousand dollars, be accompanied by a bond, with surety, conditioned for the faithful performance of the contract, and for the fulfillment of such other requirements as may be provided by law. Such bond may also be required when the contract price does not equal said amount. [C24, 27, 31, 35, 39,§10300; C46, 50, 54,§573.2]

Drainage and levee districts, see §455.45.
Drainage districts, intercounty, see §457.18.
Enforcement of bond, see §23.8.
Farm to market roads, see §310.15.
Flood protection contracts, see §§395.8, 395.9, 395.10.
Release of surety, law not applicable, see §65.10.
Secondary road construction, see §§309.57, 309.58.
Street improvement bond, see §391.33.
Venue of action against surety company, see §616.15.
Water district improvement, see §357.17.
May 1917, 3 Iowa Law Bulletin 191.

**1. Construction and application.**

Nonstatutory contractors performance bond void.
Monona County v. O'Connor, 1927, 205 Iowa 1119, 215 N.W. 803.

Persons supplying fuel granted a lien.
Standard Oil Co. v. Marvill, 1926, 201 Iowa 614, 206 N.W. 37.

**2. Execution of bond.**

Validity of bond to release claim for materials not affected by failure of "principal" to sign.
Ft. Dodge Culvert & Steel Co. v. Miller, 1925, 200 Iowa 1169, 206 N.W. 141.

**3. Cost of bond.**

Cost of bond cannot be paid by public body.
O. A. G. 1936, p. 527.

**4. Construction of bond.**

Bond given force and effect intended by contracting parties.
City of Osceola v. Gjellefald Const. Co., 1938, 225 Iowa 215, 279 N.W. 590.

Public contractors bond not elastic.
Queal Lumber Co. v. Anderson, 1930, 211 Iowa 210, 229 N.W. 707.

Obligation under bond measured by statute.
Monona County v. O'Connor, 1927, 205 Iowa 1119, 215 N.W. 803.

Meaning of bond determined by entire contract and bond.
Clinton Bridge Works v. Kingsley, 1920, 188 Iowa 218, 175 N.W. 976.

**5. Scope of bond.**

Bond limited to its specific provisions.
Noyes v. Granger, 1879, 51 Iowa 227, 1 N.W. 519.

**6. Liability on bond.**

Surety liable for faulty construction though engineer makes no objection.
City of Osceola v. Gjellefald Const. Co., 1938, 225 Iowa 215, 279 N.W. 590.

Surety not liable for incorrect payment to assignor where assignee failed to notify.
Sibley Lumber Co. v. Madsen, 1924, 198 Iowa 880, 200 N.W. 425.

Liability of surety limited to statutory requirements.
Nebraska Culvert & Mfg. Co. v. Freeman, 1924, 197 Iowa 720, 198 N.W. 7.

Performance bond liability does not extend to personal injury liability.
Schisel v. Marvill, 1924, 198 Iowa 725, 197 N.W. 662.

Surety bond not liable for claims of materialmen who have no claim against county.
Hunt v. King, 1896, 97 Iowa 88, 66 N.W. 71.

Subcontractor's performance bond not breached by excessive indebtedness of subcontractor.
Hahn v. Wickham, 1881, 55 Iowa 545, 8 N.W. 358.

**7. Priorities.**

Surety has prior claim over assignees holding non-statutory claims.
Monona County v. O'Connor, 1927, 205 Iowa 1119, 215 N.W. 803.

**8. Surety's rights.**

Rights of laborers, materialmen and sureties fixed by this chapter.
Hercules Mfg. Co. v. Burch, 1944, 235 Iowa 568, 16 N.W.2d 350.

Surety could not recover for "construction fraud" for payments over retained percentages.
Federal Surety Co. v. Des Moines Morris Plan Co., 1931, 213 Iowa 464, 239 N.W. 99.

**9. Indemnitors.**

Indemnitors released by contractor's settlement with bond company after default.
Iowa Bonding & Casualty Co. v. Wagner Co., 1926, 203 Iowa 179, 210 N.W. 775.

**10. Appropriations.**

Bond for expenditure of public funds authorized payment only after commenced.

Muscatine County v. Carpenter, 1871, 33 Iowa 41.

**11. Actions.**

Failure to file claim and sue within required time bars claim.

Zeidler Concrete Pipe Co. v. Ryan & Fuller, 1927, 205 Iowa 37, 215 N.W. 801.

**12. Evidence.**

Whether dam a water tight structure for court under evidence.

City of Osceola v. Gjellefald Const. Co., 1938, 225 Iowa 215, 279 N.W. 590.

Admission of liability by principal not prejudicial.

Ft. Dodge Culvert & Steel Co. v. Miller, 1925, 200 Iowa 1169, 206 N.W. 141.

Bond to city immaterial where city had been recouped.

Hooven, Owens, Rentschler Co. v. City of Altantic, 1913, 163 Iowa 380, 144 N.W. 635.

Evidence of forfeit of contract not prejudicial.

City of Ft. Madison v. Moore, 1899, 109 Iowa 476, 80 N.W. 527.

**573.3 Bond mandatory.** The obligation of the public corporation to require, and the contractor to execute and deliver said bond, shall not be limited or avoided by contract. [C24, 27, 31, 35, 39,§10301; C46, 50, 54,§573.3]

**1. Construction and application.**

Settlement with first subcontractor does not defeat second subcontractor's rights.

Joseph T. Ryerson & Son v. Schraag, 1930, 211 Iowa 558, 229 N.W. 733.

Assignee bank bound to know certain claim lienable.

Ottumwa Boiler Works v. M. J. O'Meara & Son, 1928, 206 Iowa 577, 218 N.W. 920.

Contract construed in light of statute.

Nebraska Culvert & Mfg. Co. v. Freeman, 1924, 197 Iowa 730, 198 N.W. 7.

**573.4 Deposit in lieu of bond.** A deposit of money, or a certified check on a solvent bank of the county in which the improvement is to be located, or state or federal bonds, or bonds issued by any city, town, school corporation, or county of this state, or bonds issued on behalf of any drainage or highway paving district of this state, may be received in an amount equal to the amount of the bond and held in

lieu of a surety on such bond, and when so received such securities shall be held on the terms and conditions applicable to a surety. [C24, 27, 31, 35, 39,§10302; C46, 50, 54, §573.4]

**573.5 Amount of bond.** Said bond shall run to the public corporation. The amount thereof shall be fixed, and the bond approved, by the official board or officer empowered to let the contract, in an amount not less than seventy-five percent of the contract price, and sufficient to comply with all requirements of said contract and to insure the fulfillment of every condition, expressly or impliedly embraced in said bond; except that in contracts where no part of the contract price is paid until after the completion of the public improvement the amount of said bond may be fixed at not less than twenty-five percent of the contract price. [C24, 27, 31, 35, 39, §10303; C46, 50, 54,§573.5]

**1. Construction and application.**

Obligation under bond measured by statute.

Monona County v. O'Connor, 1927, 205 Iowa 1119, 215 N.W. 803.

**573.6 Subcontractors on public improvements.** The following provisions shall be held to be a part of every bond given for the performance of a contract for the construction of a public improvement, whether said provisions be inserted in such bond or not, to wit:

1. "The principal and sureties on this bond hereby agree to pay to all persons, firms, or corporations having contracts directly with the principal or with subcontractors, all just claims due them for labor performed or materials furnished, in the performance of the contract on account of which this bond is given, when the same are not satisfied out of the portion of the contract price which the public corporation is required to retain until completion of the public improvement, but the principal and sureties shall not be liable to said persons, firms, or corporations unless the claims of said claimants against said portion of the contract price shall have been established as provided by law."

2. "Every surety on this bond shall be deemed and held, any contract to the contrary notwithstanding, to consent without notice:

*a.* To any extension of time to the contractor in which to perform the contract.

*b.* To any change in the plans, specifications, or contract, when such change does not involve an increase of more than twenty percent of the total contract price, and shall then be released only as to such excess increase.

*c.* That no provision of this bond or of any other contract shall be valid which limits to less than one year from the

time of the acceptance of the work the right to sue on this bond for defects in workmanship or material not discovered or known to the obligee at the time such work was accepted." [S13,§1527-s18; C24, 27, 31, 35, 39,§10304; C46, 50, 54,§573.6]

Referred to in 391A.19.
**May 1917, 3 Iowa Law Bulletin 191.**

**1. Construction and application.**

Conflict between contract and statute resolved according to statute.

Hercules Mfg. Co. v. Burch, 1944, 235 Iowa 568, 16 N.W.2d 350.

Bond provisions governed by statute.

City of Osceola v. Gjellefald Const. Co., 1938, 225 Iowa 215, 279 N.W. 590.

Claimant's rights under contractor's bond governed by statute.

Southern Surety Co. v. Jenner Bros., 1931, 212 Iowa 1027, 237 N.W. 500.

**2. Liability on bond.**

Acceptance of work no bar to recovery for hidden defects.

City of Osceola v. Gjellefald Const. Co., 1938, 225 Iowa 215, 279 N.W. 590.

Surety's liability fixed by statute.

Southern Surety Co. v. Jenner Bros., 1931, 212 Iowa 1027, 237 N.W. 500.

Settlement with first subcontractor did not defeat liability to second subcontractor.

Joseph T. Ryerson & Son v. Schraag, 1930, 211 Iowa 558, 229 N.W. 733.

Bond liability broader than statute limited to statute.

Ottumwa Boiler Works v. M. J. O'Meara & Son, 1928, 206 Iowa 577, 218 N.W. 920.

**3. Discharge of surety.**

Surety discharged for lack of notice of extension only where valid agreement to extend.

O. A. G. 1919-20, p. 273.

**4. Retained funds, right to.**

Words "the amount then due the contractor" and "said amount" in section 573.23 refer to retained percentage.

Sinclair Refining Co. v. Burch, 1944, 235 Iowa 594, 16 N.W.2d 359.

Laborers and materialmen could resort only to retained ten percent and not to excess retained.

Hercules Mfg. Co. v. Burch, 1944, 235 Iowa 568, 16 N.W.2d 350.

**5. Filing claims.**

Filing claim within 30 days not condition precedent to claim against retained percentage and bond.

Cities Service Oil Co. v. Longerbone, 1942, 232 Iowa 850, 6 N.W.2d 325.

Failure to file claim in 30 days releases surety.

Southern Surety Co. v. Jenner Bros. 1931, 212 Iowa 1027, 237 N.W. 500.

**573.7 Claims for material or labor.** Any person, firm, or corporation who has, under a contract with the principal contractor or with subcontractors, performed labor, or furnished material, service, or transportation, in the construction of a public improvement, may file, with the officer, board, or commission authorized by law to let contracts for such improvement, an itemized, sworn, written statement of the claim for such labor, or material, service, or transportation. [C97,§3102; S13,§1989-a57; C24, 27, 31, 35, 39,§10305; C46, 50, 54,§573.7]

Federal public buildings or works, bonds of contractors, see 40 U. S. C. A. §270a-270.
Mechanic's lien, persons entitled to, see §572.2.
May 1943, 28 Iowa Law Review 711.

**1. Construction and application.**

No lien attaches to public improvements.

Cities Service Oil Co. v. Longerbone, 1942, 232 Iowa 850, 6 N.W.2d 325.

This section strictly construed.

Melcher Lumber Co. v. Robertson Co., 1933, 217 Iowa 31, 250 N.W. 594.

Designation of officer where claims filed strictly construed.

Missouri Gravel Co. v. Federal Surety Co., 1931, 212 Iowa 1322, 237 N.W. 635.

Failure of proof of use of petroleum products precludes relief.

Rainbo Oil Co. v. McCarthy Improvement Co., 1931, 212 Iowa 1186, 236 N.W. 46.

Filing time mandatory.

Francesconi v. Independent School Dist. of Wall Lake, 1927, 204 Iowa 307, 214 N.W. 882.

Independent School Dist. of Perry v. Hall et al., 159 Iowa 607, 140 N.W. 855.

McGillivray Bros. v. District Township of Barton, 96 Iowa 629, 65 N.W. 974.

Manchester v. Popkin et al., 237 Mass. 434, 130 N.E. 62.

Kendall et al. v. Fader, 199 Ill. 294, 65 N.E. 318.

Joint Board of Sup'rs of Dickinson and Osceola Counties v. Title Guaranty & Surety Co., 1924, 198 Iowa 1382, 201 N.W. 88.

Whitehouse v. Surety Co., 117 Iowa 328, 90 N.W. 727.

Filing of claims antedate effective date of act.
O. A. G. 1932, p. 166.

**2. Claims, nature of.**

Claims for labor or material only protected by this section.
Nolan v. Larimer & Shaffer, 1934, 218 Iowa 599, 254 N.W. 45.

Trucker for subcontractor could file claim against retained percentage.
Forsberg v. Koss Const. Co., 1934, 218 Iowa 818, 252 N.W. 258.

Labor and material used for production of material not claims under this section.
Forsberg v. Koss Const. Co., 1934, 218 Iowa 818, 252 N.W. 258.

Lumber for cement forms not lienable.
Melcher Lumber Co. v. Robertson Co., 1933, 217 Iowa 31, 250 N.W. 594.

Gasoline and oils used in hauling other material constitute "materials."
Rainbo Oil Co. v. McCarthy Improvement Co., 1931, 212 Iowa 1186, 236 N.W. 46.

Highway subcontractor not employed by principal contractor could not recover against principal.
Commercial State Bank of Independence v. Broadhead, 1931, 212 Iowa 688, 235 N.W. 299.

Claims for repairing machinery not lienable.
Ottumwa Boiler Works v. M. J. O'Meara & Son, 1928, 206 Iowa 577, 218 N.W. 920.

Contract to furnish labor and material held as subcontractor.
Teget v. Polk County Drainage Ditch No. 40, 1926, 202 Iowa 747, 210 N.W. 954.

Supply of gasoline and oil held supplying materials.
Standard Oil Co. v. Marvill, 1925, 201 Iowa 614, 206 N.W. 37.

Contractor not liable for rental or depreciation of grading equipment used by subcontractor.
Nebraska Culvert & Mfg. Co. v. Freeman, 1924, 197 Iowa 720, 198 N.W. 7.

Bond to pay claims for labor and material or bridge does not extend to material for contractor's equipment.
Empire State Surety Co. v. City of Des Moines, 1911, 152 Iowa 531, 132 N.W. 837.

Bank loaning money for payroll not entitled to lien.
O. A. G. 1928, p. 64.

**3. County or city, liability of.**

Material supplier has no claim against county which let contract for drainage district.

Iowa Pipe & Tile Co. v. Parks & Gerber, 1915, 169 Iowa 438, 151 N.W. 438.

Claimants furnishing material payable out of tax certificate.

Empire State Surety Co. v. City of Des Moines, 1911, 152 Iowa 531, 131 N.W. 870, rehearing denied, 152 Iowa 531, 132 N.W. 837.

Completion of defaulted contract by county relieves retained percentage from liability for subcontractor's claim.

Epeneter v. Montgomery County, 1896, 98 Iowa 159, 67 N.W. 93.

City not released from liability for judgment for public improvements because not payable out of general revenue.

Slusser, Taylor & Co. v. City of Burlington, 1876, 42 Iowa 378.

**4. Bond, liability on.**

Surety's liability fixed by statute.

Southern Surety Co. v. Jenner Bros., 1931, 212 Iowa 1027, 237 N.W. 500.

Settlement with first subcontractor does not defeat second subcontractor claim.

Joseph T. Ryerson & Son v. Schraag, 1930, 211 Iowa 558, 229 N.W. 733.

Obligation under bond measured by statute.

Monona County v. O'Connor, 1927, 205 Iowa 1119, 215 N.W. 803.

**5. Payments.**

School district payment to subcontractor did not entitle contractor to deduct from money due subcontractor.

Bain v. Bruce, 1914, 164 Iowa 327, 145 N.W. 865.

No defense to suit by materialman against city that certificates had been issued.

Iowa Brick Co. v. City of Des Moines, 1900, 111 Iowa 272, 82 N.W. 922.

Subcontractor entitled to lien for net balance due him.

Green Bay Lumber Co. v. Thomas, 1898, 106 Iowa 420, 76 N.W. 749.

**6. Statement of claim.**

Verified weekly time checks sufficient to recover on bond.

Francesconi v. Independent School Dist. of Wall Lake, 1927, 204 Iowa 307, 214 N.W. 882.

Claim for lien on building and funds for its erection does not invalidate proper claim.

Epeneter v. Montgomery County, 1896, 98 Iowa 159, 67 N.W. 93.

Statement without jurat though sworn to was insufficient.

McGillivray v. District Tp. of Barton, 1896, 96 Iowa 629, 65 N.W. 974.

**7. Filing claim.**

Filing of itemized claim essential to enforceable claim.

William Penn & Co. v. Northern Bldg. Co., C. C. 1905, 140 F. 973.

Surety of primary road contractor not liable for claims not filed with auditor.

Missouri Gravel Co. v. Federal Surety Co., 1931, 212 Iowa 1322, 237 N.W. 635.

Claims not filed within 30 days not entitled to 10 percent.

Southern Surety Co. v. Jenner Bros., 1931, 212 Iowa 1027, 237 N.W. 500.

Subcontractor's claims should be filed with county auditor.

Fuller & Hiller Hardware Co. v. Shannon & Willfong, 1927, 205 Iowa 104, 215 N.W. 611.

Claims on school contractor bond must be filed with secretary of school board.

Francesconi v. Independent School District of Wall Lake, 1927, 204 Iowa 307, 214 N.W. 882.

Subcontractor's claim filed with treasurer of school with notice to secretary and president proper.

Wackerbarth & Blamer Co. v. Independent School Dist. of Independence, 1912, 157 Iowa 614, 138 N.W. 470.

One not complying with section could not complain of premature payment.

Empire State Surety Co. v. City of Des Moines, 1911, 152 Iowa 531, 131 N.W. 870, rehearing denied, 152 Iowa 531, 132 N.W. 837.

Payment of contractor proper where right to reserve payment not retained.

Modern Steel Structural Co. v. Van Buren County, 1905, 126 Iowa 606, 102 N.W. 536.

Payment on certificates valid as against materialmen.

Green Bay Lumber Co. v. Independent School Dist. of Odebolt, 1904, 125 Iowa 227, 101 N.W. 84.

Answer of garnishee corporation valid defense against subcontractor's claim.
Swearingen Lumber Co. v. Washington School Tp. of Greene County, 1904, 125 Iowa 283, 99 N.W. 730.

Surety not released where no obligation to pursue a lien.
Whitehouse v. American Surety Co., 1902, 117 Iowa 328, 90 N.W. 727.

Failure to file claim did not release surety.
Read v. American Surety Co., 1902, 117 Iowa 10, 90 N.W. 590.

Claims must be filed with county auditor though supervisor named superintendent.
Green Bay Lumber Co. v. Thomas, 1898, 106 Iowa 420, 76 N.W. 749.

Claims must be filed with highway commission on highway work.
O. A. G. 1932, p. 166.

Claims filed with state auditor should be forwarded to highway commission.
O. A. G. 1930, p. 142.

Notice of existence of claim usually protects laborer on city work.
O. A. G. 1916, p. 216.

**8. Assignments.**

Assignee bank has prior right over surety on defaulted contract.
Coon River Co-op. Sand Ass'n v. McDougall Const. Co. of Sioux City, 1932, 215 Iowa 861, 244 N.W. 847.

Assignee bank bound to know bond requirements and lienability of claims.
Ottumwa Boiler Works v. M. J. O'Meara & Son, 1928, 206 Iowa 577, 218 N.W. 920.

Assignee bank not prior to claim where assignment for payment of lienable claims.
Reynolds v. City of Onawa, 1921, 192 Iowa 398, 184 N.W. 729.

Materialmen claims not defeated by assignment by contractor.
City of Boone v. Gary, 1913, 162 Iowa 695, 144 N.W. 709.

Materialmen's rights following assignment for benefit of creditors purely equitable.
Des Moines Bridge & Iron Works v. Plane, 1913, 163 Iowa 18, 143 N.W. 866.

Assignees for benefit of creditors took only rights of assignor and subject to equities.
Wackerbarth & Blamer Co. v. Independent School Dist. of Independence, 1912, 157 Iowa 614, 138 N.W. 470.

**9. Actions.**
Question of right of intervenors to recover cannot be raised a month after judgment.
Henderson v. Wilson, 1923, 196 Iowa 631, 195 N.W. 194.

Subcontractor not establishing lien may sue on bond.
Streator Clay Mfg. Co. v. Henning-Vineyard Co., 1916, 176 Iowa 297, 155 N.W. 1001.

**10. Garnishment.**
Maturity of school district's debt on contract not postponed by claim for materials.
Swearingen Lumber Co. v. Washington School Tp. of Greene County, 1904, 125 Iowa 283, 99 N.W. 730.

**11. Evidence.**
Showing of extent of use of machinery prerequisite to establishing claim.
Byers Mach. Co. v. Iowa State Highway Commission, 1932, 214 Iowa 1347, 242 N.W. 22.

Hiring of laborer by subcontractor not contract of principal.
Commercial State Bank of Independence v. Broadhead, 1931, 212 Iowa 688, 235 N.W. 299.

Contractor's bond immaterial where city not recouped for value of property.
Hooven, Owens, Rentschler Co. v. City of Atlantic, 1913, 163 Iowa 380, 144 N.W. 635.

Burden of proof of legal filing of claims on city.
Iowa Brick Co. v. City of Des Moines, 1900, 111 Iowa 272, 82 N.W. 922.

**573.8 Highway improvements.** In case of highway improvements by the county, claims shall be filed with the county auditor of the county letting the contract.

But no claims filed for credit extended for the personal expenses or personal purchases of employees for their individual use shall cause any part of the unpaid funds of the contractor to be withheld. [C24, 27, 31, 35, 39,§10306; C46, 50, 54,§573.8]

**1. Construction and application.**
Claims for primary road construction not filed with county auditor.
Missouri Gravel Co. v. Federal Surety Co., 1931, 212 Iowa 1322, 237 N.W. 635.

Claims filed with state auditor should be forwarded to highway commission.
O. A. G. 1930, p. 142.

**573.9 Officer to indorse time of filing claim.** The officer shall indorse over his official signature upon every claim filed with him, the date and hour of filing. [C24, 27, 31, 35, 39,§10307; C46, 50, 54,§573.9]

**573.10 Time of filing claims.** Claims may be filed with said officer as follows:

1. At any time before the expiration of thirty days immediately following the completion and final acceptance of the improvement.

2. At any time after said thirty-day period if the public corporation has not paid the full contract price as herein authorized, and no action is pending to adjudicate rights in and to the unpaid portion of the contract price. [C97,§3102; S13,§1989-a57; C24, 27, 31, 35, 39,§10308; C46, 50, 54,§573.10]

**1. Construction and application.**

Failure to file claim in 30 days does not prevent recovery on bond.
Francesconi v. Independent School District, 204 Iowa 307, 214 N.W. 882.
Perkins B. S. & F. Co. v. Independent School District, 206 Iowa 1144, 221 N.W. 793.

Filing claim in district court after 30 days does not establish claim against surety.
Southern Sur. Co. v. Jenner Bros., 212 Iowa 1027, 1035, 1036, 237 N.W. 500, 504.
Cities Service Oil Co. v. Longerbone, 1942, 232 Iowa 850, 6 N.W.2d 325.

Claim not filed within 30 days could not recover from surety but only against balance of contract price.
Southern Surety Co. v. Jenner Bros., 1931, 212 Iowa 1027, 237 N.W. 500.

Claim filed after 30 days could not recover in excess of amount withheld.
Perkins Builders' Supply & Fuel Co. v. Independent School District, 206 Iowa 1144, 221 N.W. 793.

Statute prescribing time of filing inapplicable where non-statutory bond.
Monona County v. O'Connor, 1927, 205 Iowa 1119, 215 N.W. 803.

Action against surety barred for failure to file and bring timely suit.
Zeidler Concrete Pipe Co. v. Ryan & Fuller, 1927, 205 Iowa 37, 215 N.W. 801.

Claim for materials on county road filed with county auditor.

Fuller & Hiller Hardware Co. v. Shannon & Willfong, 1927, 205 Iowa 104, 215 N.W. 611.

Claims maturing under prior law not subject to revised law.

Francesconi v. Independent School District of Wall Lake, 1927, 204 Iowa 307, 214 N.W. 882.

Independent School District of Perry v. Hall et al., 159 Iowa 607, 140 N.W. 855.

McGillivray Bros. v. District Township of Barton, 96 Iowa 629, 65 N.W. 974.

Failure to give notice waives claim against school district.

Maryland Casualty Co. v. Des Moines City Evangelistical Union, 1918, 184 Iowa 246, 167 N.W. 695.

Failure to file claim defeats rights as against other claimants.

Humboldt County v. Ward Bros., 1914, 163 Iowa 510, 145 N.W. 49.

Filing of claim after 30 day period waives lien on building and fund.

Independent School District of Perry v. Hall, 1913, 159 Iowa 607, 140 N.W. 855.

Claim must be filed within 30 day period.

Empire State Surety Co. v. City of Des Moines, 1911, 152 Iowa 531, 131 N.W. 870, rehearing denied, 152 Iowa 531, 132 N.W. 837.

Subcontractor must file claim with 30 days after last labor by him.

Breneman v. Harvey, 1886, 70 Iowa 479, 30 N.W. 846.

**2. Computation of time.**

Verfied itemized statement must be filed within 4 months.

Queal Lumber Co. v. Anderson, 1930, 211 Iowa 210, 229 N.W. 707.

**3. Payments.**

Failure to retain required percentage rendered school district liable.

C. E. Stukas & Sons v. Miller & Ladehoff, 1924, 197 Iowa 824, 198 N.W. 65.

Payment to subcontractor not a preference.

Bain v. Bruce, 1914, 164 Iowa 327, 145 N.W. 865.

Premature payment of contractor not subject to question by one not complying with section 3102, Code 1897.
Empire State Surety Co. v. City of Des Moines, 1911, 152 Iowa 531, 131 N.W. 870, rehearing denied, 152 Iowa 531, 132 N.W. 837.

Excessive payments by county does not subject it to liability.
Modern Steel Structural Co. v. Van Buren County, 1905, 126 Iowa 606, 102 N.W. 536.

**4. Revival of claims.**

Right to file claim not revived by furnishing material to trustee in bankruptcy.
Empire State Surety Co. v. City of Des Moines, 1911, 152 Iowa 531, 131 N.W. 870, rehearing denied, 152 Iowa 531, 132 N.W. 837.

**5. Contract, rights under.**

Assignee not preferred over claimants preferred under contract.
Reynolds v. City of Onawa, 1921, 192 Iowa 398, 184 N.W. 729.

Promise of contractor to pay subjected contractor and surety to liability beyond filing period.
City National Bank of Mason City v. Independent School District of Mason City, 1920, 190 Iowa 25, 179 N.W. 947.

**6. Bonds, liability on.**

Subcontractor not filing lien could recover against surety.
Streator Clay Mfg. Co. v. Henning-Vineyard Co., 1916, 176 Iowa 297, 155 N.W. 1001.

**573.11 Claims filed after action brought.** The court may permit claims to be filed with it during the pendency of the action hereinafter authorized, if it be made to appear that such belated filing will not materially delay the action. [C24, 27, 31, 35, 39,§10309; C46, 50, 54,§573.11]

**1. Construction and application.**

Filing of claim not prerequisite to recovery from surety.
Cities Service Oil Co. v. Longerbone, 1942, 232 Iowa 850, 6 N.W.2d 325.

Rights of claimants determined by statute.
Southern Surety Co. v. Jenner Bros., 1931, 212 Iowa 1027, 237 N.W. 500.

Claims maturing under prior law not affected by revision.
Francesconi v. Independent School District of Wall Lake, 1927, 204 Iowa 307, 214 N.W. 882.

**2. Lien.**

No lien attaches to public improvements.
Cities Service Oil Co. v. Longerbone, 1942, 232 Iowa 850, 6 N.W.2d 325.

**573.12 Retention from payments on contracts.** Payments made under contracts for the construction of public improvements, unless provided otherwise by law, shall be made on the basis of monthly estimates of labor performed and material delivered; said payments to be made for not more than ninety per cent of said estimates and to be so made that at least ten per cent of the contract price will remain unpaid at the date of the completion of the contract, anything in the contract to the contrary notwithstanding. [S13, §1989-a57; C24, 27, 31, 35, 39,§10310; C46, 50, 54,§573.12]

Referred to in §573.13 Inviolability and disposition of fund.
Public corporation not permitted to plead noncompliance with this section, see §573.13.
May 1945, 30 Iowa Law Review 568.

**1. Construction and application.**

Legislature intended to protect claimants by this section.
Sinclair Refining Co. v. Burch, 1944, 235 Iowa 594, 16 N.W.2d 359.

Rights of laborers, materialmen and surety determined by this chapter.
Hercules Mfg. Co. v. Burch, 1944, 235 Iowa 568, 16 N.W.2d 350.

Surety's liability on statutory bond fixed by this section.
Southern Surety Co. v. Jenner Bros., 1931, 212 Iowa 1027, 237 N.W. 500.

Sections 573.12, 573.13 and 573.14 should be strictly followed.
O. A. G. 1925-26, p. 86.
O. A. G. 1925-26, p. 85.
O. A. G. 1925-26, p. 73.

**2. Filing claims.**

Filing of claims within 30 days prerequisite to sharing retained percentage.
Southern Surety Co. v. Jenner Bros., 1931, 212 Iowa 1027, 237 N.W. 500.

**3. Interest.**

Where retained percentage insufficient interest properly denied.
Southern Surety Co. v. Jenner Bros., 1931, 212 Iowa 1027, 237 N.W. 500.

**4. Assignment.**

Assignment in surety bond covers only retained percentage.

Federal Surety Co. v. Des Moines Morris Plan Co., 1931, 213 Iowa 464, 239 N.W. 99.

Where estimates assigned, voucher payable to contractor and assignee jointly.

O. A. G. 1925-26, p. 338.

**5. Contractual provisions.**

Payment of entire contract by city no defense where retained percentage contracted for.

Iowa Brick Co. v. City of Des Moines, 1900, 111 Iowa 272, 82 N.W. 922.

Withholding retained percentage proper though mechanics liens not secured.

Independent School District of Forest Home v. Mardis, 1898, 106 Iowa 295, 76 N.W. 794.

Contractor not entitled to any part of retained percentage where county took over work.

King v. Mahaska County, 1888, 75 Iowa 329, 39 N.W. 636.

Special provision in contract must not violate statute.

O. A. G. 1925-26, p. 73.

**6. Release by filing bond.**

Retained percentage not released by filing of indemnifying bond.

O. A. G. 1928, p. 312.

**7. Bond of supervisor.**

Bond for proper expenditure of fund subject to recovery.

Muscatine County v. Carpenter, 1871, 33 Iowa 41.

**573.13 Inviolability and disposition of fund.** No public corporation shall be permitted to plead noncompliance with section 573.12 and the retained percentage of the contract price, which in no case shall be less than ten percent, shall constitute a fund for the payment of claims for materials furnished and labor performed on said improvement, and shall be held and disposed of by the public corporation as hereinafter provided. [S13,§1989-a57; C24, 27, 31, 35, 39, §10311; C46, 50, 54,§573.13]

May 1945, 30 Iowa Law Review, 568, 569.

**1. Construction and application.**

Contract not void for failure to require retained percentage.

Weiss v. Incorporated Town of Woodbine, 1940, 228 Iowa 1, 289 N.W. 469.

Sections 573.12, 573.13 and 573.14 should be strictly followed.

O. A. G. 1925-26, p. 86.

**573.14 Retention of unpaid funds.** Said fund shall be retained by the public corporation for a period of thirty days after the completion and final acceptance of the improvement. If at the end of said thirty-day period claims are on file as herein provided the public corporation shall continue to retain from said unpaid funds a sum not less than double the total amount of all claims on file. [C97,§3104; S13, §1989-a59; C24, 27, 31, 35, 39,§10312; C46, 50, 54,§573.14]

**May 1945, 30 Iowa Law Review, 568, 569.**

**1. Construction and application.**

Retained percentage for benefit of claimants and filing of bond releases excess.

Sinclair Refining Co. v. Burch, 1944, 235 Iowa 594, 16 N.W.2d 359.

Rights of laborers, materialmen, and surety determined by this chapter.

Hercules Mfg. Co. v. Burch, 1944, 235 Iowa 568, 16 N.W.2d 350.

Rights of claimant on bond fixed by this chapter.

Southern Sur. Co. v. Jenner Bros, 212 Iowa 1027, 237 N.W. 500.

Retention of percentage did not relieve necessity of filing claim.

Perkins Builders' Supply & Fuel Co. v. Independent School District, 206 Iowa 1144, 221 N.W. 793.

Retained percentage must be held until action brought to adjudicate rights.

O. A. G. 1925-26, p. 102.
O. A. G. 1925-26, p. 86.
O. A. G. 1925-26, p. 85.

**2. Neglect to retain percentage.**

School district liable for payments of retained funds and not absolved by bond.

C. E. Stukas & Sons v. Miller & Ladehoff, 1924, 197 Iowa 824, 198 N.W. 65.

**3. Assignments.**

Assignee acquired only rights of contractor.

Independent School District of Forest Home v. Mardis, 1898, 106 Iowa 295, 76 N.W. 794.

**4. Interest.**

Interest properly denied where insufficient funds retained.

Southern Surety Co. v. Jenner Bros., 1931, 212 Iowa 1027, 237 N.W. 500.

**5. Bonds, liability on.**

Failure to file claim in 30 days releases contractor's surety.

Southern Surety Co. v. Jenner Bros., 1931, 212 Iowa 1027, 237 N.W. 500.

Subcontractor failing to perfect lien can sue on bond.

Streator Clay Mfg. Co. v. Henning-Vineyard Co., 1916, 176 Iowa 297, 155 N.W. 1001.

**6. Release by filing bond.**

Retained percentage not released by filing of indemnifying bond.

O. A. G. 1928, p. 312.

**7. Waiver of rights.**

Failure of legal action within six months of completion releases retained percentage.

O. A. G. 1930, p. 148.

**573.15 Exception.** No part of the unpaid fund due the contractor shall be retained as provided in this chapter on claims for material furnished, other than materials ordered by the general contractor or his authorized agent, unless such claims are supported by a certified statement that the general contractor has been notified within thirty days after the materials are furnished or by itemized invoices rendered to contractor during the progress of the work, of the amount, kind, and value of the material furnished for use upon the said public improvement. [C31, 35,§10312-d1; C39,§10312.1; C46, 50, 54,§573.15]

**1. Construction and application.**

"Retained" refers to retained percentage.

Sinclair Refining Co. v. Burch, 1944, 235 Iowa 594, 16 N.W.2d 359.

**573.16 Optional and mandatory actions—bond to release.** The public corporation, the principal contractor, any claimant for labor or material who has filed his claim, or the surety on any bond given for the performance of the contract, may, at any time after the expiration of thirty days, and not later than sixty days, following the completion and final acceptance of said improvement, bring action in equity in the county where the improvement is located to adjudicate all rights to said fund, or to enforce liability on said bond.

Provided that upon written demand of the contractor served on the person or persons filing said claims requiring him to commence action in court to enforce his claim in the manner as prescribed for original notices, such action shall be commenced within thirty days thereafter, otherwise such

retained and unpaid funds due the contractor shall be released; and it is further provided that, after such action is commenced, upon the general contractor filing with the public corporation or person withholding such funds, a surety bond in double the amount of the claim in controversy, conditioned to pay any final judgment rendered for such claims so filed, said public corporation or person shall pay to the contractor the amount of such funds so withheld. [C97,§3103; S13,§1989-a58; C24, 27, 31, 35, 39,§10313; C46, 50, 54,§573.16]

Action against surety, §616.15.
Manner of service, R. C. P. 56(a).
May 1945, 30 Iowa Law Review 568, 569.

**1. Construction and application.**

Enforcement of claim not "mechanics lien."
Eclipse Lumber Co. v. Iowa Loan & Trust Co., C. C. A. 1930, 38 F.2d 608.

Provisions of section refer to "retained percentage."
Sinclair Refining Co. v. Burch, 1944, 235 Iowa 594, 16 N.W.2d 359.

Laborers, materialmen and surety could resort only to retained percentage.
Hercules Mfg. Co. v. Burch, 1944, 235 Iowa 568, 16 N.W.2d 350.
City of Waukon v. Southern Surety Co. of New York, 1932, 214 Iowa 522, 242 N.W. 632.

Remedy of materialmen and surety's liability limited by statute.
Queal Lumber Co. v. Anderson, 1930, 211 Iowa 210, 229 N.W. 707.

Kerosene supplier not entitled to participate in retained amount.
AEtna Casualty & Surety Co. of Hartford, Conn., v. Kimball, 1928, 206 Iowa 1251, 222 N.W. 31.

Duty to retain percentage did not relieve claimant from pursuing remedy.
Perkins Builders' Supply & Fuel Co. v. Independent School Dist. of Des Moines, 1928, 206 Iowa 1144, 221 N.W. 793.

Construction of bond or contract not affected by balance remaining due.
Monona County v. O'Connor, 1927, 205 Iowa 1119, 215 N.W. 803.

Rights against bondsman fixed by statute of limitations.
Daniels Lumber Co. v. Ottumwa Supply & Construction Co., 1927, 204 Iowa 268, 214 N.W. 481.

Rights of subcontractor and assignee no different from original rights.
Independent School Dist. of Perry v. Hall, 1913, 159 Iowa 607, 140 N.W. 855.

Provisions of section applicable to contracts prior to effective date.
O. A. G. 1932, p. 166.

**2. Computation of time.**
Limitations commence when public improvement completed.
Daniels Lumber Co. v. Ottumwa Supply & Construction Co., 1927, 204 Iowa 268, 214 N.W. 481.

**3. Bond to release claims.**
Failure to sign bond by contractor did not affect validity.
Fort Dodge Culvert & Steel Co. v. Miller, 1925, 200 Iowa 1169, 206 N.W. 141.

**4. Waiver.**
Failure to bring legal action within six months waives rights and releases funds retained.
O. A. G. 1930, p. 148.

**5. Election of remedies.**
Judgment against principal contractor does not preclude equitable remedy against city and surety.
Zeidler Concrete Pipe Co. v. Ryan & Fuller, 1927, 205 Iowa 37, 215 N.W. 801.

**6. Defenses.**
Acceptance bars recovery on bond absent fraud or mistake which must be proven.
City of Osceola v. Gjellefald Const. Co., 1938, 225 Iowa 215, 279 N.W. 590.
Settlement with first subcontractor no bar to claim of second subcontractor.
Joseph T. Ryerson & Son v. Schraag, 1930, 211 Iowa 558, 229 N.W. 733.

**7. Accounting.**
Materialmen entitled to know exact status of payments to contractor.
Green Bay Lumber Co. v. Independent School Dist. of Odebolt, 1902, 90 N.W. 504, affirmed, 121 Iowa 663, 97 N.W. 72.

**8. Dismissal.**
Claimant may dismiss action prior to trial.
Eclipse Lumber Co. v. City of Waukon, 1927, 204 Iowa 278, 213 N.W. 804.

**9. Issues.**
In action on bond, issue of notice properly withdrawn from jury.
City of Ottumwa v. McCarthy Improvement Co., 1915, 175 Iowa 233, 154 N.W. 306, Ann. Cas. 1917E, 1077.

Performance subject to attack by city though work accepted.

City of Ottumwa v. McCarthy Improvement Co., 1915, 175 Iowa 233, 150 N.W. 586, Ann. Cas. 1917E, 1077, modified on other grounds and rehearing denied, 175 Iowa 233, 154 N.W. 306, Ann. Cas. 1917E, 1077.

**10. Evidence.**

Evidence showed completion more than six months prior to suit.

Daniels Lumber Co. v. Ottumwa Supply & Construction Co., 1927, 204 Iowa 268, 214 N.W. 481.

Resolution passed by council admissable.

City of Ft. Madison v. Moore, 1899, 109 Iowa 476, 80 N.W. 527.

**11. Instructions.**

Further instructions on statement of issues properly refused.

Zalesky v. Fidelity & Casualty Co. of New York, 1916, 176 Iowa 267, 157 N.W. 858.

**12. Judgment.**

Decretal portion should establish claim and direct disposition.

Cities Service Oil Co. v. Longerbone, 1942, 232 Iowa 850, 6 N.W.2d 325.

Recovery cannot be had on bond piecemeal.

City of Osceola v. Gjellefald Const. Co., 1938, 225 Iowa 215, 279 N.W. 590.

Adjudication of claims not res judicata of city's right to recover from surety.

City of Waukon v. Southern Surety Co. of New York, 1932, 214 Iowa 522, 242 N.W. 632.

Where plaintiff dismissed action, decree not binding on plaintiff.

Eclipse Lumber Co. v. City of Waukon, 1927, 204 Iowa 278, 213 N.W. 804.

**13. Appeal.**

Where principal admitted liability admission of other evidence not prejudicial.

Ft. Dodge Culvert & Steel Co. v. Miller, 1925, 200 Iowa 1169, 206 N.W. 141.

Too late on appeal to raise question of sufficiency of allegations of petition.

City of Ft. Madison v. Moore, 1899, 109 Iowa 476, 80 N.W. 527.

**573.17 Parties.** The official board or officer letting the contract, the principal contractor, all claimants for labor

and material who have filed their claim, and the surety on any bond given for the performance of the contract shall be joined as plaintiffs or defendants. [C24, 27, 31, 35, 39, §10314; C46, 50, 54,§573.17]

May 1945, 30 Iowa Law Review, 568, 569.

**1. Construction and application.**

Any party in interest may litigate claims for public improvement.

Eclipse Lumber Co. v. City of Waukon, 1927, 204 Iowa 278, 213 N.W. 804.

**2. Failure to make person party.**

Subcontractor entitled to judgment in rem against fund.

Commercial State Bank of Independence v. Broadhead, 1931, 212 Iowa 688, 235 N.W. 299.

**3. Dismissal.**

Dismissal of action by plaintiff renders decree ineffective against him.

Eclipse Lumber Co. v. City of Waukon, 1927, 204 Iowa 278, 213 N.W. 804.

**573.18 Adjudication—payment of claims.** The court shall adjudicate all claims. Payments from said retained percentage, if still in the hands of the public corporation, shall be made in the following order:

1. Cost of the action.
2. Claims for labor.
3. Claims for materials.
4. Claims of the public corporation. [C24, 27, 31, 35, 39, §10315; C46, 50, 54,§573.18]

Referred to in 573.19.
May 1945, 30 Iowa Law Review, 568, 569.

**1. Construction and application.**

Claims should be ordered paid from retained percentage in order of filing.

Sinclair Refining Co. v. Burch, 1944, 235 Iowa 594, 16 N.W.2d 359.

Laborers, materialmen and surety rights determined by this chapter.

Hercules Mfg. Co. v. Burch, 1944, 235 Iowa 568, 16 N.W.2d 350.

Filing claim in 30 days not condition precedent to claim against retained percentage on surety.

Cities Service Oil Co. v. Longerbone, 1942, 232 Iowa 850, 6 N.W.2d 325.

Retained funds paid to court costs and attorney fees, labor claims in order filed and material claims in order filed.

Southern Surety Co. v. Jenner Bros., 1931, 212 Iowa 1027, 237 N.W. 500.

This chapter strictly construed.
Aetna Casualty & Surety Co. of Hartford, Conn., v. Kimball, 1928, 206 Iowa 1251, 222 N.W. 31.

**2. Priorities.**

Surety has priority over non statutory claimants.
Monona County v. O'Connor, 1927, 205 Iowa 1119, 215 N.W. 803.

Surety may compel payment of materialmen prior to general creditors.
Des Moines Bridge & Iron Works v. Plane, 1913, 163 Iowa 18, 143 N.W. 866.

Assignee out of profits subject to materialmen claims.
Des Moines County v. Hinkley, 1883, 62 Iowa 637, 17 N.W. 915.

**573.19 Insufficiency of funds.** When the retained percentage aforesaid is insufficient to pay all claims for labor or materials, the court shall, in making distribution under section 573.18, order the claims in each class paid in the order of filing the same. [C97,§3102; S13,§1989-a57; C24, 27, 31, 35, 39,§10316; C46, 50, 54,§573.19]

May 1945, 30 Iowa Law Review, 568, 572.

**1. Construction and application.**

Retained funds paid to court costs, attorney fees, labor claims in order filed and material claims in order filed.
Southern Surety Co. v. Jenner Bros., 1931, 212 Iowa 1027, 237 N.W. 500.

Where value of old buildings and insurance payments, district entitled to credit.
Ludowici Caladon Co. v. Independent School Dist. of Independence, 1914, 169 Iowa 669, 149 N.W. 845.

Materialmen entitled to preference over general creditors.
Des Moines Bridge & Iron Works v. Plane, 1913, 163 Iowa 18, 143 N.W. 866.

Preferred claim not ignored even though assignment for benefit of creditors.
Wackerbarth & Blamer Co. v. Independent School Dist. of Independence, 1912, 157 Iowa 614, 138 N.W. 470.

Subcontractor acquires no lien though claim in nature of lien.
Thompson & Peterson v. Stephens, 1906, 131 Iowa 51, 107 N.W. 1095.

**573.20 Converting property into money.** When it appears that the unpaid portion of the contract price for the public improvement, or a part thereof, is represented in

whole or in part by property other than money, or if a deposit has been made in lieu of a surety, the court shall have jurisdiction thereover, and may cause the same to be sold, under such procedure as it may deem just and proper, and disburse the proceeds as in other cases. [C24, 27, 31, 35, 39,§10317; C46, 50, 54,§573.20]

May 1942, 27 Iowa Law Review 579, 589.

**1. Construction and application.**

"Said fund" refers to retained percentage.

Hercules Mfg. Co. v. Burch, 1944, 235 Iowa 568, 16 N.W.2d 350.

**573.21 Attorney fees.** The court may tax, as costs, a reasonable attorney fee in favor of any claimant for labor or materials who has, in whole or in part, established his claim. [C97,§3103; S13,§1989-a58; C24, 27, 31, 35, 39,§10318; C46, 50, 54,§573.21]

Order of payment of costs, see §273.18.

**1. Construction and application.**

Refusal of attorney fees not abuse of discretion.

Petit v. Ervin Clark Const. Co., 1951, 243 Iowa 118, 49 N.W.2d 508.

Where attorneys did not represent district, not entitled to fees.

Teget v. Polk County Drainage Ditch No. 40, 1926, 202 Iowa 747, 210 N.W. 954.

Where subcontractor settled, attorney fees not taxable against him.

Fisher v. Independent School District of Keota, 1912, 154 Iowa 125, 134 N.W. 545.

**2. Estoppel.**

Settlement of account did not subject claimants to taxing of attorney fees.

Fisher v. Independent School District of Keota, 1912, 154 Iowa 125, 134 N.W. 545.

**573.22 Unpaid claimants—judgment on bond.** If, after the said retained percentage has been applied to the payment of duly filed and established claims, there remain any such claims unpaid in whole or in part, judgment shall be entered for the amount thereof against the principal and sureties on the bond. In case the said percentage has been paid over as herein provided, judgment shall be entered against the principal and sureties on all such claims. [C24, 27, 31, 35, 39,§10319; C46, 50, 54,§573.22]

May 1945, 30 Iowa Law Review 568, 569.

**1. Construction and application.**

"Said amount" refers to retained percentage.

Sinclair Refining Co. v. Burch, 1944, 235 Iowa 594, 16 N.W.2d 359.

Preferred claimants could not resort to more than retained 10 percent.

Hercules Mfg. Co. v. Burch, 1944, 235 Iowa 568, 16 N.W.2d 350.

**2. Filing claim.**

Filing claim in 30 days not prerequisite to recover against fund or surety.

Cities Service Oil Co. v. Longerbone, 1942, 232 Iowa 850, 6 N.W.2d 325.

**3. Judgment.**

Failure to file cross petition not res judicata of city's right to recover.

City of Waukon v. Southern Surety Co. of New York, 1932, 214 Iowa 522, 242 N.W. 632.

**573.23 Abandonment of public work—effect.** When a contractor abandons the work on a public improvement or is legally excluded therefrom, the improvement shall be deemed completed for the purpose of filing claims as herein provided, from the date of the official cancellation of the contract. The only fund available for the payment of the claims of persons for labor performed or material furnished shall be the amount then due the contractor, if any, and if said amount be insufficient to satisfy said claims, the claimants shall have a right of action on the bond given for the performance of the contract. [C24, 27, 31, 35, 39,§10320; C46, 50, 54,§573.23]

**1. Construction and application.**

Right of action on bond if retained percentage insufficient.

Sinclair Refining Co. v. Burch, 1944, 235 Iowa 594, 16 N.W.2d 359.

Laborers, materialmen and surety have resort only to the 10 percent.

Hercules Mfg. Co. v. Burch, 1944, 235 Iowa 568, 16 N.W.2d 350.

**573.24 Notice of claims to highway commission.** If payment for such improvement is to be made in whole or in part from the primary road fund, the county auditor shall immediately notify the state highway commission of the filing of all claims. [C24, 27, 31, 35, 39,§10321; C46, 50, 54, §573.24]

May 1945, 30 Iowa Law Review 568, 571.

**573.25 Filing of claim—effect.** The filing of any claim shall not work the withholding of any funds from the contractor except the retained percentage, as provided in this chapter. [C24, 27, 31, 35, 39,§10322; C46, 50, 54,§573.25]

May 1945, 30 Iowa Law Review 568, 569.

**1. Construction and application.**

Laborers, materialmen and surety have resort only to the 10 percent.

Hercules Mfg. Co. v. Burch, 1944, 235 Iowa 568, 16 N.W.2d 350.

No liens exist beyond retained percentage.

Federal Surety Co. v. Des Moines Morris Plan Co., 1931, 213 Iowa 464, 239 N.W. 99.

**2. Order of payment.**

Liens attach in order of filing claims.

Federal Surety Co. v. Des Moines Morris Plan Co., 1931, 213 Iowa 464, 239 N.W. 99.

**3. Deductions.**

Propriety of deduction moot where deficiency of fund greater than deduction.

Southern Surety Co. v. Janner Bros., 1931, 212 Iowa 1027, 237 N.W. 500.

**573.26 Public corporation—action on bond.** Nothing in this chapter shall be construed as limiting in any manner the right of the public corporation to pursue any remedy on the bond given for the performance of the contract. [C24, 27, 31, 35, 39,§10323; C46, 50, 54,§573.26]

**1. Constuction and application.**

Failure to file cross petition not prerequisite to recovery against surety.

City of Waukon v. Southern Surety Co. of New York, 1932, 214 Iowa 522, 242 N.W. 632.

# CHAPTER 573A

## EMERGENCY STOPPAGE OF PUBLIC CONTRACTS

573A.1 National emergency.
573A.2 Termination of contracts.
573A.3 Determination of dispute.
573A.4 Rules applicable.
573A.5 Jurisdiction.
573A.6 Appeal.
573A.7 Order of court.
573A.8 Limit of payment.
573A.9 Application of statute.
573A.10 Definitions.

**573A.1 National emergency.** In the event work or construction upon a public improvement is stopped directly or indirectly by or as the result of an order or action of any federal or state authority or of any court because of the occurrence or existence of a situation which the president or the Congress of the United States has declared to be national emergency, and the circumstances or conditions are such that it is and will be impracticable to proceed with such work or construction, then the public corporation and the contractor or contractors may, by written agreement, terminate said contract. Such an agreement shall include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which any party shall pay to the other, or any other person, firm or corporation under the facts and circumstances in the case. [54GA, ch. 198,§1; C54,§573A.1]

Referred to in §573A.2 Termination of contracts.

**573A.2 Termination of contracts.** Whenever a public corporation and a contractor or contractors, have entered into a contract for the construction of a public improvement, and any party to such contract desires to terminate said contract because of the occurrence of the event and under the circumstances stated in section 573A.1, and another party thereto will not agree to such termination, or said parties having agreed upon the termination of the contract cannot agree upon the terms and conditions thereof, then any party may have the issues in dispute determined in the manner hereinafter provided. [54GA, ch. 198§2; C54, §573A.2]

**573A.3 Determination of dispute.** Any party to the contract may have the issue in dispute determined by filing in the district court of the county in which the public improvement or any part thereof is located a verified petition which shall allege in detail the ultimate facts upon which the petitioner relies for the termination of such contract. All sub-

contractors and the sureties upon all bonds given in connection with the contract and subcontracts shall be made parties to the proceedings. [54GA, ch. 198,§3; C54,§573A.3]

**573A.4 Rules applicable.** The rules of civil procedure shall be applicable to such action. The cause shall be tried forthwith in equity, and the court shall give such cases preference over other cases, except criminal cases. [54GA, ch. 198,§4; C54,§573A.4]

**573A.5 Jurisdiction.** The district court shall have jurisdiction of the issue which is thus presented, and of all parties including any public corporation as defined in this chapter. The court shall make findings and render its judgment determining the issues involved in accordance with the purpose and spirit of this chapter. [54GA, ch. 198,§5; C54, §573A.5]

**573A.6 Appeal.** Any party aggrieved by the findings and judgment of the district court may appeal to the supreme court as in other cases and the case shall be given preference over other cases in the supreme court. [54GA, ch. 198,§6; C54, §573A.6]

**573A.7 Order of court.** If the court determines that said contract should be terminated, or if the parties have agreed to its termination, the court shall include in its order:

1. The terms and conditions imposed upon each party to the contract, including the extent of the liability of the surities upon any bond;
2. The protective requirements, if any be deemed necessary, to protect the property, and provision for the payment of the cost thereof;
3. The determination of the relative rights of the parties involved, including the compensation or payments, if any, which any party shall pay to any other person, firm or corporation under the facts and circumstances of the case.

If the court determines that the contract shall not be terminated, it shall state in its order the reasons therefor. The court shall adjust and assess the costs in such manner as may be equitable and fair under the circumstances. [54GA, ch. 198,§7; C54,§573A.7]

**573A.8 Limit of payment.** In no event shall the public corporation pay or be required to pay compensation or moneys in excess of the total compensation stated in the contract for the construction of the public improvement. [54GA, ch. 198,§8; C54,§573A.8]

**573A.9 Application of statute.** The provisions of this chapter shall not apply unless it is specifically contracted for between the contracting parties. [54GA, ch. 198,§9; C54, §573.9]

**573A.10 Definitions.** For the purposes of this chapter:

1. "Public corporation" shall embrace the state, and all counties, cities, towns, public school corporations, drainage districts, and all officers, boards or commissions empowered by law to enter into contracts for the construction of public improvements.

2. "Public improvement" is one, the cost of which is payable from taxes or other funds under the control of the public corporation.

3. "Construction" shall, in addition to its ordinary meaning, embrace repair and alternation. [54GA, ch. 198,§10; C54, §573A.10]

# CHAPTER 616

## PLACE OF BRINGING ACTIONS

616.1-616.8 Omitted.
616.9 Construction companies.
616.10-616.21 Omitted.

**616.9 Construction companies.** An action may be brought against any corporation, company, or person engaged in the construction of a railway, canal, telegraph or telephone line, oil, gas, or gasoline transmission lines, highway, or public drainage improvement, on any contract relating thereto, or to any part thereof, or for damages in any manner growing out of the contract or work thereunder, in any county where such contract was made, or performed in whole or in part, or where the work was done out of which the damage claimed arose. [C73,§2583; C97,§3498; C24, 27, 31, 35, 39,§11042; C46, 50, 54,§616.9]

For annotations see I.C.A.

# CHAPTER 657

## NUISANCES

657.1 Nuisance—what constitutes—action to abate.
657.2 What deemed nuisances.
657.3 Penalty—abatement.
657.4 Process.
657.5 Warrant by justice of the peace.
657.6 Stay of execution.
657.7 Expenses—how collected.

Abatement of nuisances.
Cities, see §§368.3, 389.12, 420.176.
Local board of health, see §137.13.
Billboards and signs along highway, see §319.10.
Execution for abatement of nuisance, see §791.7.
Highway obstructions, see §319.8 et seq.
Levee and drainage districts, see §455.161.

**657.1 Nuisance — what constitutes — action to abate.** Whatever is injurious to health, indecent, or offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life or property, is a nuisance, and a civil action by ordinary proceedings may be brought to enjoin and abate the same and to recover damages sustained on account thereof. [C51, §§2131-2133; R60,§§3713-3715; C73,§3331; C97,§4302; C24, 27, 31, 35, 39,§12395; C46, 50, 54,§657.1]

Referred to in §368.3.
Jan. 1933, 18 Iowa Law Review 286.
Jan. 1939, 24 Iowa Law Review 385.
June 1926, 11 Iowa Law Review 403.
Nov. 1922, 8 Iowa Law Bulletin 61.
March 1918, 4 Iowa Law Bulletin 67, 80.
May 1946, 31 Iowa Law Review 668.
Nov. 1924, 10 Iowa Law Bulletin 79.
Nov. 1915, 1 Iowa Law Bulletin 201.
April 1931, 16 Iowa Law Review 422.
Jan. 1918, 4 Iowa Law Bulletin 63.

**1. Construction and application.**

Dense smoke may be declared to be a nuisance.
Northwestern Laundry v. City of Des Moines, 1916, 36 S.Ct. 206, 239 U. S. 486, 60 L. Ed. 396.

Court properly refused bond where not properly completed.
Harding v. McCullough, 1945, 236 Iowa 556, 19 N.W.2d 613.

"Nuisance" has special meaning when applied to public streets or highways.
Stokes v. Sac City, 1911, 151 Iowa 10, 130 N.W. 786.

Within province of legislature to determine what constitutes a nuisance.
State v. Beardsley, 1899, 108 Iowa 396, 79 N.W. 138.

**2. Nature and element of nuisance.**

Unsightliness does not constitute nuisance.
Livingston v. Davis, 1952, 243 Iowa 21, 50 N.W.2d 592 27 A. L. R.2d 1237.

Negligence not essential to recover for nuisance and damages therefrom.
Blackman v. Iowa Union Electric Co., 1944, 234 Iowa 859, 14 N.W.2d 721.

Nuisance is interference with use and enjoyment of land.
Ryan v. City of Emmetsburg, 1942, 232 Iowa 600, 4 N.W.2d 435.

Solicitation of orders for goods is property right and not a nuisance.
City of Osceola v. Blair, 1942, 231 Iowa 770, 2 N.W.2d 83.

Courts should consider sensibilities of reasonable ordinary persons in considering nuisance.
Higgins v. Decorah Produce Co., 1932, 214 Iowa 276, 242 N.W. 109, 81 A. L. R. 1199.

Conduct of legitimate business may be nuisance.
Pauly v. Montgomery, 1930, 209 Iowa 699, 228 N.W. 648.

Element of nuisance is invasion of rights of persons or threatened danger to public.
State v. Jacob Decker & Sons, 1924, 197 Iowa 41, 196 N.W. 600.

"Public nuisance" effects rights enjoyed by every citizen.
State v. Chicago Great Western Ry. Co., 1914, 166 Iowa 494, 147 N.W. 874.

"Nuisance" has special meaning applied to public highways or streets.
Stokes v. Sac City, 1911, 151 Iowa 10, 130 N.W. 786.

Every person entitled to redress where exclusive uninterrupted enjoyment of premises is disturbed.
McGill v. Pintsch Compressing Co., 1908, 140 Iowa 429, 118 N.W. 786, 20 L. R. A., N. S. 466.

Intent not an element in question of presence of nuisance.
Bonnell v. Smith & Bro., 1880, 53 Iowa 281, 5 N.W. 128.

**3. Enjoyment of life or property.**

Vehicular use of private road to take children to private school not nuisance.
Livingston v. Davis, 1952, 243 Iowa 21, 50 N.W.2d 592, 27 A. L. R.2d 1237.

Use of property should not unreasonably interfere with neighbors use of land.
Amdor v. Cooney, 1950, 241 Iowa 777, 43 N.W.2d 136.

Substantial interference with enjoyment of property subject to abatement.
Higgins v. Decorah Produce Co., 1932, 214 Iowa 276, 242 N.W. 109, 81 A. L. R. 1199.

Where use of dwelling or health of occupants affected, damages recoverable.
McGill v. Pintsch Compressing Co., 1908, 140 Iowa 429, 118 N.W. 786, 20 L. R. A., N. S. 466.

Stench and effect on health enough to support nuisance.
Percival v. Yousling, 1903, 120 Iowa 451, 94 N.W. 913.

Unsightly building not nuisance per se.
Trulock v. Merte, 1887, 72 Iowa 510, 34 N.W. 307.

**4. Dangerous devices.**

Trap door not nuisance per se.
Sulhoff v. Everett, 1945, 235 Iowa 396, 16 N.W.2d 737.

Unlocked and unguarded well drilling equipment not nuisance per se.
Wood v. Independent School District of Mitchell, 1876, 44 Iowa 27.

**5. Pollution of atmosphere.**

Pollution of waters by city a nuisance.
Newton v. City of Grundy Center, 1955, 246 Iowa 916, 70 N.W.2d 162.

Stockyards not nuisance per se but method of conduct may create it.
Funnell v. City of Clear Lake, 1948, 239 Iowa 135, 30 N.W.2d 722.

Noxious gases and odors not a "trespass" but a "nuisance".
Ryan v. City of Emmetsburg, 1942, 232 Iowa 600, 4 N.W.2d 435.

Honest attempts to overcome dust in school yard prevent injunction as "nuisance".
Ness v. Independent School District of Sioux City, 1941, 230 Iowa 771, 298 N.W. 855.

Rendering plant within city limits a nuisance.
State ex rel. Harris v. Drayer, 1934, 218 Iowa 446, 255 N.W. 532.

Excessive smoke, cinders, fumes and dust from asphalt plant a nuisance.
Andrews v. Western Asphalt Paving Corporation, 1922, 193 Iowa 1047, 188 N.W. 900.

Showing of actual physical discomfort to ordinary persons required.

Soderburg v. Chicago, St. P., M. & O. Ry. Co., 1914, 167 Iowa 123, 149 N.W. 82.

Unreasonable emission of smoke and cinders resulting in tangible injury a nuisance.

McGill v. Pintsch Compressing Co., 1908, 140 Iowa 429, 118 N.W. 786, 20 L. R. A., N. S. 466.

**6. Necessities for business and enjoyment of property.**

Owner may put property to reasonable use depending on locality.

Casteel v. Town of Afton, 1939, 227 Iowa 61, 287 N.W. 245.

Stretching wires over street a "nuisance".

Incorporated Town of Ackley v. Central States Electric Co., 1927, 204 Iowa 1246, 214 N.W. 879, 54 A. L. R. 474.

**7. Cemeteries.**

Cemetery not nuisance per se.

Payne v. Town of Wayland, 1906, 131 Iowa 659, 109 N.W. 203.

**8. Fences and hedges.**

Fence erected on own property not a nuisance.

Livingston v. Davis, 1952, 243 Iowa 21, 50 N.W.2d 592, 27 A. L. R.2d 1237.

Adjoining owners may be enjoined from cutting down trees.

Musch v. Burkhart, 1891, 83 Iowa 301, 48 N.W. 1025, 12 L. R. A. 484, 32 Am. St. Rep. 305.

**9. Funeral homes.**

Undertaking not nuisance per se but may constitute nuisance through method of operation.

Dawson v. Laufersweiler, 1950, 241 Iowa 850, 43 N.W.2d 726.

Evidence justified injunction of funeral home as nuisance.

Bevington v. Otte, 1937, 223 Iowa 509, 273 N.W. 98.

Funeral home reasonably operated in business district not a nuisance.

Kirk v. Mabis, 1933, 215 Iowa 769, 246 N.W. 759, 87 A. L. R. 1055.

**10. Games and entertainment.**

Baseball park not nuisance per se but operation may make it so.

Amdor v. Cooney, 1950, 241 Iowa 777, 43 N.W.2d 136.

Public playgrounds not nuisance per se but may be so.
Casteel v. Town of Afton, 1939, 227 Iowa 61, 287 N.W. 245.

Playground equipment not nuisance per se.
Smith v. Iowa City, 1931, 213 Iowa 391, 239 N.W. 29.

**11. Garages and filling stations.**

Service station not nuisance per se.
Yeanos v. Skelly Oil Co., 1936, 220 Iowa 1317, 263 N.W. 834.

Whether garage a nuisance depends on circumstances.
Pauly v. Montgomery, 1930, 209 Iowa 699, 228 N.W. 648.

**12. Junk dealers.**

Town may by statute declare junk dealer a nuisance.
Town of Grundy Center v. Marion, 1942, 231 Iowa 425, 1 N.W.2d 677.

**13. Keeping and slaughter of animals.**

Poultry and produce plants not nuisance per se.
Higgins v. Decorah Produce Co., 1932, 214 Iowa 276, 242 N.W. 109, 81 A. L. R. 1199.

Animal breeding may be nuisance if particularly annoying to others.
Williams v. Wolfgang, 1911, 151 Iowa 548, 132 N.W. 30.

Slaughtering and rendering may be nuisance.
Rhoades v. Cook, 1904, 122 Iowa 336, 98 N.W. 122.

Slaughter house in city is nuisance per se.
Bushnell v. Robeson, 1883, 62 Iowa 540, 17 N.W. 888.

Livery stable may be nuisance.
Shiras v. Olinger, 1879, 50 Iowa 571, 32 Am. Rep. 138.

**14. Noises.**

Playing of baseball not nuisance per se.
Ness v. Independent School District of Sioux City, 1941, 230 Iowa 771, 298 N.W. 855.

Noises which unreasonably interfere with enjoyment of property are "nuisance" and showing of injury to health unnecessary.
Higgins v. Decorah Produce Co., 1932, 214 Iowa 276, 242 N.W. 109, 81 A. L. R. 1199.

Unloading dairy cans at night a nuisance.
Mitchell v. Flynn Dairy Co., 1915, 172 Iowa 582, 151 N.W. 434, modified on other grounds, 172 Iowa 582, 154 N.W. 878.

Manufacturing noises must be unreasonable and of physical discomforts to constitute nuisance.
McGill v. Pintsch Compression Co., 1908, 140 Iowa 429, 118 N.W. 786, 20 L. R. A., N. S. 466.

**15. Exercise of legal right.**

Legitimate character of dam does not defeat showing of nuisance.
Mills County v. Hammack, 1925, 200 Iowa 251, 202 N.W. 521.

Proper discharge of water from building lawfully erected not nuisance.
Reynolds v. Union Savings Bank, 1912, 155 Iowa 519, 136 N.W. 529, 49 L. R. A., N. S. 194.

All property subject to use for common good and welfare.
McGill v. Pintsch Compressing Co., 1908, 140 Iowa 429, 118 N.W. 786, 20 L. R. A., N. S. 466.

No action for nuisance where use is lawful.
Quinn v. Chicago, B. & Q. R. Co., 1884, 63 Iowa 510, 19 N.W. 336.

Additional track in city by R. R. not a nuisance.
Davis v. Chicago & N. W. R. Co., 1877, 46 Iowa 389.

**16. Municipal regulations.**

Damages recoverable from city for creation of public nuisance.
Gates v. City of Bloomfield, 1952, 243 Iowa 671, 53 N.W.2d 279.

Ordinance regulating solicitors invalid.
City of Osceola v. Blair, 1942, 231 Iowa 770, 2 N.W.2d 83.

City may adopt reasonable regulations governing use of property.
Town of Grundy Center v. Marion, 1942, 231 Iowa 425, 1 N.W.2d 677.

Unreasonableness of ordinance immaterial.
Miller v. Webster City, 1895, 94 Iowa 162, 62 N.W. 648.

Railroads authorized by municipalities not nuisances.
Milburn v. City of Cedar Rapids, 1861, 12 Iowa 246.

Ordinance prohibiting hogs from running at large not invalid.
Gosselink v. Campbell, 1856, 4 Iowa 296, 4 Clarke 296.

**17. Care, precautions against annoyance or injury.**

Negligence not essential to nuisance action.
Ryan v. City of Emmetsburg, 1942, 232 Iowa 600, 4 N.W.2d 435.

School's conduct of playground must not create private nuisance.
Ness v. Independent School District of Sioux City, 1941, 230 Iowa 771, 298 N.W. 855.

Use of property should not be injurious to others.
Casteel v. Town of Afton, 1939, 227 Iowa 61, 287 N.W. 245.

Others may not ignore improper use of property.
State v. Jones, 1926, 202 Iowa 640, 210 N.W. 784.

Freedom from negligence no defense to nuisance.
Andrews v. Western Asphalt Paving Corporation, 1922, 193 Iowa 1047, 188 N.W. 900.

Negligence and nuisance may combine in same act.
Erickson v. Town of Manson, 1917, 180 Iowa 378, 160 N.W. 276.

Damages recoverable regardless of negligence.
Soderburg v. Chicago, St. P., M. & O. Ry. Co., 1914, 167 Iowa 123, 149 N.W. 82.

Contributory negligence not applicable.
Risher v. Acken Coal Co., 1910, 147 Iowa 459, 124 N.W. 764.

Contributory negligence not complete defense.
Steber v. Chicago & G. W. Ry. Co., 1908, 139 Iowa 153, 117 N.W. 304.

**18. Similar annoyances or injuries from other causes.**

Contribution of garbage no bar to contributor suit against city.
Correll v. City of Cedar Rapids, 1900, 110 Iowa 333, 81 N.W. 724.

All contributors to smoke nuisance need not be joined in nuisance action.
Harley v. Merrill Brick Co., 1891, 83 Iowa 73, 48 N.W. 1000.

Evidence as to another sewer properly excluded unless alike in construction and use.
Randolph v. Town of Bloomfield, 1899, 77 Iowa 50, 41 N.W. 562, 14 Am. St. Rep. 268.

Similar use by plaintiff of his own property not admissable.
Baker v. Bohannan, 1886, 69 Iowa 60, 28 N.W. 435.

Maintaining structure on complainant's property bars objection to like structure on neighboring land.
Cassady v. Cavenor, 1873, 37 Iowa 300.

**19. Defenses.**

Intent to injure not required in dumping molasses in ditch.
Iverson v. Vint, 1952, 243 Iowa 949, 54 N.W.2d 494.

Construction permit no defense for construction of nuisance.

Dawson v. Laufersweiler, 1950, 241 Iowa 850, 43 N.W.2d 726.

An agreement for discharge of sewer no defense to nuisance.

Ruthven v. Farmers' Co-op Creamery Co., 1908, 140 Iowa 570, 118 N.W. 915.

Legislative authorization of city operation of public work no defense to nuisance.

Churchill v. Burlington Water Co., 1895, 94 Iowa 89, 62 N.W. 646.

Separate nuisance operated by plaintiff considered in fixing liability.

Randolf v. Town of Bloomfield, 1889, 77 Iowa 50, 41 N.W. 562, 14 Am. St. Rep. 268.

**20. Estoppel or laches.**

Knowledge of erection of baseball park did not estop complaint as nuisance.

Amdor v. Cooney, 1950, 241 Iowa 777, 43 N.W.2d 136.

Failure to protest erection of asphalt plant did not bar complaint as nuisance.

Andrews v. Western Asphalt Paving Corporation, 1922, 193 Iowa 1047, 188 N.W. 900.

Mere delay does not constitute estoppel to complain of nuisance.

Smith v. City of Jefferson, 1913, 161 Iowa 245, 142 N.W. 220, 45 L. R. A., N. S. 792, Ann. Cas. 1916A, 97.

Purchaser near cemetery not bound to submit to enlargement.

Payne v. Town of Wayland, 1906, 131 Iowa 659, 109 N.W. 203.

Plaintiff setting out hedge may not require defendant to remove it as nuisance.

Harndon v. Stultz, 1904, 124 Iowa 440, 100 N.W. 329.

Purchaser not estopped to complain of nuisance.

Van Fossen v. Clark, 1901, 113 Iowa 86, 84 N.W. 989, 52 L. R. A. 279.

Evidence of cost of factory admissible where plaintiff knowingly permitted it to be built.

Harley v. Merrill Brick Co., 1891, 83 Iowa 73, 48 N.W. 1000.

Control of use of adjoining property cannot be gained by erection of nuisance.

Bushnell v. Robeson, 1883, 60 Iowa 540, 17 N.W. 888.

**21. Damages in general.**

Damages may be recovered though injunction denied.
Friedman v. Forest City, 1948, 239 Iowa 112, 30 N.W.2d 752.

Damages recovered in equity suit may thereafter be recovered at law.
Stovern v. Town of Calmar, 1929, 207 Iowa 1123, 224 N.W. 24.

Joint perpetrator of nuisance may compel contribution for damages paid.
Horrabin v. City of Des Moines, 1924, 198 Iowa 549, 199 N.W. 988, 38 A. L. R. 554.

Plaintiff may elect whether to seek permanent damages or recover in successive actions.
Risher v. Acken Coal Co., 1910, 147 Iowa 459, 124 N.W. 764.

Finding by board of health not prerequisite to recovery.
Baker v. Bohannan, 1886, 69 Iowa 60, 28 N.W. 435.

One who suffers nuisance to arise again liable without notice.
Drake v. Chicago, R. I. & P. R. Co., 1884, 63 Iowa 302, 19 N.W. 215, 50 Am. Rep. 746.

Complainant entitled to jury assessment of damages though injunction requested.
Miller, Trustee, v. Keokuk & Des Moines Ry. Co., 1884, 63 Iowa 680, 16 N.W. 567.

Recovery limited to special damages shown.
Prosser v. City of Ottumwa, 1876, 42 Iowa 509.

**22. Elements and measure of damages.**

Action for special damages for private nuisance limited to invasion of use and enjoyment of land.
Ryan v. City of Emmetsburg, 1942, 232 Iowa 600, 4 N.W.2d 435.

Discomfort of owners proper element of damage.
Stovern v. Town of Calmar, Winneshiek County, 1927. 204 Iowa 983, 216 N.W. 112.

Wife entitled to damages for extra cleaning and washing.
Andrews v. Western Asphalt Paving Corporation, 1922, 193 Iowa 1047, 188 N.W. 900.

Inconvenience and discomfort sufficient basis for substantial damages.
Boyd v. City of Oskaloosa, 1917, 179 Iowa 387, 161 N.W. 491.

Recovery had for diminished enjoyment of premises.
Soderburg v. Chicago, St. P., M. & O. Ry. Co., 1914, 167 Iowa 123, 149 N.W. 82.

Damages not limited to injury to land but may include special damages to private person.

Van Fossen v. Clark, 1901, 113 Iowa 86, 84 N.W. 989, 52 L. R. A. 279.

Where smoke nuisance, damages not confined to loss in rental value but include special damages.

Churchill v. Burlington Water Co., 1895, 94 Iowa 89, 62 N.W. 646.

Impairment of enjoyment of premises, loss in rental value, sickness are proper elements.

Ferguson v. Firmenich Mfg. Co., 1889, 77 Iowa 576, 42 N.W. 448, 14 Am. St. Rep. 319.

Where premises are homestead, damages not limited to rental value.

Randolf v. Town of Bloomfield, 1889, 77 Iowa 50, 41 N.W. 562, 14 Am. St. Rep. 268.

Loss of time for sickness recoverable.

Loughran v. City of Des Moines, 1887, 72 Iowa 382, 34 N.W. 172.

Damages confined to time nuisance exists.

Quinn v. Chicago, B. & Q. R. Co., 1884, 63 Iowa 510, 19 N.W. 336.

**23. Damages accuring after commencement of action.**

Proof of damages to date of trial not error.

Bowman v. Humphrey, 1904, 124 Iowa 744, 100 N.W. 854.

Supplemental petition may set up damages since petition filed.

Foote v. Burlington Gaslight Co., 1897, 103 Iowa 576, 72 N.W. 755.

**24. Continuing nuisances, damages.**

Damages in case of continuing nuisance is loss in value of use of land.

Duncanson v. City of Fort Dodge, 1943, 233 Iowa 1325, 11 N.W.2d 583.

Every day's continuance of nuisance is new cause of action.

Thompson v. Illinois Cent. R. Co., 1920, 191 Iowa 35, 179 N.W. 191.

Removal of obstruction in drainage built by nature may not be nuisance.

Taylor v. Frevert, 1918, 183 Iowa 799, 166 N.W. 474.

Owner may elect to sue for damages as a whole or continuing damages.

Irvine v. City of Oelwein, 1915, 170 Iowa 653, 150 N.W. 674, L. R. A. 1916E 990.

Recovery for permanent damages bars later suit for continuing nuisance.
Risher v. Acken Coal Co., 1910, 147 Iowa 459, 124 N.W. 764.

Indefinite continuance of nuisance entitles recovery but once, but temporary may entitle to successive damages.
Harvey v. Mason City & Ft. D. R. Co., 1906, 129 Iowa 465, 105 N.W. 958, 3 L. R. A., N. S. 973, 113 Am. St. Rep. 483.

Measure for continuing nuisance is loss of its use.
Vogt v. City of Grinnell, 1904, 123 Iowa 332, 98 N.W. 782.

Recovery of continuing damage no bar to later actions.
Bennett v. City of Marion, 1903, 119 Iowa 473, 93 N.W. 558.

Wrongful operation of railroad is continuing nuisance.
Cain v. Chicago, R. I. & P. R. Co., 1879, 54 Iowa 255, 3 N.W. 736, rehearing denied, 54 Iowa 255, 6 N.W. 268.

Where nuisance continues without change it may be fully compensated in one action.
Powers v. City of Council Bluffs, 1877, 45 Iowa 652, 24 Am. Rep. 792.

**25. Permanent nuisance, damages.**

Permanent nuisance damage is value before and after.
Conklin v. City of Des Moines, 1918, 184 Iowa 384, 168 N.W. 874.
Wesley v. City of Waterloo, 1943, 232 Iowa 1299, 8 N.W.2d 430.

Where progressive and increasing discomfort, permanent damages recoverable.
Friedman v. Forest City, 1948, 239 Iowa 112, 30 N.W. 2d 752.

Only one action maintainable for permanent injury.
Wesley v. City of Waterloo, 1943, 232 Iowa 1299, 8 N.W.2d 430.

"Permanent nuisance" is one which is reasonably certain to continue indefinitely.
Ryan v. City of Emmetsburg, 1942, 232 Iowa 600, 4 N.W.2d 435.

Recovery for permanent and original damage bars later suit for unforseen injury.
Thompson v. Illinois Cent. R. Co., 1920, 191 Iowa 35, 179 N.W. 191.

Permanent construction of sewer does not preclude later recovery.
City of Ottumwa v. Nicholson, 1913, 161 Iowa 473, 143 N.W. 439, L. R. A. 1916E, 983.

Recovery is limited to difference in value of home where injury permanent.

Risher v. Acken Coal Co., 1910, 147 Iowa 459, 124 N. W. 764.

Where smoke abated prior to trial no permanent injury.

Foote v. Burlington Water Co., 1895, 94 Iowa 200, 62 N.W. 648.

**26. Temporary nuisance, damages.**

Depreciation in rental value measure of damages for temporary nuisance.

Shively v. Cedar Rapids, I. F. & N. R. Co., 1888, 74 Iowa 169, 37 N.W. 133, 7 Am. St. Rep. 471.

**27. Diminution in value, damages.**

No recovery by owner for decreased value for nuisance after lease.

Stovern v. Town of Calmar, Winneshiek County, 1927, 204 Iowa 983, 216 N.W. 112.

Measure of damages is diminution of value.

McGill v. Pintsch Compressing Co., 1908, 140 Iowa 429, 118 N.W. 786, 20 L. R. A., N. S. 466.

Instructions limiting recovery to difference in value before and after proper.

Holbrook v. Griffis, 1905, 127 Iowa 505, 103 N.W. 479.

Test of damages is value of use of property for purposes for which suitable.

Pettit v. Incorporated Town of Grand Junction, Greene County, 1903, 119 Iowa 352, 93 N.W. 381.

Special damages and abatement proper where refuse discharged onto dairy land.

Van Fossen v. Clark, 1901, 113 Iowa 86, 84 N.W. 989, 52 L. R. A. 279.

Instruction that damages are difference in rental value before and after nuisance proper.

Podhaisky v. City of Cedar Rapids, 1898, 106 Iowa 543, 76 N.W. 847.

"Value of use" before and "value of said premises" with nuisance improper.

Ferguson v. Firmenich Mfg. Co., 1889, 77 Iowa 576, 42 N.W. 448, 14 Am. St. Rep. 319.

Damages are difference in rental value before and after plus loss of time for sickness.

Loughran v. City of Des Moines, 1887, 72 Iowa 382, 34 N.W. 172.

**28. Public nuisance, damages.**

Individual may recover special damages for public and private nuisance.

Park v. Chicago & S. W. R. Co., 1876, 43 Iowa 636.
Platt v. Chicago, B. & Q. R. Co., 1888, 74 Iowa 127.

Suit by citizen for public nuisance may show special damage.

Dugan v. Zurmuehlen, 1927, 203 Iowa 1114, 211 N.W. 986.

Showing of special damages sufficient to recover for public nuisance.

Pettit v. Incorporated Town of Grand Junction, Greene County, 1903, 119 Iowa 352, 93 N.W. 381.

Franchise from city no defense to action for special injury.

Cain v. Chicago, R. I. & P. R. Co., 1879, 54 Iowa 255, 3 N.W. 736, rehearing denied, 54 Iowa 255, 6 N.W. 268.

**29. Amount of damages.**

$259.91 adequate for creek through farm.

Stovern v. Town of Calmar, Winneshiek County, 1927, 204 Iowa 983, 216 N.W. 112.

Nominal damages proper where special injury not shown.

Perry v. Howe Co-op Creamery Co., 1904, 125 Iowa 415, 101 N.W. 150.

**30. Persons entitled, damages.**

Damages recoverable by one who is specially injured by public nuisance.

Gates v. City of Bloomfield, 1952, 243 Iowa 671, 53 N. W.2d 279.

No defense that present owner was not owner when nuisance commenced.

Miller v. Keokuk & D. M. R. Co., 1883, 63 Iowa 680, 16 N.W. 567.

Widow of owner may recover for R. R. track placed during life of husband.

Cain v. Chicago, R. I. & P. R. Co., 1879, 54 Iowa 255, 3 N.W. 736, rehearing denied, 54 Iowa 255, 6 N.W. 268.

Any person injured may obtain injunction and damages.

Ewell v. Greenwood, 1868, 26 Iowa 377.

**31. Persons liable for damages.**

Repair of hangar by city not "nuisance."

Abbott v. City of Des Moines, 1941, 230 Iowa 494, 298 N.W. 649, 139 A. L. R. 120.

Collapse of speakers' stand not "nuisance" for which school district liable.

Larsen v. Independent School Dist. of Kane Tp., Council Bluffs, 1837, 223 Iowa 691, 272 N.W. 632.

Dairy owner not liable for nuisance of patrons feeding horses on street.

Mitchell v. Flynn Dairy Co., 1915, 172 Iowa 582, 151 N.W. 434, modified on other grounds, 172 Iowa 582, 154 N.W. 878.

**32. Abatement and injunction—nature of remedy.**

Injunction to be granted sparingly and with caution.

Dawson v. Lauferswelier, 1950, 241 Iowa 850, 43 N.W. 2d 726.

In injunction proceedings character and sufficiency of nuisance is for court.

Mississippi & M. R. Co. v. Ward, 1862, 67 U. S. 485, 2 Black 485, 17 L. Ed. 311.

Injunction of nuisance may be brought either in law or equity.

Friedman v. Forest City, 1948, 239 Iowa 112, 30 N.W. 2d 752.

Action for permanent injunction may be brought but once.

Cary-Platt v. Iowa Electric Co., 1929, 207 Iowa 1052, 224 N.W. 89.

No proof of special damages in action to enjoin public nuisance.

Lytle Inv. Co. v. Gilman, 1925, 201 Iowa 603, 206 N.W. 108.

Where public benefits outweigh private interests no injunction.

Molden v. Town of Batavia, 1924, 200 N.W. 183.

Judgment for injunction and damages not inconsistent.

Steber v. Chicago & G. W. Ry. Co., 1908, 139 Iowa 153, 117 N.W. 304.

No injunction after abatement by owner.

Perry v. Howe Co-op Creamery Co., 1904, 125 Iowa 415, 101 N.W. 150.

Action for injunction and damages may be tried in equity.

Gribbin v. Hanson, 1886, 69 Iowa 255, 28 N.W. 584.

Injunction will lie to abate nuisance.

Bushnell v. Robeson, 1883, 62 Iowa 540, 17 N.W. 888.

**33. Jurisdiction and venue.**

Action to enjoin must be brought in district where nuisance is.

Mississippi & M. R. Co. v. Ward, 1862, 67 U. S. 485, 2 Black 485, 17 L. Ed. 311.

Proper relief is abatement and not criminal prosecution.

Town of Grundy Center v. Marion, 1942, 231 Iowa 425, 1 N.W.2d 677.

Prevention of nuisance proper is exercise of police power.

City of Des Moines v. Manhattan Oil Co., 1921, 193 Iowa 1096, 184 N.W. 823, 23 A. L. R. 1322.

Title held subject to authority of state to abate nuisance.

City of Waterloo v. Waterloo, C. F. & N. Ry. Co., 1910, 149 Iowa 129, 125 N.W. 819.

**34. Abatement.**

Action to abate is preventive justice.

State ex rel Swanson v. Heaton, 1946, 237 Iowa 564, 22 N.W.2d 815.

Tubercular animal is a nuisance and may be slaughtered.

Loftus v. Department of Agriculture of Iowa, 1930, 211 Iowa 566, 232 N.W. 412, appeal dismissed, 51 S. Ct. 647, 283 U. S. 809, 75 L. Ed. 1427.

Proper exercise of police power not limited to supression of common law nuisance.

Fevold v. Board of Sup'rs of Webster County, 1926, 202 Iowa 1019, 210 N.W. 139.

Where dam endangered R. R. bridge and rendered highway bridge useless it is a nuisance.

Mills County v. Hammack, 1925, 200 Iowa 251, 202 N.W. 521.

Recovery of damages for permanent nuisance bars injunction.

Downing v. City of Oskaloosa, 1892, 86 Iowa 352, 53 N.W. 256.

Recovery of damages does not bar abatement and removal.

Platt v. Chicago, B. & Q. R. Co., 1888, 74 Iowa 127, 37 N.W. 107.

No negligance for failing to abate nuisance.

Cooper v. Dolvin, 1886, 68 Iowa 757, 28 N.W. 59, 56 Am. Rep. 872.

Abatement of water pollution does not include filling pond.

Finley v. Hershey, 1875, 41 Iowa 389.

Abatement by individual proper to extent of destruction.
Morrison v. Marquardt, 1868, 24 Iowa 35, 92 Am. Dec. 444.

Abatement authorized by individual only in case of particular emergency.
Moffett v. Brewer, 1848, 1 G. Greene 348.

Common law right to abate nuisance not abrogated by penal offense for injury to milldam.
State v. Moffett, 1848, 1 G. Greene 247.

**35. Wrongful abatement.**

Restoration proper for wrongful abatement of nuisance.
Morrison v. Marquardt, 1868, 24 Iowa 35, 92 Am. Dec. 444.

Appropriation of gas without payment improper where nuisance not established.
Davenport Gas Light & Coke Co. v. City of Davenport, 1862, 13 Iowa 229.

**36. Grounds for abatement or injunction.**

Anticipated nuisance enjoined only where it is certain to follow.
Livingston v. Davis, 1952, 243 Iowa 21, 50 N.W.2d 592, 27 A. L. R.2d 1237.

Depreciation in value of home from mortuary construction not enjoinable.
Dawson v. Laufersweiler, 1950, 241 Iowa 850, 43 N.W. 2d 726.

Abatement granted only where annoyance such as to cause actual physical discomfort.
Amdor v. Cooney, 1950, 241 Iowa 777, 43 N.W.2d 136.

Injunction asked on grounds of anticipated nuisance is subject to use of surrounding premises.
Funnell v. City of Clear Lake, 1948, 239 Iowa 135, 30 N.W.2d 722.

Prohibition of junk yards not "penal ordinance" but was regulatory.
Town of Grundy Center v. Marion, 1942, 231 Iowa 425, 1 N.W.2d 677.

Annoyance and discomfort must be actual discomfort.
Casteel v. Town of Afton, 1939, 227 Iowa 61, 287 N.W. 245.

Equity will enjoin cemetery constituting a nuisance.
Payne v. Town of Wayland, 1906, 131 Iowa 659, 109 N.W. 203.

No injunction where proper basis not shown.
Harndon v. Stultz, 1904, 124 Iowa 734, 100 N.W. 851.

Deposit of excrement of horses on city street no basis for injunction.
Miller v. Webster City, 1895, 94 Iowa 162, 62 N.W. 648.

Ordinary operation of feed lots a nuisance and enjoinable.
Baker v. Bohannan, 1886, 69 Iowa 60, 28 N.W. 435.

Where injury will result irrespective of existence of nuisance it will not be abated.
Langdon v. Chicago, B. & Q. R. Co., 1878, 48 Iowa 437.

Obstruction in highway is subject to abatement and individual may also have relief.
Ewell v. Greenwood, 1868, 26 Iowa 377.

**37. Persons entitled, abatement and injunction.**

Private suit against public nuisance must show special damage.
Mississippi & M. R. Co. v. Ward, 1862, 67 U. S. 485, 2 Black 485, 17 L. Ed. 311.

Private individual not entitled to injunction if he is only one of a class.
Farmers Co-op Assn. v. Quaker Oats Co., 1943, 233 Iowa 701, 7 N.W.2d 906.

Town entitled to injunction for junk yard in violation of ordinance.
Town of Grundy Center v. Marion, 1942, 231 Iowa 425, 1 N.W.2d 677.

"Incumbering streets" a nuisance and subject to injunction.
Incorporated Town of Lamoni v. Smith, 1934, 217 Iowa 264, 251 N.W. 706.

Owner not estopped to enjoin enlargement of poultry business.
Higgins v. Decorah Produce Co., 1932, 214 Iowa 276, 242 N.W. 109, 81 A. L. R. 1199.

Private injury special to plaintiff sufficient to abate public nuisance.
Livingston v. Cunningham, 1920, 188 Iowa 254, 175 N.W. 980.

One who assisted city to construct dam cannot thereafter claim a nuisance.
Irvine v. City of Oelwein, 1915, 170 Iowa 653, 150 N.W. 674, L. R. A. 1916E, 990.

Presence of hitching posts subject to abatement if special injury shown.
Smith v. City of Jefferson, 1913, 161 Iowa 245, 142 N.W. 220, 45 L. R. A., N. S. 792, Ann. Cas. 1916A, 97.

Effect on others of nuisance does not preclude plaintiff's right to bring suit.
Percival v. Yousling, 1903, 120 Iowa 451, 94 N.W. 913.

Action against public nuisance must show peculiar injury.
Innis v. Cedar Rapids, I. F. & N. W. R. Co., 1888, 76 Iowa 165, 40 N.W. 701, 2 L. R. A. 282.

No authority for city to enjoin on ground of general harm to public.
City of Ottumwa v. Chinn, 1888, 75 Iowa 405, 39 N.W. 670.

Circuitous route required by construction of turntable is sufficient special damage.
Platt v. Chicago B. & Q. R. Co., 1888, 74 Iowa 127, 37 N.W. 107.

Individuals may sue to restrain slaughter house though public too affected.
Bushnell v. Robeson, 1883, 62 Iowa 540, 17 N.W. 888.

Maintenance of nuisance on own premises precludes suit for similar nuisance on adjoining premises.
Cassady v. Cavenor, 1873, 37 Iowa 300.

Obstruction in highway subject to abatement.
Houghman v. Harvey, 1871, 33 Iowa 203.

Public and individual may enjoin obstruction in highway.
Ewell v. Greenwood, 1868, 26 Iowa 377.

**38. Persons who may be enjoined.**

Injunction against municipal light plant proper only in extreme circumstances.
Friedman v. Forest City, 1948, 239 Iowa 112, 30 N.W. 2d 752.

Injunction not proper against owner permitting playing ball on his premises.
Spiker v. Eikenberry, 1907, 135 Iowa 79, 110 N.W. 457, 11 L. R. A., N. S. 463, 124 Am. St. Rep. 259, 14 Ann. Cas. 175.

**39. Defenses, abatement and injunction.**

Building permit no defense to wrongful erection of building.
McCartney v. Schuette, 1952, 243 Iowa 1358, 54 N.W. 2d 462.

No defense that residential area is small.
Higgins v. Decorah Produce Co., 1932, 214 Iowa 276, 242 N.W. 109, 81 A. L. R. 1199.

Minor contribution in nuisance by plaintiff will not bar injunction against city.
Rand Lumber Co. v. City of Burlington, 1904, 122 Iowa 203, 97 N.W. 1096.

**40. Relief awarded, abatement and injunction.**

Condemnation not such adequate remedy as to preclude abatement of nuisance.
Newton v. City of Grundy Center, 1955, 246 Iowa 916, 70 N.W.2d 162.

Where no complaint in petition as to fence, injunction of fence improper.
Livingston v. Davis, 1952, 243 Iowa 21, 50 N.W.2d 592, 27 A. L. R.2d 1237.

Injunction decree should not go beyond particular case.
Amdor v. Cooney, 1950, 241 Iowa 777, 43 N.W.2d 136.

Injunction improper which enjoined use already abated.
Trulock v. Merte, 1887, 72 Iowa 510, 34 N.W. 307.

Where premises cannot be used except to create nuisance injunction restraining absolutely their use is proper.
Baker v. Gohannan, 1886, 69 Iowa 60, 28 N.W. 435.

Injunction proper, forcing removal of hog house to different part of lot.
Cook v. Benson, 1883, 62 Iowa 170, 17 N.W. 470.

Court can only enjoin such use of hog lot as amounts to nuisance.
Richards v. Holt, 1883, 61 Iowa 529, 16 N.W. 595.

Defective water ways not sufficient to establish nuisance.
Fuller v. Chicago, R. I. & P. R. Co., 1883, 61 Iowa 125, 15 N.W. 861.

Blacksmith shop not nuisance per se and injunction should only restrain use for that purpose.
Faucher v. Grass, 1883, 60 Iowa 505, 15 N.W. 302.

Rebuilding of stable not enjoined if use modified so as to not constitute a nuisance.
Shiras v. Olinger, 1879, 50 Iowa 571, 32 Am. Rep. 138.

**41. Violation of injunction.**

Violation of injunction is contempt.
Ford v. Oliver, 1910, 124 N.W. 1067.

**42. Prescription and limitation of actions.**

No vested right to continue nuisance against public.
Mills County v. Hammack, 1925, 200 Iowa 251, 202 N.W. 521.

Damages do not accrue until nuisance causes damage.
Churchill v. Burlington Water Co., 1895, 94 Iowa 89, 62 N.W. 646.

A slaughter house a nuisance and priority of erection no defense.

Bushnell v. Robeson, 1883, 62 Iowa 540, 17 N.W. 888.

Right to continue a nuisance cannot be gained by prescription.

Cain v. Chicago, R. I. & P. R. Co., 1879, 54 Iowa 255, 3 N.W. 736, rehearing denied, 54 Iowa 255, 6 N.W. 268.

**43. Actions.**

Abatement action joined with damages not subject to dismissal.

Newton v. City of Grundy Center, 1955, 70 N.W.2d 162.

Action to enjoin raising dam and for past damages could not be joined.

Watt v. Robbins, 1913, 160 Iowa 587, 142 N.W. 387.

**44. Parties.**

Where nuisance erected by several parties those within jurisdiction are the only necessary parties.

Mississippi & M. R. Co. v. Ward, 1862, 67 U. S. 485, 2 Black 485, 17 L. Ed. 311.

Tenant of filling station "indispensable party" to injunction suit against filling station.

Wright v. Standard Oil Co. (Indiana) 1944, 234 Iowa 1241, 15 N.W.2d 275.

Individuals specially injured may join in injunction proceedings against public nuisance.

Bushnell v. Robeson, 1883, 60 Iowa 540, 17 N.W. 888.

**45. Pleadings.**

No reply necessary where answer sets out building permit as defense.

Dawson v. Laufersweiler, 1950, 241 Iowa 850, 43 N.W. 2d 726.

Division asking past and present damages not repugnant to division asking past, present and future damages.

Friedman v. Forest City, 1948, 239 Iowa 112, 30 N.W. 2d 752.

Striking from answer allegations as to proper construction not error.

Ryan v. City of Emmetsburg, 1942, 232 Iowa 600, 4 N.W.2d 435.

Ryan v. City of Emmetsburg, 1940, 228 Iowa 678, 293 N.W. 29.

Negligence may exist where no nuisance and vice versa and both may be present.
Erickson v. Town of Manson, 1917, 180 Iowa 378, 160 N.W. 276.

Motion in arrest of judgment proper where location of obstruction not pleaded or found by jury.
Sloan v. Rebman, 1885, 66 Iowa 81, 23 N.W. 274.

Defendants cannot object on trial to evidence of multiple plaintiff's interest in property.
Bushnell v. Robeson, 1883, 60 Iowa 540, 17 N.W. 888.

**46. Evidence.**

Burden on plaintiff to plead and prove nuisance.
Livingston v. Davis, 1952, 243 Iowa 21, 50 N.W.2d 592, 27 A. L. R.2d 1237.

Presumption that plaintiff has ordinary sensibilities.
Amdor v. Cooney, 1950, 241 Iowa 777, 43 N.W.2d 136.

Testimony of what visitors in home said properly excluded.
Friedman v. Forest City, 1948, 239 Iowa 112, 30 N.W. 2d 752.

Testimony of health hazard permitted where noxious odors from sewage.
Hill v. City of Winterset, 1927, 203 Iowa 1392, 214 N.W. 592, followed in Brooker v. City of Winterset, 215 N.W. 668.

Evidence of other residents as to smoke soot and gas admissible.
Soderburg v. Chicago, St. P. M. & O. Ry. Co., 1914, 167 Iowa 123, 149 N.W. 82.

Clerk's testimony as to collection of fines admissible without reference to police record.
Ford v. Oliver, 1910, 124 N.W. 1067.

Instruction as to decrease in value cured admission of decrease in rental value.
Risher v. Acken Coal Co., 1910, 147 Iowa 459, 124 N.W. 764.

Difference in value before and after nuisance as distinguished from difference in value from date of decree to time of trial inadmissible.
Holbrook v. Griffis, 1905, 127 Iowa 505, 103 N.W. 479.

Premises of nuisance may be identified by evidence aliunde.
Jasper County v. Sparham, 1904, 125 Iowa 464, 101 N.W. 134.

Construction of sewer proper evidence.
Suddith v. Incorporated City of Boone, 1903, 121 Iowa 258, 96 N.W. 853.

Objection to admission of similar petition should be sustained.
Bennett v. City of Marion, 1903, 119 Iowa 473, 93 N.W. 558.

Matters subsequent to verification of petition admissible.
State v. Williams, 1894, 90 Iowa 513, 58 N.W. 904.

Manner in which nuisance affected other persons not parties to suit inadmissible.
Harley v. Merrill Brick Co., 1891, 83 Iowa 73, 48 N.W. 1000.

Competent for defendant to show other causes contributed to damages.
Loughran v. City of Des Moines, 1887, 72 Iowa 382, 34 N.W. 172.

**47. Weight and sufficiency of evidence.**

Evidence established that baseball games caused actual discomfort.
Amdor v. Cooney, 1950, 241 Iowa 777, 43 N.W.2d 136.

Evidence sustained $300 verdict.
Ness v. Independent School Dist. of Sioux City, 1941, 230 Iowa 771, 298 N.W. 855.

Evidence showed offensive odors may be reduced by sanitary measures.
Higgins v. Decorah Produce Co., 1932, 214 Iowa 276, 242 N.W. 109, 81 A. L. R. 1199.

Temporary injunction proper when defendants agreed to comply though evidence failed to establish a nuisance.
Walter v. Howe, 1918, 184 Iowa 563, 168 N.W. 867.

Evidence sufficient to enjoin sand pit within town.
City of Hawarden v. Betz, 1917, 182 Iowa 808, 164 N. W. 775.

Evidence showed nuisance complained of did not frighten horse.
Stokes v. Sac City, 1912, 155 Iowa 334, 136 N.W. 207.

Evidence insufficient to sustain damages for more than nominal amount.
McGill v. Pintsch Compressing Co., 1908, 140 Iowa 429, 118 N.W. 786, 20 L. R. A., N. S. 466.

If injury is doubtful or contingent equity will not interfere.
Payne v. Town of Wayland, 1906, 131 Iowa 659, 109 N.W. 203.

Evidence that garbage dump was nuisance sufficient.
Percival v. Yousling, 1903, 120 Iowa 451, 94 N.W. 913.

**48. Trial.**

Denial of relief not necessarily a dismissal.
Friedman v. Forest City, 1948, 239 Iowa 112, 30 N.W. 2d 752.

Trial may be either at law or in equity.
Gribbin v. Hanson, 1886, 69 Iowa 255, 28 N.W. 584.

Plaintiff entitled to have damages assessed by jury.
Miller v. Keokuk & D. M. R. Co., 1883, 63 Iowa 680, 16 N.W. 567.

Finding that gas works are permanent is equivalent to finding that injury is permament.
Baldwin v. Oskaloosa Gaslight Co., 1881, 57 Iowa 51, 10 N.W. 317.

**49. Jury questions.**

Evidence not sufficient to submit to jury depreciation of rental value.
Soderburg v. Chicago, St. P., M. & O. Ry. Co., 1914, 167 Iowa 123, 149 N.W. 82.

**50. Instructions.**

Use of nuisance statutes not objectionable where limited.
Wesley v. City of Waterloo, 1943, 232 Iowa 1299, 8 N.W.2d 430.

Instructions to damages for each year alike improper where damages different each year.
Friend v. City of Grinnell, 1924, 200 N.W. 592.

Evidence must be sufficient to submit question of injury.
Nuessle v. Western Asphalt Paving Corporation, 1922, 194 Iowa 616, 190 N.W. 5.

Doctrine of contributory negligence may apply.
Holbrook v. Griffis, 1905, 127 Iowa 505, 103 N.W. 479.

Plaintiff need not prove every allegation of her petition.
Harley v. Merrill Brick Co., 1891, 83 Iowa 73, 48 N.W. 1000.

Instruction that stockyards necessary properly refused.
Shively v. Cedar Rapids I. F. & N. W. R. Co., 1888, 74 Iowa 169, 37 N.W. 133, 7 Am. St. Rep. 471.

**51. Judgment or decree.**

Where no issues or evidence, necessity of proof by defendant improper.
Livingston v. Davis, 1952, 243 Iowa 21, 50 N.W.2d 592, 27 A. L. R.2d 1237.

Decree should be interlocutory rather than final.
Stovern v. Town of Calmar, Winneshiek County, 1927, 204 Iowa 983, 216 N.W. 112.

Denial of order enjoining construction not conclusive that nuisance will not result.
Thomas v. City of Grinnell, 1915, 171 Iowa 571, 153 N.W. 91.

No prejudice to defendant where prior judgments pleaded.
Bennett v. City of Marion, 1903, 119 Iowa 473, 93 N.W. 558.

Injunction abatement must include all parties interested.
Danner v. Hotz, 1888, 74 Iowa 389, 37 N.W. 969.

Judgment to abate nuisance res judicata to another action between same parties.
Brant v. Plumer, 1884, 64 Iowa 33, 19 N.W. 842.

**52. Appeal.**

Where claim of misjoinder withdrawn by stipulation, no basis for appeal.
Steber v. Chicago & G. W. Ry. Co., 1908, 139 Iowa 153, 117 N.W. 304.

Plaintiff entitled to modification of decree.
Harndon v. Stultz, 1904, 124 Iowa 440, 100 N.W. 329.

Appellate court may consider survey though no plea of res judicata.
Brutsche v. Bowers, 1904, 122 Iowa 226, 97 N.W. 1076.

An order conditioned on voluntary abatement by defendant not appealable.
Suddith v. Incorporated City of Boone, 1903, 121 Iowa 258, 96 N.W. 853.

Objection of no avail on appeal where not made below.
Bennett v. City of Marion, 1903, 119 Iowa 473, 93 N.W. 558.

**53. Criminal liability.**

A person may be indicted for maintaining nuisance.
State v. Chicago Great Western Ry. Co., 1914, 166 Iowa 494, 147 N.W. 874.

Indictment need not specify premises for purposes of lien.
Jasper County v. Sparham, 1904, 125 Iowa 464, 101 N.W. 134.

Indictment sufficiently described public nuisance.
State v. Close, 1873, 35 Iowa 570.

Defendant may not show public benefit equals public inconvenience.
State v. Kaster, 1872, 35 Iowa 221.

Description in indictment sufficient.
State v. Schilling, 1862, 14 Iowa 455.

**657.2 What deemed nuisances.** The following are nuisances:

1. The erecting, continuing, or using any building or other place for the exercise of any trade, employment, or manufacture, which, by occasioning noxious exhalations, offensive smells, or other annoyances, becomes injurious and dangerous to the health, comfort, or property of individuals or the public.

2. The causing or suffering any offal, filth, or noisome substance to be collected or to remain in any place to the prejudice of others.

3. The obstructing or impeding without legal authority the passage of any navigable river, harbor, or collection of water.

4. The corrupting or rendering unwholesome or impure the water of any river, stream, or pond, or unlawfully diverting the same from its natural course or state, to the injury or prejudice of others.

5. The obstructing or encumbering by fences, buildings, or otherwise the public roads, private ways, streets, alleys, commons, landing places, or burying grounds.

6. Houses of ill fame, kept for the purpose of prostitution and lewdness, gambling houses, or houses resorted to for the use of opium or hasheesh, or houses where drunkenness, quarreling, fighting, or breaches of the peace are carried on or permitted to the disturbance of others.

7. Billboards, signboards, and advertising signs, whether erected and constructed on public or private property, which so obstruct and impair the view of any portion or part of a public street, avenue, highway, boulevard, or alley or of a railroad or street railway track as to render dangerous the use thereof.

8. Cotton-bearing cottonwood trees and all other cotton-bearing poplar trees in cities.

9. Any object or structure hereafter erected within one thousand feet of the limits of any municipal or regularly established airport or landing place, which may endanger or obstruct aerial navigation, including take-off and landing, unless such object or structure constitutes a proper use or enjoyment of the land on which the same is located.

10. The depositing or storing of inflammable junk, such as old rags, rope, cordage, rubber, bones, and paper, by dealers in such articles within the fire limits of any city, unless it be in a building of fireproof construction, is a public nuisance.

11. The emission of dense smoke, noxious fumes, or fly ash in cities is a nuisance and cities may provide the necessary rules for inspection, regulation and control.

12. Dense growth of all weeds, vines, brush, or other

vegetation in any city or town so as to constitute a health, safety or fire hazard is a public nuisance. [C51,§§2759, 2761; R60,§§4409, 4411; C73,§§4089, 4091; C97,§§5078, 5080; S13, §§713-a,-b, 1056-a19; C24, 27, 31, 35, 39,§§5740, 5741, 6567, 6743, 12396; C46, 50,§§368.3, 368.4, 416.92, 420.54, 657.2; C54,§657.2]

Airport hazards as nuisance, see §§329.2, 329.6.
Billboards and signs along highway, see §319.10.
Dams, see §469.16.
Dams, obstructing fishways, see §109.14.
Dead animals disposal plants, see §§167.12, 167.19.
Highway signs, see §321.259.
Highway obstructions, see §319.8 et seq.
House of prostitution or gambling, see §99.21.
Narcotic drugs, see §204.13.
Pollution of water, see §§135.18, 135.29.
Jan. 1918, 4 Iowa Law Bulletin 63.

**1. Construction and application.**

That thing is unsightly or offends aesthetic sense not sufficient for nuisance.

Livingston v. Davis, 1952, 243 Iowa 21, 50 N.W.2d 592. 27 A. L. R.2d 1237.

Only one action for permanent nuisance and all damages assessed but once.

Wesley v. City of Waterloo, 1943, 232 Iowa 1299, 8 N.W.2d 430.

"Nuisance in fact" is legitimate business conducted as nuisance.

Pauly v. Montogomery, 1930, 209 Iowa 699, 228 N.W. 648.

Decrease in rental value on leased farm is damage to owner.

Stovern v. Town of Calmar, Winneshiek County, 1927, 204 Iowa 983, 216 N.W. 112.

Criminal nuisance statute did not abrogate common law nuisance.

State v. Chicago Great Western R. Co., 1914, 166 Iowa 494, 147 N.W. 874.

**2. Noxious exhalations or offensive smells.**

Allegation of emission of odors, pollution and corruption made a case of nuisance.

Newton v. Grundy Center, 1955, 246 Iowa 916, 70 N.W.2d 162.

Not error for court to cite nuisance statutes though not pleaded.

Wesley v. Waterloo, 1943, 232 Iowa 1299, 8 N.W.2d 430.

"Private nuisance" is actionable invasion of interests in use and enjoyment of land.

Ryan v. City of Emmetsburg, 1942, 232 Iowa 600, 4 N.W.2d 435.

All property owners have right to have air diffused without undue soot, smoke or fumes.

Higgins v. Decorah Produce Co., 1932, 214 Iowa 276, 242 N.W. 109, 81 A. L. R. 1199.

Discomfort from odors from pollution of creek proper element of damages.

Stovern v. Town of Calmar, Winneshiek County, 1927, 204 Iowa 983, 216 N.W. 112.

Allegation of offensive odors permit testimony as to health hazard.

Hill v. City of Winterset, 1927, 203 Iowa 1392, 214 N.W. 592, followed in Brooker v. City of Winterset, 215 N.W. 668.

Admission of evidence of offensive odors not prejudicial where instruction limited damages.

Chase v. Winterset, 1927, 203 Iowa 1361, 214 N.W. 591, followed in Brooker v. City of Winterset, 215 N.W. 668.

Where no evidence of injury from discharge of waste no nuisance.

Ruthven v. Farmers Co-op Creamery Co., 1908, 140 Iowa 570, 118 N.W. 915.

An offensive trade though lawful should be exercised in remote place.

McGill v. Pintsch Compressing Co., 1908, 140 Iowa 429, 118 N.W. 786, 20 L. R. A., N. S. 466.

Though "creamery odor" could be noticed, its discharge not a nuisance.

Perry v. Howe Co-op Creamery Co., 1904, 125 Iowa 415, 101 N.W. 150.

Knowledge of construction does not estop complaint as nuisance.

Harley v. Merrill Brick Co., 1891, 83 Iowa 73, 48 N.W. 1000.

Annoyance from coal chute not enough to constitute nuisance.

Dunsmore v. Central Iowa R. Co., 1887, 72 Iowa 182, 33 N.W. 456.

Annoyance without injury or destruction insufficient for nuisance.

Daniels v. Keokuk Waterworks, 1883, 61 Iowa 549, 16 N.W. 705.

Corruption and infesting of air constitutes public indictable nuisance.

State v. Kaster, 1872, 35 Iowa 221.

**3. Filth or noisome substances.**

Verbatim use of statutes in instructions not objectionable where limited.

Wesley v. City of Waterloo, 1943, 232 Iowa 1299, 8 N.W.2d 430.

Unusally large manure pile a nuisance.

Smith v. City of Jefferson, 1913, 161 Iowa 245, 142 N.W. 220, 45 L. R. A., N. S. 792, Ann. Cas. 1916A, 97.

Plaintiff's dumping of garbage on own property no defense to action against city.

Correll v. City of Cedar Rapids, 1900, 110 Iowa 333, 81 N.W. 724.

Due care to prevent nuisance and evidence sufficient to show no nuisance.

Bennett v. National Starch Mfg. Co., 1897, 103 Iowa 207, 72 N.W. 507.

**4. Conditions endangering public welfare.**

"Junk dealer" may be declared nuisance by ordinance.

Town of Grundy Center v. Marion, 1942, 231 Iowa 425, 1 N.W.2d 677.

Repair of hangar tower not nuisance.

Abbott v. Des Moines, 1941, 230 Iowa 494, 298 N.W. 649, 139 A. L. R. 120

Playground equipment in park not nuisance.

Smith v. Iowa City, 1931, 213 Iowa 391, 239 N.W. 29.

**5. Noises.**

Breeding of horses in residential district a nuisance.

Williams v. Wolfgang, 1911, 151 Iowa 548, 132 N.W. 30.

Whether smoke or noise constitutes nuisance depends on evidence.

McGill v. Pintsch Compressing Co., 1908, 140 Iowa 429, 118 N.W. 786, 20 L. R. A., N. S. 466.

Conditions under which shop could be operated so as not to constitute nuisance should be shown.

Hughes v. Scheurman Bros., 1907, 134 Iowa 742, 112 N.W. 198.

**6. Obstructing streams.**

Pier erected in navigable water without authority is a nuisance.

Atlee v. Union Packet Co., 1874, 88 U. S. 389, 21 Wall. 389, 22 L. Ed. 619.

Erection of bridge in reasonable place and in reasonable manner no nuisance.

Mississippi & M. R. Co. v. Ward, 1862, 67 U. S. 485, 2 Black 485, 17 L. Ed. 311.

Where discharge of sewer into stream caused injury to property and streets, obstruction of it is a nuisance.

Sioux City v. Simmons Warehouse Co., 1911, 151 Iowa 334, 129 N.W. 978, rehearing denied, modified on other grounds, 151 Iowa 334, 131 N.W. 17.

No defense that obstruction caused flood only in very high water.

Hastings v. Chicago, R. I. & P. Ry. Co., 1910, 148 Iowa 390, 126 N.W. 786.

Right of unobstructed flow of water may be lost by perscription.

Marshall Ice Co. v. La Plant, 1907, 136 Iowa 621, 111 N.W. 1016, 12 L. R. A., N. S., 1073.

Riparian owner may construct pier on navigable lake if navigation not obstructed.

Mills & Allen v. Evans, 1897, 100 Iowa 712, 69 N.W. 1043.

Ferry franchise cannot be exercised to inconvenience, annoy or damage boat passage.

The Globe, 1854, 4 G. Greene 433.

Mississippi River cannot be obstructed or monopolized.

U. S. ex rel. Jones v. Fanning, 1844, Morris, 348.

**7. Pollution of water.**

Allegation of emission of offensive materials into pasture creek makes a case of nuisance.

Newton v. Grundy Center, 1955, 246 Iowa 916, 70 N.W.2d 162.

Decree should be interlocutory to give city chance to abate pollution.

Stovern v. Town of Calmar, Winneshiek County, 1927, 204 Iowa 983, 216 N.W. 112.

Failure to be specific in petition rendered it fatally defective.

State v. Jacob Decker & Sons, 1924, 197 Iowa 41, 196 N.W. 600.

Jury may consider decrease in rental value and inconvenience and discomfort.

Boyd v. Oskaloosa, 1917, 179 Iowa 387, 161 N. W.491.

Plaintiff may recover for damages sustained for five years preceding action.

Vogt v. Grinnell, 1907, 133 Iowa 363, 110 N.W. 603.

Contributory negligence not applicable to nuisance.

Bowman v. Humphrey, 1906, 132 Iowa 234, 109 N.W. 714, 6 L. R. A., N. S., 1111, 11 Ann. Cas. 131.

Deposit of refuse which affected use and enjoyment of property a nuisance.

Perry v. Howe Co-op Creamery Co., 1904, 125 Iowa 415, 101 N.W. 150.

Where health or comfort destroyed or visible injury to property rights there is a nuisance.
Bowman v. Humphrey, 1904, 124 Iowa 744, 100 N.W. 854.

Defendant cannot complain in action for permanent nuisance where only temporary damages are asked.
Hollenbeck v. City of Marion, 1902, 116 Iowa 69, 89 N.W. 210.

Where causes of offense are removed prior to trial it will not be enjoined.
Bennett v. National Starch Mfg. Co., 1897, 103 Iowa 207, 72 N.W. 507.

One who merely contributes to pollution of stream is guilty of nuisance.
State v. Smith, 1891, 82 Iowa 423, 48 N.W. 727.

Recovery proper of depreciation in rental value and for sickness.
Ferguson v. Firmenich Mfg. Co., 1889, 77 Iowa 576, 42 N.W. 448, 14 Am. St. Rep. 319.

**8. Obstructions of roads, ways and streets.**

Obstruction of access need not be continuous to allow recovery.
Gates v. City of Bloomfield, 1952, 243 Iowa 671, 53 N.W.2d 279.

Gasoline pumps in street are "incumbering" street.
Incorporated Town of Lamoni v. Smith, 1934, 217 Iowa 264, 251 N.W. 706.

Cities may enjoin stretching of wires across street without showing damages.
Incorporated Town of Ackley v. Central States Electric Co., 1927, 204 Iowa 1246, 214 N.W. 879, 54 A. L. R. 474.

Obstruction of alley is nuisance.
Dugan v. Zurmuehlen, 1927, 203 Iowa 1114, 211 N.W. 986.

No private person has right to obstruct streets.
Mettler v. Ottumwa, 1924, 197 Iowa 187, 196 N.W. 1000.

Unloading circus on street not prohibited by this section.
Carlisle v. Sells-Floto Show Co., 1917, 180 Iowa 549, 163 N.W. 380.

Obstruction of streets by parking of autos is nuisance.
Pugh v. Des Moines, 1916, 176 Iowa 593, 156 N.W. 892, L. R. A. 1917F, 345.

Finding of nuisance in hitching posts will not be disturbed.
Kent v. City of Harlan, 1915, 170 Iowa 90, 152 N.W. 6.

Hitching posts constructed by city council no nuisance.
Smith v. City of Jefferson, 1913, 161 Iowa 245, 142 N. W. 220, 45 L. R. A., N. S. 792, Ann. Cas. 1916A, 97.

No defense to city council action to remove hitching posts that they are not a nuisance.
Lacey v. Oskaloosa, 1909, 143 Iowa 704, 121 N.W. 542, 31 L. R. A., N. S., 853.

A fence extending into public highway is a nuisance.
Quinn v. Baage, 1907, 138 Iowa 426, 114 N.W. 205.

Advice of judge no defense for violation of injunction.
Young v. Rothrock, 1903, 121 Iowa 588, 96 N.W. 1105.

Trees in street not a nuisance where they do not obstruct travel and public policy to preserve.
Burget v. Incorporated Town of Greenfield, 1903, 120 Iowa 432, 94 N.W. 933.

Lessee may proceed against obstruction though it existed prior to tenancy.
Morrison v. Chicago & N. W. R. Co., 1902, 117 Iowa 587, 91 N.W. 793.

Cities and towns may fine one for obstructing streets.
Incorporated Town of Nevada v. Hutchins, 1882, 59 Iowa 506, 13 N.W. 634.

No defense that grievance committed under authority of law.
Scheckner v. Milwaukee & P. Du C. R. Co., 1866, 21 Iowa 515.

Injunction will not lie against city where no showing stream will obstruct street.
McMahon v. Council Bluffs, 1861, 12 Iowa 268.

Equity has no power to restrain removal by city of obstruction in street.
Sayers v. City of Lyons, 1859, 10 Iowa 249.

**9. Sidewalks, obstructing.**

Newstand operation in public street not authorized by prescriptive right or license.
Cowin v. Waterloo, 1946, 237 Iowa 202, 21 N.W.2d 705, 163 A. L. R. 1327.

Permission by city to build housing in street does not render city liable for death of child.
Jones v. City of Ft. Dodge, 1919, 185 Iowa 600, 171 N.W. 16.

**10. Obstructions authorized by public authority.**

Business owner could sue city for nuisance though permit granted by city.
Gates v. City of Bloomfield, 1952, 243 Iowa 671, 53 N.W.2d 279.

Obstructions to travel are "nuisance" absent valid ordinance authorizing same.
Pederson v. Town of Radcliffe, 1939, 226 Iowa 166, 284 N.W. 145.

City may authorize use of streets for areaways if no injury to others.
Wendt v. Incorporated Town of Akron, 1913, 161 Iowa 338, 142 N.W. 1024.

Public market not nuisance per se where only temporary or partial obstruction.
State v. Smith, 1903, 123 Iowa 654, 96 N.W. 899.

Traffic post of pipe filled with concrete attached to pavement is an obstruction.
O. A. G. 1916, p. 235.

**11. Abatement, obstruction of ways.**

Ditch which changes natural course of drainage is nuisance and may be abated.
Droegmiller v. Olson, 1950, 241 Iowa 456, 40 N.W.2d 292.

City may bring action to abate nuisance though summary remedy provided.
Polk City, Polk County v. Gemricher, 1919, 185 Iowa 278, 170 N.W. 378.

City may prohibit parking or limit time of parking.
Pugh v. Des Moines, 1916, 176 Iowa 593, 156 N.W. 892, L. R. A. 1917F, 345.

City may order removal of one entering on or excavating on street without permission.
Callahan v. City of Nevada, 1915, 170 Iowa 719, 153 N.W. 188, L. R. A. 1916B, 927.

Action by individual against city must show special injury.
Collins v. Keokuk, 1910, 147 Iowa 605, 125 N.W. 231.

City may not arbitrarily destroy trees.
Waterbury v. Morphew, 1910, 146 Iowa 313, 125 N.W. 205.

Limited extent of street obstruction is immaterial to right to remove.
Lacy v. Oskaloosa, 1909, 143 Iowa 704, 121 N.W. 542, 31 L. R. A., N. S. 853.

City charged with duty of keeping full width of street in repair.
Kemper v. City of Burlington, 1890, 81 Iowa 354, 47 N.W. 72.

Right to continue obstruction not gained by prescription or estoppel.
City of Waterloo v. Union Mill Co., 1887, 72 Iowa 437, 34 N.W. 197.

Shade trees cannot be removed unless actual obstruction to travel.
Everett v. City of Council Bluffs, 1877, 46 Iowa 66.

If enclosure of street affects value of property, owner entitled to restrain enclosure.
Prince v. McCoy, 1875, 40 Iowa 533.

**12. Damages, obstructions of ways.**

Private citizen complaining of nuisance in street must show special damages.
Lytle Inv. Co. v. Gilman, 1925, 201 Iowa 603, 206 N.W. 108.

Instruction as to wind condition improper where burden on plaintiff.
Kiple v. Town of Clermont, 1922, 193 Iowa 243, 186 N.W. 889.

Proof that obstruction is a nuisance not prerequisite to recovery of damages.
Raine v. City of Dubuque, 1915, 169 Iowa 388, 151 N. W. 518.

Special interrogatories assuming knowledge by plaintiff properly refused.
Hall v. City of Shenandoah, 1914, 167 Iowa 735, 149 N.W. 831.

Ultimate effect on instructions was proper as to proximate cause.
Stokes v. Sac City, 1913, 162 Iowa 514, 144 N.W. 639.

Violation of duty of city to maintain streets may subject them to liability.
Wheeler v. Fort Dodge, 1906, 131 Iowa 566, 108 N.W. 1057, 9 L. R. A., N. S. 146.

Abutting owner may recover from city for injury from erection of buildings in street by city.
Pettit v. Incorporated Town of Grand Junction, Greene County, 1903, 119 Iowa 352, 93 N.W. 381.

Cause of action for R. R. nuisance arose at first occupancy.
Fowler v. Des Moines & K. C. R. Co., 1894, 91 Iowa 533, 60 N.W. 116.

Town had right to remove hedges if in public street.
Philbrick v. Town of University Place, 1893, 88 Iowa 354, 55 N.W. 345.

R. R. laying track beyond limits authorized subject to damages for special injury.
Cain v. Chicago, R. I. & P. R. Co., 1879, 54 Iowa 255, 3 N.W. 736, rehearing denied, 54 Iowa 255, 6 N.W. 268.

Lamp post at center of intersection a nuisance but whether city subjected to liability quaere.
O. A. G. 1916, p. 235.

**13. Diversion of water.**

Diversion of surface water inconsequential and no nuisance.
Grimes v. Polk County, 1949, 34 N.W.2d 767.

Defendant could not complain of admission of evidence of permanent damage.
Valentine v. Widman, 1912, 156 Iowa 172, 135 N.W. 599.

That dike diverted less water than before did not excuse maintenance of dike as nuisance.
Meyers v. Priest, 1909, 145 Iowa 81, 123 N.W. 943.

Action for damages and for abatement not inconsistent.
Steber v. Chicago & G. W. Ry. Co., 1908, 139 Iowa 153, 117 N.W. 304.

One who without objection watches construction of diversion bank may not later enjoin.
Slocumb v. Chicago, B. & Q. R. Co., 1882, 57 Iowa 675, 11 N.W. 641.

**14. Billboards and signs.**

Highway Commission jurisdiction over billboards does not extend to primary road extensions.
O. A. G. 1940, p. 180.

**15. Dams.**

See I. C. A.

**16. Garages and filing stations.**

See I. C. A.

**17. Houses of ill fame, etc.**

See I. C. A.

**18. Municipal regulations.**

Ordinance prohibiting junk yard not unconstitutional.
Grundy Center v. Marion, 1942, 231 Iowa 425, 1 N.W. 2d 677.

Vacation of street no defense to suit to enjoin nuisance for obstructing street.
Pederson v. Town of Radcliffe, 1939, 226 Iowa 166, 284 N.W. 145.

Cities have no authority to punish by fine the obstruction of street with buildings.
Incorporated Town of Nevada v. Hutchins, 1882, 59 Iowa 506, 13 N.W. 634.

**19. Weeds.**

Primary duty on city to destroy weeds in streets and alleys.

O. A. G. 1938, p. 802.

**20. Remedies.**

Mandamus proper to force city to abate newstand as public nuisance.

Cowin v. Waterloo, 1946, 237 Iowa 202, 21 N.W.2d 705, 163 A. L. R. 1327.

Ordinance prohibiting junk yard not penal but regulatory.

Grundy Center v. Marion, 1942, 231 Iowa 425, 1 N.W. 2d 677.

**21. Criminal liability.**

See I. C. A.

**22. Repeals.**

See I. C. A.

**657.3 Penalty—abatement.** Whoever is convicted of erecting, causing, or continuing a public or common nuisance as provided in this chapter, or at common law when the same has not been modified or repealed by statute, where no other punishment therefor is specially provided, shall be fined not exceeding one thousand dollars, or be imprisoned in the county jail not exceeding one year, and the court, with or without such fine, may order such nuisance abated, and issue a warrant as hereinafter provided. [C51, §2762; R60,§4412; C73,§4092; C97,§5081; S13,§5081; C24, 27, 31, 35, 39,§12397; C46, 50, 54,§657.3]

Form of information for nuisance, see §773.34.
Trial of nonindictable offenses, see §762.1.
March 1939, 24 Iowa Law Review 608.

For annotations, see I. C. A.

**657.4 Process.** When upon indictment, complaint, or civil action any person is found guilty of erecting, causing, or continuing a nuisance, the court before whom such finding is had may, in addition to the fine imposed, if any, or to the judgment for damages or cost for which a separate execution may issue, order that such nuisance be abated or removed at the expense of the defendant, and, after inquiry into and estimating as nearly as may be the sum necessary to defray the expenses of such abatement, the court may issue a warrant therefor. [C51,§2763; R60,§4413; C73,§4093; C97,§5082; C24, 27, 31, 35, 39,§12398; C46, 50, 54,§657.4]

Execution for abatement of nuisance, see §791.7.
Judgment, see §789.1 et seq.

**657.5 Warrant by justice of the peace.** When the conviction is had upon an action before a justice of the peace

and no appeal is taken, the justice, after estimating as aforesaid the sum necessary to defray the expenses of removing or abating the nuisance, may issue a like warrant. [C51, §2764; R60,§4414; C73,§4094; C97,§5083; C24, 27, 31, 35, 39, §12399; C46, 50, 54,§657.5]

**657.6 Stay of execution.** Instead of issuing such warrant, the court or justice may order the same to be stayed upon motion of the defendant, and upon his entering into an undertaking to the state, in such sum and with such surety as the court or justice may direct, conditioned either that the defendant will discontinue said nuisance, or that, within a time limited by the court, and not exceeding six months, he will cause the same to be abated and removed, as either is directed by the court; and, upon his failure to perform the condition of his undertaking, the same shall be forfeited, and the court in term time or vacation, or justice of the peace, as the case may be, upon being satisfied of such default, may order such warrant forthwith to issue, and action may be brought on such undertaking. [C51,§2765; R60,§4415; C73,§4095; C97,§5084; C24, 27, 31, 35, 39,§12400; C46, 50, 54, §657.6]

Execution for abatement of nuisance, see §791.7.
Stay of execution, see, also, §790.2.

**1. Construction and application.**

An order continuing decision on abatement is not final order and not appealable.

Suddith v. City of Boone, 1903, 121 Iowa 258, 96 N.W. 853.

**657.7 Expenses—how collected.** The expense of abating a nuisance by virtue of a warrant can be collected by the officer in the same manner as damages and costs are collected on execution, except that the materials of any buildings, fences, or other things that may be removed as a nuisance may be first levied upon and sold by the officer, and if any of the proceeds remain after satisfying the expense of the removal, such balance must be paid by the officer to the defendant, or to the owner of the property levied upon; and if said proceeds are not sufficient to pay such expenses, the officer must collect the residue thereof. [C51,§2766; R60,§4416; C73,§4096; C97,§5085; C24, 27, 31, 35, 39,§12401; C46, 50, 54, §657.7]

**1. Construction and application.**

Expense of removal of obstruction in highway borne by owner who created obstruction.

O. A. G. 1938, p. 318.

# CHAPTER 716

## INJURIES TO INTERNAL IMPROVEMENTS AND COMMON CARRIERS

716.1 Injury to dams, locks, mills, or machinery.
716.2 Injury to levees.
716.3 Obstructing public ditches or drains.
716.4 Obstructing ditches and breaking levees.
716.5 Draining meandered lakes.
716.6-716.19 Omitted.

**716.1 Injury to dams, locks, mills, or machinery.** If any person maliciously injure or destroy any dam, lock, canal, trench, or reservoir, or any of the appurtenaces thereof, or any of the gear or machinery of any mill or manufactory; or maliciously draw off the water from any mill pond, reservoir, canal, or trench; or destroy, injure, or render useless any engine or the apparatus belonging thereto, prepared or kept for the extinguishing of fires, he shall be imprisoned in the county jail not exceeding one year and be fined not exceeding five hundred dollars. [C51,§2679; R60,§4319; C73, §3978; C97,§4806; C24, 27, 31, 35, 39,§13112; C46, 50, 54,§716.1]

For annotations see I.C.A.

**716.2 Injury to levees.** If any person maliciously injure, break, or cause to be broken, any levee erected to prevent the overflow of land within the state, such person so offending shall be imprisoned in the penitentiary not more than five years, or be fined not exceeding one thousand dollars and imprisoned in the county jail not exceeding one year. [R60, §4332; C73,§3991; C97,§4804; C24, 27, 31, 35, 39,§13113; C46, 50, 54,§716.2]

**716.3 Obstructing public ditches or drains.** If any person place any obstruction in any of the public ditches or drains made for the purpose of draining any of the swamp lands in this state, he shall be compelled to remove the same, and be fined not less than five nor more than one hundred dollars, or be imprisoned in the county jail not more than thirty days. [C73,§3992; C97,§4805; C24, 27, 31, 35, 39,§13114; C46, 50, 54,§716.3]

**716.4 Obstructing ditches and breaking levees.** Any person, firm, or corporation diverting, obstructing, impeding, or filling up, without legal authority, any ditch, drain, or watercourse, or breaking down any levee established, constructed, or maintained under any provision of law, shall be deemed guilty of a misdemeanor and punished accordingly. [S13,§1989-a15; C24, 27, 31, 35, 39,§13115; C46, 50, 54,§716.4]

Punishment §687.7.

**716.5 Draining meandered lakes.** Every person who shall drain or cause to be drained or shall attempt to drain in any manner, any lake, pond, or body of water, which shall have been meandered and its metes and bounds established by the government of the United States in the survey of public lands, shall be guilty of a misdemeanor and be punished by a fine not exceeding one thousand dollars; provided this shall not apply where the drainage was or is authorized by law. [SS15,§2900-e; C24, 27, 31, 35, 39,§13116; C46, 50, 54,§716.5]

**1. Authority to drain.**

Beds of meandered lakes belong to state and county has no authority to drain.

O. A. G. 1898, p. 279.

**2. Injunction.**

State has sufficient interest in nonnavigable lake to bring action to enjoin its drainage.

Marshall Dental Mfg. Co. v. State of Iowa, 1913, 33 S.Ct. 168, 226 U.S. 460, 57 L.Ed. 300.

**3. Presumptions.**

Presumption of regular proceedings prior to draining lake.

Higgins v. Board of Sup'rs of Dickinson County, 1920, 188 Iowa 448, 176 N.W. 268.

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# Acts of the 57th G. A.

## SENATE FILE 22

AN ACT relating to written objections to proposed local budgets.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Amend section twenty-four point twenty-six (24.26), Code 1954, by inserting after the word "have" in line seventeen (17) the following:

"filed a joint written objection, at or before the time of the meeting contemplated in section twenty-four point eleven (24.11), Code 1954, which shall include a detailed statement of the objections to said budget, expenditures or tax levy for each and every fund, or the items therein to which objection is taken and an analysis of the fund or funds, or items therein showing grounds for such objections or shall have".

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## SENATE FILE 58

AN ACT to amend chapter four hundred sixty-seven B (467B), Code 1954, relating to taxation on land acquired by the federal government for flood control purposes.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Chapter four hundred sixty-seven B (467B), Code 1954, is hereby amended by adding thereto the following: "The treasurer of any county wherein is situated any land acquired by the federal government for flood control projects is hereby authorized to cancel any taxes or tax assessments against any such land so acquired where the tax has been extended but has not become a lien thereon at the time of the acquisition thereof."

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## SENATE FILE 93

AN ACT to clarify the exemption of animals from property tax.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section four hundred twenty-seven point one (427.1), Code 1954, is amended by striking from line nine (9) of subsection thirteen (13) the word, "domestic" and inserting in lieu thereof the words, "livestock and fur-bearing".

## SENATE FILE 107

AN ACT relating to the use of public lands and waters and the regulation thereof by the conservation commission.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section one hundred eleven point four (111.4), Code 1954, is hereby amended as follows:

1. Strike from the first paragraph the last sentence thereof and insert the following: "No person shall maintain or erect any structure beyond the line of private ownership along or upon the shores of state-owned waters in such a manner as to obstruct the passage of pedestrians along the shore between the ordinary high-water mark and the water's edge, except by permission of the commission."

2. Strike from the last paragraph the last sentence, and insert in lieu thereof "The commission may issue and revoke such permits for the protection of the public health, safety, morals or welfare."

Sec. 2. Section one hundred six point nineteen (106.19), Code 1954, is hereby repealed.

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## SENATE FILE 137

AN ACT relating to the classification of lands within a proposed drainage or levee district prior to the establishment of such district.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section four hundred fifty-five point nine (455.9), Code 1954, is hereby amended by inserting the following new subsection:

"In the event the petitioners request a classification before the establishment of the district, the petition shall include a request that the district be classified as provided in sections four hundred fifty-five point forty-five (455.45) to four hundred fifty-five point fifty-one (455.51), inclusive, of the Code after the board has approved the report of the engineer as a tentative plan but before the district is finally established."

Sec. 2. In the event of two or more landowners included in the proposed district other than the petitioners request a classification prior to the establishment of said district, they shall file in writing their request and execute a bond as required in sections four hundred fifty-five point ten (455.10) and four hundred fifty-five point eleven (455.11) of the Code to cover the expense of such classification if the district is not established. Such written request and the bond shall be filed before the board establishes a district.

Sec. 3. Section four hundred fifty-five point nineteen (455.19), Code 1954, is hereby amended by adding thereto the following:

"If the petition or other landowners requested a classification of the district prior to establishment, the board shall order a classification as provided by sections four hundred fifty-five point forty-five (455.45) to section four hundred fifty-five point fifty-one (455.51), inclusive, of the Code after they have approved the report of the engineer as a tentative plan. The notice of hearing provided by section four hundred fifty-five point twenty (455.20) of the Code shall also include the requirements of the notice of hearing provided in section four hundred fifty-five point fifty-two (455.52) of the Code as to this classification, and the hearing on the petition provided in section four hundred fifty-five point twenty-seven (455.27) of the Code shall also include the matters to be heard as provided in section four hundred fifty-five point fifty-three (455.53) of the Code. If the board establishes the district as provided in section four hundred fifty-five point twenty-eight (455.28) of the Code, the classification which is finally approved at said hearing by the board shall remain the basis of all future assessments for the purposes of said district as provided in section four hundred fifty-five point fifty-six (455.56) of the Code. The landowners shall have the same right of appeal from this classification as they would have if the petition had not requested a classification prior to establishment and the classification had been made after establishment."

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## SENATE FILE 143

AN ACT relating to the annexation of additional lands in a drainage or levee district and basis for assessments upon such lands.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section four hundred fifty-five point one hundred twenty-eight (455.128), Code 1954, is hereby repealed and the following enacted in lieu thereof:

"After the establishment of a levee or drainage district, if the board becomes convinced that additional lands are benefited by the improvement or that the same are then receiving benefit or will be benefited by a repair or improvement to said district as contemplated in section four hundred fifty-five point one hundred thirty-five (455.135), it may adopt, with or without a petition from owners of the proposed annexed lands, a resolution of necessity for the annexation of such additional land and appoint an engineer with the qualifications provided in this chapter to examine

such additional lands, to make a survey and plat thereof showing their relation, elevation, and condition of drainage with reference to such established district, and to make and file with the auditor a report as in this chapter provided for the original establishment of such district, said report to specify the character of the benefits received."

Sec. 2. Section four hundred fifty-five point one hundred thirty (455.130), Code 1954, is hereby repealed and the following enacted in lieu thereof:

"After such annexation is made the board shall levy upon the annexed lands an assessment sufficient to equal the assessments for benefit originally paid by the lands of equal classification if the finding by the board as provided by section four hundred fifty-five point one hundred twenty-eight (455.128) was that said lands should have been included in the district when originally established, plus their proportionate share of the costs of any enlargement or extension of drains required to serve the annexed lands. If the finding of the board as provided in section four hundred fifty-five point one hundred twenty-eight (455.128) was based on the fact that additional lands are now benefited by virtue of the repair or improvement made to said district and were not benefited by the district as originally established, then the board shall levy upon said annexed lands an assessment sufficient to pay their proportionate share of the costs of said repair or improvement which was the basis for the lands being annexed."

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## SENATE FILE 185

AN ACT relating to crossing highways with tile drains.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section four hundred sixty-five point twenty-three (465.23), Code 1954, is amended by adding at the end thereof the following:

"If a tile line must be projected across the right of way to a suitable outlet, the expense of both material and labor used in installing the tile drain across the highway and any subsequent repair thereof shall be paid from funds available for the highways affected."

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## SENATE FILE 243

AN ACT relating to protection from floods by cities and towns, and amending section three hundred ninety-five point one (395.1), Code 1954.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section three hundred ninety-five point one

(395.1), Code 1954, is amended by adding after the word, "within" in line fifteen (15) the words, "or without".

Sec. 2. Section three hundred ninety-five point one (395.1), Code 1954, is further amended by adding after the word, "embankments" in line sixteen (16) the words, "structures, impounding reservoirs,".

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## SENATE FILE 246

AN ACT relating to the election and terms of office of trustees in levee or drainage districts having pumping stations.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section four hundred sixty-two point twenty (462.20), Code 1954, is hereby repealed and the following enacted in lieu thereof:

"The presently acting de facto members of the boards of trustees of drainage or levee districts having pumping stations are hereby declared to be the legally constituted members of such boards; the terms of such present trustees shall expire on the fourth (4th) Saturday of January, 1958, 1959 and 1960 respectively and the length of term of each present trustee shall be determined by lot at a meeting to be held on the third (3rd) Saturday of August, 1957. At an election to be held on the third (3rd) Saturday in January, 1958 and on the third (3rd) Saturday in January of each year thereafter a trustee shall be elected for a term of three (3) years. At such election there shall also be elected, if necessary, a trustee or trustees to fill any vacancy or vacancies which may have occurred before such election."

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## SENATE FILE 247

AN ACT relating to drainage and levee districts having pumping stations.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Chapter four hundred sixty-one (461), Code 1954, is hereby amended by adding thereto the following new section:

"The provisions of this chapter so far as applicable shall apply to all levee districts maintaining levees for the protection of any drainage district or districts having pumping stations."

Sec. 2. Senate File two hundred forty-six (246), Acts of the Fifty-seventh General Assembly, is amended as follows:

1. Insert in line twelve (12) of section one (1) before the word "At", a new sentence: "Thereafter, in levee and drain-

age districts having pumping stations trustees shall hold office until the fourth Saturday in January three years after election."

2. Insert after the word "years" in line sixteen (16) of section one (1) the words, "to succeed the member of the board whose term will expire on the following Saturday."

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## SENATE FILE 256

AN ACT relating to flood and soil erosion control and watershed improvements.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section four hundred sixty-seven B point one (467B.1), Code 1954, is hereby repealed and the following enacted in lieu thereof:

"Whenever any county, soil conservation district, subdistrict of a soil conservation district, political subdivision of the state, or other local agency shall engage or participate in any project for flood or erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, in cooperation with the federal government, or any department or agency thereof, the counties in which said project shall be carried on shall have the jurisdiction, power, and authority through the board of supervisors to construct, operate and maintain said project on lands under the control or jurisdiction of the county whenever dedicated to county use, or to furnish financial and other assistance in connection with said projects. Such flood, soil erosion control, and watershed improvement projects shall be presumed to be for the protection of the tax base of the county, for the protection of public roads and lands, and for the protection of the public health, sanitation, safety, and general welfare."

Sec. 2. Section four hundred sixty-seven B point two (467B.2), Code 1954, is hereby repealed and the following enacted in lieu thereof:

"Any county may, in accordance with provisions of this chapter, accept federal funds for aid in any project for flood, or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, and may cooperate with the federal government or any department or agency thereof, soil conservation districts, subdistrict of a soil conservation district, political subdivision of the state, or other local agency, and the county may assume such proportion of the cost of the project as deemed appropriate, and may assume the maintenance cost of the same on lands under the control or jurisdiction of the county as will not be discharged by federal aid or grant."

Sec. 3. Section four hundred sixty-seven B point three (467B.3), Code 1954, is hereby repealed and the following enacted in lieu thereof:

"The counties and soil conservation districts, subdistricts of soil conservation districts concerned, shall advise and consult with each other, upon the request of either party or any affected landowners, and shall be authorized to cooperate with each other or with other state subdivisions, or instrumentalities, and affected landowners, as well as with the federal government or any department or agency thereof, to construct, operate, and maintain suitable projects for flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water on public roads or other public lands or other land granted county use."

Sec. 4. Section four hundred sixty-seven B point four (467B.4), Code 1954, is hereby repealed and the following enacted in lieu thereof:

"When structures or levees necessary for flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, are constructed on county roads, the cost in total or in part shall be considered a part of the cost of road construction."

Sec. 5. Section four hundred sixty-seven B point five (467B.5), Code 1954, is hereby repealed and the following enacted in lieu thereof:

"Where construction of projects has been completed by the soil conservation district, subdistricts of soil conservation districts, political subdivisions of the state, or other local agencies, or the federal government, or any department or agency thereof on private lands under the easement granted to the county, only the cost of maintenance may be assumed by the county."

Sec. 6. Section four hundred sixty-seven B point seven (467B.7), Code 1954, is hereby repealed and the following enacted in lieu thereof:

"Any flood or soil erosion control, flood prevention, or the conservation, development, utilization, and disposal of water, projects built on private land with federal or other funds when dedicated to the county use, shall be maintained in the same manner as its own county owned or controlled property."

Sec. 7. Section four hundred sixty-seven B point ten (467B.10), Code 1954, is hereby repealed and the following enacted in lieu thereof:

"This chapter contemplates that actual direction of the project, or projects, and the actual work done in connection therewith, will be assumed by the soil conservation district, subdistrict of a soil conservation district, or by the federal

government and that the county or other state subdivisions or instrumentalities jointly will meet the obligation required for federal cooperation and may make proper commitment for the care and maintenance of the project after its completion for the general welfare of the public and residents of the respective counties."

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## SENATE FILE 378

AN ACT relating to the use of certified mail for mailings required or permitted by statute and defining certified mail.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Chapter six hundred eighteen (618), Code 1954, is hereby amended by adding the following new section:

"Wherever used in this Code, the following words shall have the meanings respectively ascribed to them unless such meanings are repugnant to the context:

1. The words, 'certified mail' mean any form of mail service, by whatever name, provided by the United States post office where the post office provides the mailer with a receipt to prove mailing.

2. The words, 'restricted certified mail' mean any form of certified mail as defined in subsection one (1) which carries on the face thereof, in a conspicuous place where it will not be obliterated, the endorsement, 'Deliver to addresse only', and for which the post office provides the mailer with a return receipt showing the date of delivery, the place of delivery, and person to whom delivered."

Sec. 4. Section twenty-four point twenty-seven (24.27), Code 1954, is hereby amended by striking from line eight (8) the word, "registered" and inserting in lieu thereof the word, "certified".

Sec. 33. Section three hundred six point twenty-four (306.24), Code 1954, is hereby amended by striking from line fourteen (14) the word, "registered" and inserting in lieu thereof the word, "certified".

Sec. 52. Section four hundred twenty-seven point one (427.1), subsection twenty-six (26), Code 1954, as amended by chapter two hundred seventeen (217), Acts of the Fifty-sixth General Assembly, is hereby amended by striking from line ten (10) the word, "registered" and inserting in lieu thereof the word, "certified".

Sec. 60. Section four hundred fifty-five point twenty-two (455.22), Code 1954, is hereby amended by striking from line twelve (12) the word, "registered" and inserting in lieu thereof the word, "certified".

Sec. 61. Section four hundred fifty-five point sixty-six

(455.66), Code 1954, is hereby amended by striking from line nine (9) the word, "registered" and inserting in lieu thereof the word, "certified".

Sec. 62. Section four hundred fifty-five point one hundred fourteen (455.114), Code 1954, is hereby amended by striking from line ten (10) the word, "registered" and inserting in lieu thereof the word, "certified".

Sec. 63. Section four hundred fifty-five point one hundred forty-two (455.142), Code 1954, is hereby amended as follows:

1. By striking from line twelve (12) the word, "registered" and inserting in lieu thereof the word, "certified".

2. By striking from line sixteen (16) the word, "registered" and inserting in lieu thereof the word, "certified".

Sec. 64. Section four hundred fifty-five point one hundred forty-four (455.144), Code 1954, is hereby amended as follows:

1. By striking from line ten (10) the word, "registered" and inserting in lieu thereof the word, "certified".

2. By striking from line twelve (12) the word, "registered" and inserting in lieu thereof the word, "certified".

Sec. 65. Section four hundred fifty-five point one hundred forty-five (45.145), Code 1954, is hereby amended by striking from line eleven (11) the word, "registered" and inserting in lieu thereof the word, "certified".

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## HOUSE FILE 38

AN ACT relating to the preparation of the county budget required by chapter twenty-four (24) of the Code.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. 1. On or before the first day of July of each year, each elective or appointive officer or board, except tax certifying boards as defined in subsection three (3) of section twenty-four point two (24.2) of the Code, having charge of any county office or department shall prepare and submit to the county auditor the following:

a. An estimate of the actual expenditures of such office or department during the current year;

b. A statement of the requested expenditures to be budgeted for such office for the next calendar year;

c. An estimate of the revenues, except property tax, to be collected for the county by such office during the current year;

d. An estimate of the revenues, except property tax, to be collected for the county by such office during the next calendar year.

Such estimates and statements shall be itemized in the same manner as the various expenditures and revenues are itemized in the records of the auditor.

2. On or before the tenth day of July of each year, the auditor shall submit to the board of supervisors, a compilation of the various office and department estimates in as much detail as they were submitted to him. With this compilation, the auditor shall show the itemized expenditures and revenues for the two years preceding the current year and an estimate of the cash balances of each county fund at the end of the current year.

3. The board of supervisors, in the preparation of the county budget as required by chapter twenty-four (24) of the Code, shall have authority to consult with any such county officer or board concerning his budget estimates and requests and to adjust the budget requests for any such county office or department.

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## HOUSE FILE 42

AN ACT relating to the secondary road system of counties.
*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Sections three hundred and nine point four (309.4), three hundred and nine point five (309.5), three hundred and nine point six (309.6), three hundred and nine point seven (309.7), three hundred and nine point eight (309.8), three hundred and nine point nine (309.9), three hundred and nine point ten (309.10), as amended by chapter one hundred and forty-nine (149), Acts of the Fifty-sixth General Assembly, three hundred and nine point eleven (309.11), three hundred and nine point twelve (309.12), three hundred and nine point thirteen (309.13), as amended by chapter one hundred and forty-nine (149), Acts of the Fifty-sixth General Assembly, three hundred and nine point fourteen (309.14), three hundred and nine point fifteen (309.15), three hundred and nine point twenty-three (309.23), three hundred and nine point thirty-one (309.31), three hundred and nine point thirty-two (309.32), three hundred and nine point thirty-three (309.33), and section three hundred twenty-one point three hundred fifty-one (321.351), Code 1954, are hereby repealed.

Sec. 2. The board of supervisors may annually, at its September session, levy for secondary road construction and maintenance purposes:

1. A tax of not to exceed two and one-half mills on the dollar on all taxable property in the county except on property within cities and towns which control their own bridge levies.

2. A tax of not to exceed eight and five-eighths mills on the dollar on all property in the county, except on property within cities and towns, provided, that no county shall be required, as a condition precedent to being eligible, to receive farm-to-market road funds on an equalization basis, to levy in excess of five mills.

3. A tax not to exceed five-eighths mills on the dollar on all taxable property in the county.

Sec. 3. There is hereby created a secondary road fund which fund shall consist of:

1. All funds derived from the secondary road tax levies.

2. All funds allotted to the county from the state road use tax fund.

3. All funds provided by individuals for the improvement of any secondary road from their own contributions.

4. All other funds which may by law be dedicated to said fund.

Sec. 4. The secondary road fund is hereby pledged to and shall be used for any or all of the following purposes at the option of the board of supervisors:

1. Construction and reconstruction of secondary roads and costs incident thereto.

2. Maintenance and repair of secondary roads and costs incident thereto.

3. Payment of all or part of the cost of construction and maintenance of bridges in cities and towns having a population of eight thousand (8,000), or less and all or part of the cost of construction of roads located within an incorporated town, of less than four hundred (400), population, which lead to state parks.

4. Special drainage assessments levied on account of benefits to secondary roads.

5. Payment of interest on and principal of any bonds of the county issued on account of secondary roads, bridges or culverts constructed by the county.

6. Any legal obligation or contract in connection with secondary roads and bridges which is required by law to be taken over and assumed by the county, and

7. Secondary road equipment, materials, supplies and garages or sheds for the storage, repair and servicing thereof.

8. For the assignment or designation of names or numbers to roads in the county and to erect, construct or maintain guide posts or signs at the intersections thereof.

Sec. 16. Section four hundred sixty-seven B point thirteen (467B.13), Code 1954, is hereby amended by striking lines four (4) through line (9) inclusive, and inserting in

lieu thereof the following: "to the secondary road funds of the counties which".

Sec. 17. The classification of secondary roads into "county trunk roads" and "local county roads" is hereby abolished. Wherever in any statute the words, "county trunk-roads", "county road" or "local county road" appear, they shall be construed to mean "secondary road".

Sec. 18. The classification of county road funds into "secondary road construction funds" and "secondary road maintenance funds" is hereby abolished. Wherever in any statute the words, "necessary road construction fund" or "secondary road maintenance fund" appear; they shall be construed to mean, "secondary road fund".

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## HOUSE FILE 100

AN ACT relating to the reclassification of lands in drainage and levee districts.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section four hundred fifty-five point seventy-two (455.72), Code 1954, is hereby repealed and the following enacted in lieu thereof:

"When, after a drainage or levee district has been established, except districts established by mutual agreement in accordance with section four hundred fifty-five point one hundred fifty-two (455.152), Code 1954, and the improvements thereof constructed and put in operation, there has been a material change as to lands occupied by highway or railroad right-of-way or in the character of the lands benefited by the improvement, or when a repair, improvement, or extension has become necessary, the board may consider whether the existing assessments are equitable as a basis for payment of the expense of maintaining the district and/or of making the repair, improvement or extension. If they find the same to be inequitable in any particular, they shall by resolution express such finding, appoint three commissioners possessing the qualifications prescribed in section four hundred fifty-five point forty-five (455.45) of the Code and order a reclassification as follows:

1. If they find the assessments to be generally inequitable they shall order a reclassification of all property subject to assessment, such as lands, highways, and railroads in said district.

2. If the inequity ascertained by the board is limited to the proportion paid by highways or railroads, a general reclassification of all lands shall not be necessary but the commissioners may evaluate and determine the fair proportion to be paid by such highways or railroads or both as pro-

vided in sections four hundred fifty-five point forty-nine (455.49) and four hundred fifty-five point fifty (455.50) of the Code.

**3.** Any benefits of a character for which levee or drainage districts may be established and which are attributable to or enhanced by the improvement or by the repair, improvement, or extension thereof, shall be a proper subject of consideration in a reclassification notwithstanding the district may have been originally established for a limited purpose.

Such reclassification when finally adopted shall remain the basis for all future assessments unless revised as provided in this chapter."

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## HOUSE FILE 103

AN ACT relating to the acquisition of easements for meander by drainage or levee districts.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section four hundred fifty-five point one hundred thirty-five (455.135), Code 1954, is hereby amended by striking the last paragraph thereof and inserting in lieu thereof the following:

"The governing body of the district may, by contract or conveyance, acquire, within or without the district, the necessary lands or easements for making repairs or improvements under this section, including easements for borrow and easements for meander, and in addition thereto, the same may be obtained in the manner provided in the original establishment of the district, or by exercise of the power of eminent domain as provided for in chapter four hundred seventy-two (472) of the Code."

Sec. 2. Districts hereafter established for the straightening, widening, deepening, or changing of a natural watercourse shall acquire therefor an easement for right-of-way of sufficient width to accommodate reasonably anticipated erosion and meander of such stream. In existing districts where the stream has by erosion appropriated lands beyond its original right-of-way and it is more economical and feasible to acquire an easement for such erosion and meander than to undertake containment of the stream in its existing right-of-way, the board may, in the discharge of the duties enjoined upon it by section four hundred fifty-five point one hundred thirty-five (455.135) of the Code, effect such acquisition as to the whole or part of the course. Right-of-way so taken shall be classed as improvement for the purpose of procedure under said section.

## HOUSE FILE 104

AN ACT relating to the authority of drainage and levee districts to make improvements exceeding the original cost of the district plus existing subsequent improvements.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section four hundred fifty-five point one hundred thirty-five (455.135), Code 1954, is hereby amended by adding thereto the following:

"In the event that the estimated cost of the improvements as contemplated in this section should exceed the original cost of the district plus the cost of subsequent improvements in the district, a majority of the landowners, owning in the aggregate more than seventy per cent (70%) of the total land in said district, may file a written remonstrance against said improvement, at or before the time fixed for hearing on said improvement, with the county auditor, or auditors in case the district extends into more than one county. If such remonstrance is filed, the board shall discontinue and dismiss all further proceedings on said improvement and charge the costs incurred to date for said proposed improvement to the district. This right of remonstrance shall not apply to repairs as defined in this section."

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## HOUSE FILE 105

AN ACT relating to the assessment of costs between two or more drainage districts which outlet into the same ditch, drain, or natural watercourse for improvements, repairs, and for the maintenance of such ditch, drain or natural watercourse.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section four hundred fifty-five point one hundred forty-three (455.143), Code 1954, is hereby amended by adding thereto the following:

"In the event that one of the districts to be assessed under this statute shall have any improvement such as a settling basin which reduces the quality and quantity of flow or sediment, such commission may give consideration to the existence of such an improvement when they determine the percentage of benefits and the sum total to be assessed to each district for the improvement."

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## HOUSE FILE 109

AN ACT to authorize the payment of the organizational expenses of subdistricts of soil conservation districts from the proceeds of the tax levied for such subdistricts.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Chapter four hundred sixty-seven A (467A), Code 1954, as amended by section three (3) of chapter two hundred twenty-five (225), Acts of the Fifty-sixth General Assembly, is hereby further amended by inserting the word "organization," after the word "for" in line seventy-nine (79) of said section three (3).

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## HOUSE FILE 110

AN ACT to amend section four hundred fifty-five point two hundred twelve (455.212), Code 1954, relating to installments of assessments for the costs incident to the adoption by a drainage district board of a federal plan of improvement for said district.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section four hundred fifty-five point two hundred twelve (455.212), Code 1954, is hereby amended by striking from line eight (8) of said section the word "three" and inserting in lieu thereof the word "twenty".

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## HOUSE FILE 117

AN ACT to provide for the payment of drainage and levee assessments on certain state-owned lands.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Chapter four hundred fifty-five (455), Code 1954, is amended by adding the following new section:

"When any state-owned lands under the jurisdiction of the state conservation commission are situated within a levee or drainage district, the commissioners to assess benefits shall ascertain and return in their report the amount of benefits and the apportionment of costs and expenses to such lands and the board of supervisors shall assess the same against such lands.

"Such assessments against lands used by the fish and game division of the state conservation commission shall be paid by the state conservation commission from the state fish and game protection fund on due certification of the amount by the county treasurer to said commission, and against lands used by the division of lands and waters from the state conservation funds."

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## HOUSE FILE 174

AN ACT to amend section four hundred sixty-two point twenty-six (462.26), Code 1954, relating to the appointment of a clerk for board of trustees for drainage district.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Amend section four hundred sixty-two point twenty-six (462.26), Code 1954, by striking from line four (4) the word "taxpayer" and inserting in lieu thereof the words "competent person".

Sec. 2. Further amend section four hundred sixty-two point twenty-six (462.26), Code 1954, by striking from lines four (4) and five (5) the words "of the district".

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## HOUSE FILE 237

AN ACT to amend section three hundred eighty-four point three (384.3), Code 1954, relating to the powers of dock boards in cities and towns.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section three hundred eighty-four point three (384.3), Code 1954, is amended by changing the period in line fourteen (14) of subsection three (3) thereof to a comma and inserting thereafter the following: "together with such other municipally owned lands or properties as the city council may designate by ordinance."

Sec. 2. Section three hundred eighty-four point three (384.3), Code 1954, is amended by adding a new subsection thereto as follows: "In cities and towns the powers vested in the dock board by this act shall be subject to such limitations and exceptions as the city council may, by ordinance, establish.".

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## HOUSE FILE 308

AN ACT relating to milldams and to amend sections four hundred sixty-nine point five (469.5) and four hundred sixty-nine point nine (469.9), Code 1954.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section four hundred sixty-nine point five (469.5), Code 1954, is amended by adding after the word, "project" in line eight (8) the words, ", excepting water taken by a municipality for distribution in its watermains,".

Sec. 2. Section four hundred sixty-nine point nine (469.9), Code 1954, is amended by adding after the word, "constructed" in line seventeen (17) the words, "for power production"; and by striking the period (.) following the word, "capacity" in line eighteen (18) and inserting in lieu thereof the words, ", nor shall they apply to dams developed solely for recreational use where the recreational facilities thus created are open to the public without charge.".

## HOUSE FILE 342

AN ACT relating to conservation commission construction permits and amending section one hundred eleven point four (111.4), Code 1954.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section one hundred eleven point four (111.4), Code 1954, is amended by striking the period (.) after the first word, "permit" in line eight (8) and by inserting in lieu thereof the following: ", provided, however, that this provision shall not apply to dams constructed and operated under the authority of chapter four hundred sixty-nine (469).

Sec. 2. Section one hundred eleven point four (111.4), Code 1954, is further amended by adding after the second word, "permit" in line eight (8) the following: ", in matters relating to or in any manner affecting flood control,".

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## HOUSE FILE 435

AN ACT relating to the power of soil conservation districts to change the name of such districts.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section four hundred sixty-seven A point seven (467A.7), Code 1954, is hereby amended by adding the following new section:

"Subject to the approval of the state soil conservation committee, to change the name of such soil conservation district."

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## HOUSE FILE 476

AN ACT to amend section four hundred fifty-five point forty-five (455.45), Code 1954, relating to time for appointment of commissioners to assess benefits and classify the lands affected by a drainage district improvement.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section four hundred fifty-five point forty-five (455.45), Code 1954, is hereby amended by inserting after the comma (,) following the word, "district" in line nine (9) the following: "or a plan of the United States Government for original construction of the improvements in such district has been heretofore or hereafter adopted by such district under the provisions of sections four hundred fifty-five point two hundred one (455.201) to four hundred fifty-five point two hundred sixteen (45.216), inclusive, of the Code,".

Sec. 2. This Act being deemed of immediate importance shall take effect and be in force and effect from and after its publication in the Onawa Sentinel, a newspaper published at Onawa, Iowa, and the Dunlap Reporter, a newspaper published at Dunlap, Iowa.

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## HOUSE FILE 551

AN ACT relating to the notice given to owners of land or interests or rights therein, in certain types of procedures and other matters affecting such land.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section four hundred fifty-five point twenty-one (455.21), Code 1954, is hereby repealed and the following enacted in lieu thereof:

"The notice provided in section four hundred fifty-five point twenty (455.20) shall be served, except as otherwise hereinafter provided, by publication thereof once each week for two consecutive weeks in some newspaper of general circulation published in the county, the last of which publications shall be not less than twenty days prior to the day set for hearing. Proof of such service shall be made by affidavit of the publisher. Copy of such notice shall also be sent by ordinary mail to each person named therein at his last known mailing address unless there is on file an affidavit of the auditor, or of a person designated by the board to make the necessary investigation, stating that no mailing address is known and that diligent inquiry has been made to ascertain it. Such copy of notice shall be mailed not less than twenty days before the day set for hearing and proof of such service shall be by affidavit of the auditor. Proofs of service required by this section shall be on file at the time the hearing begins."

Sec. 2. Section four hundred fifty-five point fifty-five (455.55), Code 1954, is hereby repealed and the following enacted in lieu thereof:

"The board shall cause notice to be served upon the owner of any tract of land or easement against which it is proposed to increase the assessment, requiring him to appear at a fixed date and show cause why such assessment should not be so increased. Such notice shall be served for the time and in the manner prescribed in section four hundred fifty-five point twenty-one (455.21) or section four hundred fifty-five point twenty-two (455.22), as the case may be, except that personal service in the same manner as an original notice may be made in lieu of the other methods."

Sec. 3. Section four hundred fifty-five point eighty-one (455.81), Code 1954, is hereby amended by striking the sen-

tence beginning with the word "Such" in line thirty-one (31) and inserting in lieu thereof the following:

"Such notice shall be given by publication and by mailing for the same time in advance of hearing and in the same manner prescribed in section four hundred fifty-five point twenty-one (455.21)."

Sec. 4. Section four hundred fifty-five point two hundred seven (455.207), Code 1954, is hereby repealed and the following enacted in lieu thereof:

"Such notice shall be captioned in the name of the district and shall be directed to the owners of each tract or lot within said levee or drainage district, including railroad companies having rights of way, lienholders and encumbrancers, and to all owners, lienholders or encumbrancers of lands which an adoption of the plan would exclude from benefits and of lands outside the district which will benefit therefrom and to all other persons whom it may concern and, without naming them, to the occupants of all lands affected and shall set forth that there is on file in the office of the auditor a plan of construction of the federal agency (naming it), together with reports of an engineer thereon, which the board has tentatively approved, and that such plan may be amended before final action; also the day and hour set for hearing on the adoption of said plan, and that all claims for damages, except claims for land required for right of way or construction, and all objections to the adoption of said plan for any reason must be made in writing and filed in the office of the auditor at or before the time set for hearing. Provisions of this chapter for giving notice, waiver of notice, waiver of objection and damages and adjournment for service contained in sections four hundred fifty-five point twenty-one (455.21) to four hundred fifty-five point twenty-six (455.26), inclusive, shall apply."

Sec. 5. Section four hundred sixty-nine point eighteen (469.18), Code 1954, is hereby amended by striking therefrom the last sentence in said section and inserting in lieu thereof the following:

"Where the owner of any land affected is a nonresident of the state, service of the notice may be made by publication thereof once each week for three consecutive weeks in some newspaper of general circulation published in the county, the last of which publications shall be not less than twenty (20) days prior to the day set for hearing. Proof of such service shall be made by affidavit of the publisher. Copy of such notice shall also be sent by ordinary mail to such person at his last known mailing address unless there is on file an affidavit of the plaintiff or his attorney stating that no mailing address is known and that diligent inquiry has been made to ascertain it. Such copy of notice shall be

mailed not less than twenty (20) days before the day set for hearing and proof of such service shall be by affidavit of the plaintiff or his attorney, as the case may be. Proofs of service required by this section shall be on file at the time the hearing begins."

Sec. 6. Section four hundred sixty-five point three (465.3), Code 1954, is hereby repealed and the following is enacted in lieu thereof:

"In case any such owner is a nonresident of the county he may be personally served in the manner required for original notices or, in lieu thereof, he may be given notice as provided in section four hundred fifty-five point twenty-one (455.21)."

Sec. 7. Section four hundred sixty-four point four (464.4), Code 1954, is hereby amended by striking all after the word "petition" in line twenty-five (25) and adding in lieu thereof the following:

"and a copy of such notice shall also be sent by ordinary mail to his last known address unless there is on file an affidavit of one of the petitioners or his attorney stating that no mailing address is known and that diligent inquiry has been made to ascertain it. Such copy of notice shall be mailed not less than twenty (20) days prior to the date set for hearing. Proof of publication and mailing shall be by affidavit and shall be included in the records of the proceedings."

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## HOUSE FILE 553

AN ACT relating to the conservation, protection, development, use, and regulation of the water resources of Iowa.

WHEREAS, the use of water for municipal, industrial, agricultural, recreational and all other beneficial purposes is a matter of great public interest and affects the public welfare, health and safety; and

WHEREAS, the sustained yield of water, services and products of kinds dependent upon water from related soils, watersheds, and ground water basins is essential to the attainment and maintenance of a permanent, stable and fruitful economy in the state of Iowa; and

WHEREAS, the proper use and management of surface water facilities makes practicable the conservation of ground water and land in many areas; and

WHEREAS, the needs of the state of Iowa, in reference to the availability and use of water of good quality, are such that the public interest and welfare require that our limited water supplies be put to the highest beneficial use in due regard to the needs of the land to assure proper develop-

ment, wise use, conservation and protection of water, as well as land, including the sustained yield of water from soils, watersheds and ground water basins making up water problem areas; and

WHEREAS, the public interest, health and welfare will be served by enactment of a water code supplying needed definitions in the area of water rights, classifying certain uses of water as regulated uses to be regulated and controlled by means of a permit system to make possible the greatest utilization of the water resources of the state of Iowa for beneficial use but at the same time to protect the public interest in areas where competing uses are involved, and otherwise providing for the conservation, development, protection, use and regulation of the water resources of the state of Iowa; now therefore,

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section four hundred fifty-five A point one (455A.1), Code 1954, is amended as follows:

1. By striking the words, "flood control" in line twenty-four (24) of such section and inserting in lieu thereof the words, "the subject matter of this chapter".

2. By adding to said section the following:

"Surface water" means the water occurring on the surface of the ground;

"Ground water" means that water occurring beneath the surface of the ground;

"Diffused waters" means waters arising by precipitation and snowmelt, and not yet a part of any water course or basin and shall include capillary soil water;

"Depleting use" means the storage, diversion, conveyance, or use of any supply of water which might impair rights of lower or surrounding users, or might impair the natural resources of the state or might injure the public welfare if not controlled.

"Beneficial use" means the application of water to a useful purpose that inures to the benefit of the water user and subject to his dominion and control but does not include the waste or pollution of water;

"Nonregulated use" means the use of water for ordinary household purposes, use of water for poultry, livestock and domestic animals, any beneficial use of surface flow from rivers bordering the state of Iowa, or use of ground water on islands or former islands situated in such rivers, existing beneficial uses of water within the territorial boundaries of municipal corporations on the effective date of this Act, except that industrial users of water, having their own water supply, within the territorial boundaries of municipal corporations, shall be regulated when such water use ex-

ceeds three (3) percent more than the highest per day beneficial use prior to the effective date of this Act, and any other beneficial use of water by any person of less than five thousand (5000) gallons per day;

"Regulated use" means any depleting use except a use specifically designated as a nonregulated use;

"Permit" means the written authorization issued by the water commissioner or council to a permittee which shall be limited as to quantity, time, place, and rate of diversion, storage or withdrawal in accordance with the declared policies and principles of beneficial use set forth in this chapter;

"Permittee" means the person who obtains a permit from the council authorizing such person to take possession by diversion or otherwise and to use and apply an allotted quantity of water for a designated beneficial use, and who makes actual use of the water for such purpose;

"Waste" means (a) permitting ground water or surface water to flow, taking it or using it in any manner so that it is not put to its full beneficial use, (b) transporting ground water from its source to its place of use in such a manner that there is an excessive loss in transit, (c) permitting or causing the pollution of water bearing strata through any act which will cause salt water, highly mineralized water, or otherwise contaminated water to enter it.

"Watercourse" means any lake, river, creek, ditch or other body of water or channel having definite banks and bed with visible evidence of the flow or occurrence of water, except such lakes or ponds without outlet to which only one landowner is riparian;

"Basin" means a specific subsurface water-bearing reservoir having reasonably ascertainable boundaries;

"Established average minimum flow" means when reasonably required for the purpose of this Act, the council shall determine and establish the average minimum flow for a given watercourse at a given point thereon. The "average minimum flow" for a given watercourse as used in this Act shall be determined by the following factors: (a) Average of minimum daily flows occurring during the preceding years chosen by the council as more nearly representative of changing conditions and needs of a given drainage area at a particular time; (b) minimum daily flows shown by experience to be the limit at which further withdrawals would be harmful to the public interest in any particular drainage area; and (c) those minimum daily flows shown by established discharge records and experiences to be definitely harmful to the public interest. Such determination shall be based upon available flow data, supplemented, when available data are incomplete, by whatever evidence is available."

"Impounded or stored water" means that water captured and stored on the land by anyone taking it pursuant to the provisions of this chapter, and the party impounding the water shall become the absolute owner thereof.

Sec. 2. Section four hundred fifty-five A point two (455A.2), Code 1954, is amended as follows:

1. By inserting after the word, "the" in line four (4) of such section the words, "orderly development, wise use, protection and".

2. By inserting after the word, "agency" in line eleven (11) of such section the following: ", the Iowa natural resources council,".

3. By striking all of such section after the word, "statewide" in line thirteen (13) of such section and inserting in lieu thereof the following: "program for the control, utilization, and protection of the surface and ground-water resources of the state. It is hereby declared that the general welfare of the people of the state of Iowa requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use, or unreasonable methods of use, of water be prevented, and that the conservation of such water be exercised with the view to the reasonable and beneficial use thereof in the interest of the people, and that the public and private funds for the promotion and expansion of the beneficial use of water resources shall be invested to the end that the best interests and welfare of the people are served.

Water occurring in any basin or in any watercourse, or other natural body of water of the state, is hereby declared to be public waters and public wealth of the people of the state of Iowa and subject to use in accordance with the provisions of this Act, and the control and development and use of water for all beneficial purposes shall be in the state, which, in the exercise of its police powers, shall take such measures as shall effectuate full utilization and protection of the water resources of the state of Iowa."

Sec. 3. Section four hundred fifty-five A point four (455A.4), Code 1954, is hereby amended as follows:

1. By striking the word, "seven" in line two (2) of such section and inserting in lieu thereof the word, "nine (9)".

2. By striking the word, "and" in line six (6) after the word, "office".

3. By striking all of such section after the word, "years." in line eleven (11) of such section and inserting in lieu thereof the following:

"The terms of three (3) members of the council shall expire on July 1 of each odd-numbered year. Within sixty

(60) days following the organization of each biennial regular session of the general assembly, appointments shall be made of successors to members of the council whose terms of office shall expire on the first of July next thereafter and of members to fill the unexpired portion of vacant terms."

Sec. 4. Each incumbent member of the Iowa natural resources council serving at the time of the enactment of this Act shall continue in office until the expiration of the term of office to which he was appointed. Short-term appointments of such additional members for periods of less than six (6) years as is necessary to provide for the transition from seven (7) members to nine (9) members, three (3) of whose terms expire on July 1, of each odd numbered year, shall be made within thirty (30) days after the effective date of this Act by the governor with the consent of two-thirds (⅔) of the senate in executive session, if the general assembly is then in session.

Sec. 5. Section four hundred fifty-five A point seven (455A.7), Code 1954, is hereby amended by striking the word, "one" in line seven (7) of such section and inserting in lieu thereof the word, "two (2)".

Sec. 6. Section four hundred fifty-five A point nine (455A.9), Code 1954, is hereby amended by inserting at the beginning of such section the numeral "1", and inserting at the end of such section the following:

"2. The council shall choose a water commissioner who shall not be a member of the council and shall fix the compensation of such commissioner, which shall be payable out out the funds appropriated to the council. The water commissioner shall be qualified by training and experience. The term of office of the water commissioner shall be during the pleasure of the council. The water commissioner shall serve in a quasi-judicial capacity as the trier of fact questions in the processing of all applications for appropriation permits. He shall conduct hearings on any applications for permits as provided by law and the rules and regulations of the council, and he shall perform such other duties as the council may prescribe.

3. The council may choose one or more deputy water commissioners who shall not be members of the council. The council shall fix the compensation of such deputy commissioners, which shall be payable out of the funds appropriated to the council. The deputy commissioners shall be qualified by training and experience. The term of office of the deputy commissioners shall be during the pleasure of the council. A deputy commissioner shall have all of the duties, responsibilities, and powers of the water commissioner when acting in his stead. The deputy commissioners shall be assigned hearings on applications for permits by the water commissioner."

Sec. 7. Section four hundred fifty-five A point seventeen (455A.17), Code 1954, is hereby amended by adding thereto the following new sentence: "The council shall administer said program."

Sec. 8. Section four hundred fifty-five A point eighteen (455A.18), Code 1954, is hereby amended by inserting after the word, "protection" in line thirty-eight (38) of such section the word, "utilization," and by striking all of such section after the word, "state." in line thirty-nine (39) of such section and inserting in lieu thereof the following:

"Upon application by any person for permission to divert, pump, or otherwise take waters from any watercourse, underground basin or watercourse, drainage ditch or settling basin within the state of Iowa, for any purpose other than a nonregulated use, the council shall cause to be made an investigation of the effect of such use upon the natural flow of such watercourse and also the effect of any such use upon the owners of any land which might be affected by such use and shall hold a hearing thereon."

Sec. 9. The procedure for securing a permit to divert, store or withdraw waters shall be as follows:

1. The application for a permit shall be made in writing to the council and shall set forth the designated beneficial use for which the permit is sought, the specific limits as to quantity, time, place, and rate of diversion, storage or withdrawal of waters.

2. Upon receipt of an application for a permit, the water commissioner shall set a time and place for hearing. The hearing shall be in the county where the permit is sought, but may be held at any other place in the state unless objection is raised by the applicant. The hearing shall be to the water commissioner.

3. The water commissioner shall cause notice of the hearing to be published in a newspaper of general circulation in the county in which the permit is sought. Said notice shall be published once each week for two consecutive weeks, with the date of last publication not less than ten (10) nor more than thirty (30) days prior to the date of hearing and said notice shall be on a form provided by the council which shall specify the date, time and place of hearing and shall include a concise statement of the designated beneficial purposes for which diversion is sought, the specific limits as to quantity, time, place, and rate of diversion, storage or withdrawal of waters, the name of the applicant and the description of the land upon which waters are to be diverted, stored or withdrawn. In addition to the foregoing, the water commissioner shall cause a copy of the notice to be sent to the director of the conservation commission, commissioner of public health, the secretary of

the soil conservation committee, secretary of agriculture, director of the Iowa geological survey, the director of the Iowa development commission, and to any other person who has filed a written request for a notification of any hearings affecting a designated area, by ordinary mail, prior to the date of last publication.

4. Any interested person may appear and present evidence at the hearing, and may be represented by counsel, who shall have the right to question others who present evidence.

5. The applicant for a permit shall pay a fee to the council in the amount of ten (10.00) dollars at the time of filing his application which fee shall include the cost of publishing notice and which publication shall then be paid for by the council.

6. The council shall prescribe the rules of procedure for the conduct of the hearings.

7. The determination of the water commissioner on any application before him shall be in writing, filed with the council and shall set forth his findings. A copy of the determination shall be mailed to the applicant and to any person appearing who in writing requests a copy of the determination.

8. Any party aggrieved by the determination of the water commissioner may, within thirty (30) days from the date such determination is filed, appeal therefrom to the council setting forth in general terms the determination appealed from and the grounds of the appeal. The director shall set a time and place for hearing before the council and shall then send a notice by ordinary mail to all persons who appeared at the hearing before the water commissioner.

9. The council shall adopt rules and regulations for the conduct of the hearing on appeal and shall file a determination in writing, setting forth findings. A copy of the determination shall be mailed to the applicant or to any person appearing who in writing requests a copy of the determination.

10. The water commissioner or the council at any hearing or other proceeding authorized by this Act, shall have the power to administer oaths; take testimony; issue subpoenas and compel the attendance of witnesses, the subpoenas shall be served in the same manner as subpoenas issued by the courts of the state; and to order the taking of depositions in the same manner as depositions are taken under the Iowa Rules of Civil Procedure.

Sec. 10. If the water commissioner at the first hearing or the council at the hearing on appeal shall determine after due investigation that such diversion, storage or withdrawal will not be deterimental to the public interests, in-

cluding drainage and levee districts, or to the interests of property owners with prior or superior rights who might be affected, the water commissioner following the first hearing, or the council following the hearing on appeal shall grant a permit for such diversion, storage or withdrawal. Any person or public body aggrieved by the granting of such permit may appeal as provided by section four hundred fifty-five A point twenty-three (455A.23). Permits may be granted for any period of time but not to exceed ten (10) years. Permits may be granted which provide for less diversion, storage, or withdrawal of waters than set forth in the application. Permits may be extended by the water commissioner beyond the period for which granted without hearing if no objection is raised, but if written objection is filed by any aggrieved person shown to have an interest, a hearing shall be held thereon. Any permit granted shall remain as an appurtenance of the land described in the application unless disposed of otherwise.

Sec. 11. In the consideration of applications for permits, priority will be given to persons in the order applications are received. However, persons who have made diversion or withdrawal of water for a beneficial use prior to the effective date of this Act will be accorded priority according to the actual date of said diversion or withdrawal. The water commissioner or the council on appeal shall exercise their judgment on the quantity of water for which a permit may be granted. The use of water for ordinary household purposes, for poultry, livestock and domestic animals shall have priority over other uses. Any person with an existing irrigation system in use prior to the effective date of this Act shall be issued a permit to continue, unless by the use thereof some other riparian user is damaged. In the consideration of applications for permits by regulated users, the declared policies and principles of beneficial use, as set forth in this chapter, shall be the standard for the determination of the disposition of the applications for said permits. Nothing in this chapter shall impair the vested right of any person. Prior orders of the council shall not be invalidated by the provisions of this Act.

Sec. 12. The water commissioner and the council shall have the authority to issue a permit for beneficial use of water in a watercourse provided the established average minimum flow is preserved.

Sec. 13. No use of water shall be authorized that will impair the effect of pollution control laws of this state.

Sec. 14. No permit shall be issued or continued that will impair the navigability of any navigable watercourse.

Sec. 15. For the purpose of administering this Act, a permit as herein provided shall be required for the following:

1. Any municipal corporation or person supplying a municipal corporation which increases its water use in excess of one hundred thousand (100,000) gallons, or three per cent (3%), whichever is the greater, per day more than its highest per day beneficial use prior to the effective date of this Act. Such corporation or person shall make reasonable provision for the storage of water at such time or times when the daily use of such water by such corporation or person is less than the amount specified herein.

2. Except for a nonregulated use, any person using in excess of five thousand (5000) gallons of water per day, diverted, stored, or withdrawn from any source of supply except a municipal water system or any other source specifically exempted under the provisions of this Act.

3. Any person who diverts water or any material from the surface directly into any underground watercourse or basin. Provided, however, that any diversion of water or material from the surface directly into any underground watercourse or basin existing upon the effective date of this Act shall not require a permit if said diversion does not create waste or pollution.

4. Industrial users of water having their own water supply, within the territorial boundaries of municipal corporations, shall be regulated when such water use exceeds three (3) percent more than the highest per day beneficial use prior to the effective date of this Act.

Sec. 16. No person shall take water from any natural watercourse, underground basin or watercourse, drainage ditch, or settling basin within the state of Iowa for any purpose other than a nonregulated use except upon compliance with the provisions of this Act, provided that existing uses may be continued during the period of the pendency of an application for a permit.

Sec. 17. Nothing in this Act shall operate to deprive any person of the right to use diffused waters, or to drain land by use of tile, open ditch or surface drainage, or to construct an impoundment on said person's property or across a stream that originates on said person's property so long as provision is made for safe construction and for continued established average minimum flow, if and when such flow is required to protect the rights of water users below.

Sec. 18. Every permit issued hereunder shall be irrevocable for the term therefor, and for any extension of such term except as follows:

1. A permit may be modified or cancelled by the water commissioner, with the consent of the permittee.

2. Subject to appeal in the manner provided by section nine (9), subsection eight (8), of this Act, a permit may be

modified or cancelled by the water commissioner in case of any breach of the terms or conditions thereof or in case of any violation of the law pertaining thereto by the permittee, his agents or servants, in case of non-use as provided hereinafter, or in case the water commissioner finds such modification or cancellation necessary to protect the public health or safety or to protect the public interests in lands or waters, or to prevent substantial injury to persons or property in any manner, upon at least thirty (30) days written notice mailed to the permittee at his last known address, stating the grounds of the proposed modification or cancellation and giving the permitte an opportunity to be heard thereon.

3. By written order to the permittee, the water commissioner may forthwith suspend operations under a permit if he finds it necessary in an emergency to protect the public health or safety or to protect the public interests in lands or waters against imminent danger of substantial injury in any manner or to any extent not expressly authorized by the permit, or to protect persons or property against such danger, may require the permittee to take any measures necessary to prevent or remedy such injury; provided, that no such order shall be in effect for more than thirty (30) days from the date thereof, without giving the permittee at least ten (10) days written notice of such order and an opportunity to be heard thereon.

Sec. 19. The right of the permittee and his successors to the use of water shall terminate when he ceases for three (3) consecutive years to use it for the specific beneficial purpose authorized in his permit and the permittee has been notified by the water commission that unless written application as set forth as follows, that the permit will cease; provided, however, that upon his written application prior to the expiration of said three-year period for extension of said permit, the council may grant such extension without loss of priority.

Sec. 20. A permittee may sell, transfer, or assign his permit by conveying, leasing, or otherwise transferring the ownership of the land described in the permit, but such permit shall not constitute ownership or absolute rights of use of such waters, but such waters shall remain subject to the principle of beneficial use and the orders of the council.

Sec. 21. The state of Iowa, any subdivision thereof, or municipal corporation, for the purpose of carrying out any permission granted, as hereinbefore provided, shall have and exercise the power of eminent domain.

Sec. 22. Section four hundred fifty-five A point nineteen (455A.19), Code 1954, is hereby amended as follows:

1. By inserting after the word, "erected" in line three (3) of such section the words, ", used, or maintained".

2. By striking from line seventeen (17) of such section the words, ", make, use or maintain" and inserting in lieu thereof the words, "or make".

3. By striking from lines twenty-two (22) to twenty-five (25) inclusive, of such section the words, "and it is uncertain as to whether it will adversely affect the efficiency of or unduly restrict the capacity of the floodway,".

4. By striking the word, "may" in line twenty-five (25) of such section and inserting in lieu thereof the word, "shall".

5. By inserting after the word, "same." in line thirty (30) of such section the following new paragraph:

"The council shall have the authority to maintain an action in equity to enjoin any such person from erecting or making or suffering or permitting to be made any structure, dam, obstruction, deposit, or excavation other than a dam constructed and operated under the authority of chapter four hundred sixty-nine (469) of the Code, for which a permit has not been granted."

Sec. 23. Section four hundred fifty-five A point twenty-five (455A.25), Code 1954, is hereby repealed.

Sec. 24. Unauthorized depleting uses. In the event that any person shall file a complaint with the council that any other person is making a depleting use of water not expressly exempted as a nonregulated use under the provisions of this chapter and without a permit to do so, the council shall cause an investigation to be made and if the facts stated in the complaint are verified the council shall order the discontinuance of the use.

Sec. 25. Section four hundred fifty-five A point twenty-six (455A.26), Code 1954, is hereby amended by inserting after the word, "chapter," in line three (3) of such section the words, "or whoever diverts or withdraws water in violation of the provisions of this chapter, upon conviction,".

Sec. 26. Saving clause. If any provision of this chapter or the application of such provision to any person or circumstance shall be held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

Sec. 27. This Act being deemed of immediate importance shall be in full force and effect immediately upon its publication in the Davis County Republican, a newspaper published in Bloomfield, Iowa, and the Britt-News Tribune, a newspaper published in Britt, Iowa.