

OPINION NO. 72-092

Syllabus:

A state university is exempt from the payment of sanitary district special assessments on its property unless the General Assembly specifically allows the payment of such assessments.

To: William S. Carlson, Pres. University of Toledo, Toledo, Ohio
By: William J. Brown, Attorney General, October 13, 1972

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

"The University of Toledo, a state university created by Section 3360.01 Ohio Revised Code, does hereby request your opinion regarding the propriety of its expenditure of funds appropriated by the General Assembly for educational purposes for the payment of the maintenance assessment of the Toledo Area Sanitary District created pursuant to Chapter 6115 Ohio Revised Code.

"Bills have been received by The University of Toledo from the Treasurer of Lucas County, Ohio for assessments against real estate owned by its Board of Trustees in trust for the University in the total amount of \$2,453.71 for the year 1971. All of these assessments are for mosquito control and are placed upon the duplicate as a maintenance assessment of the Sanitary District pursuant to authority of Section 6115.53 Ohio Revised Code.

"Section 3345.17 Ohio Revised Code provides that:

"All property, personal, real, or mixed of the boards of trustees and of the housing commissions of the state universities, the medical college of Ohio at Toledo and of the state held for the use and benefit of any such institution which is used for the support of such institution, is exempt from taxation so long as such property is used for the support of such university or college."

"Section 6115.01 Ohio Revised Code defines 'person' as any 'person, firm, partnership, association or corporation, other than county, township, municipal corporation, or other political subdivision' and further defines 'land' as 'real property, as 'real property' is used in and defined by the laws of this state, and embraces all railroads, tramroads, roads, electric

railroads, street and interurban railroads, streets and street improvements, telephones, telegraphs, and transmission lines, gas, sewerage and water systems, pipelines and rights-of-way of public service corporations, and all other real property whether public or private.'

"Section 6115.53 Ohio Revised Code authorized the sanitary district to assess its maintenance assessment 'upon each tract or parcel of land and upon corporate property within the district . . .'

"Section 6115.42 Ohio Revised Code provides:

"'If any lands in any sanitary district are not liable for taxation or assessment at the time of the execution of the work, but afterwards, during the period when such work is being paid for, become liable to taxation or assessment by reason of some change in condition, benefit, or ownership, such lands shall thereupon be appraised and assessed as other lands in said district receiving equal benefits.'

"The only specific authority for the payment of assessments of the sanitary district by a political subdivision is contained in Section 6115.61 Ohio Revised Code which permits the appropriation of funds from a water department of the political subdivision to pay for the supply of water by a sanitary district.

"Inasmuch as there appears to be some conflict between the general authority to assess all properties contained in Section 6115.53 and the implication that certain lands are exempt from the payment of taxation or assessment in Section 6115.41, we would appreciate your opinion whether The University of Toledo is exempt from the payment of these assessments by virtue of its exemption from taxation contained in Section 3345.17 Ohio Revised Code."

It is clear, from the sections of the Revised Code to which your letter refers, that the University of Toledo is a state university, Section 3360.01, Revised Code, and that its property is exempt from general taxation, Section 3345.17, Revised Code.

There is, however, a well recognized distinction between a general tax and a special assessment. In Home Owners' Loan Corp. v. Tyson, 133 Ohio St. 184, 188 (1930), the Supreme Court pointed out that, although in a broad sense an assessment is a tax, and a tax is an assessment, nevertheless

"there is a generic difference in that taxes are levied to pay the expense of government and an assessment is levied upon property abutting or adjacent to a public improvement with reference to the special benefits conferred for the paying of the cost thereof, * * * (Emphasis added.)

See also Miami County v. Dayton, 92 Ohio St. 215, 227-234 (1915); Adler v. Whitbeck, 44 Ohio St. 539, 563-564 (1886); Lima v. Cemetery Association, 42 Ohio St. 128 (1884); Reeves v. Treasurer of Wood County, 8 Ohio St. 333 (1858); and Hill v. Higdon, 5 Ohio St. 243 (1855). Furthermore, some of these cases clearly hold that an exemption from general taxes does not necessarily mean that the same property is also exempt from special assessment. See also Jackson v. Board of Education, 115 Ohio St. 368 (1926). It must, therefore, be first decided whether we are dealing with a tax or an assessment.

An examination of the pertinent sections of Chapter 6115, Revised Code, which prescribes the nature, the manner of creation, and the powers of a sanitary district, leaves no doubt that the authority of such a district to levy taxes is limited to special assessments against property within the district, based on the benefit derived by such property from the organization and operation of the district. In its order organizing a sanitary district (Section 6115.29, Revised Code) the court of common pleas is required to appoint appraisers, who shall

"thereupon appraise the benefits of every kind of all real property * * * which will result from the organization of said district and the execution of the official plan. * * *"
(Section 6115.30 Revised Code.)

Provision is also made for keeping the appraisals current. Section 6115.43, Revised Code. The revenues of the sanitary district are contained primarily in the "bond fund", designed to defray the cost of original construction and organization, and in the "maintenance fund", used to meet upkeep, administration and current expenses. Section 6115.45, Revised Code. Both of these funds are derived from special assessments levied upon land or property in the district in proportion to the benefits appraised. Sections 6115.48 and 6115.53, Revised Code. It is true that Section 6115.53 refers to the levies for the maintenance fund as a "maintenance tax" as well as a "maintenance assessment." But the intent of the General Assembly to provide for special assessments in Chapter 6115 is quite clear and must be followed regardless of some of the terminology used. Miami County v. Dayton, *supra*, 92 Ohio St. at page 229. The next question is whether state property is exempt from a special assessment.

My predecessors, in reliance on State, ex rel. Monger v. Board of County Commissioners, 119 Ohio St. 93 (1928), have consistently held that a political subdivision, such as a sanitary district (Section 6115.03 (F), Revised Code), has no power to levy and collect a special assessment upon property of the State of Ohio in the absence of specific statutory authorization. The first Attorney General to rely on Monger, in Opinion No. 728, Opinions of the Attorney General for 1946, pointed out that the majority rule in other jurisdictions is that, "in the absence of legislative permission, state property is not subject to special assessment." See also Opinion No. 658, Opinions of the Attorney General for 1949; Opinion No. 1036, Opinions of the Attorney General for 1951; Opinion No. 2685, Opinions of the Attorney General for 1961; Opinion No. 3388, Opinions of the Attorney General for 1962. The last of these Opinions referred to Informal Opinion No. 304, dated April 26, 1961, in which the then Attorney General followed the same reasoning in holding that the City of Columbus could not collect a special assessment against The Ohio State University for cleaning the streets abutting on its property.

Examination of the Revised Code in the light of this rule discloses no provision which subjects property of the State of Ohio to the type of special assessment with which you are concerned. In fact, as your letter points out, Section 6115.42, Revised Code, clearly implies that there are exemptions from the special assessments levied by sanitary districts. Furthermore, Section 3345.12 (N), Revised Code, which pertains to the general powers of the state universities, specifically provides for the exemption of a great part of the universities' property in the following language:

"All facilities purchased, acquired, constructed, or owned by a state university or college, or financed in whole or in part by obligations issued by a state university college, and used for the purposes of a state university or college or other publicly owned and controlled college or university, is public property used exclusively for a public purpose, and such property and the income therefrom is exempt from all taxation and assessment within this state * * *" (Emphasis added.)

It is true that the definition of university "facilities" as used here (see Section 3345.12 (A) (3) and (4) is not all inclusive. But the omission of some university property in the exemption is irrelevant in view of the fact that, as we have seen above, the rule is that state property is exempted from assessment unless specifically declared nonexempt. If the General Assembly had intended to subject the property of the universities to special assessments it would have done so in language similar to Section 6133.14, Revised Code, in which it made provision for payment of the state's share of assessments for county and township ditches designed for drainage improvement.

In specific answer to your question it is my opinion, and you are so advised, that a state university is exempt from the payment of sanitary district special assessments on its property unless the General Assembly specifically allows the payment of such assessments.