February 9, 1998

OPINION NO. 98-010

The Honorable Stephen A. Schumaker
Clark County Prosecuting Attorney
50 East Columbia Street
P.O. Box 1608
Springfield, Ohio 45501

Dear Prosecutor Schumaker:

You have requested an opinion concerning the provision of water and sewer services by a county. Specifically, you wish to know whether a county may discontinue providing water and sewer services to a residential customer who fails to pay for the services.

In order to respond to your specific question, we must examine the provisions of R.C. 6103.02 and R.C. 6117.01. These statutes authorize a board of county commissioners to establish, respectively, a public water supply system and a sewer system.

With regard to operating and maintaining its public water supply system, a board of county commissioners is authorized to enact rules pertaining to the use of the water system. In this regard, R.C. 6103.02 provides in part:

> The board [of county commissioners] may adopt, publish, administer, and enforce rules for the construction, maintenance, protection, and *use of public water supplies* in the county outside of municipal corporations, and of public water supplies within municipal corporations in its county wherever such water supplies are constructed or operated by such board or are supplied with water from water supplies constructed or operated by such board, including the establishment of connections. Such rules shall not be inconsistent with the laws of the state or the rules of the environmental protection agency. (Emphasis added.)

Similarly, R.C. 6117.01 authorizes a board of county commissioners to enact rules pertaining to the use of the county sewer system. R.C. 6117.01 provides, in part, as follows:

> The board [of county commissioners] may adopt, publish, administer, and enforce rules for

> the construction, maintenance, protection, and *use of sewers and sewer improvements* in its county outside of municipal corporations, and of sewers and sewer improvements within municipal corporations in its county wherever such sewers are constructed or operated by such board or discharge into sewers or sewage treatment plants constructed or operated by such board, including the establishment and use of connections. Such rules shall not be inconsistent with the laws of this state or the rules of the director of environmental protection. (Emphasis added.)

R.C. 6103.02 and R.C. 6117.01 thus authorize a board of county commissioners to adopt and enforce rules concerning the use of its water and sewer systems, provided that such rules are not inconsistent with the laws of this state or rules promulgated by the Environmental Protection Agency. *See* 1979 Op. Att'y Gen. No. 79-107.

It is axiomatic that the circumstances under which a county will continue to provide water and sewer services to a residential customer relate to the use of public water supplies and sewers and sewer improvements. In addition, when a board of county commissioners undertakes the duty to provide water and sewer services, the board has a concomitant responsibility for providing such services to its residential customers in the most efficient and economical manner. *See generally Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878) ("[w]here authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner"). By terminating water and sewer services to residential customers who fail to pay for such services, the board of county commissioners is able to diminish the financial burden upon those customers who pay promptly for the use of such services. *See* 1912 Op. Att'y Gen. No. 357, vol. I, p. 243, at 245. Therefore, pursuant to R.C. 6103.02 and R.C. 6117.01, a board of county commissioners may adopt and enforce a rule that authorizes the county to discontinue providing water and sewer services to a residential customer who fails to pay for such services, provided that the rule is not inconsistent with the laws of this state or rules promulgated by the Environmental Protection Agency.[1] *See* 1981 Op. Att'y Gen. No. 81-030 at 2-116 (a public body or official may adopt reasonable procedures, pursuant to its general authority to operate utilities in an efficient manner, to refuse service to properties where the charges are delinquent); 1912 Op. Att'y Gen. No. 473, vol. II, p. 1977 (a board of trustees of public affairs is empowered to make and enforce a rule which permits the board to turn off the water to a consumer in the event of non-payment of rentals); 1912 Op. Att'y Gen. No. 444, vol. I, p. 256 (syllabus) ("[t]he board of public affairs of a village has the same powers to enforce its rules by turning off the water in the event of non-payment of rent as are possessed by the director of public

---

[1] Any rule adopted by the board of county commissioners concerning the termination of water and sewer services to a residential customer for non-payment must satisfy the requirements of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *See Brown v. City of East Cleveland*, No. C84-3411 (N.D. Ohio Apr. 15, 1986) (where a water customer has a contractual relationship with a city for water service, procedural due process requires that the city notify the customer of the possibility of termination of service and establish reasonable procedures for challenging a disputed bill or resolving other types of disputes).

service of a city"); 1912 Op. Att'y Gen. No. 357, vol. I, p. 243, at 247 (pursuant to G.C. 3957 (now R.C. 743.02), the director of public service "may make a rule that in case water rent is not paid, the water will be turned off until all arrearages are paid"); *see also City of Mansfield v. Humphreys Mfg. Co.*, 82 Ohio St. 216, 92 N.E. 233 (1910) (a municipal regulation that authorizes the director of public service to turn off water to any property for which the water bill remains unpaid is a valid and enforceable regulation).

The determination whether a rule of a board of county commissioners concerning the use of its water and sewer systems is inconsistent with the laws of this state or rules promulgated by the Environmental Protection Agency is one that must be resolved on a case-by-case basis. As a general matter, however, our research has revealed no law of this state or rule promulgated by the Environmental Protection Agency that prohibits a board of county commissioners from enacting a rule that permits the county to terminate water and sewer services to a residential customer who fails to pay for such services. *Cf.* 1987 Op. Att'y Gen. No. 87-083 at 2-556 (syllabus) ("[a] board of county commissioners may divest itself of the responsibility for the control, management, and maintenance of a county sewer district established pursuant to R.C. Chapter 6117 where divestiture is not inconsistent with preservation and promotion of the public health and welfare, and provided that divestiture does not result in violation of the statutory provisions and administrative regulations governing the lawful operation of a sewer district, such as R.C. Chapter 6111").

In your letter you note that the court of appeals in *Leigh v. City of Dayton*, No. CA 11011, 1988 Ohio App. LEXIS 5372 (Ct. App. Montgomery County Dec. 30, 1988), addressed the discontinuation of water service by a county when water service charges are not paid. You state in your letter that the court's opinion "was unclear as to whether discontinuation of service was unlawful as to current residents, or only subsequent residents." Let us therefore review the specific issues that were before the court of appeals in that case.

Leigh v. City of Dayton concerned a property owner who alleged that he was refused water service by Montgomery County because the previous owner had failed to pay for water services that the county had previously furnished to the property. Plaintiff Leigh further claimed that such a practice on the part of the county was contrary to R.C. 6103.02. On this point the court of appeals agreed that "such a practice would be unlawful." *Leigh v. City of Dayton*, 1988 Ohio App. LEXIS 5372 at *12.

Before the court of common pleas, however, the county asserted that it would not refuse water service to a property owner in such a circumstance, and submitted in support thereof the affidavit of the superintendent of customer services for the county sanitary engineering department, which specifically stated that water service had not been refused to Plaintiff Leigh's property because of delinquent water service charges attributable to the property's previous owner. Plaintiff Leigh filed a counter affidavit in which he testified that the county had refused to provide water service to his property because of delinquencies incurred by prior owners or tenants of the property. The court of common pleas granted summary judgment to the county on this issue.

The court of appeals reversed, finding that the conflicting affidavits raised a genuine issue of material fact as to whether the county unlawfully refused to provide water service to Plaintiff Leigh's property. Accordingly, the court of appeals ruled that the lower court erred in granting the county's motion for summary judgment, and thus remanded the case for further proceedings.

For several reasons the decision in *Leigh v. City of Dayton* is not dispositive of your present inquiry. First, the court of appeals was asked to address only the propriety of the county's alleged practice of refusing a property owner water service because of delinquencies incurred by prior owners or tenants of that property. The court was not asked to address the question of whether a county could properly refuse water service to the current owner of property because such owner is delinquent in his water service payments, and the court made no ruling on that particular issue. Thus, the court's statement in its opinion that R.C. 6103.02 "does not provide for discontinuation of water service by [a county] when water service charges are not paid" arguably is *obiter dicta* with respect to that issue.

Nonetheless, the foregoing statement by the court is a correct characterization of the express language of R.C. 6103.02. R.C. 6103.02 does not expressly authorize a county to terminate water service for non-payment of delinquent charges.[2] *See generally State ex rel. Shriver v. Board of Comm'rs*, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (a board of county commissioners has only those powers which are expressly granted by statute or which are necessarily implied therefrom). However, as explained above, R.C. 6103.02 does authorize a board of county commissioners to adopt and enforce a rule that permits the county to discontinue providing water service to a property

---

[2] R.C. 6103.02 states, in pertinent part, as follows:

When any rents or charges are not paid when due, the board may do either or both of the following:

(1) Certify them, together with any penalties, to the county auditor. The county auditor shall place the certified amount upon the real property tax list and duplicate against the property served by the connection if he also receives from the board additional certification that the unpaid rents or charges have arisen pursuant to a service contract made directly with an owner who occupies the property served.

The amount placed on the tax list and duplicate shall be a lien on the property from the date placed on the list and duplicate and shall be collected in the same manner as other taxes, except that, notwithstanding section 323.15 of the Revised Code, a county treasurer shall accept a payment in such amount when separately tendered as payment for the full amount of such unpaid water rents or charges and associated penalties. The lien shall be released immediately upon payment in full of the certified amount. All money collected as rents or tap-in charges or for water-works purposes in any district shall be paid to the county treasurer and kept in a separate and distinct fund to the credit of such district.

(2) Collect them by actions at law in the name of the county from an owner, tenant, or other person who is liable to pay the rents or charges.

owner who fails to pay for such service, provided the rule is not inconsistent with the laws of this state or rules promulgated by the Environmental Protection Agency.[3]

In *Leigh v. City of Dayton* there is no indication that the county had adopted a rule that permitted the county to terminate a property owner's water service when the prior owner or tenant of the property failed to pay for such service. The court in *Leigh v. City of Dayton* thus did not address the question of whether a board of county commissioners could discontinue providing water service in that circumstance pursuant to a rule adopted under R.C. 6103.02, nor did it consider as well

---

[3] With respect to the collection of sewer rentals and charges, language similar to that which is set forth in R.C. 6103.02 appears in R.C. 6117.02:

> When any rents or charges are not paid when due, the board shall certify the same together with any penalties to the county auditor, who shall place them upon the real property tax list and duplicate against the property served by such connection. Such rents and charges shall be a lien on such property from the date the same are placed upon the real property tax list and duplicate by the auditor and shall be collected in the same manner as other taxes. All moneys collected as rents for use of such sewers or sewerage treatment or disposal works or as connection charges in any sewer district shall be paid to the county treasurer and kept in a separate and distinct fund to the credit of such district.

whether a board of county commissioners could adopt a rule providing for the termination of water service to a property owner who is currently delinquent in his water payments. Accordingly, it is our opinion that the decision of the court in *Leigh v. City of Dayton* is not controlling in this instance.[4]

In conclusion, it is my opinion, and you are advised that, pursuant to R.C. 6103.02 and R.C. 6117.01, a board of county commissioners may adopt and enforce a rule that authorizes the county to discontinue providing water and sewer services to a residential customer who fails to pay for such services, provided that the rule is not inconsistent with the laws of this state or rules promulgated by the Environmental Protection Agency.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

---

[4] R.C. 6103.02 and R.C. 6117.02 provide the methods for collecting unpaid rents and charges. While the termination of water and sewer services "may, at times, have the effect of compelling payment, ... it is not a method of collection, but rather a termination of further services to a party who has failed to make payment for past services rendered." 1986 Op. Att'y Gen. No. 86-109 at 2-606 n.7. Thus, as a general matter, a rule that authorizes the county to discontinue providing water or sewer services to a residential customer who fails to pay for such service is not inconsistent with R.C. 6103.02 and R.C. 6117.02.

February 9, 1998

The Honorable Stephen A. Schumaker
Clark County Prosecuting Attorney
50 East Columbia Street
P.O. Box 1608
Springfield, Ohio 45501

SYLLABUS: 98-010

Pursuant to R.C. 6103.02 and R.C. 6117.01, a board of county commissioners may adopt and enforce a rule that authorizes the county to discontinue providing water and sewer services to a residential customer who fails to pay for such services, provided that the rule is not inconsistent with the laws of this state or rules promulgated by the Environmental Protection Agency.