
194

SYLLABUS:

1. A joint board of county commissioners acting pursuant to Chapter 6133, Revised Code, to construct, reconstruct, or improve a joint county ditch is not authorized by law to issue and sell bonds to pay the cost of such improvement and a resolution adopted by such a joint board of county commissioners is void to the extent that it attempts to determine the necessity for issuing bonds.

2. Pursuant to Section 6133.03, Revised Code, as amended effective November 9, 1959, the board of county commissioners for each county included in the joint board of county commissioners may issue and sell bonds to pay such county's portion of the cost of the improvement.

3. Section 6131.23, Revised Code, directs that interest shall be added to unpaid installments of assessments when bonds have been sold to pay for the improvement, but there is no authority in law for a board of county commissioners to charge interest on such installments where there are no such interest-bearing bonds.

Columbus, Ohio, May 6, 1963

Hon. John D. Starn
Prosecuting Attorney
Sandusky County
Court House
Fremont, Ohio

Dear Sir:

Your request for my opinion reads:

“Your opinion is requested as to the questions raised herein, based upon the following set of facts:

“1. On February 27, 1959 John Maddy and others petitioned the Boards of County Commissioners of Sandusky and Wood Counties for the deepening, widening and straightening of Sugar Creek, which has its origin in Wood County and its terminus in Sandusky County.

“2. The necessary proceedings were had under Chapter 6133 to establish the Joint Board of County Commissioners and the matter proceeded in accordance with Chapter 6131.

“3. An appeal was taken to the Common Pleas Court wherein the ditch project was sustained (with minor modifications) and a stipulation as to compensation and damages was entered into between all interested parties. The Court of Appeals, Sixth District, affirmed and the Supreme Court overruled the motion to certify the record and issued its mandate to the Common Pleas Court, commanding that the project proceed according to law. Therefore, all legal remedies have been exhausted, both as to the propriety of the project, the damages and compensation of the property owners and the assessments to be made against those benefited.

“4. On July 12, 1960 the Joint Board passed a resolution which, among other things, determined 10 years to be the period of time for payment of the assessments and that bonds of the county be sold at not to exceed 4% per annum, with interest being added to the assessments (R. C. 6131.23). The estimated cost exceeded \$100,000.00

“5. The Joint Board has now determined that no bond sale will be required because there will be sufficient funds on hand to carry the project along and pay the contractor out of current ditch funds.

“I have been confronted with this set of facts and have been asked the following questions:

“A. May the Joint Board lawfully amend its findings as to sale of bonds and make a finding that no such bond sale is necessary?

“B. If the answer to Question A is in the affirmative, then: May those of the property owners who fail to pay their assessments in cash be charged interest on their unpaid installments? (Comment: R.C. 6131.23, last para-

graph, *seems* to permit interest charges only to the extent that the bonds bear interest).

“The Engineer is ready to advertise for bids and, accordingly, it is requested that, if possible, your reply to the foregoing be expedited.”

Section 6133.03, Revised Code, as amended by the 103 General Assembly in Amended Substitute House Bill No. 306, 128 Ohio Laws, page 694, reads :

“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. *The cost of a joint county improvement shall be paid by the counties affected by such improvement, in proportion to their total ditch assessments, or as otherwise apportioned by the joint board, for such improvement. To meet its portion of such cost, a board of county commissioners may borrow such sums of money as are apportioned to the county, and may issue and sell the bonds of the county to secure the payment of the principal and interest of the sum borrowed. Such principal and interest shall be paid as provided in Section 133.19 of the Revised Code.* All rights of appeal, and all other rights and remedies as provided in sections 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.” (Emphasis added)

Section 3 of Amended Substitute House Bill No. 306 provides :

“Any proceeding pending at the time this act becomes effective which was commenced under the provisions of Chapter 6133 of the Revised Code shall be subject to and

affected by the amendments of the sections of the Revised Code made by this act.”

This amendment to Section 6133.03, Revised Code, became effective November 9, 1959, and the language which has been emphasized by italics came into the law at that time. Prior to that date Chapter 6133, Revised Code, had not provided for the issuance of bonds where a joint board of county commissioners was proceeding under that chapter to construct or improve a joint county ditch. It was the law as it formerly existed which was being considered in Opinion No. 499, Opinions of the Attorney General for 1959, page 253, the syllabus of which reads:

“Section 6133.07, Revised Code, provided the sole method of financing the construction of joint county ditch projects by assessments against owners of benefited lands, and a joint board of county commissioners, the sole agency authorized to proceed with such joint improvements, is without authority, under Chapters 133., 6131., or 6133., Revised Code, to issue bonds or notes to finance such projects.”

The petition mentioned in your letter was filed February 27, 1959, but, because of Section 3 of Amended Substitute House Bill No. 306, the joint board of county commissioners and the board of county commissioners have those powers and duties set forth in Section 6133.03, Revised Code, as amended.

You have stated that the joint board of county commissioners adopted a resolution declaring that bonds of the county should be sold and should bear interest at a rate of not more than 4 percent. Section 6133.03, Revised Code, however, authorizes *a board of county commissioners to issue and sell bonds of the county to meet its portion of the cost*. This follows the direction that the total cost of the improvement shall be apportioned between or among the cooperating counties. It seems to me that there is nothing in this section which authorizes a joint board of county commissioners to borrow money or to issue and sell bonds, and such a resolution adopted by a joint board would be a nullity.

Your inquiry states that an appeal was taken to a Court of Common Pleas in accordance with Chapter 6131, Revised Code, and that appellate procedures were exhausted, with the joint county ditch project being sustained. These appeals, however, pursuant to

Section 6133.09 and the pertinent sections of Chapter 6131, Revised Code, would have related generally to the problems of the necessity or advisability of the improvement, assessments, compensation for land taken, and damages to land. I find nothing which leads me to believe that these legal proceedings would in any way have touched on the question of issuing bonds to pay for this improvement.

Section 133.19, Revised Code, mentioned in Section 6133.03, Revised Code, is part of the Uniform Bond Law, and directs that bonds or notes issued by any subdivision shall specify the purpose for which they are issued, the resolution or ordinance under which they are issued and that such evidence of indebtedness shall bear interest at not more than six percent. This section then directs the manner in which such bonds or notes shall be signed and sealed. There is nothing in this section which suggests that a joint board of county commissioners acting pursuant to Chapter 6133, Revised Code, to construct or improve a joint county ditch is a "subdivision" within the meaning of Section 133.01, Revised Code.

You have also asked whether interest may be charged on those assessments paid in installments if no bonds are issued and sold. I find nothing in Chapter 6133, Revised Code, which relates to this question. Section 6133.03, Revised Code, however, provides in part:

"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 6131.04 to 6131.64, inclusive, of the Revised Code, relating to single county ditches insofar as applicable."

Section 6131.23, Revised Code, to which you referred in your letter, directs that a board of county commissioners shall determine the period of time during which assessments shall be paid and concludes with this paragraph:

"When assessments are made payable in installments and bonds have been sold to pay for the improvement, interest shall be added to said installments of assessments at the same rate as is drawn by the bonds issued to pay for such improvements. Any owner may pay the estimated assessments on his land in cash within thirty days after the final hearing without paying any interest thereon."

There is no other provision in Chapter 6131, Revised Code, which authorizes a board of county commissioners to charge interest on assessments which are paid in installments, and it is my opinion that Section 6131.23, Revised Code, is controlling; where no bonds are issued, there is no authority to add interest to the assessments made.

It is, therefore, my opinion and you are advised that:

1. A joint board of county commissioners acting pursuant to Chapter 6133, Revised Code, to construct, reconstruct, or improve a joint county ditch is not authorized by law to issue and sell bonds to pay the cost of such improvement and a resolution adopted by such a joint board of county commissioners is void to the extent that it attempts to determine the necessity for issuing bonds.

2. Pursuant to Section 6133.03, Revised Code, as amended effective November 9, 1959, the board of county commissioners for each county included in the joint board of county commissioners may issue and sell bonds to pay such county's portion of the cost of the improvement.

3. Section 6131.23, Revised Code, directs that interest shall be added to unpaid installments of assessments when bonds have been sold to pay for the improvement, but there is no authority in law for a board of county commissioners to charge interest on such installments where there are no such interest-bearing bonds.

Respectfully,

WILLIAM B. SAXBE

Attorney General