

**OPINION NO. 858****Syllabus:**

The rates fixed by a board of county commissioners under Section 6117.02, Revised Code, for the use of sewers or sewerage treatment or disposal works maintained by the board must be reasonable and at least sufficient to pay all the cost of operation and improvements, and such rates may or may not be uniform throughout the sewer district. (Opinion No. 3229, Opinions of the Attorney General for 1962, discussed and limited).

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**To: Norman J. Putman, Stark County Pros. Atty., Canton, Ohio**  
**By: William B. Saxbe, Attorney General, February 11, 1964**

Your request for my opinion reads as follows:

"It is the purpose of this letter to request respectfully your views concerning the ruling made in 1962 O.A.G. No. 3229.

"That opinion would require that the rates fixed by a board of county commissioners pursuant to Revised Code Section 6117.02 for sanitary sewer service rendered within a particular county sewer district be uniform throughout that district and would specifically prevent a board from entering into separate sewer service contracts on behalf of a single county sewer district with one or more municipal corporations if differing rate schedules were incorporated in such contracts. This conclusion would seem to apply even though there may be sound economic or other bases for a rate differential and irrespective of such factors as changes in the cost of providing sewer service or the differing circumstances of the suppliers of the service.

"Thus viewed, it seems to me that the matter is one of broad general interest that conceivably could seriously affect sewer district operations by counties throughout the State, including the creation, extension and reorganization of such districts.

"To relate the opinion to this County, however,

the board of commissioners presently has under consideration a proposed reorganization of the multitudinous sewer districts in the County. It would be the general purpose of this program not only to simplify the basic sewer district organization, but also to give greater recognition to such factors as topography, natural drainage, population trends and present and prospective land use; to facilitate the planning for and the construction, maintenance and operation of sewer and water improvements and to reduce the cost thereof; to permit more efficient and economical operation of sewer and water facilities; to lessen the pollution of public waters; and to provide improved protection for the health of residents of the County.

"As a part of this program, which would be implemented in accordance with and pursuant to a detailed study by the County's Consulting Engineers, an enlarged sewer district embracing areas surrounding both the City of Massillon and the Village of Navarre would be created. The factors heretofore listed, including the fact that such areas lie within the same drainage basin and contribute to the pollution of the Tuscarawas River which must be eradicated, dictate the creation of such a district. The opinion herein discussed would, however, create apparent difficulties since the board of county commissioners has heretofore entered into separate agreements with the City of Massillon and the Village of Navarre to provide sewer service at differing rates to areas that would be included in the enlarged district; and there is the distinct possibility that the existing agreements with such municipalities would be extended, or that additional service agreements with them would be entered into, with the development of the territory in the proposed enlarged district.

"I would therefore greatly appreciate it if you would, in view of the foregoing, advise me whether in your judgment the provisions of Revised Code Section 6117.02 require the conclusion reached in the opinion referred to herein."

Section 6117.01, Revised Code, provides to the extent material:

"For the purpose of preserving and promoting the public health and welfare, boards of county commissioners may by resolution lay out, establish, and maintain one or more sewer districts within their respective counties, outside of municipal corporations, and may have a competent sanitary engineer make such surveys as are necessary for the determination of the proper boundaries of such district. Each district shall be designated by an appropriate name or number. 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. \* \* \* The board may make, publish, and enforce rules and regulations for the construction maintenance, protection, and use of sewers and sewer improvements in its county outside of municipal corporations, and of sewers and sewer improvements within municipal corporations in its county wherever such sewers are constructed or operated by such board or discharge into sewers or sewage treatment plants constructed or operated by such board, including the establishment and use of connections.  
\* \* \*"

Section 6117.02, Revised Code, provides in material part:

"The board of county commissioners shall fix reasonable rates to be charged for the use of the sewers or sewerage 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 sewerage treatment or disposal works when such sewers or sewerage treatment or disposal works are owned or operated by the county, and may change such rates as it deems advisable. Such rates shall be at least sufficient to pay all the cost of operation and maintenance of improvement for which the resolution declaring the necessity thereof shall be passed after the effective date of this act. When the sewerage treatment or disposal works is owned by a municipal corporation or any person, firm, or private corporation, the schedule of rates to be charged by such municipal corporation, person, firm, or private corporation for the use of such facilities shall be ratified by the board at the time any contract is entered into for such use. The board shall also fix a reasonable tap in charge \* \* \*. No provision of this section shall limit or restrict the power and discretion of the board to determine how much of the cost of such improvements shall be borne by the county at large and how much shall be specially assessed upon benefited properties, \* \* \* nor the power of the board to levy special assessments upon benefited properties for operation and maintenance whenever the rents and other funds available are not sufficient to pay the cost thereof."

It is obvious that the need for sewer improvements is not a static thing and that the necessity may arise within a sewer district for an extension of sewer services by increasing sewers or by additions to sewage treatment or disposal works or by additional sewer service contracts with municipal corporations within the district. I think it is clear that, in such instances and in other instances as well, a board of county commissioners, acting under Chapter 6117, Revised Code, may extend sewer services by entering separate sewer service contracts or by the construction of additional facilities; either by constructing additions to existing facilities or by constructing new completely separate facilities.

It is equally obvious that the costs of supplying sewer services under these circumstances may well vary. The question then is, given circumstances or conditions such as I have briefly hypothesized here, or similar circumstances, must the rates fixed by a board of county commissioners for the use of sewers or sewerage treatment or disposal works be uniform throughout the sewer district. I am of the opinion that such rates need not be uniform.

The board of county commissioners is charged, under Section 6117.02, Revised Code, with fixing reasonable rates to be charged for service which "shall be at least sufficient to pay all the cost of operation and maintenance of the improvements." There is no mention of uniform rates in this section or anywhere in Chapter 6117, Revised Code, and I can not conclude that this requirement can be fairly implied from the language used. I can, indeed, easily conceive of situations in which a uniform rate would not be sufficient to pay all the cost of operation and maintenance of sewer improvements as is required by Section 6117.02, supra, without imposing an unreasonable burden on some users.

In Kennebunk, Kennebunkport & Wells Water Dist. v. Town of Wells, 128 Me. 256, 147 A. 188, the question was raised as to the meaning of a provision in an act creating a water district which provided that "rates for the water used shall be uniform throughout the district." It was concluded that the uniformity required by the act meant that the rates to be established had to be reasonable and just and without discrimination between takers of the same class, having reference to the nature of the service and also the cost of supplying it. It would seem a fortiori that rates which are required to be reasonable need not be uniform but may reflect the cost of supplying services.

The "schedule of rates" referred to in Section 6117.02, supra, and relief upon in part in Opinion No. 3229, Opinions of the Attorney General for 1962, is not a schedule of rates for a sewer district but is a schedule of rates charged by a municipal corporation, or a person, or firm supplying service to a sewer district pursuant to a contract, and such rates may or may not be the rates charged to users in the district. In addition, it is possible to have more than one service contract with the same municipal corporation or with different municipal corporations within the sewer district.

It may well be that, under the facts considered in the 1962 Opinion, any but uniform rates would have been unreasonable. To the extent, however, that the conclusion expressed therein is stated as a fixed conclusion of law, I am in disagreement with it.

In specific answer to your question, therefore, it is my opinion and you are advised that the rates fixed by a board of county commissioners under Section 6117.02, Revised Code, for the use of sewers or sewerage treatment or disposal works maintained by the board must be reasonable and at least sufficient to pay all the cost of operation and improvements, and such rates may or may not be uniform throughout the sewer district. (Opinion No. 3229, Opinions of the Attorney General for 1962, discussed and limited).