

6202

1. SEWER DISTRICT—ESTABLISHED BY COUNTY COMMISSIONERS—COMMISSIONERS AUTHORIZED TO CONTRACT WITH MUNICIPALITY TO FURNISH WATER TO COUNTY FOR USE OF DISTRICT—SECTION 6103.02 RC.
2. WATER LINES—OWNED BY COUNTY—CONSTRUCTED WITHIN SEWER DISTRICT — COUNTY PURCHASES WATER FROM MUNICIPALITY TO BE DISTRIBUTED THROUGH LINES—COMMISSIONERS AUTHORIZED TO FIX RATES TO BE CHARGED TO USERS.
3. SECTION 743.13 RC—NO APPLICATION TO CONTRACT FOR WATER SUPPLY MADE BY COMMISSIONERS UNDER SECTION 6103.02 RC.

SYLLABUS:

1. County commissioners, having established a sewer district within their county, are authorized by Section 6103.02, Revised Code, to contract with a municipality for furnishing water to the county for the use of such district.

2. Where the county owns water lines constructed within a sewer district, and purchases water from a municipality to supply such district with water to be distributed through such lines, the county commissioners are authorized by Section 6103.02, Revised Code, to fix the rates to be charged the users of such water.

3. Section 743.13, Revised Code, has no application to a contract for water supply made by county commissioners pursuant to Section 6103.02, Revised Code.

Columbus, Ohio, February 2, 1956

Hon. Mathias H. Heck, Prosecuting Attorney
Montgomery County, Dayton, Ohio

Dear Sir:

I have before me your request for my opinion, which reads as follows:

“This office requests your opinion as to the following:

“The County Commissioners have negotiated contracts with a municipality located in this county for the extension of water lines into the less populated areas of the county and beyond the corporate limits of the city.

“The basic subject matter and terms are as follows:

“1. The County extends the mains and lines.

“2. The plan for said extension must be submitted to the municipality for its approval and the lines must be extended according to the specifications of the municipality.

“3. Said water line extensions are made in districts created by the county commissioners and located outside municipal limits according to law.

“4. The county purchases water from the city based upon a rate negotiated between the parties.

“5. These contracts are for a period in excess of one year.

“The Chapter on County Water Supply Systems contain Section 6103.21 RC., which provides that the county may contract with the city for water improvements.

“Section 6103.22 provides for the terms of said contract.

“Located in the Chapter on Utilities is Section 743.13 RC. This section provides for extension of water service beyond corporate lines and provides a rate or charge.

“This office has read 1927 OAG No. 276 and 1951 OAG No. 218. In the former opinion political subdivisions are excluded but in the latter the state is included within the meaning of ‘person’ as used in 743.13 RC.

“This office requests an answer to the following:

“1. In a contractual relationship containing the provisions as set forth above in this letter, does the county have the authority under 6103.21 RC. to enter into such a contract?

“2. If the county does have such authority, is such authority found exclusively under 6103.21 RC.?

“3. If Section 6103.21 RC. is authority, what effect is section 743.13 RC. in setting the rates or charges under said contract?”

Chapter 6103, Revised Code, deals with county water supply systems. Section 6103.02 authorizes the board of county commissioners, where it has established a sewer district, to provide a water supply for such district either by constructing the system or by contract with any municipality,

or any person, firm or corporation. This section contains the following provision :

“By contract with any municipal corporation, or any person, firm, or private corporation *furnishing a public water supply* within or without its county, the board *may provide such supply of water to such district* from the water-works of such municipal corporation, person, firm, or private corporation.”

(Emphasis added.)

The same section provides :

“The board may fix reasonable rates to be charged for water when the source of supply *or distributing pipes are owned by the county or district*. When the source of supply is owned by a municipal corporation or any person, firm, or private corporation, the schedule of rates to be *charged by such municipal corporation*, person, firm, or private corporation shall be ratified by the board at the time any contract is entered into for the use of water from such municipal corporation, person, firm, or private corporation.”

(Emphasis added.)

The second sentence of that quotation appears to contemplate an agreement whereby the municipality would not only furnish the water, but would also distribute it.

The above quoted matter is immediately followed by the following language :

“All money collected as rents or for water-works purposes from any district shall be paid to the county treasurer and kept in a separate and distinct fund to the credit of such district. Such fund shall be applied first to the conduct, management, and operation of such water supply or water-works system, * * *”

Your letter makes it quite clear that under the contract in question the county builds and owns the water lines, and buys the water from the municipality at an agreed price. Under such circumstances, I do not see any reason to resort to the provisions of Sections 6103.21 and 6103.22, Revised Code. Those sections contemplate a water supply improvement to be constructed and used jointly by the county and municipality. Your proposition has nothing of that character.

Nor do I consider that your plan is governed by Section 743.13, Revised Code. That section reads :

“When any person at his own expense has laid down and extended mains and water pipes or electric light and power lines

beyond the limits of a municipal corporation, and the legislative authority thereof, by resolution, has authorized the proper officer of the water works to superintend or supervise such laying and extension, the municipal corporation shall furnish water or electricity to the residents and property holders on the line of such facilities. The same rules and regulations which govern the furnishing of water or electricity to its own citizens shall apply in such cases, except that the rates charged therefor shall not exceed those within the municipal corporation by more than one tenth."

That section was intended to meet the situation which frequently exists in the territory immediately adjacent to a municipality where a person or group of persons or an institution desire to obtain water from a municipal water system, and have been permitted to extend, at their own expense, water lines beyond the corporation lines. In such a case, it is provided by Section 743.15, Revised Code, that in case of annexation to the municipality the municipal corporation shall pay a just compensation for the lines, and become the owner of them. I do not consider that either the county or the municipality need look to said Section 743.13 for authority to make the contract proposed by your letter. That statute is a relic of the days when a municipality was a creature of the legislature and wholly subject to control; a situation which passed with the adoption in 1912 of Article XVIII of the Constitution, commonly referred to as the "Home Rule Amendment." Section 6 of that Article gives a municipal corporation the right, without any qualification as to rate or price, to sell and deliver to outsiders the surplus product of any of its utilities, up to fifty percent of the amount supplied to its own citizens.

Your contract, so far as the county commissioners are concerned, is expressly authorized by Section 6103.02, supra, which section also recognized the right of the municipality to make the contract, and so far as appears, the municipality is merely to deliver the water to the county for distribution through the county's own mains, and at rates to be fixed by the county.

Specifically answering your questions, it is my opinion:

1. County commissioners, having established a sewer district within their county, are authorized by Section 6103.02, Revised Code, to contract with a municipality for furnishing water to the county for the use of such district.

2. Where the county owns water lines constructed within a sewer district, and purchases water from a municipality to supply such district

with water to be distributed through such lines, the county commissioners are authorized by Section 6103.02, Revised Code, to fix the rates to be charged the users of such water.

3. Section 743.13, Revised Code, has no application to a contract for water supply made by county commissioners pursuant to Section 6103.02, Revised Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General