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1. SEWER DISTRICT—ESTABLISHED BY COUNTY COMMISSIONERS — SEWERS AND DISPOSAL WORKS CONSTRUCTED—COMMISSIONERS AUTHORIZED TO CONTRACT WITH OWNERS OF PRIVATE SEWER LINES OUTSIDE OF DISTRICT TO RECEIVE AND DISPOSE OF SEWAGE—MAY FIX REASONABLE CHARGES—NO AUTHORITY TO AGREE TO MAINTAIN PRIVATE LINES—SECTION 6117.01 ET SEQ., RC.

2. COUNTY HAS TITLE TO PRIVATELY OWNED SEWER LINES WITHIN SEWER DISTRICT ESTABLISHED BY COUNTY COMMISSIONERS — LINES CONNECTED TO COUNTY SYSTEM—COMMISSIONERS MAY FIX RATE TO RECEIVE AND DISPOSE OF SEWAGE—OBLIGATED TO MAINTAIN LINES—SECTION 6117.38 RC.

SYLLABUS:

1. When pursuant to the provisions of Section 6117.01 et seq., Revised Code, the commissioners of a county have established a sewer district and have constructed therein sewers and disposal works, the commissioners are authorized to contract with the owners of private sewer lines outside of the district to receive and dispose of their sewage, and are authorized to fix reasonable charges therefor, but such commissioners are without authority to agree to maintain such private lines.

2. Where pursuant to the provisions of Section 6117.38 Revised Code, a county has obtained title to privately owned sewer lines constructed within a sewer district established by the commissioners of such county, and such lines are connected to the county system, the county commissioners may lawfully fix a reasonable rate for receiving and disposing of the sewage from the lines so acquired, and is obligated to maintain them.

Columbus, Ohio, June 30, 1955

Hon. Calvin W. Hutchins, Prosecuting Attorney
Ashtabula County, Jefferson, Ohio

Dear Sir:

I have before me certain correspondence from your office in which questions are raised as to the responsibility of the county commissioners relative to the maintenance of sewer lines which have been built by private

persons or corporations and connected with a public sewer established and maintained by the county. I quote the following from your first letter:

> "By authority of the Board of County Commissioners, and under the supervision of the County Engineer, a privately owned corporation has laid a sewer line within the limits of a township highway. This sewer line leads from a subdivision which has been developed by the private corporation to sewer lines owned by the City of Ashtabula."

From a subsequent communication I quote the following:

> "Referring again to this same situation, please be advised that the corporation which installed the sewer line in the public highway to service its subdivision, now is requesting that the county commissioners assume responsibility for the maintenance and repairs.
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> "We note the provisions of Section 6117.38 R. C., which provide the manner in which the county may acquire certain sewers, in the event that they are necessary to provide sewage disposal for property in a sewer district, and the established sewers fit into the picture.
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> "Will you please advise whether or not the county may assume responsibility for the repair and maintenance of this privately constructed sewer, in the absence of some act by the installing corporation which would vest the county with title to the sewer, as provided in the section of the code above referred to.
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> "We have a second situation in reference to a sewer which was installed in a public highway without the consent or supervision of the county commissioners. This is a small, local sewer, servicing about ten or eleven houses. Originally, it emptied into a septic tank. Within the last few years, the out-fall from the septic tank has been connected to a county sewer.
>
> "We would like to know whether the county commissioners are charged with the duty of maintaining this line in repair."

From these statements it appears that both private installations were located in the public highway and both have been connected into a public sewer line. It appears, however, that in the one case the original installation was made with the consent of the county commissioners and under the supervision of the county engineer, while in the other case such installation was made without such consent or supervision. I cannot see that this point of difference can have any bearing on the questions you are raising. Both private sewers are actually in the highway. In both cases I under-

stand that permission has in some way been obtained to drain these sewers into the county system, and they are connected thereto.

Your question relative to the first case is whether or not the county may assume responsibility for the repair and maintenance of this privately constructed sewer, in the absence of some act by the installing corporation which would vest the county with title to the sewer.

In the second instance, you inquire whether the county commissioners are charged with the duty of maintaining this privately constructed sewer line.

Section 6117.38 Revised Code, appears to me to have a bearing upon both situations. That section is a part of an act passed in 1917, and found in 107 Ohio Laws, page 440. It now constitutes the major portion of Chapter 6117 of the Revised Code, which relates to county sewers.

By the terms of Section 6117.01 Revised Code, county commissioners are given authority to lay out, establish and maintain one or more sewer districts outside of municipal corporations. This section contains the following provision:

> "* * * Any board may *acquire, construct, maintain, and operate such main, branch, intercepting, or local sewer* within any such district, and such outlet sewer and sewage treatment or disposal works within or without such district, as are necessary to care for and conduct the sewage or surface water from any part of such district to a proper outlet, so as to properly treat or dispose of same. * * *" (Emphasis added.)

It will be noted that the board of county commissioners is authorized to acquire as well as construct such sewer lines and, coupled with this right, has the right to maintain and operate them.

Section 6117.02 Revised Code, contains among others the following provision:

> "The board of county commissioners may fix reasonable rates or charges of rents to be paid to the county for the use of the sewers or sewage treatment or disposal works referred to in Section 6117.01 of the Revised Code by every person, firm, or corporation whose premises are served by a connection to such sewers or sewage treatment or disposal works, * * *"

Subsequent provisions of this original law, which has come down to the present time without radical changes, authorize the cost of such sewer

lines to be assessed upon the benefited property, although authority is given to the county to pay any portion which they may determine out of county funds.

Coming to Section 6117.38 Revised Code, we find provisions authorizing the county commissioners to extend the services of such sewer system to territory *not included* within the district. It is provided in this section, in part, as follows:

> "At any time after the formation of any sewer district, the board of county commissioners, when it deems it expedient, on application by a corporation, individual, or public institution *outside of any district,* may contract with such corporation, individual, or public institution for depositing sewage from *premises outside such district* in the sewers constructed or to be constructed to serve such district and for the treatment or disposal thereof, on such terms as the board deems equitable. * * *"
>
> (Emphasis added.)

The above provision appears to contemplate only a contract for service with outsiders. There is a further provision in the same section which contemplates the acquisition by the county of the title to such privately constructed sewers, *but only as to territory within the district.* This provision reads as follows:

> "Wherever sewers have been constructed by a corporation, individual, or public institution at its own cost for the purpose of providing sewerage for any allotment, development, subdivision, or similar enterprise, or for any institution, and the board deems it expedient *to acquire* said sewers or any part thereof for the purpose of providing sewerage for territory outside the allotment, subdivision, development, or other such enterprise for which such sewers were constructed, *such additional territory being within a district,* the county sanitary engineer shall examine said sewers. If he finds such sewers properly designed and constructed he shall make an appraisal of the present value of said sewers or parts thereof to the district as a means of providing sewerage for such territory outside the allotment, subdivision, development, or similar enterprise for which it was originally constructed and shall certify the same to the board. * * *" (Emphasis added.)

From the foregoing provisions, the conclusion seems clear that the county has open to it two modes of procedure: (a) to contract with the owners of property located outside the district for the services of receiving and disposing of their sewage coming through the lines constructed by

them, and (b) to contract with owners of property within the district whereby the county would acquire and operate sewers which have been constructed by such private owners.

It does not definitely appear from your letter whether the two installations mentioned are within or without the sewer district.

In view of the distinction above pointed out as to the location of the property, it would appear that if the owners of the premises located within the sewer district desire to have the service of disposal of their sewage they must accomplish it by a contract whereby they convey their installation to the county on terms agreed upon; whereas if their property is located outside the sewer district the only contract the county is authorized to make is a contract for service which would leave the lines in the ownership of the individuals who constructed them.

In any case, in my opinion both the right and obligation of maintenance goes with the ownership of the sewer lines. If those located within the district are conveyed to the county, then the county along with the title asumes the obligation of maintenance. If the title remains in the private owners then there could be no obligation or right on the part of the county to bear the cost of their maintenance. That public funds cannot be used to benefit private interests seems almost axiomatic. The Constitution, Article XII, Section 5, provides that money raised by taxation shall be applied only to the purpose for which it is raised. See also Section 6 of Article VIII. In 32 Ohio Jurisprudence, at page 734, it is said:

> "Public funds can be disbursed only by clear authority of law, and upon compliance with statutory provisions relating thereto. And in case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power."

The provisions of Section 6117.02, which I have quoted, would give the commissioners the right to exact in either of the situations presented, a reasonable rate for the handling and disposal of the sewage.

It is accordingly my opinion:

1. When pursuant to the provisions of Section 6117.01 et seq. Revised Code, the commissioners of a county have established a sewer

district and have constructed therein sewers and disposal works, the commissioners are authorized to contract with the owners of private sewer lines, outside of the district, to receive and dispose of their sewage, and are authorized to fix reasonable charges therefor, but such commissioners are without authority to agree to maintain such private lines.

2. Where pursuant to the provisions of Section 6117.38 Revised Code, a county has obtained title to privately owned sewer lines constructed within a sewer district established by the commissioners of such county, and such lines are connected to the county system, the county commissioners may lawfully fix a reasonable rate for receiving and disposing of the sewage from the lines so acquired, and is obligated to maintain them.

Respectfully,
C. WILLIAM O'NEILL
Attorney General