

clerical error, and this fact is established beyond dispute, may I draw my warrant in refundment of such moneys without a specific appropriation made for such purposes?"

I understand this question arises because a remitting officer in sending fines to the state treasurer remitted more than the state was entitled to receive and that this amount was deposited in the treasury of the state.

Article II, Section 22 of the Constitution of Ohio reads as follows:

"No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years."

In pursuance of this provision of the Constitution, laws have been enacted providing for biennial appropriations to be made by the General Assembly for the various purposes for which appropriations are made and warrants drawn by the auditor of state on the state treasury.

In addition to this the legislature from time to time passes what is known as the "Sundry Appropriation Bill" which appropriates from the state treasury moneys to pay, among others, such obligations as the one in question.

If the remitting officer in this case remitted more than the state was entitled to have in depositing the fines, and that fact is established beyond dispute, as you state in your letter, the person undoubtedly is entitled to be reimbursed, but by virtue of the above mentioned constitutional provision the people have vested the legislature with the power and authority to determine that fact.

The language of this provision is plain and unambiguous and must be followed.

It is therefore my opinion that money paid into the state treasury by mistake cannot be refunded to the person entitled thereto until the legislature has made a specific appropriation therefor.

Respectfully,
EDWARD C. TURNER,
Attorney General.

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COUNTY COMMISSIONERS—AUTHORITY TO CONTRACT WITH MUNICIPALITY FOR WATER SUPPLY.

SYLLABUS:

The county commissioners of any county may contract with a municipality upon such terms as may be agreed upon, for the supplying of water to sewer districts outside the municipality or for the joint use with a municipality of water works systems and may contract with such municipality to convey to it any completed water mains which have been constructed for the use of any such sewer district when the territory included in such sewer district is annexed to the municipality.

COLUMBUS, OHIO, April 5, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your communication of recent date in which you submit a copy of a certain ordinance which has been passed by the city commissioners of the city of Lima, authorizing the city manager to enter into a contract with

the commissioners of Allen county, providing for the furnishing of a water supply for the Westwood Sewer District which lies outside and contiguous to the city of Lima and within the county of Allen, and request my opinion with reference to Section 8 of this ordinance which reads as follows:

"In the event of the annexation by said city of all or any part of the territory in which said system is located the said distribution system shall pass to and become the property of the city of Lima, without cost to the city, and upon such annexation the city shall not in any manner become obligated or responsible for the interest and sinking fund charges nor shall the city of Lima be liable for the collection of assessments for the purpose of paying the interest upon and retiring as they fall due, the bonds or notes issued by said county to pay the cost of said improvement, nor shall the said city be responsible for any deficiencies in the amount of the said assessments collected or to be collected; that is to say, that said county shall remain responsible for all interest, principal and sinking fund charges on said bonds and notes and shall remain responsible for the collection of assessments therefor."

It appears that the county commissioners of Allen county have established a sewer district known as the Westwood Sewer District lying outside the corporate limits of the city of Lima and contiguous thereto, and have provided for the construction of a sanitary and storm sewer for this district and they now desire to contract with the city of Lima for a supply of water to be furnished to the inhabitants of the district from the municipal water works of the city of Lima.

I am advised, from information which has been furnished me, supplementing your communication, that some question has arisen with reference to Section 8 of the ordinance which I have quoted above, as to whether or not county commissioners have a right to contract with a municipality to convey to the municipality free of charge, water mains which have been paid for by special assessments on the property benefitted in face of the provisions of Section 3967 and 3969 of the General Code of Ohio, which read in part 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, * * *"

"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."

It has been contended that it is the intention of the law, where owners of property have laid down or extended water mains and water pipes at their own expense, that they should be reimbursed for the expense of building such water lines when the territory in which the lines have been built is annexed to the municipality.

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.

The county commissioners derive their authority for the creation of sewer districts and the supplying of water therefor from the provisions of the General Code of Ohio, Sections 6602-1 and 6602-17, Section 6602-1 reading in part as follows:

"For the purpose of preserving and promoting the public health and wel-

fare, 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. * * *

Section 6602-17 reads in part as follows:

"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. * * *"

Provision is made for the payment of the entire cost of providing such water supply as follows:

"In the construction of a main, branch or reinforcing pipe line or pipe lines and such water supply, the property immediately abutting upon such main, branch or reinforcing pipe line or pipe lines shall be assessed for local service, and the balance of the cost and expense of such improvement to be paid by assessments shall be assessed, as a district assessment, upon all the property, including the abutting property, within said district proportionately and in accordance with the special benefits conferred, less such part of said cost as shall be paid by the county at large. In the construction of a local pipe line the entire cost and expense of construction and maintenance may be assessed, proportionately, upon the benefited property abutting thereon, according to special benefits conferred." (Section 6602-24, General Code.)

Provision is also made for the joint use of a water works system by a municipality, and the county commissioners. Section 6602-32a reads as follows:

"At any time after the formation of any sewer district the board of county commissioners may enter into a contract upon such terms and conditions and for such period of time as may be mutually agreed upon with any city or village or any other county to prepare necessary plans and estimates of cost and to construct any water supply improvement or improvements to be used jointly by the contracting parties, and to provide for the furnishing of water and for the joint use by such contracting parties of such water supply improvement or the joint use of any suitable existing water supply or water mains belonging to either of such parties."

Although provisions were made by act of the general assembly of Ohio as early as 1911 (102 O. L. 482) authorizing county commissioners to provide for the construction of sewers outside of municipalities and to provide for the cost and expense thereof by levying assessments on property to be benefited thereby, this act being amended and supplemented several times so as to authorize the commissioners to provide water distributing systems and water works for the territory served by such sewers, no specific provision was made for the disposal of such water works systems or for the transfer of the management thereof in the event such territory was incorporated as a municipality or was annexed to an existing municipality until 1923 (110

O. L. 338) when the general assembly passed an act relating to county sewers, portions of which act were codified as Sections 6602-32a, 6602-32b, 6602-32c and 6602-32d.

Section 6602-32b as enacted in 1923 reads in part as follows:

“* * * Any completed water mains for the use of any sewer district, constructed under the provisions of Section 6602-17 to 6602-33, inclusive, General Code, and located within any municipality or within any area which may be incorporated as a municipality or annexed to an existing municipality, may, by mutual agreement between the county commissioners and such municipality, be conveyed to such municipality, which shall thereafter maintain and operate such water mains. The county commissioners may retain the right to joint use of such water mains for the benefit of the sewer district. The validity of any assessment which may have been levied or may thereafter be levied to provide means for the payment of the cost of such construction or maintenance of such water mains or any part thereof shall not be affected by such conveyance.”

In view of the terms of the section last above quoted, I am of the opinion that the county commissioners of Allen county may if they see fit, contract with the commissioners of the city of Lima that in the event all or any part of the territory included in the Westwood Sewer District be annexed to the city of Lima such part of the water distributing system for the territory so annexed shall pass to and become the property of the city of Lima upon such terms as may in the judgment of the contracting parties be for the best interest of the inhabitants of the territory so to become annexed, and that Section 8 of the ordinance which you have submitted for my opinion is not illegal and its provisions may be included in a contract between the county commissioners of Allen county and the city commissioners of the city of Lima.

You have not requested, nor do I express an opinion with reference to the constitutionality of the provisions of law which authorize county commissioners to levy special assessments for the building of sewers and water works systems. For the purpose of this opinion I am assuming the legislation to be valid. In this connection, I refer you to the decision of Judge Hough of the United States District Court in the case of Corah T. Conner vs. Board of County Commissioners of Logan county, being case No. 418 in the United States District Court for the Southern District of Ohio, Eastern Division; also the case of Baxter et al. vs. Van Houter, auditor, et al. decided by the Supreme Court of Ohio on June 15th, 1926 and reported in the Ohio Law Bulletin and Reporter for October 11th, 1926; also the decision in the case of Neibel et al. vs. Board of County Commissioners of Montgomery County. This last decision is not reported so far as I can find but reference to it is made in the footnote of the report of the case found in Ohio Law Bulletin and Reporter for September 6th, 1926.

Respectfully,

EDWARD C. TURNER,
Attorney General.