

MICHIGAN LAW ON PRIVATE DRAINAGE

This discussion has been prepared to aid our taxpayers in knowing their rights and obligations in matters of drains and drainage. No effort is made to give all the law, but we have tried to answer questions most frequently received during the past 10 years. The questions on private drains are answered from the Michigan Statutes and opinions of the Michigan Supreme Court. The discussion of the county drain law is based on Act 316, P.A. 1923, as amended by further Public Acts of 1929, '31, '33, '35, '37, '39, '41, '43 and '45. From this number of amendments, it will be obvious the county drain law is always subject to change by the legislature; interpretations of the courts may further change our conception of it.

Private Farm Drains and Ditches

What is the law on private drain disputes? The law provides for a board of fence reviewers to settle line fence disputes. But if my neighbor floods my land it appears I must go to court. Has the county drain commissioner authority to settle such disputes?

MOST drainage disputes between neighbors arise because one or neither of them knows the law. Hence, the best way to settle such disagreements is to find out the law and then apply it. In case the party in the wrong refuses to remedy matters when the law is pointed out to him, the injured party may file a "bill" in circuit court to stop any unlawful flooding of his lands. Also, he can secure damages in the same suit on proving that his crops or lands have been injured. The drain commissioner has no power to settle such disputes, but in some cases he can be petitioned for a county drain and in this way be given jurisdiction over the drain in question. Often he can be of great help in disputes of this kind, unofficially, and will generally be glad to volunteer his advice and services in arbitrating private disputes.

Obtaining an Easement to Drain

Eighteen years ago I dug a ditch across a swampy part of my land and ran this into a ditch on my neighbor's land just below me. At the time he approved of this, but we never had any formal agreement or put anything in writing. The ditch has been used continuously to keep my lands drained until this spring when my neighbor built a dam across his part of it in such a way that the water backs up and floods my land again. What can I do?

A PRESCRIPTIVE right to flow your neighbor's lands has been obtained by suffering this drain to continue in use continuously for 15 years. The right is in the nature of an easement. It is a property right which he cannot now take away from you. Unless your neighbor will open up the line on request, we suggest that suit be started in circuit court for an injunction to restrain him from interfering with flowage of the water and requiring him to remove the dam.

Partnership Drains

Some years ago my neighbor furnished part of the tile and together we built a drain over my land. The idea was that the new drain would take care of drains I had and in addition handle the water from a couple of swales on his place. The drain has done this in good shape. Now my neighbor is planning to drain two more wet places on his farm, and is also sending his sewage through the drain. I am afraid it will not handle this extra load and is likely to flood my land in the spring. Has he a right to hook in these extra drains without my permission, and has he a right to send sewage through the drain?

YOUR neighbor has no right to do either of these things. He cannot burden the drain with more water than it was originally intended should be sent through, in accordance with the capacity of the drain. And he has no right to send sewage through the drain, that not being a use for which the drain was originally intended. If he insists on doing these things we believe you could go into circuit court and obtain an injunction against these acts on the grounds that they constitute a nuisance. You could also have judgment for damages that resulted from flooding your crop lands.
