

1791.

APPROVAL, BONDS OF NORWALK CITY SCHOOL DISTRICT, HURON COUNTY, OHIO—\$9,953.28.

COLUMBUS, OHIO, October 31, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1792.

SEWER DISTRICT—COUNTY COMMISSIONERS MUST FIRST ESTABLISH SAME BEFORE CONSTRUCTING WATER SUPPLY SYSTEM—SEWERS NEED NOT BE CONSTRUCTED THEREIN IMMEDIATELY—TRANSFER OF CONTROL AND MANAGEMENT OF WATER SUPPLY SYSTEM TO VILLAGE PROHIBITED WHEN.

SYLLABUS:

1. *Before the county commissioners may acquire or construct a public water supply or water works system within their county, a sewer district for such territory must first be established.*

2. *Upon the establishment of such sewer district, it is not necessary that the commissioners immediately proceed to construct sewers therein, but may construct the same at such times as they deem the public health and welfare require it, and may, prior to such construction, construct in such sewer district a water works system.*

3. *While the county commissioners may contract with a municipality for water supply, there is no authority whereby the county commissioners can dispense with the management and control of a water supply system which they have constructed in a sewer district outside a municipality and transfer such control and management to a city or village until such territory is annexed to such municipality.*

COLUMBUS, OHIO, November 1, 1933.

HON. NORTON C. ROSENRETER, *Prosecuting Attorney, Port Clinton, Ohio.*

DEAR SIR:—I am in receipt of your communication, which reads in part as follows:

"I write for your opinion concerning the following situation.

The county commissioners of this Ottawa County have been petitioned by approximately 90% of the land and lot owners residing in a given territory adjacent to and east of the Village of Port Clinton for a water supply or water works system. This territory borders on Lake Erie and for the past several years has been considerably improved, in that a large number of people have been buying lots and building substantial homes and cottages along the lake front from Port Clinton east to a Summer resort known as Catawba Island.

The lot and land owners are willing that the cost of the construction of said improvement be assessed on the lots and lands receiving

the benefit of such water. It appears that the lots and lands affected thereby would be much enhanced in value by the construction of such a water works system and would encourage further selling, building and development in this territory.

* * * * *

I am informed that no immediate, urgent need exists for the establishment of a sewer district for this territory, nor is it desired by the petitioners.

We inquire, therefore, if a sewer district must first be established for the given territory and further, that if it is necessary to establish such a sewer district, is it actually necessary to construct a sewer, or would it be sufficient to establish such district as to territory and boundaries alone by proper resolution and other procedure and dispense with the actual building of the sewer?

* * * * *

Also, in view of this water to be obtained and purchased from the Village of Port Clinton, we desire to know whether the management and control of this water district may not be dispensed with by the county commissioners after the original construction has been completed, so that the village could thereafter contract directly with each user of water in the territory without the necessity of having the county commissioners make such collections and certify as delinquent taxes all such delinquent payments for water maintenance and other service."

A reading of the statutes governing the construction and operation of public water supplies or water works systems by county commissioners shows clearly that the county commissioners can acquire or construct a public water supply or water works system only in an established sewer district. For instance, section 6602-17, General Code, provides in part:

"For the purpose of preserving and promoting the public health and welfare, and providing fire protection, the boards of county commissioners of the several counties of this state may by resolution, acquire, construct, maintain and operate any public water supply or water works system within their respective counties, for any established sewer district. * * * * * By contract with any municipal corporation, or any person, firm or private corporation furnishing a public water supply within or without their county, they may provide such supply of water to such sewer district or districts from the water works of such municipality, person, firm or private corporation. * * *"

Section 6602-17b, General Code, reads in part as follows:

"The authority of the board of county commissioners to provide water supply improvements and to maintain and operate the same within sewer districts which include a part or all of the territory within one or more incorporated municipalities shall be the same as provided by law within sewer districts wholly outside of municipalities, * * *."

Section 6602-18, General Code, reads in part as follows:

"After the establishment of any sewer district the county commissioners may have prepared by the county sanitary engineer a general

plan of water supply and water works for such district as complete as can be made at that time. * * *

Section 6602-28, General Code, provides that the State Department of Health may order the construction of a water supply system and provides that when so ordered "the commissioners shall obey such order and proceed, as provided in section 6602-1 and sections 6602-17 to 6602-33 of the General Code, inclusive, to establish such district or districts, provide necessary funds, and construct such public water supplies, or maintain, repair or operate the same, as may be required by such order and in such manner as may be satisfactory to the state department of health."

Section 6602-32, General Code, among other things, provides that the commissioners may acquire water supply lines which have been constructed by corporations, individual or public institutions for the purpose of supplying water to any allotment, development, subdivision or similar enterprise, or to any institution when it is deemed expedient to acquire said water supply line or lines or any part thereof for the purpose of supplying water to territory outside the allotment, development or other enterprise for which such line or lines were constructed, "such additional territory being within a sewer district." It is apparent therefore that before the county commissioners of a county may acquire or construct a public water supply or water works system within the county, they must first establish a sewer district for the territory to be covered by such system. Section 6602-1, General Code, reads in part as follows:

"For the purpose of preserving and promoting the public health and welfare, the boards of county commissioners of the several counties of this state may, by resolution, lay out, establish and maintain one or more sewer districts within their respective counties, outside of incorporated municipalities, and may cause to be made by a competent sanitary engineer such surveys as may be necessary for the determination of the proper boundaries of such districts. Each district shall be designated by an appropriate name or number. * * *

These provisions relate to the establishment of a sewer district. Section 6602-2, General Code, reads in part as follows:

"After the establishment of any sewer district the county commissioners shall have prepared by the county sanitary engineer a general plan of sewerage and sewage disposal for such district, as complete as can be made at that time. After such general plan has been approved by them they shall have prepared, by the county sanitary engineer, detailed plans, specifications and estimates of cost of such part or parts of the improvement as it is necessary to then construct, together with a tentative assessment of the cost based on such estimate. * * *

I am of the view that after a sewer district is established, it is not necessary that the commissioners proceed immediately to construct sewers therein but that they need only construct such sewers at such time as they deem the public health and welfare require it.

As to your last question, clearly the county commissioners can contract with a municipality for such water supply, as that is expressly authorized by the

above quoted portion of section 6602-17. Sections 3967 and 3969, General Code, read as follows:

Sec. 3967.

"When a person or persons at his or their expense have laid down and extended mains and water pipes or electric light and power lines beyond the limits of a municipal corporation, and the corporation by resolution of the council, has authorized the proper officer of the water works to superintend or supervise the laying and extension of such mains and water pipes or electric light and power lines the corporation shall furnish water or electricity to the residents and property holders on the line of such mains and water pipes or electric light and power lines subject to the same rules and regulations that it furnishes water or electricity to its own citizens, except that the rates charged therefor shall not exceed those within the corporation by more than one-tenth thereof."

Sec. 3969.

"The corporation shall take full charge and control of such mains and water pipes, keep them in repair at its own expense, and, in case of annexation to the corporation of such territory, the corporation shall pay to such person or persons a just compensation therefor and shall thereupon become the owner of them."

As to these sections, the following is said in Opinions of the Attorney General for 1927, Vol. I, page 480:

"These provisions of the law last above quoted have reference in my opinion, to situations wherein private parties have laid or extended water mains for the purpose of serving territory outside of a municipality and are not applicable where water lines are built by public authorities and paid for by special assessments."

Under the provisions of section 3966 a municipal corporation may extend its water pipes not more than five miles beyond the corporate limits. While the county commissioners are expressly authorized to contract with a municipality for water supply, I know of no authority whereby the county commissioners could dispense with the management and control of the water supply system which it has established in a sewer district outside a municipality and transfer such control and management to a city or village allowing the latter to contract directly with the inhabitants of such sewer district.

It is my opinion therefore that:

1. Before the county commissioners may acquire or construct a public water supply or water works system within their county, a sewer district for such territory must first be established.

2. Upon the establishment of such sewer district, it is not necessary that the commissioners immediately proceed to construct sewers therein, but may construct the same at such times as they deem the public health and welfare require it, and may, prior to such construction, construct in such sewer district a water works system.

3. While the county commissioners may contract with a municipality for water supply, there is no authority whereby the county commissioners can dis-

pense with the management and control of a water supply system which they have constructed in a sewer district outside a municipality and transfer such control and management to a city or village until such territory is annexed to such municipality.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1793.

WITNESS—IMMUNITY THEREOF WHEN REQUIRED TO TESTIFY BEFORE DULY AUTHORIZED COMMITTEE OF GENERAL ASSEMBLY—PURPOSE OF SECTION 60, G. C., DISCUSSED.

SYLLABUS:

1. *Witnesses who testify before a duly authorized committee or sub-committee of the General Assembly or either house thereof, or produce evidence documentary or otherwise, for the use of such committee, in obedience to a subpoena therefor, may not be prosecuted or subjected to a penalty or forfeiture on account of a transaction, matter or thing concerning which he so testifies or produces evidence, and the testimony so given or evidence produced may not be used in a criminal proceeding against such witness, providing the testimony so given or evidence produced has a substantial, direct and immediate connection with the offense for which the prosecution is instituted or the penalty or forfeiture provided, but the giving of such testimony or the production of such evidence shall not exempt the witness from the penalties of perjury.*

2. *The obvious purpose of the enactment of Section 60 of the General Code, thereby amending Section 5 of the Act of 1872 relating to the production of testimony and the compelling of attendance of witnesses by committees and sub-committees of the General Assembly or either house thereof, was to broaden the scope of evidence that might be obtained by these committees and to further limit the right of witnesses to object to the giving of testimony on the grounds that they might thereby incriminate themselves. It, therefore, should be construed, so far as possible, as being coterminous with the constitutional privilege of the person concerned exempting him from being a witness against himself in a criminal case, as granted by Section 10 of Article I of the Constitution of Ohio.*

3. *Testimony given, or evidence produced before a committee or sub-committee of the General Assembly, does not make a basis under Section 60 of the General Code of Ohio, for immunity of the witness against prosecution for crime with which the testimony or evidence was only remotely connected.*

4. *For a witness to claim immunity from prosecutions by force of Section 60 of the General Code, it is not necessary that the witness claim such immunity or exact an agreement to that effect before testifying or producing evidence in obedience to a subpoena, before a duly authorized committee or sub-committee of the General Assembly or either house thereof.*

COLUMBUS, OHIO, November 1, 1933.

HON. L. L. MARSHALL, *Chairman, Special Banking Committee, Cleveland, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion, which reads:

“Section 60 of the Ohio General Code has been called to the atten-