

Note from the Attorney General's Office:

1962 Op. Att'y Gen. No. 62-3229 was limited by
1964 Op. Att'y Gen. No. 64-858.

3229

SEWER RATES FIXED BY A BOARD OF COUNTY COMMISSIONERS MUST BE UNIFORM THROUGHOUT THE SEWER DISTRICT—§§6117.01 R.C., 6117.02 R.C.

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 pursuant to Section 6117.01, Revised Code, must be uniform throughout the sewer district.

Columbus, Ohio, August 24, 1962

Hon. Geo. C. Steinemann, Prosecuting Attorney
Erie County, Sandusky, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“In re: East Perkins Avenue Sanitary Sewer.

“Some years ago the Board of County Commissioners of Erie County, Ohio, created the Perkins-Margaretta Sewer and Water District and some years later entered into a written contract with the City of Sandusky, Ohio under which the City accepted into one of its sanitary sewers sewerage from a limited area in the Sewer and Water District and permitted said sewerage to pass through the City sewer and sanitation plant. There was written into this contract a rate to be paid by the County to the City for this service.

“The Board of County Commissioners now desires to enter into a second contract with the City of Sandusky under which the City would accept into another sanitary sewer and into its sanitation plant sewerage from a second limited area in the Sewer and Water District. However, the City now demands a rate for this service which is higher than that provided for in the first contract.

“The result is that if the Board of County Commissioners enters into the second contract it will be required to charge higher rates to its customers in the second area of the Sewer and Water District than the rate charged to its customers in the first area of the same Sewer and Water District. Section 6117.02 of the Ohio Revised Code provides only that the Board of County Commissioners shall fix reasonable rates but that such rates shall be at least sufficient to pay all costs of operation for such a service.

“Can the Board of County Commissioners of Erie County enter into such a contract and charge a higher rate in the second area and still be free from liability on the ground that the higher rate discriminates against residents of the second area?”

Section 6117.01, Revised Code, authorizes a board of county commissioners to lay out, establish, and maintain one or more sewer districts, outside of municipal corporations. I assume that the sewer district to which you refer was established under this authority. Said Section 6117.01 further provides:

“* * * 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. * * *”

Section 6117.02, Revised Code, reads in pertinent 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 improvements 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."*

(Emphasis added)

Section 6117.02, *supra*, states that rates must be reasonable, but does not specifically require that rates must be uniform throughout the district. The language used, however, strongly implies that rates must be uniform.

Under Section 6117.02, *supra*, the board fixes reasonable rates to be charged for the use of the sewers, etc., by every person, firm, or corporation served by said sewers, etc. Clearly, this authority pertains to reasonable rates *within the district*, and to persons, firms, and corporations *in the district*. Further, the provision as to rates where the sewerage treatment or disposal works is not owned by the county sheds further light on the subject. In such a case, *the* schedule of rates to be charged must be ratified by the board, the reference to "the schedule" implying that there is but one schedule of rates in the district.

Accordingly, 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 pursuant to Section 6117.01, Revised Code, must be uniform throughout the sewer district.

Respectfully,

MARK McELROY

Attorney General