

May 24, 2016

The Honorable William T. Goslee  
Logan County Prosecuting Attorney  
117 East Columbus Avenue, Suite 200  
Bellefontaine, Ohio 43311-2053

**SYLLABUS:**

2016-016

A board of county commissioners may adopt a resolution that provides that a county sewer district customer's unpaid sanitary rates or charges shall be certified pursuant to R.C. 6117.02(C)(1) when the amount of the customer's unpaid rates or charges exceeds a certain dollar amount or when the customer owes rates or charges that are more than thirty days past due.



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OPINION NO. 2016-016

The Honorable William T. Goslee  
Logan County Prosecuting Attorney  
117 East Columbus Avenue, Suite 200  
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Dear Prosecutor Goslee:

You have requested an opinion about the certification of unpaid sanitary rates or charges pursuant to R.C. 6117.02(C)(1). Currently, the board of county commissioners certifies to the county auditor for placement on the tax list and duplicate all sanitary rates or charges that are unpaid by any customer of the county sewer district on August 25 of each year. You ask whether the board of county commissioners may adopt a resolution that requires that unpaid sanitary rates or charges be certified to the county auditor only when the amount of unpaid rates or charges exceeds a certain dollar amount or when the unpaid sanitary rates or charges are more than thirty days past due. You also ask whether a board of county commissioners is required to certify all rates or charges that are unpaid by all of the customers of the county sewer district when the board elects to use certification as a method of collection.

“[A] board of county commissioners, as a creature of statute, has only those powers that are expressly granted by statute or that are necessarily implied thereby.” 2014 Op. Att’y Gen. No. 2014-031, at 2-270. R.C. Chapter 6117 governs the establishment and administration of county sewer districts. A board of county commissioners may establish and maintain one or more sewer districts within the unincorporated areas of the county. R.C. 6117.01(B)(1). “The board of county commissioners shall fix reasonable rates, including penalties for late payments, for the use, or the availability for use, of the sanitary facilities of a [county] sewer district[.]” R.C. 6117.02(A). Such rates are payable by “every person and public agency whose premises are served, or capable of being served, by a connection directly or indirectly” to sanitary facilities owned or operated by the county. *Id.* A board of county commissioners that has fixed sanitary sewer rates “may change the rates from time to time as it considers advisable.” *Id.*

In addition, a board of county commissioners “shall establish reasonable charges to be collected for the privilege of connecting to the sanitary facilities of the [county sewer] district[.]” R.C. 6117.02(B). Sanitary sewer charges shall be paid in full prior to connecting to the sanitary facilities, unless the board has determined in a resolution that it is equitable to have the charges paid in installments. *Id.* In a manner it determines to be adequate, the board of county

commissioners shall provide for payment of charges in installments “at the times, in the amounts, and with the security, carrying charges, and penalties as may be found by the board in that resolution to be fair and appropriate.” *Id.* “The board may include amounts attributable to connection charges being paid in installments in its billings of rates and charges for the use of sanitary facilities.” *Id.*

When a customer of a county sewer district does not pay sanitary rates or charges when due, a board of county commissioners may choose one or more of four methods of collecting the unpaid rates or charges as set forth in R.C. 6117.02(C), which provides, in pertinent part:

When any of the sanitary rates or charges are not paid when due, the board may do any or all of the following as it considers appropriate:

(1) Certify the unpaid rates or charges, 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 the connection....

(2) Collect the unpaid rates or charges, together with any penalties, by actions at law in the name of the county from an owner, tenant, or other person or public agency that is liable for the payment of the rates or charges;

(3) Terminate, in accordance with established rules, the sanitary service to the particular property and, if so determined, any county water service to that property, unless and until the unpaid sanitary rates or charges, together with any penalties, are paid in full;

(4) Apply, to the extent required, any security deposit made in accordance with established rules to the payment of sanitary rates and charges for service to the particular property.

You have asked whether, pursuant to R.C. 6117.02(C)(1), a board of county commissioners that has elected to certify unpaid sanitary rates or charges is required to certify the unpaid rates and charges of all customers of the sewer district, or whether the board of county commissioners may certify the unpaid rates or charges of customers that exceed a dollar amount or that have been delinquent for more than thirty days. The answer to your question is dependent upon the meaning of the first use of the word “when” and the first use of the word “any” in the opening sentence of R.C. 6117.02(C).

We begin with the meaning of “when.” “When” may mean “at the moment that.” *See Merriam-Webster’s Collegiate Dictionary* 1424 (11th ed. 2005) (“at or during the time that ... just at the moment that”); *see also Gehrung v. Collister*, 52 Ohio App. 314, 316, 3 N.E.2d 700 (Cuyahoga County 1936). If this meaning is adopted, the statute will read: “[at the moment that] any of the sanitary rates or charges are not paid when due, the board may ... [c]ertify the unpaid rates and charges ... to the county auditor[.]” This means that if a board of county commissioners elects to certify unpaid rates and charges to the county auditor pursuant to R.C. 6117.02(C)(1), the board shall certify those unpaid rates and charges at the moment that any rates or charges are not paid when due. Under this interpretation, the board has discretion to

determine whether it will certify unpaid rates or charges, but does not have discretion to determine the timing of the certification.

Alternatively, “when” may mean “in the event that.” *Merriam-Webster’s Collegiate Dictionary* 1424 (11th ed. 2005); *see also U.S. v. Willings & Francis*, 8 U.S. 48, 56 (1807). If that meaning is adopted, the statute will read: “[in the event that] any of the sanitary rates or charges are not paid when due, the board may ... [c]ertify the unpaid rates or charges ... to the county auditor[.]” This construction of “when” in R.C. 6117.02(C) means that if there are any rates or charges that are not paid when due, the board may certify the unpaid rates or charges to the county auditor. Under this interpretation, the board has discretion to determine the point at which, or the circumstances under which, the board will certify unpaid rates and charges to the county auditor.

To determine which meaning of “when” is intended by the General Assembly, it is necessary to consider the statutory context. R.C. 6117.01(D) confers discretion on a board of county commissioners to adopt and enforce rules regarding the termination of services and the use of security deposits. A board of county commissioners has discretion under R.C. 6117.02 to set the amount of rates, charges, and penalties that a county sewer district customer shall pay. In addition, as indicated by the General Assembly’s inclusion of the phrase “as it considers appropriate,” a board of county commissioners has discretion under R.C. 6117.02(C) to determine whether to use any or all of the collection methods set forth in R.C. 6117.02(C)(1)-(4). These provisions indicate that the General Assembly has lodged a great deal of discretion in a board of county commissioners with respect to how unpaid, past due sanitary rates or charges are collected.

Construing “[w]hen any of the sanitary rates or charges are not paid when due” to mean that if a board of county commissioners elects to certify unpaid rates or charges, the board shall certify the unpaid rates and charges “at the moment that” the rates or charges become past due, is contrary to the discretion conferred upon the county commissioners by R.C. 6117.01, R.C. 6117.02, and, in particular, the second half of the opening phrase of R.C. 6117.02(C) declaring that a board of county commissioners “may do any or all of the following *as it considers appropriate*[.]” (Emphasis added.) If a board of county commissioners is required to certify rates and charges at the moment that they are not paid when due, the board’s exercise of discretion to determine the circumstances or period of time in which to employ certification as a means of collecting unpaid, past due rates and charges is hampered. Such a requirement is unreasonable and may result in inefficiencies and unnecessary expenses.

In light of the discretionary nature of R.C. 6117.01 and R.C. 6117.02, we conclude that “when” means “in the event that.” Thus, R.C. 6117.02(C)(1) means that in the event that there are any unpaid, past due rates and charges, the board of county commissioners may elect to pursue any or all of the four actions specified in R.C. 6117.02(C), as the board determines is appropriate. This interpretation preserves the intended meaning and purpose of the phrase, “as [the board] considers appropriate” in R.C. 6117.02(C).

Having determined the meaning of “when,” it is necessary to ascertain the meaning of “any” as it is used to qualify “sanitary rates or charges.” The dictionary furnishes several meanings of “any” including:

one, some, or all indiscriminately of whatever quantity... one or more – used to indicate an undetermined number or amount ... a or some without reference to quantity or extent ... unmeasured or unlimited in amount, number, or extent[.]

*Merriam-Webster’s Collegiate Dictionary* 56 (11th ed. 2005). “Any” may also mean “every” or “all.” *Id.* Attorney General opinions have examined the meaning of “any” in various statutes. *See, e.g.*, 2009 Op. Att’y Gen. No. 2009-031, at 2-207 to 2-208 (“any” means “all” in R.C. 4931.64(D) (overruled by 2015 Op. Att’y Gen. No. 2015-035, on other grounds)); 2004 Op. Att’y Gen. No. 2004-031, at 2-281 (“[u]se of the word ‘any’ indicates that the grant of authority is broad, encompassing any or all powers or duties of the type described”); 2000 Op. Att’y Gen. No. 2000-046, at 2-283 (“[w]here a statute uses the word ‘any’ to modify a noun without selection, distinction, or limitation, it is presumed that the legislative intent is that the noun modified by ‘any’ be treated as a whole class without division into smaller classes, and that ‘any’ may be equated to mean ‘all’ or ‘every’ in that context”); 1990 Op. Att’y Gen. No. 90-050, at 2-209 (“any” in the public records statute means “all” or “every”); 1990 Op. Att’y Gen. No. 90-015, at 2-66 (“any” in R.C. 307.71 means “some, one, or all”); 1982 Op. Att’y Gen. No. 82-008, at 2-28 (“any” in R.C. 511.13 means “all”).

Again, it is necessary to look at the statutory context to determine which of the common meanings of “any” the General Assembly intends to apply to R.C. 6117.02(C). 2014 Op. Att’y Gen. No. 2014-031, at 2-274 advised that “[a] board of county commissioners has a duty to collect unpaid sanitary rates and connection charges[.]” A board of county commissioners does not have discretion to decide whether to collect sanitary rates and does not have discretion to waive collection of those rates. *Id.* However, a board of county commissioners does have discretion to determine whether to employ any or all of the collection methods set forth in R.C. 6117.02(C)(1)-(4). *See* R.C. 6117.02(C) (“[w]hen any of the sanitary rates or charges are not paid when due, the board *may do any or all* of the following *as it considers appropriate*” (emphasis added)).

No language in R.C. 6117.02(C) specifies the circumstances in which a board of county commissioners may employ certification or one of the other methods to collect unpaid, past due rates or charges. It follows, therefore, that the board may exercise a reasonable discretion to determine the ways in which an authorized collection method will be used. *See State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1 (1915) (syllabus, paragraph 4) (“[w]here an officer is directed by ... a statute of the state to do a particular thing, in the absence of specific directions covering in detail the manner and method of doing it, the command carries with it the implied power and authority necessary to the performance of the duty imposed”); *Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878) (“[w]here authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner”). Whether a dollar amount will dictate when certification is

used is part of a board of county commissioners' discretion to determine the circumstances in which a collection method will be used. It follows, therefore, that the phrase "any of the sanitary rates or charges," as it appears in R.C. 6117.02(C), means a customer's rates or charges, regardless of amount, that have not been paid when due. That the statute does not indicate that a particular amount of unpaid rates or charges triggers certification means that a board of county commissioners may set the amount of unpaid rates or charges that will cause the board to certify the rates or charges of an account for collection pursuant to R.C. 6117.02(C)(1). And even as a board of county commissioners may determine the amount of unpaid rates or charges that will prompt their certification, the board may determine that rates or charges shall be delinquent for a specific period of time before the board will certify the rates and charges pursuant to R.C. 6117.02(C)(1).

In response to your question, we conclude that under R.C. 6117.02(C), in the event that a county sewer district customer has not paid sanitary rates or charges when those rates or charges are due, regardless of the amount of that customer's unpaid rates or charges, a board of county commissioners may choose to employ one, some, or all of the collection methods listed in R.C. 6117.02(C)(1)–(4) as the board determines is appropriate. A board of county commissioners may determine that a customer's unpaid sanitary rates or charges that are past due shall not be certified pursuant to R.C. 6117.02(C)(1) until the balance due exceeds a certain amount or the rates or charges have been past due for a specified period of time.

It is important to note that although a board of county commissioners has discretion to determine under what circumstances it will employ certification as a means of collecting unpaid rates or charges, the board is not authorized to certify only a portion of a customer's unpaid rates or charges. The General Assembly used "the" in R.C. 6117.02(C)(1) ("[c]ertify the unpaid rates or charges") to refer to the definite category of a customer's rates or charges that have not been paid when due. See *Merriam-Webster's Collegiate Dictionary* 1294 (11th ed. 2005) ("the" is "used as a function word to indicate that a following noun ... is definite or has been previously specified by context or by circumstance" or is "used as a function word with a noun modified by an adjective ... to limit the application of the modified noun to that specified by the adjective"); see also 2011 Op. Att'y Gen. No. 2011-047, at 2-381 ("the definite article 'the' particularizes the subject which it precedes" (quoting *Brooks v. Zabka*, 168 Colo. 265, 269, 450 P.2d 653 (1969))). R.C. 6117.02(C)(1) further provides:

[t]he certified amount shall be a lien on the property from the date placed on the real property tax list and duplicate and shall be collected in the same manner as taxes, except that, notwithstanding [R.C. 323.15], a county treasurer shall accept a payment in [the certified amount] when separately tendered as payment for the *full amount of the unpaid* sanitary rates or charges and associated penalties. (Emphasis added.)

If a board of county commissioners certifies less than the whole amount of a customer's unpaid rates or charges, then by operation of R.C. 6117.02(C)(1), the remaining amount that was not certified will be considered paid even though a customer does not pay the entire amount of

unpaid rates or charges. This would, in effect, waive part of the rates or charges, which a board of county commissioners is not authorized to do. 2014 Op. Att’y Gen. No. 2014-031, at 2-274 (“[because the duty [to fix and collect reasonable rates] is mandatory, a board of county commissioners, upon establishing a sewer district, has no discretion in deciding whether to collect sanitary rates. Waiver of this requirement is not an option”).

In addition, in the event that a board of county commissioners elects to use certification as a method of collecting unpaid rates or charges, the board is not required to use certification to collect all of the unpaid rates or charges owed by every customer of the sewer district. As noted above, R.C. 6117.02(C) states that the board “may do *any or all* of the following as it *considers appropriate[.]*” (Emphasis added.) A board of county commissioners, thus, may exercise reasonable discretion in determining which of the four collection methods are used to collect the unpaid rates or charges of the county sewer district’s customers. The board may choose to certify unpaid rates or charges associated with the accounts of customers that exceed a certain dollar amount or that are more than thirty days past due, and use one of the other methods of collection for unpaid rates or charges that do not meet those criteria. For example, a board of county commissioners may elect to certify customer accounts with unpaid rates or charges that amount to \$100 or less, and to collect by actions at law those customer accounts with unpaid rates or charges that are greater than \$100. Whatever collection methods are used, a board of county commissioners shall ensure that the methods are applied uniformly and not discriminatorily. To that end, a board of county commissioners should adopt and implement policies and procedures that explain the circumstances in which the various collection methods of R.C. 6117.02(C) will be used with respect to delinquent accounts of county sewer district customers.

Based upon the foregoing, it is my opinion, and you are hereby advised that a board of county commissioners may adopt a resolution that provides that a county sewer district customer’s unpaid sanitary rates or charges shall be certified pursuant to R.C. 6117.02(C)(1) when the amount of the customer’s unpaid rates or charges exceeds a certain dollar amount or when the customer owes rates or charges that are more than thirty days past due.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

MICHAEL DEWINE  
Ohio Attorney General