

of Ohio, acting by the Department of Highways and Public Works, and The Permutit Company, a corporation organized under the laws of Delaware and of New York. This contract covers the construction and completion of water softener equipment with electric alarm meters for Miami University, Oxford, Ohio, and calls for an expenditure of \$2,910.00.

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has further been submitted a contract bond upon which the National Surety Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
C. C. CRABBE,
Attorney-General.

2203.

SEWER DISTRICT—AUTHORITY OF COUNTY COMMISSIONERS UNDER
SECTIONS 6602-1a AND 6602-1b GENERAL CODE.

SYLLABUS:

Authority granted under sections 6602-1a and 6602-1b cannot be limited or defined by ordinance or resolution of council in such a manner as to give supervisory powers to the council over the establishment, construction, maintenance, repair and operation of a county sewer district. The board of county commissioners should not regard any limitation or qualification as giving the consent of the municipality to the establishment of the sewer district.

COLUMBUS, OHIO, February 6, 1925.

HON. EDWARD C. STANTON, *Prosecuting Attorney, Cleveland, Ohio.*

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

“A question has arisen on which your opinion is requested as to whether, under the provisions of section 6602-1a and 6602-1b G. C., as amended 110 Ohio Laws 338, a municipality may by the ordinance or resolution authorizing the board of county commissioners to lay out, establish and maintain one or more sewer districts within the municipality, limit the authority of the board of county commissioners as to what may constitute ‘a main works’ and by such ordinance or resolution provide that no works of any kind, the cost and expense of which will be charged against the property within the municipality until plans and estimates therefor have been prepared and submitted to the council of the municipality and the approval of that body thereto obtained.

“Can any limitation or definition be placed upon such ‘main works’ by the municipality, as for instance, that no water pipes or sewers whatsoever

shall be installed within the limits of the municipality, or that the main works shall consist of a certain sized sewer or water pipe, or that it shall consist of only one line of sewer or water main?"

Section 6602-1a, as found in 110 O. L., p. 339, provides:

"Whenever duly authorized by the council of any incorporated municipality, the board of county commissioners may, by resolution, lay out, establish and maintain one or more sewer districts within their respective counties to include a part or all of the territory within such municipality as the whole or a part of such sewer district. Such authority shall be evidenced by an ordinance or resolution of the council of said municipality, entered upon its records."

Section 6602-1b (110 O. L., p. 339) provides:

"The authority of the board of county commissioners to provide sewer improvements and to maintain and operate the same within sewer districts which include a part or all of the territory within one or more incorporated municipalities shall be the same as provided by law within sewer districts wholly outside of municipalities, including the levying of assessments, provided, however, that such authority, except as hereinafter provided, shall be limited to main works only, and shall not include construction and maintenance of lateral sewers for local service within such municipality.

"At any time after a sewer district is established comprising or including a part or all of the territory within any municipality, the council of such municipality may by ordinance or resolution authorize the board of county commissioners to proceed with the construction or the maintenance, repair and operation of any sewer improvement for local service within such municipality. After such authority has been granted, the board of county commissioners may proceed with the construction, or the maintenance and operation of said improvement in the same manner as provided by law for improvements in sewer districts wholly outside of municipalities."

Sections 6602-1a and 6602-1b were supplemental to the county sewer district act, sections 6602-1 et seq.

Section 6602-1 provides in part:

"For the purpose of preserving and promoting the public health and welfare, 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. * * * Any board of county commissioners may acquire, construct, maintain and operate such main, branch, intercepting, or local sewer or sewers within any such sewer district, and such outlet sewer or sewers and sewage treatment or disposal works within or without such sewer district, as may be necessary to care for and conduct the sewage or surface water from any or all parts of such sewer district to a proper outlet, so as to properly treat or dispose of same. * * * No sewer or sewage treatment works shall be constructed in any county outside of incorporated municipalities by any person, firm or corporation, until the plans and specifications for the same shall have been approved by the board of county commissioners, and any such construction shall be done under the supervision of the county sanitary engineer. * * *"

Section 6602-2 provides in part:

"After the establishment of any such sewer district the county commissioners shall have prepared by the county sanitary engineer a general plan of sewage and sewage disposal for such district, as complete as can be made at that time. After such general plan has been approved by them they shall have prepared by the county sanitary engineer, detailed plans, specifications and estimates of cost of such part or parts of the improvement as it is necessary to then construct. * * * After approval of the detailed plans, specifications and estimates of cost, the board of county commissioners shall adopt a resolution declaring that such improvement or improvements, describing the same and the location, route and termini thereof, are necessary, for the preservation and promotion of public health and welfare, designating the character of the materials to be used, referring to the plans, specifications and estimates of cost, stating the place where they are on file and may be examined, the estimated cost of the maintenance of such improvement for one year, what part of the cost will be paid by the county at large and what part will be specially assessed against the benefited property within the sewer district. * * *

Under section 6602-3, after the expiration of ten days from the completion of the publication of the resolution specified in section 6602-2, the board of county commissioners must determine whether they will proceed with the construction of the improvement, and if so must adopt the improvement resolution, must determine whether bonds shall be issued in anticipation of the collection of special assessments, etc.

Sections 6602-8 and 6602-8b provide for the assessment of the cost of the improvement against property benefited by such improvement.

An examination of section 6602-1a discloses that the authority conferred upon the board of county commissioners by that resolution is to include within the sewer district or districts so established by them a part or all of the territory of the municipality as the whole or a part of such sewer district. This may not be done unless the municipality, through its council, shall authorize the inclusion of all or a part of the territory of the municipality as the whole or a part of such sewer district.

It must be borne in mind that a municipality has authority to create its own sewer districts within its corporate limits and to provide a system of sewage for the municipal corporation. See sections 3871 et seq. It must be further borne in mind that municipalities have the right to contract with other municipalities or the board of county commissioners for the joint use of sewers. See sections 6602-10 et seq. These sections provide that the municipality may contract with the board of county commissioners for a connection on to the sewers of the county sewer district. The object and intent of the legislature in passing supplementary section 6602-1a was to give the municipality the benefits of the county sewer district act, but section 6602-1b specifically provides that when the consent is given to the incorporation of the municipality into the county sewer district, the authority of the board of county commissioners to provide sewer improvements and to maintain and operate the same within the sewer district, which includes all or a part of the municipality, "shall be the same as provided by law within sewer districts wholly outside of municipalities, including the levying of assessments."

It will further be noted that by the first paragraph of section 6602-1b, the authority of the county commissioners within that part of the district contained within the municipality is limited to the construction, maintenance and operation of "main works only" and the act specifically excludes "construction and maintenance of lateral sewers for local service within such municipality," unless, as provided in the second paragraph of section 6602-1b, after the establishment of the sewer district comprising a part or all of the territory of the municipality, the council by ordinance or resolution authorizes the board of county commissioners to proceed with the construction or the

maintenance, repair and operation of any sewer improvement for local service within such municipality. It will be further noted that after such authority is given by the municipality, the board of county commissioners proceed with the construction, maintenance and operation of such sewers for local service "in the same manner as provided by law for the improvements in sewer districts wholly outside of municipalities."

It is therefore plainly evident that when the municipality desires to avail itself of the privileges of the county sewer district act, it must consent to the inclusion of all or part of the municipality within the county sewer district and that the board of county commissioners then have the power, to the exclusion of the municipal authorities, to proceed with the construction of the improvements the same as if no part of the municipality was included within the district; that is, the sewers must be constructed by the board of county commissioners under the supervision of the county sanitary engineer and the cost of the construction is provided for in the manner to be determined by the board of county commissioners, pursuant to the sections above quoted. It is further apparent that no limitations on this consent may be imposed by the municipal corporation and that no supervisory powers may be reserved by council over the right to construct, maintain, repair and operate the sewers so constructed. To hold otherwise would be to give the council a right in advance of the preparation of the general plans or detailed plans, provided for under section 6602-2, which authority is imposed solely in the board of county commissioners to determine the matters so imposed upon the board of county commissioners. It will be borne in mind that not only the general plans and detailed plans are prepared after the establishment of the district, but the plans must be approved by the board of county commissioners. The location, route and termini must be selected and approved by the board, the character of materials to be used must be approved by the board and the assessments must be levied by the board. A limitation by council, for example, that the board of county commissioners shall not proceed, after the establishment of the district, with the construction of such sewers until plans and estimates are prepared and submitted to council, would be in direct conflict with the provisions of sections 6602-2 and 6602-3.

It is therefore apparent that if the municipality desires to reserve and exercise the control over its sewers, it should proceed under sections 3871 et seq., but if it desires to take advantage of the county sewer district act, its consent to the incorporation of the territory of the municipality into the district must be unqualified and the right of control by the board of county commissioners cannot be limited by council. It is apparent that any limitations or reservations of the municipality might interfere with the plans of the county commissioners relating to other parts of the county sewer district and might be inimical to the interests of the district as a whole.

What has been said with reference to the sewer district applies as well to the authority of the county commissioners to acquire, construct, maintain and operate the public water supply or water works system within sewer districts comprised in part of municipal corporations, as provided in sections 6602-17 et seq.

It is therefore my opinion that the authority granted under section 6602-1a and 6602-1b cannot be limited or defined by ordinance or resolution of council in such a manner as to give supervisory powers to the council over the establishment, construction, maintenance, repair and operation of a county sewer district. The board of county commissioners should not regard an ordinance or resolution containing any limitation or qualification as giving the consent of the municipality to the establishment of the sewer district.

Respectfully,

C. C. CRABBE,

Attorney-General.