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SEWERAGE SYSTEM, SEWAGE PUMPING WORKS, SEWAGE DISPOSAL WORKS—RATES OR CHARGES OF RENTS TO BE PAID TO VILLAGE FOR USE BY PERSONS, FIRMS OR CORPORATIONS SERVED, VESTED IN VILLAGE COUNCIL— BOARD OF TRUSTEES OF PUBLIC AFFAIRS WITHOUT POWER TO DETERMINE SUCH RATES — SECTION 3891-1 G.C.

SYLLABUS:

The sole power to establish rates or charges of rents to be paid to a village for the use of its system of sewerage, sewage pumping works or sewage disposal works, by persons, firms or corporations whose premises are served by a connection to such system or works, is vested by the provisions of Section 3891-1 of the General Code in the village council, and the board of trustees of public affairs of such village is wholly without power either to establish such rates, or to change, modify or annul a schedule of rates established by the village council.

Columbus, Ohio, September 19, 1942.

Dr. R. H. Markwith, Director of Health,  
Columbus, Ohio.

Dear Sir:

I have your request for an opinion, which reads as follows:

“In 1934 the Council of the village of Lebanon, Warren County, passed an ordinance establishing a schedule of sewer rental rates for the purpose of securing funds for the maintenance and operation of the village sewerage system and sewage disposal works. This action was taken under the authority and in accordance with the provisions of Section 3891-1 of the General Code. In October, 1940, the Board of Trustees of Public Affairs of said village adopted a resolution changing this schedule of sewer rental rates. This change of rates was not endorsed or ratified by action of the Village Council. The question is now raised as to the authority of the Board of Trustees of Public Affairs to nullify the provisions of the ordinance fixing a schedule of sewer rental rates by adopting a resolution changing such schedule of rates.

We shall be glad to have your opinion as to whether the schedule of sewer rental rates authorized by Section 3891-1 of the General Code is to be established by ordinance of council, or if such rates may be established or changed by resolution of the Board of Trustees of Public Affairs.”

The question resolves itself into a discussion of the relative powers of the village council and the board of public affairs in connection with the establishment of a schedule of sewer rental rates to be paid by those whose premises are served by the sewerage system and sewage disposal works of such village.

I note at the outset that the board of public affairs is a body which comes into existence only by action of the village council when the village acquires certain public utilities. This board is provided for by Section 4357 of the General Code, which reads as follows:

“In each village in which water works, an electric light plant, artificial or natural gas plant, or other similar public utility is situated, or when council orders water works, an electric light plant, natural or artificial gas plant, or other similar public utility, to be constructed, or to be leased or purchased from any individual, company or corporation, or when the council shall have determined to establish a schedule of rates or charges of rents for use of the sewerage system and sewage pumping, treatment and disposal works of the village, council shall establish at such time a board of trustees of public affairs for the village, which shall consist of three members, residents of the village, who shall be elected for a term of two years.”

One of my predecessors in discussing the subject (1927 Opinions Attorney General, p. 229), said:

“Such boards of public affairs are not constitutional officers but are purely creatures of village councils, and such councils are authorized to establish these boards only when the village owns one or more of the utilities enumerated in the statute, or when council shall determine to establish such a utility, or a schedule of rates or charges of rents, for use of the sewerage system. \* \* \*

The office of the board of public affairs is under the control of the council which created it, and when conditions are such in a village that a board of public affairs is no longer necessary, there is ample authority for council to abolish the office.”

It will be observed on reading the above quoted Section 4357 that one of the conditions under which the village council is authorized and required to establish such a board is “when the council shall have determined to establish a schedule of rates or charges of rents for use of the sewerage system and sewage pumping, treatment and disposal works

of the village". In view of this provision it might be expected that we would find in Section 4361, which outlines the powers and duties of the board of trustees of public affairs, some express authority conferred upon such board to manage the sewerage system and sewage disposal works.

The nearest approach to such authorization is found in that portion of Section 4361, which reads as follows:

"The board of trustees of public affairs shall manage, conduct and control the water works, electric light plants, artificial or natural gas plants, or other similar public utilities, furnish supplies of water, electricity or gas, collect all water, electrical and gas rents, and appoint necessary officers, employes and agents."

The words "other similar public utilities" might possibly be construed as including the sewage disposal plant, particularly when we consider that the history of Sections 4357 and 4361 shows that they are parts of the same legislative enactment, but there is in Section 4361 no specific reference to sewers or sewage disposal plants.

Section 4361 makes a further provision relative to the right of said board to enact regulations relative to the utilities that are committed to its supervision. It provides:

"\* \* \* The board of trustees of public affairs may make such by-laws and regulations as it may deem necessary for the safe, economical and efficient management and protection of such works, plants and public utilities. Such by-laws and regulations when not repugnant to the ordinances, to the constitution or to the laws of the state, shall have the same validity as ordinances."

It will be observed that so far as the board is given power to enact by-laws and regulations relative to these works, plants and public utilities, they must not be "repugnant to the ordinances". The same section, 4361, also gives such board all the powers and duties which are imposed upon the director of public service in cities by Sections 3955, 3959, 3960, 3961, 3964, 3965, 3974, 3981, 4328, 4329, 4330, 4331, 4332, 4333 and 4334 of the General Code. But an examination of these sections shows that none of them relates to the management of sewerage or sewage disposal plants.

However, in 110 Ohio Laws, p. 370, the Legislature amended Sec-

tion 4357 by inserting therein the present provision requiring the appointment of such board "when the council shall have determined to establish a schedule of rates or charges of rents for use of the sewerage system", etc., and, in the same act enacted Sections 3891-1, 3891-3 and 3891-4, which read as follows:

Section 3891-1:

"The council of any city or village which has installed or is installing sewerage, a system of sewerage, sewage pumping works or sewage treatment or disposal works for public use, may by ordinance establish just and equitable rates or charges of rents to be paid to such city or village for the use of such sewerage, a system of sewerage, sewage pumping works or sewage treatment or disposal works by every person, firm or corporation whose premises are served by a connection to such sewerage, system of sewerage, sewage pumping works or sewage treatment or disposal works. Such charges shall constitute a lien upon the property served by such connection and if not paid when due shall be collected in the same manner as other city and village taxes. The council may change such rates or charges from time to time as may be deemed advisable. \* \* \*"

Section 3891-3:

"When the council of a village has established a schedule of rates or charges of rents for the use of the sewerage system and sewage pumping, treatment and disposal works, the board of trustees of public affairs shall manage, conduct and control such sewerage system and sewage pumping, treatment and disposal works and shall collect sewer rentals and shall appoint necessary officers and agents for such purposes; and shall assume all duties, in relation to sewers, imposed upon the street commissioner by section 4364 of the General Code, whereupon the street commissioner shall be relieved of such duties."

Section 3891-4:

"The director of public service and the board of trustees of public affairs may make such by-laws and regulations as may be deemed necessary for the safe, economical and efficient management and protection of the sewerage system and sewage pumping, treatment and disposal works; and for the construction and use of house sewers and connections to the sewerage system. Such by-laws and regulations shall have the same force and effect as ordinances when not repugnant thereto or to the constitution or laws of the state."

Here it will be observed the Legislature has very specifically outlined and limited the powers and duties of the village council and the

board of trustees of public affairs, respectively, in regard to the schedule of rents. Section 3891-1 expressly provides that *the council* "may by ordinance establish just and equitable rates", etc. The section further provides that *the council* "may change such rates or charges from time to time as may be deemed advisable."

The language of Section 3891-3 is also significant. Here again reference is made to the establishment of the schedule of rates *by the council*, and the board is given authority to manage the sewerage system and sewage disposal works only "when the council of a village has established a schedule of rates", etc.

Section 3891-4 gives the board authority to make by-laws and regulations as it may deem necessary for the safe, economical and efficient management and protection of the sewerage system and sewage pumping, treatment and disposal works; and for the construction and use of house sewers and connections to the sewerage system." But the power to make such by-laws and regulations plainly does not include the power to establish a schedule of rents or to change the schedule established by the council. That power is vested exclusively in the council. Even as to such by-laws and regulations which the board may enact, it is specifically provided that they must not be repugnant to the ordinances or to the constitution or laws of the state.

Specifically answering your inquiry, it is my opinion that the sole power to establish rates or charges of rents to be paid to a village for the use of its system of sewerage, sewage pumping works or sewage disposal works, by persons, firms or corporations whose premises are served by a connection to such system or works, is vested by the provisions of Section 3891-1 of the General Code in the village council, and that the board of trustees of public affairs of such village is wholly without power either to establish such rates, or to change, modify or annul a schedule of rates established by the village council.

Respectfully,

THOMAS J. HERBERT  
Attorney General.