

3148

DITCHES, SINGLE COUNTY—TRANSFER OF FUNDS BEFORE COUNTY ENGINEER TO PREPARE PLANS AND SCHEDULES, §6131.12 R.C.—JOINT COUNTY DITCHES REQUIRE NO SUCH TRANSFER.

SYLLABUS :

1. Under the provisions of Section 6131.12, Revised Code, an effective transfer of funds from the general fund of the county to the general drainage improvement fund is required before the county engineer can be ordered to prepare the reports and schedules as provided in Sections 6131.01 to 6131.64, inclusive, Revised Code.

2. Chapter 6133., Revised Code, dealing with joint county ditches contains no requirement for a transfer of funds similar to that required by Section 6131.12, Revised Code, in the case of a county ditch improvement project.

Columbus, Ohio, December 11, 1958

Hon. Robert O. Stout, Prosecuting Attorney
Marion County, Marion, Ohio

Dear Sir :

I have your request for my opinion reading as follows :

“Ohio Revised Code 6131.12 provides that when the Board of Commissioners grants a ditch petition, the Board shall order the County Auditor ‘to transfer from the general revenue funds of the county, not otherwise appropriated, to the general drainage improvement fund, an amount equal to eight and one-half per cent of the engineer’s preliminary estimate of the cost of the improvement.’

“As you are no doubt aware, many of the counties are encountering financial squeezes. Where a county has no unappropriated general funds and no available funds from which a transfer could be made, what procedure should the Board follow in the event a ditch petition is filed with and granted by the Board?

“Also, in the event a joint or tri-county ditch petition is filed and granted, is the eight and one-half per cent transferred by the county in which the petition is filed, or is the amount pro-rated among the counties involved?”

Section 6131.12, Revised Code, to which you have directed my attention, provides in pertinent part :

“* * * Upon granting the petition, the board shall order the county auditor to transfer from the general revenue funds of the county, not otherwise appropriated, to the general drainage improvement fund an amount equal to eight and one-half per cent of the engineer’s preliminary estimate of the cost of construction. *As soon as such transfer of funds has been authorized*, the board shall order the county engineer to prepare the reports and schedules as provided in sections 6131.01 to 6131.64, inclusive, of the Revised Code. * * *” (Emphasis added)

You state that no unappropriated funds are available for transfer to the general drainage improvement fund. The question presented is whether the transfer of funds from the general fund of the county to the general drainage improvement fund must be *accomplished* before the county engineer can be ordered to prepare the necessary reports and schedules. This transfer is ordered in the usual case by the board of county commissioners as provided by Section 6131.12, *supra*; however, upon appeal the court of common pleas must authorize such transfer when ordering the county engineer to make the surveys and reports as provided by Section 6131.30, Revised Code.

Although Section 6131.51, Revised Code, provides that reimbursement for the funds transferred under authority of Section 6131.12 or Section 6131.30, Revised Code, may be made when the amount of assessments collected for the drainage improvement exceeds the eight and one-half per cent of the engineer’s preliminary estimate of cost of the improvement, it is clear that there must be funds available for expenditure in the general drainage improvement fund at the time the county engineer is ordered to prepare the necessary reports, schedules and plans.

The use of the words “shall order” in Section 6131.12, *supra*, coupled with the detailed provision for procedures thereafter to be accomplished, negatives the notion that an *effective* transfer of funds is not required; nor does a consideration of the language and provisions of Chapter 6131., Revised Code, as a whole justify such conclusion.

Therefore, I conclude that under the provisions of Section 6131.12, Revised Code, an effective transfer of funds from the general fund of the county to the general drainage improvement fund is required before the county engineer can be ordered to prepare the reports and schedules as provided in Section 6131.01 to 6131.64, inclusive, Revised Code.

Your inquiry assumes that the transfer of funds requirement of Section 6131.12, Revised Code, applies to joint county ditch improvement

projects governed by Chapter 6133., Revised Code. This assumption is based, no doubt, upon the provisions of Section 6133.03, Revised Code:

“A joint board of county commissioners may do all the things that a board of county commissioners may do in a single county improvement, and shall be governed by and be subject to sections 6131.01 to 6131.64, inclusive, of the Revised Code, relating to single county ditches insofar as applicable. The proceedings for a joint county improvement shall proceed before said joint board the same as if said joint board were a board of county commissioners representing a county that included all the territory of all the counties represented by the commissioners on said joint board. All rights of appeal, and all other rights or remedies as provided in section 6131.01 to 6131.64, inclusive, of the Revised Code, apply to joint county improvements. All officers doing any acts or making any findings for or against such improvement shall perform all the duties required of them under such sections. All owners affected by the proceedings for a joint county improvement shall have all the rights and remedies given them in the case of single county improvements. The proceedings in joint county improvements shall be the same as the proceedings in single county improvements except as modified in sections 6133.02 to 6133.11, inclusive, of the Revised Code.”

It is to be noted, however, that an amendment of an adopted statute does *not* change the adopted statute which became a part of the adopting statutes. The rule is stated in 37 *Ohio Jurisprudence*, 341, as follows:

“It is a general rule that when a statute adopts a part or all of another statute, domestic or foreign, general or local, by a specific and descriptive reference thereto the adoption takes the statute as it exists at that time. The subsequent amendment or repeal of the adopted statute has no effect on the adopting statute, unless it, also, is repealed expressly or by necessary implication.”

Section 6131.12, *supra*, was a part of Am. H. B. No. 220, 102nd General Assembly, 127 Ohio Laws 577 (583), effective August 23, 1957. This enactment changed the prior law to add the requirement of a transfer of funds. Section 6133.03, *supra*, was enacted as a part of the codification of drainage laws in H. B. No. 569, 85th General Assembly, 110 Ohio Laws, 161 (195), effective July 16, 1923. Under the rule above, Section 6133.03, *supra*, adopts those provisions of Chapter 6131., Revised Code, existing on July 16, 1923. Subsequent amendments of Chapter 6131., Revised Code, do not change the adopted provisions of Chapter 6133., Revised Code, in the absence of a re-enactment of Section 6133.03, *supra*.

Therefore, in answer to your second question, I conclude that Chapter 6133., Revised Code, dealing with joint county ditches contains no requirement for a transfer of funds similar to that required by Section 6131.12, Revised Code, in the case of a county ditch improvement project.

In sum, therefore, it is my opinion and you are accordingly advised:

1. Under the provisions of Section 6131.12, Revised Code, an effective transfer of funds from the general fund of the county to the general drainage improvement fund is required before the county engineer can be ordered to prepare the reports and schedules as provided in Sections 6131.01 to 6131.03, inclusive, Revised Code.

2. Chapter 6133., Revised Code, dealing with joint county ditches contains no requirement for a transfer of funds similar to that required by Section 6131.12, Revised Code, in the case of a county ditch improvement project.

Respectfully,
WILLIAM SAXBE
Attorney General