

I have examined the deed form of the deed to be executed by Elizabeth Wilson Mullock and by Charles Mullock her husband, and find said proposed deed to be in form sufficient to convey to the State of Ohio a fee simple title to the above described property, free and clear of all encumbrances whatsoever, except the taxes for the year 1930, the first installment of which is due and payable in December, 1930. As above noted, the taxes for the year 1930 are now a lien on said property, and some adjustment should be made with respect to said taxes before the transaction for the purchase of this property is closed. As above indicated, this deed has not yet been signed and acknowledged by said Elizabeth Wilson Mullock and Charles Mullock her husband, and care should be taken to see that such deed is properly executed and acknowledged before you close the transaction for the purchase of this property.

Upon examination of encumbrance estimate No. 251 I find that the same has been executed in the manner required by law, and from its provisions I find that there are sufficient balances in the proper appropriation account to pay the purchase price of this property, which is the sum of four thousand five hundred dollars (\$4,500.00).

From the certificate of the controlling board submitted to me it appears that on March 17, said board approved the release of the sum of thirty thousand dollars (\$30,000.00) out of the appropriation made by the Legislature for the purchase of land for the use of the Ohio State University, and it appears that the purchase price of the property here in question is included within the amount of money so released.

I am herewith returning with my approval, subject to the exceptions above noted, said abstract of title, warranty deed form, encumbrance estimate No. 251 and controlling board certificate relating to the proposed purchase of the above described property.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1846.

APPROVAL, BONDS OF CUMBERLAND-SPENCER RURAL SCHOOL DISTRICT, GUERNSEY COUNTY—\$55,000.00.

COLUMBUS, OHIO, May 10, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1847.

WATERWORKS SYSTEM—COUNTY SEWER DISTRICT—DISTRIBUTING PIPES OWNED BY COUNTY BUT WATER SUPPLIED BY MUNICIPALITY UNDER CONTRACT—COMMISSIONERS' RIGHT TO INCLUDE IN RATE CHARGED CONSUMERS, A PERCENTAGE THAT WILL COVER DEFICIENCIES FROM UNCOLLECTIBLE ASSESSMENTS.

SYLLABUS:

1. *When a county owns the distributing pipes of a waterworks system for an established sewer district within the county and contracts with a municipal corporation or private*

water company for a supply of water to be supplied consumers through and by means of the said distributing pipes, the county commissioners of the county may fix reasonable rates to be charged water consumers applied from such distributing pipes.

2. *All moneys collected as water rentals in connection with a water-works system for a sewer district in a county should be applied first to the conduct, management and operation of such water supply, and any surplus thereafter remaining should be applied to the enlargement or extension thereof, to the payment of principal or interest of any loan, indebtedness or liability incurred in connection therewith, or for the creation of a sinking fund for the liquidation of any debt created in connection therewith.*

3. *When a water-works system has been constructed and maintained for a sewer district within a county, the cost or any part of which has been assessed against benefited property and bonds sold in anticipation of the collection of such assessments, and experience has shown over a period of years that a proportionate percentage of the assessments so made to cover the cost of such construction is uncollectible the commissioners may lawfully fix the rates to be charged to water consumers for water consumed in such amount as to create a surplus over the cost of the conduct, management and operation of the water system, sufficient to cover the deficiencies in such assessments.*

COLUMBUS, OHIO, May 1, 1930.

HON. J. FRANK POLLOCK, *Prosecuting Attorney, Painesville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“Lake County has constructed quite extensive water lines under the provisions of Section 6602-17 and following. The Auditor finds that the average delinquency on assessments to pay for these improvements is about 15%. This 15% now amounts to so much in the aggregate that it has become a rather heavy burden for the Sinking Fund, and the County Commissioners now feel that they should refuse to make any more improvements until this situation is greatly improved. Theoretically, the assessments are all paid eventually, but we find that this does not hold true in practice for the reason that when property is sold on tax sales it does not sell for enough to pay all of the court costs. In view of this situation, I am asking for the construction of the following portion of Section 6602-17.

‘All money collected as rents or for water works purposes from any district shall be paid to the county treasurer and kept in a separate and distinct fund to the credit of such district. Such fund shall be applied first to the conduct, management and operation of such water supply or water works system, and any surplus thereafter remaining shall be applied to the enlargement or extension thereof, to the payment of interest or principal of any loan, indebtedness or liability incurred in connection therewith, or for the creation of a sinking fund for the liquidation of any debt created in connection therewith; but in no case shall money so collected be expended otherwise than for the use and benefit of such district.’

The question raised, is whether or not the Commissioners may legally add a small percentage to the rates for water, and use the revenue raised in this manner for the purpose of retiring the bonds issued for the various improvements? The amount added to the water rate would be in proportion to the amount of the uncollectible delinquency for each payment.

The section quoted above further provides that the Commissioners may fix reasonable rates to be charged for water, when the source of supply or distributing pipes are owned by the county or district, but when the source of supply is owned by a municipal corporation, the schedule of rates to be charged by such municipal corporation must be ratified by the Board of Commissioners

at the time the contract is entered into for the use of water from such municipal corporation. In our case the City of Painesville owns the pumping station and the county builds, maintains and operates the distributing pipes. May the county, under this set of circumstances, add to the price stipulated in the contract with the City of Painesville for furnishing water, for the purpose of covering overhead in the collection of water rents and also for the purpose raised in my first question, to wit, building up a fund for the purpose of covering uncollectible delinquent assessments?"

By the terms of Sections 6602-17 to 6602-33, General Code, the county commissioners of any county are authorized to construct, maintain and operate a public water supply or waterworks system for any established sewer district. Section 6602-17, General Code, provides 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. * * * The commissioners may fix reasonable rates to be charged for water, when the source of supply or distributing pipes are owned by the county or district. When the source of supply is owned by a municipal corporation, or any person, firm or private corporation, the schedule of rates to be charged by such municipal corporation, person, firm or private corporation shall be ratified by the board of county commissioners at the time any contract is entered into for the use of water from such municipal corporation, person, firm or private corporation. All money collected as rents or for water works purposes from any district shall be paid to the county treasurer and kept in a separate and distinct fund to the credit of such district. Such fund shall be applied first to the conduct, management and operation of such water supply or water works system, and any surplus thereafter remaining shall be applied to the enlargement or extension thereof, to the payment of interest or principal of any loan, indebtedness or liability incurred in connection therewith, or for the creation of a sinking fund for the liquidation of any debt created in connection therewith; but in no case shall money so collected be expended otherwise than for the use and benefit of such district."

For the purpose of paying a part or the whole of the cost of construction, maintenance, repairs or operation of any improvement provided for in Sections 6602-17 to 6602-33, General Code, or for paying the sanitary engineer and his assistants, and his other necessary expenses in connection therewith, the commissioners are authorized to borrow money, issue certificates of indebtedness or authorize the issue of bonds of the county in an amount not exceeding the estimated cost thereof by more than ten percent plus such amount as shall be necessary to pay the installments of interest on such bonds or on certificates of indebtedness to accrue before the first installment of taxes and assessments provided therefor shall be collected. Section 6602-20, General Code.

Any and all funds arising from premiums on such bonds and accrued interest thereon and interest earned on the funds realized from the sale of said bonds when placed in a county depository shall be credited to the bond and interest fund estab-

lished for the redemption of the bonds so sold, and on the completion of the improvement any surplus funds arising from the sale of said bonds or certificates of indebtedness in excess of the actual cost of such improvement including certain incidental costs shall be credited to the bond and interest fund established for the redemption of the said bonds.

Section 6602-25, General Code, reads as follows:

"Upon the completion of any * * * improvement * * * under Sections 6602-17 to 6602-33, inclusive, of the General Code, the actual cost thereof shall be ascertained and to such actual cost shall be added an amount equal to the interest accrued and to accrue upon certificates of indebtedness and upon bonds * * * authorized by said sections before the first installment of such assessment shall be collected and the sum so arising, less the portion thereof to be paid by the county at large, shall be assessed against the lots and parcels of land within such district found to be benefited by such improvement; * * * provided that the amount assessed against any lot or parcel of land may be paid within thirty days from the confirmation of the assessments as herein provided. For the purpose of paying the sanitary engineer and for paying his assistants and all of his other necessary expenses and for the purpose of paying that part of the cost of the improvement or improvements to be paid by the county, or of the interest to accrue thereon, the board of county commissioners may levy taxes, in addition to all other taxes authorized by law. Such levy shall be subject to all the limitations provided by law upon the aggregate amount, rate, maximum rate and combined maximum rate of taxation."

The authority granted to county commissioners by Section 6602-17, *supra*, to construct a waterworks system for the purpose of furnishing water to a sewer district or to contract with a municipal corporation or person, firm or private corporation to furnish such water and to supervise the rates to be charged for water when the same is furnished by contract with the municipal corporation, person, firm or private corporation no doubt contemplates that in some instances where a contract is made with a municipal corporation, firm or private corporation to furnish water to a sewer district the municipal corporation, person, firm or private corporation with whom the contract is made will not only furnish the water from a source of supply owned by it but will also own the distributing system and will furnish the water to the users and collect the water rents. The language of the statute is in my opinion broad enough to permit the making of such a contract.

In many cases, however, the commissioners construct their distributing system and in lieu of pumping the water through the distributing system from a source of supply owned by the county contract with a municipal corporation, person, firm or private corporation to supply the water and either provide for the collection of the rents from the water users by the agency supplying the water, or provide for the collection of such rents by the commissioners themselves. When the commissioners build and own the distributing system and assume the care and maintenance of the system, provision must in some way be made to provide funds for the maintenance and repair of that system. Likewise, if the commissioners assume the burden of collecting the water rents, provision must in some way be made for the payment of the overhead cost of collecting such rents, as well as maintaining and keeping in repair the pipe lines and other equipment connected with the distributing system.

In the concrete case you mention, it appears that a contract has been made by the county commissioners of Lake County with the municipal corporation of Painesville, to furnish water from the pumping station of the municipal waterworks of Painesville, for use by the county in providing water for one or more sewer districts, which

water is supplied to said districts through and by means of a distributing system owned and operated by the county, the original cost of the building of which was assessed upon the lands benefited in accordance with the statute. It also appears that by the terms of the contract between the commissioners and the City of Painesville, the city is paid for the water pumped, in accordance with the schedule of rates fixed in said contract, and that the county collects the water rents charged against the water users.

Manifestly, the rate charged to the water users should be different from the rate paid to the city or some other means would necessarily have to be provided for the funds necessary to pay the overhead expense of collecting the rents and operating and keeping in repair the distributing system owned by the county.

It is my opinion that the arrangement made with the City of Painesville, as I understand your letter, is proper and legal, and authorized by the statute.

There is, of course, necessarily some expense entailed by the county in the collection of the water rents and also in the keeping in repair, maintaining and operating the distributing system, and this expense is, in my opinion, a proper charge, to be made against funds raised by the collection of the water rents.

The purpose of the assessments made by county commissioners to cover that part of the cost of the construction of a waterworks system, or any part thereof, to be assessed against benefited property in a sewer district is to pay the bonds which have been issued to pay such cost, and if the assessments are not collected, some other means must be taken to procure the necessary funds to redeem the bonds. There is no provision made for the levying of deficit assessments and no specific provision at least directing that such deficiencies may be met from general taxation.

Authority is given, however, to fix reasonable rates to be charged water-users and one of the purposes to which these rentals may be applied is "to the payment of interest or principal of any loan, indebtedness or liability incurred in connection therewith, or for the creation of a sinking fund for the liquidation of any debt created in connection therewith."

If experience has shown over a period of years that approximately fifteen percent of the assessments made to cover the cost of construction of a waterworks system or any part thereof in a sewer district is uncollectible, it is clearly within the statutory authority granted to county commissioners to include a sufficient amount in the rentals to be collected for the use of water to cover such deficiencies.

In specific answer to your questions, therefore, I am of the opinion that under the circumstances of the concrete case set up in your inquiry, it is lawful for county commissioners to fix a schedule of rates to be charged water-users in a sewer district which rates should be such as to provide sufficient funds to cover the cost to the county of the water supplied to it from the pumping station of the waterworks of the municipality of Painesville and in addition thereto, a sufficient amount to cover the overhead expenses incurred in the collection of the water rents and also a sufficient amount to build up a fund for the purpose of covering uncollectible delinquent assessments theretofore made upon benefited property to cover the cost of the construction of the water distributing system.

Respectfully,
GILBERT BETTMAN,
Attorney General.