

633.

SANITARY SEWER DISTRICT-COUNTY COMMISSIONERS MAY NOT UNDER SECTION 6602-1 G. C. MAKE AND ENFORCE RULES AND REGULATIONS IN REGARD TO PLUMBING.

COLUMBUS, OHIO, August 11, 1923.

*SYLLABUS:*

*County commissioners may not under section 6602-1 make and enforce rules and regulations in regard to plumbing.*

HON. JOHN E. MONGER, *Director of Health, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your recent communication as follows:

"This department is in receipt of the following telegram under date of July 26, 1923, from Dr. F. M. Houghtalling, Health Commissioner, Erie County General Health District, Sandusky, Ohio.

"Please secure opinion from Attorney General whether county commissioners have legal authority to adopt and enforce plumbing regulations compliance with which is required in permitting establishment of connections to sanitary sewers in a county sewer district."

The board of county commissioners of Erie county has adopted rules and regulations governing the installation of water and sewage improvements. These were adopted in accordance with the authority conferred by section 6602-1 and section 6602-17, General Code of Ohio. Article IV provides for regulation of plumbing. Enclosed is a copy of article IV. Particular question has been raised regarding the legal authority of the county commissioners to adopt and enforce regulations which include requirements relating to the sanitation of the building and not to the protection and use of sewers. The legality of section 3, article IV, that each trap shall be properly vented has been especially questioned.

We desire, therefore, to submit for your opinion the following question: Has a Board of County Commissioners legal authority to adopt and enforce plumbing regulations compliance with which is required in permitting establishment of connections to sanitary sewers in a county sewer district?"

Section 6602-1, General Code, as far as pertinent, provides:

"For the purpose of preserving and promoting the public health and welfare, the board 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 incorporate municipalities. \* \* \* \* \*

The board of county commissioners may make, publish and enforce rules and regulations for the construction, maintenance, protection and use of sewers and sewer improvements in their respective counties outside of in-

corporated municipalities, including the establishment of connections. Such rules and regulations shall not be inconsistent with the laws of the state of Ohio or the rules and regulations of the state board of health. \* \* \*

It will be noted that the above section grants the board of county commissioners the power to publish and enforce rules and regulations for the *construction, maintenance, protection and use* of sewers and sewage improvements, including the establishment of connections, but no where does it mention plumbing.

In the case of *Peter v. Parkinson*, 83 O. S., 36, it was held:

"While in a sense the board of commissioners is the representative and financial agent of the county, its authority is limited to the exercise of such powers only as are conferred upon it by law."

Section 1261-16 General Code provides:

"For the purposes of local health administration the state shall be divided into health districts. Each city shall constitute a health district and for the purposes of this act shall be known as and hereinafter referred to as a city health district. The townships and villages in each county shall be combined into a health district and for the purposes of this act shall be known as and hereinafter referred to as a general health district. As hereinafter provided for, there may be a union of two general health districts or a union of a general health district and a city health district located within such district.

Under the above section each county is a health district known as a general health district and in counties containing cities there are two or more health districts, each city being a city health district and the remainder of the county being a general health district.

Section 1261-30, General Code provides:

"The district board of health hereby created shall exercise all the powers and perform all the duties now conferred and imposed by law upon the board of health of a municipality, and all such powers, duties, procedure and penalties for violation of the sanitary regulations of a board of health shall be construed to have been transferred to the district board of health by this act. The district board of health shall exercise such further powers and perform such other duties as are herein conferred or imposed."

By this section a general health district has all the powers and duties conferred upon the board or health of a municipality.

Title 12, Division 5, Subdivision 2, Chapter 11, is entitled "Board of Health" and relates to boards of health for municipalities.

Section 4413 General code, part of the above chapter, provides:

"The board of health of a city may make such orders and regulations as it deems necessary for its own government, for the public health, the prevention or restriction or disease, and the prevention, abatement or suppression of nuisances. Orders and regulations not for the government of the board, but intended for the general public shall be adopted,

advertised, recorded and certified as are ordinances of municipalities and the record thereof shall be given in all courts of the state, the same force and effect as is given such ordinances. Provided, however, that in cases of emergency caused by epidemic of contagious or infectious diseases, or conditions or events endangering the public health, such boards may declare such orders and regulations to be emergency measures, and such orders and regulations shall become immediately effective without such advertising, recording and certifying."

Sections 4420 and 4421, General Code of Ohio, parts of the above chapter, provide:

"Section 4420. The board of health shall abate and remove all nuisances within its jurisdiction. It may by order therefor compel the owners, agents, assignees, occupants, or tenants of any lot, property, building or structure to abate and remove any nuisance therein, and prosecute them for neglect or refusal to obey such orders. Except in cities having a building department, or otherwise exercising the power to regulate the erection of buildings, the board of health may regulate the location, construction and repair of water-closets, privies, cesspools, sinks, plumbing and drains. In cities having such departments or exercising such power the council by ordinance shall prescribe such rules and regulations as are approved by the board of health, and shall provide for their enforcement."

"Section 4421. The board of health may also regulate the location, construction and the repair of yards, pens and stables, and the use, emptying and cleaning thereof, and of water-closets, privies, cesspools, sinks, plumbing, drains, or other places where offensive or dangerous substances or liquids are or may accumulate. When a building, erection, excavation, premises, business, pursuit, matter or thing, or the sewerage, drainage, plumbing, or ventilation thereof is, in the opinion of the board of health, in a condition dangerous to life or health, and when a building or structure is occupied or rented for living or business purposes and sanitary plumbing and sewerage are feasible and necessary, but neglected or refused, the board of health may declare it a public nuisance and order it to be removed, abated, suspended, altered, or otherwise improved or purified by the owner, agent or other person having control thereof, or responsible for such condition, and may prosecute them for the refusal or neglect to obey such order. The board may also, by its officers and employes, remove, abate, suspend, alter, or otherwise improve or purify them and certify the costs and expense thereof to the county auditor, to be assessed against the property, and thereby made a lien upon it and collected as other taxes."

It has been said by a former Attorney General, found in opinions of the Attorney General for 1915, vol. 3, p. 2352, as follows:

"Before discussing the provisions of this section in detail, it must be noted that the matter of plumbing in private dwellings is now under the control and supervision of local boards of health by direct grant of power in that regard under the provisions of sections 4413, 4420 and 4421 of the General Code. Without quoting the provisions of said sections in full, it is sufficient to say that they confer full and ample authority upon

local boards of health to regulate plumbing and drains and all matters pertaining thereto."

Inasmuch as nothing is said in the act relating to sanitary sewer districts regarding plumbing or giving the county commissioners authority to make and enforce rules and regulations regarding plumbing, it would seem that they were exceeding their powers granted them under section 6602-1 in making such rules and regulations in relation to the installation of plumbing in connection with the sanitary sewer district.

It is therefore my opinion that the board of county commissioners may not, under section 6602-1, make and enforce rules and regulations in regard to plumbing.

Respectfully,

C. C. CRABBE,  
*Attorney General.*

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634.

CITY SOLICITOR—LEGAL ADVISER OF CITY BOARD OF EDUCATION  
—NOT OBLIGATED TO PREPARE ABSTRACT OF TITLE.

COLUMBUS, OHIO, August 11, 1923.

*SYLLABUS:*

*In view of a former opinion of this department in which sections 4761 and 4762, G. C., are considered, and the conclusion reached that while the City Solicitor is the legal adviser and attorney of the city board of education he is not obligated to prepare abstracts of title of property for such board, such city board of education could legally compensate a person holding the office of City Solicitor for his services in preparing an abstract of title.*

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

GENTLEMEN:—This is to acknowledge the receipt of yours of recent date in which you submit the following inquiry:

"May a board of education of a city school district legally compensate the city solicitor of the city, who is the legal adviser of the board of education, for services in preparing an abstract of title of property being purchased by the board for school purposes?"

In reply your attention is first directed to the provisions of the General Code providing that the city solicitor in city school districts shall be the legal adviser and attorney of the boards of education thereof, to wit, sections 4761 and 4762 G. C. which read as follows:

Section 4761: Except in city school districts, the prosecuting attorney of the county shall be the legal adviser of all boards of education of the county in which he is serving. He shall prosecute all actions against