

OPINION NO. 70-106**Syllabus:**

1. The board of directors of a sanitary district may levy upon the property of the district an assessment of three-tenths of a mill on the assessed valuation for real estate tax purposes for the payment of preliminary expenses incurred by the district, subject to the ten mill limitation imposed by Section 2, Article XII, Ohio Constitution.

2. The directors of a sanitary district may levy special assessments pursuant to Section 6115.48, Revised Code, without a vote of the property owners of the district, subject only to the limitations imposed by said section as to the amount of such assessments.

3. The procedures that the directors must follow in placing an assessment on a sanitary district's books and in collecting same are those prescribed by Sections 6115.48 and 6115.49, Revised Code.

4. There is no provision for the placing of a levy on the ballot to be voted upon by those residing within the sanitary district.

To: J. Warren Bettis, Columbiana County Pros. Atty., Lisbon, Ohio
By: Paul W. Brown, Attorney General, August 17, 1970

Your request for my opinion regarding the financing of a sanitary district for the purpose of exterminating and preventing mosquitoes and other insects and abating their breeding places, as authorized by Section 6115.04 (F), Revised Code, presents the following questions:

"1. May the directors place an assessment against the property owners based upon the appraised valuation for real estate tax purposes, a levy of three-tenths of a mill for the purpose of preliminary expenses in accordance with 6115.46.

"2. May the directors levy a tax by assessment without a vote of the people in accordance with 6115.-48, the last paragraph therein which provides that the total of all levies of such assessments during any ten-year period shall not exceed three per cent of the appraised valuation of the property within the district as listed and assessed for taxation. In no event shall the levy exceed in or for any one year, five tenths of one per cent of said appraised valuation.

"3. What is the procedure that the directors must follow in placing the assessment on a sanitary district's books and the collection of same.

"4. Is there any provisions for the placing of a levy on the ballot to be voted upon by those residing within the sanitary district."

Your letter indicates that the district in question is an organized district; and, as such, the method its director may employ in securing payment for preliminary expenses is set forth in the following portion of Section 6115.46, Revised Code:

* * * * *

"As soon as any district has been organized, and a board of directors of the sanitary district has been appointed and qualified, such board may levy upon the property of the district not to exceed three tenths of a mill on the assessed valuation thereof as a level rate to be used for the purpose of paying expenses of

organization for surveys and plans, and for other incidental expenses which may be necessary up to the time money is received from the sale of bonds or otherwise.* * *

Section 6115.45 (A), Revised Code, which establishes the "preliminary fund", characterizes the assessment described in Section 6115.46, supra, as "ad valorem tax". As the real estate tax is an valorem tax, the appraised valuation for real estate tax purposes is the appropriate standard for determining the amount for which property within the district is to be assessed. This conclusion is substantiated by the fact that the duties of the district's board of appraisers, as prescribed by Sections 6115.29, 6115.30, 6115.31, and 6115.33, Revised Code, do not include the making of appraisals for the aforementioned purpose. Thus, in answer to your first inquiry, the board of directors of a sanitary district may levy upon the property of the district an assessment of three tenths of a mill on the assessed valuation for real estate tax purposes for the payment of preliminary expenses incurred by the district, subject, of course, to the ten mill limitation imposed by Section 2, Article XII, Ohio Constitution.

Section 6115.48, Revised Code, sets forth the procedures for financing the execution of the sanitary district's official plan. This section authorizes the board of directors to:

"* * *levy on all real property, upon which benefits have been appraised, an assessment of such portion of said benefits as is found necessary by said board to pay the cost of the execution of the official plan including superintendence of construction and administration, plus ten per cent of said total to be added for contingencies, but not to exceed in the total of principal the appraised benefits so adjudicated.

"Such assessment shall be apportioned to and levied on each tract of land or other property in said district in proportion to the benefits appraised, and not in excess thereof.

"* * * * * * * *"

The monies so collected are to be paid into the "bond fund" as provided by Section 6115.45 (B), Revised Code.

There is no provision in this or any other section of Chapter 6115, Revised Code, requiring a vote of the property owners for approval of any of the assessments provided for therein. The sanitary district is a taxing unit and derives its power to levy assessments by delegation from the legislature as provided in Section 6115.08, Revised Code, which states in part:

"* * * * * * *"

"* * *A district so organized shall be a political subdivision of the state and a body corporate with all the powers of a corporation, and shall have perpetual existence, with powers to sue and be sued, to incur debts, liabilities, and obligations to exercise the right of eminent domain and of taxation and assessment as provided in such sections, to issue

bonds, and to do all acts necessary and proper for the carrying out of the purposes for which the district was created and for executing the powers with which it is invested.

" * * *

* * *

* * *"

Although there is no requirement for a vote of the property owners of the district to approve a particular levy, it might be pointed out that their interests are protected by the extensive procedural safeguards provided in Chapter 6115, supra, before the district may be "organized" in the first place. Thus, in answer to your second question, the directors of a sanitary district may levy special assessments pursuant to Section 6115.48, supra, without a vote of the property owners of the district, subject only to the limitations imposed by said section as to the amount of such assessment.

Your third question involved the procedure that the board of directors of a sanitary district must follow in placing the assessment on a sanitary district's books and the collection of same. Section 6115.48, supra, clearly outlines the procedure to be followed in placing the assessment on a sanitary district's books and the collection of same, and I perceive no difficulties in applying the dictates of this section. Section 6115.49, Revised Code, sets forth the procedures for the payment of assessments. This section also would seem to be self-explanatory. In answer to your third inquiry, the procedures that the directors must follow in placing an assessment on a sanitary district's books and in collecting same are those prescribed by Sections 6115.48 and 6115.49, supra.

The answer to your second inquiry is, in large measure, dispositive of the fourth question you raise. Although the interests involved in the financing of a sanitary district are those of the property owners of the district, the nature of a special assessment is that it is levied with reference to the special benefits that properties within the district derive therefrom. See Hill v. Hagdon, 5 Ohio St. 243 (1855). As previously stated, these interests are protected by the procedural safeguards of Chapter 6115, supra, before the district may be organized. Once organized, the district, subject to the express limitations imposed by the relevant statutes, has plenary power to levy assessments and there is no provision for the placing of a levy on the ballot to be voted upon by those residing within or owning property with the sanitary district.

In conclusion, it is my opinion and you are hereby advised that:

1. The board of directors of a sanitary district may levy upon the property of the district an assessment of three-tenths of a mill on the assessed valuation for real estate tax purposes for the payment of preliminary expenses incurred by the district, subject to the ten mill limitation by Section 2, Article XII, Ohio Constitution.

2. The directors of a sanitary district may levy special assessments pursuant to Section 6115.48, Revised Code, without a vote of the property owners of the district, subject only to the limitations imposed by said section as to the amount of such assessment.

3. The procedures that the directors must follow in placing an assessment on a sanitary district's books and in collecting same are those prescribed by Sections 6115.48 and 6115.49, Revised Code.

4. There is no provision for the placing of a levy on the ballot to be voted upon by those residing within the sanitary district.