

OPINION NO. 86-085**Syllabus:**

1. A county is not a "person," "firm," or "corporation" for purposes of R.C. 4933.17, and thus, does not fall within the scope of that section.
2. A county which operates a water or sewer system may not require new customers to pay a deposit for water or sewer services.

To: Jeffrey M. Welbaum, Miami County Prosecuting Attorney, Troy, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, November 19, 1986

I have before me your request for my opinion concerning whether a county, which operates a water and sewer system for the benefit of residents of the unincorporated areas of the county, may require a deposit from new customers for water and/or sewer services, and if so, whether the county is required to pay interest to the customers paying such deposit.

I turn first to the question whether a county may require a deposit from persons who are receiving water services. Pursuant to R.C. 6103.02, a board of county commissioners may "acquire, construct, maintain, and operate any public water supply or waterworks system within its county for any sewer district." See generally 1933 Op. Att'y Gen. No. 1792, vol. III, p. 1662. The board must "fix reasonable rates to be

charged for water supplied when the source of supply or distributing pipes are owned or operated by the county, which rates shall be at least sufficient to pay for all the cost of operation and maintenance of improvements," and may "levy special assessments upon benefited properties for operation and maintenance whenever the rents and other funds available are not sufficient to pay all the cost thereof." R.C. 6103.02. When the distributing pipes are owned by the county, the board of county commissioners must also fix a reasonable tap-in charge. Id. There is no express provision in R.C. 6103.02, however, for the county to charge new customers a deposit.

As you note in your letter, R.C. 4933.17 governs the collection of deposits by certain providers of gas, natural gas, water, and electricity, and reads as follows:

No person, firm, or corporation engaged in the business of furnishing gas, natural gas, water, or electricity to consumers shall demand or require a consumer to deposit cash as security for the payment of any bills for such commodity to be furnished:

(A) If the proposed consumer is a freeholder who is financially responsible or a person who is able to give a reasonably safe guaranty in an amount sufficient to secure the payment of bills for sixty days' supply;

(B) If the security is not demanded within thirty days of the initiation of service, except that this division does not apply where the account of a customer is in arrears.

In case no such security can be furnished, a deposit not exceeding an amount sufficient to cover an estimate of the monthly average of the annual consumption by such consumer plus thirty per cent may be required, upon which deposit interest at the rate of not less than three per cent per annum shall be allowed and paid to the consumer, provided it remains on deposit for six consecutive months.

Any person, firm, or corporation convicted of a violation of this section shall forfeit all right to collect or receive any sum from such consumer for gas, natural gas, water, or electricity so furnished.

The making of any rule or requirement in conflict with this section, is forbidden, and hereby declared to be unlawful.

See 7 Ohio Admin. Code Chapter 4901:1-17; note 3, infra. In order to answer your question, I must determine, therefore, whether a county, when furnishing water, is subject to R.C. 4933.17.

R.C. 4933.17 regulates the activities of persons, firms, and corporations. Thus, in order to be subject to the statute's requirements, a county must be found to be one of those entities. There is no statute which defines "person," "firm," or "corporation," specifically for purposes of R.C. 4933.17. In 1981 Op. Att'y Gen. No. 81-055, my predecessor stated with regard to the terms "corporation" and "firm":

Absent a statutory definition to the contrary, Ohio courts have consistently found that a county is not a body corporate, but rather a local political organization established for the civil administration of the state's policies. Board of County Commissioners v. Gates, 83 Ohio St. 19 (1910); Board

of County Commissioners v. Mighels, 7 Ohio St. 109 (1857). See 1978 Op. Att'y Gen. No. 78-030. Statutes including corporations within their scope have, in the past, been interpreted as excluding counties. See 1979 Op. Att'y Gen. No. 79-055; 1978 Op. Att'y Gen. No. 78-030; 1974 Op. Att'y Gen. No. 74-008; 1970 Op. Att'y Gen. No. 70-164. Similarly, the terms "firm," "partnership," and "association" have been construed to exclude counties from the operation of otherwise applicable statutes. See Op. No. 79-055; Op. No. 74-008; Op. No. 70-164.

2-218 to 2-219. As pointed out in Op. No. 81-055, the terms "corporation" and "firm" are typically used to describe types of business relationships rather than governmental entities. This interpretation is reinforced by the context in which "corporation" and "firm" are used in R.C. 4933.17. The statute covers persons, corporations, and firms which are "engaged in the business of furnishing" one of the named public utilities (emphasis added). Thus, it is apparent that R.C. 4933.17 is applicable only to those entities which provide utilities as a business rather than as a governmental service.

Further, I conclude that a county is not a "person" for purposes of R.C. 4933.17. Again, as stated in Op. No. 81-055 at 2-220:

The well-established rule in Ohio is that a public body is not a "person" in the absence of a statutory definition to the contrary, see Summers v. Hamilton County, 7 Ohio N.P. 542 (C.P. Hamilton County 1900); Op. No. 78-030, unless the language, purpose, or context of a statute demonstrates that a broad interpretation of the word is intended. See City of Dayton v. McPherson, 57 Ohio Op. 2d 361, 280 N.E.2d 106 (C.P. Montgomery County 1969); 1974 Op. Att'y Gen. No. 74-058.

In this instance, there is no indication that "person" is to be given a broad interpretation to include a county. "Person," as used in R.C. 4933.17 is also modified by the phrase "engaged in the business of furnishing" a public utility. Thus, the language of R.C. 4933.17 and the context in which "person" is used do not require that the word be interpreted to include governmental entities. Nor, as discussed in greater detail below, does the purpose of R.C. 4933.17 require that "person" be interpreted as including counties. Thus, I conclude that a county is not a "person,"¹ nor a "corporation" or "firm" for purposes of R.C. 4933.17, and thus, does not fall within the scope of that section.

¹ As noted in 1981 Op. Att'y Gen. No. 81-055, R.C. 1.59 provides a general statutory definition of "person," reading in part: "As used in any statute, unless another definition is provided:...(C) 'Person' includes an individual, corporation, business trust, estate, trust, partnership, and association." R.C. 1.59(C) has been interpreted to include governmental entities. See City of Dayton v. McPherson, 57 Ohio Op. 2d 361, 280 N.E.2d 106 (C.P. Montgomery County 1969); 1974 Op. Att'y Gen. No. 74-058. But see 1979 Op. Att'y Gen. No. 79-062; 1979 Op.

The language used in R.C. 4933.18, which prohibits persons from tampering with the equipment of a utility, and R.C. 4933.19, which prohibits the theft of utility service, supports the conclusion that R.C. 4933.17 does not apply to county water systems. Both R.C. 4933.18 and R.C. 4933.19 include the following paragraph:

As used in this section, "utility" means any electric light company, gas company, natural gas company, pipeline company, water-works company, or heating or cooling company, as defined by division (A)(4), (5), (6), (7), (8), or (9) of section 4905.03 of the Revised Code, its lessees, trustees, or receivers, or any similar utility owned or operated by a political subdivision. (Emphasis added.)

R.C. 4933.18 and R.C. 4933.19 demonstrate that where the legislature intends that a statute concerning a utility apply to utilities operated by a political subdivision, it expressly so provides. See Metropolitan Securities Co. v. Warren State Bank, 117 Ohio St. 69, 76, 158 N.E. 81, 83 (1927) (if the legislature uses "certain language in the one instance and wholly different language in the other, it will...be presumed that different results were intended").

My conclusion that the legislature is cognizant of the distinction between utilities owned by a county and utilities owned by persons, corporations, and firms is also supported by the language of R.C. 6103.02, which as noted above, empowers a board of county commissioners to acquire and operate a public water supply or waterworks system, and then further provides that the board of county commissioners may contract with "any municipal corporation, or any person, firm, or private corporation furnishing a public water supply." It is obvious that, by so clearly distinguishing among counties, municipal corporations, persons, firms, and corporations, the legislature intends that different meanings be attributed to each term.

Having concluded that R.C. 4933.17 does not apply to a board of county commissioners, I must determine whether any other statute provides the county authority to require a deposit from new customers. See generally State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 4 N.E.2d 248 (1947) (a board of county commissioners has only those powers which are expressly granted by statute or which are necessarily implied therefrom).

As noted above, R.C. 6103.02 empowers a board of county commissioners which operates a water supply to fix reasonable rates, and further empowers the board to "adopt, publish, administer, and enforce rules for the construction, maintenance, protection, and use of public water supplies." Thus, it is arguable that the board may adopt a rule providing for the collection of deposits. Cf. 1932 Op. Att'y Gen. No.

Att'y Gen. No. 79-055 (the definition of "person" in R.C. 1.59(C) does not include public bodies or officers). As discussed above, I believe it is implicit from the way "person" is used in R.C. 4933.17 that R.C. 1.59(C) does not apply to R.C. 4933.17. If "person," as used in R.C. 4933.17, were given the meaning provided in R.C. 1.59(C) the term "corporation," as used in R.C. 4933.17 would be unnecessary, since it is included within the scope of "person" as defined by R.C. 1.59(C). See Op. No. 81-055.

4705, vol. II, p. 1218 at 1219 ("[t]he authority conferred on boards of county commissioners to maintain and operate waterworks systems and to fix reasonable rates to be charged for water clearly includes...the power to collect the 'water rents' or charges which accrue from the sale or furnishing of water to customers of the said water supply or waterworks system," and "[t]he method of making these collections is left by the statute to the discretion of the commissioners"). R.C. 6103.02, however, further provides:

When any rents or charges are not paid when due, the board may do either or both of the following:

(A) Certify them, together with any penalties, to the county auditor. The county auditor shall place the certified amount upon the real property tax list and duplicate against the property served by the connection if he also receives from the board additional certification that the unpaid rents or charges have arisen pursuant to a service contract made directly with an owner who occupies the property served.

The amount placed on the tax list and duplicate shall be a lien on the property from the date placed on the list and duplicate and shall be collected in the same manner as other taxes, except that, notwithstanding section 323.15 of the Revised Code, a county treasurer shall accept a payment in such amount when separately tendered as payment for the full amount of such unpaid water rents or charges and associated penalties. The lien shall be released immediately upon payment in full of the certified amount. All money collected as rents or tap-in charges or for waterworks purposes in any district shall be paid to the county treasurer and kept in a separate and distinct fund to the credit of such district.

(B) Collect them by actions at law in the name of the county from an owner, tenant, or other person who is liable to pay the rents or charges.

....

At any time prior to a certification under division (A) of this section, the board shall accept any partial payment of unpaid water rents or charges, in the amount of ten dollars or more.

It is well established that where a statute directs a governmental entity to perform one of its express powers or duties in a particular manner, the public body has no implied power to perform that duty in any other manner. See Frisbie Co. v. City of East Cleveland, 98 Ohio St. 266, 120 N.E. 309 (1918) (syllabus, paragraph one) ("[w]here a statute prescribes the mode of exercise of the power therein conferred upon a municipal body, the mode specified is likewise the measure of the power granted"); State v. Glidden, 31 Ohio St. 309, 313 (1877) ("[w]here authority is vested in a public officer, and the mode is prescribed for exercising the authority, that mode must be followed"); Squire v. Abbott, 5 Ohio Op. 352, 355 (C.P. Cuyahoga County 1936) ("[i]t is fundamental that when the legislature grants to a public officer the authority to perform an act in a specific manner, such manner, so designated, is likewise the extent of the power and that the public officer can legally perform the act in no other manner").

The legislature has specifically provided two methods by which the county may collect unpaid water charges. Thus, the

county is restricted to utilizing those methods in collecting its rents and charges. The purpose behind a requirement that consumers of utility services pay a deposit appears to be for the protection of the owner of the utility and other consumers against unpaid or uncollectible bills. See rule 4901:1-17-02. Because R.C. 6103.02 does not authorize a county to require a deposit, but rather, provides that a county may collect unpaid rents by placing a lien against the property served or by instituting an action at law, I conclude that the county which owns or operates a public water supply has no authority to require new customers to pay a deposit.²

You have also asked whether a county may require new customers to pay a deposit for sewer services. R.C. 6117.01 authorizes boards of county commissioners to "establish, and maintain one or more sewer districts within their respective counties, outside of municipal corporations." The board may "adopt, publish, administer, and enforce rules for the construction, maintenance, protection, and use of sewers and sewer improvements," R.C. 6117.01, and "shall fix reasonable rates to be charged for the use of the sewers or sewerage treatment or disposal works referred to in [R.C. 6117.01] 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," R.C. 6117.02. The board must also establish reasonable charges for the privilege of connecting to the sewers or sewerage treatment or disposal works. Id. R.C. 6117.02 also provides:

When any rents or charges are not paid when due, the board shall certify the same together with any penalties to the county auditor, who shall place them upon the real property tax list and duplicate against the property served by such connection. Such rents and charges shall be a lien on such property from the date the same are placed upon the real property tax list and duplicate by the auditor and shall be collected in the same manner as other taxes.

² I am aware that in Rogers v. City of Cincinnati, 14 Ohio N.P. (n.s.) 193 (C.P. Hamilton County 1913), the court held that the director of public service of a city which owns and operates a waterworks may require consumers to pay a cash deposit in advance. This conclusion was based on the director's authority to manage and control the waterworks, furnish supplies of water, and collect rents under G.C. 3956 (now R.C. 743.03), to make regulations for the management of the waterworks under G.C. 3957 (now R.C. 743.02) and to assess and collect water rents under G.C. 3958 (now R.C. 743.04). The opinion was rendered, however, prior to the enactment of Am. Sub. S.B. 118, 115th Gen. A. (1984) (eff. July 4, 1984), which added language to R.C. 743.04 authorizing the director of public service or other official or body to certify unpaid water rents to the county auditor for placement on the real property tax list and duplicate or to collect unpaid rents by actions at law. R.C. 6103.02 was also amended by Am. Sub. S.B. 118 to grant similar authority to the board of county commissioners with regard to collecting unpaid water rents. See also Am. Sub. H.B. 754, 116th Gen. A. (1986) (eff. Sept. 25, 1986) (further amending R.C. 743.04 and R.C. 6103.02 with regard to the collection of unpaid water rents or charges).

Again, the legislature has provided a means by which the county may collect unpaid rents and charges. For the reasons set forth above, I conclude that the county may not, therefore, require a deposit from new customers for sewer services.³

In conclusion, it is my opinion, and you are advised, that:

1. A county is not a "person," "firm," or "corporation" for purposes of R.C. 4933.17, and thus, does not fall within the scope of that section.
2. A county which operates a water or sewer system may not require new customers to pay a deposit for water or sewer services.

³ 7 Ohio Admin. Code Chapter 4901:1-17, which was promulgated by the Public Utilities Commission, also provides for the establishment of credit for residential utility services. Although R.C. 4933.17 applies only to persons, firms, and corporations which are in the business of furnishing gas, natural gas, water, or electricity, Chapter 4901:1-17 regulates "persons, firms, or corporations engaged in the business of furnishing gas, water, electricity, telephone or sewage disposal service to consumers" (emphasis added). Rule 4901:1-17-01. Although Chapter 4901:1-17 applies to entities providing sewage disposal service, for the reasons set forth above with regard to the interpretation of R.C. 4933.17, I conclude that a county is not a person, firm, or corporation, and thus is not subject to Chapter 4901:1-1-17, even though it may be furnishing water or sewage disposal service to consumers.