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1. SEWER DISTRICT CREATED BY COUNTY COMMISSIONERS—MAIN SEWER LINE—MAY BE LAWFULLY CONSTRUCTED—SUFFICIENT IN SIZE TO RECEIVE SEWAGE EXPECTED TO ORIGINATE IN ADJOINING AREA—SPARSELY POPULATED—INCLUSION IN DISTRICT NOT PRESENTLY WARRANTED—SECTION 6602-1 ET SEQ., GC.
2. OWNERS OF PREMISES IN AREA ADJACENT TO SEWER DISTRICT—CONTRACT FOR SEWER CONNECTIONS—ASSESSMENTS—COST OF MAIN SEWER LINE—TAX LEVY—SECTION 6602-8b GC.

SYLLABUS:

1. Where the county commissioners have created a sewer district under authority of Section 6602-1 et seq., General Code, the commissioners may lawfully arrange for the construction of a main sewer line sufficient in size to receive the sewage which is expected to originate in an adjoining area, even though such adjoining area is so sparsely populated that its inclusion in such district is not presently warranted.

2. Under the provisions of Section 6602-8h, General Code, the owners of premises in an area adjacent to a sewer district may, by contract, be permitted to connect the sewage system within such adjacent area to the system already existing within such district; and the payment for such service by such individual may, under the provisions of this section, be made by special assessment on the lots or parcels of land involved, but such assessments may not be less than the original assessment for similar property within the district. Such contract payments, however, even though made by way of special assessments, do not constitute such a reapportionment of the cost of the main sewer line in such original district as would permit the diminution of the assessments originally laid on the owners of property within such original district, but any funds raised under such arrangements may properly be appropriated for the use and benefit of the original sewer district and specifically may be used to pay the cost of maintenance and operation of the original improvement with the result that the necessity for the levy of taxes on the taxable property in such district for such purposes, under the provisions of Section 6602-8b, General Code, will be diminished or avoided altogether.

Columbus, Ohio, March 11, 1953

Hon. Calvin W. Hutchins, Prosecuting Attorney
Ashtabula County, Jefferson, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The County Commissioners of Ashtabula County are contemplating the creation of a sewer district, under authority of Sec-

tions 6602-1 to 6602-9, inclusive, General Code. This district will include a densely populated area located on the lake front in Saybrook Township. There is a sparsely settled area adjacent to that, which will be included in the district. This adjoining area may within the next few years require a sewer system.

“Assuming that the district, presently to be created, includes only that portion of the township which is densely populated, may the Commissioners arrange for a main sewer line sufficient in size to receive that sewage which would originate in the adjoining area, if it was later erected into the sewer district? If this can be done, would it be possible, under the provisions of G.C. 6602-8h, to reapportion a part of the cost of the main sewer line, installed in the original district, and assess a portion of such cost upon the adjoining area, when it becomes a part of the other sewer district?”

By reference to Section 6602-8h, General Code, I find the following provision :

“At any time after the formation of any sewer district, the board of county commissioners, when deemed expedient, may, on application by a corporation, individual or public institution outside of any sewer district, contract with such corporation, individual or public institution for depositing sewage from premises outside such district in the sewers constructed or to be constructed to serve such district and for the treatment or disposal thereof, on such terms and conditions as shall be by such board of county commissioners deemed equitable, but the amount to be paid shall in no case be less than the original assessment for similar property within the district, and such board of county commissioners in any such case, *shall appropriate any moneys received for such service to and for the use and benefit of such sewer district*; provided, however, that whenever the board of county commissioners deem it necessary to contract with a corporation, individual or public institution for depositing sewage from premises outside such sewer district in the sewers constructed or to be constructed to serve such district, they shall so determine by resolution, and may collect said amount in cash, or the same may be assessed against said lots or parcels of land, and the method and manner of making said assessment, together with the notice thereof, shall be the same as provided herein for the original assessment. * * *

(Emphasis added.)

The fact that the General Assembly has seen fit in the above quoted language to authorize the use of a sewage system by owners of land lying outside of the sewer district by which such system was originally constructed, clearly indicates that it was contemplated that such a sewer system might lawfully be constructed of such size and capacity as to make possible

its use for the disposal of sewage from sources other than those within the district. In other words, in constructing a sewer system for a particular district does not appear to be necessary to restrict such a system to such size as will accommodate merely the needs of the district concerned. For this reason I am impelled to conclude that the commissioners in the situation which you have described would be authorized to arrange for a main sewer line sufficient in size to receive that sewage which is expected to originate at some future date in the sparsely populated area adjacent to the district which is proposed to be erected.

Your second question relates to the possibility of proceedings under Section 6602-8h, supra, "to reapportion" a part of the cost of the main sewer line to be constructed by the district in question, and to "assess a portion of such cost upon the adjoining area when it becomes a part of the district."

From the language already quoted from Section 6602-8h, supra, you will observe that as to the district which the commissioners presently propose to erect, the commissioners may, by contract, arrange with individuals residing outside such district for the depositing of sewage from their premises in the sewers presently to be constructed within such district. It will further be observed that in such case the contract may provide for an assessment on the property of such owners in an amount not less than the original assessment for similar property within the district. The disposition of the funds arising from such "contract assessments" is also provided for by this statute, the requirement being that funds so accruing shall be appropriated by the county commissioners "to and for the use and benefit of such sewer district."

It is important to observe at this point that the funds thus coming into the control of the commissioners are to be appropriated as other public moneys, and that they accrue to the use and benefit of the district rather than to the use and benefit of any of the property owners in the original district upon whom the original assessments were imposed.

This circumstance leads to the inference that such funds so accruing to the district are to be utilized for the payment of the cost and maintenance of the operation of the district system rather than being applied so as to reduce the amount of any assessments on the owners of the property within the district which remain unpaid.

The application of such funds to pay the cost of maintenance and operation would, of course, amount to an indirect benefit to the owners of property within the original district, since such use would either make unnecessary or tend to diminish the need for a levy of taxes upon the taxable property within the district, as provided by Section 6602-8b, General Code. The pertinent statutory provision in this section is as follows:

“* * * The board of county commissioners may, from time to time and at such intervals as they may deem expedient, assess the lots and parcels of land specified in said notice of assessment *and levy taxes* upon the taxable property of the district so improved, to pay the cost of the maintenance and operation of any such improvement or improvements, including disposal of sewage, after completion thereof, and no notice shall be necessary of such maintenance, repair or operation assessment unless the amount thereof shall exceed ten per cent. of the original cost of the construction. * * *”
(Emphasis added.)

It will be noted, of course, in Section 6602-8h, *supra*, provision is made for the payment by individuals owning land outside the original sewer district for services provided in the matter of connecting to the original sewer district by having assessments laid against the premises involved. This method of collection does not, in my opinion, affect in any way the consideration for such payments nor the limitations on the use of the funds thus raised, it being my conclusion that such consideration is the privilege of connecting the new system to that constructed by the original district, and the use of such funds being limited to the payment of the cost of maintenance and operation of the original system. This, of course, does not in any direct sense amount to a “reapportionment” of a part of the cost of the main sewer line which has been constructed in the original district, even though the owners of premises within such district will indirectly benefit from such arrangement.

Accordingly, and in specific answer to your inquiry, it is my opinion that:

1. Where the county commissioners have created a sewer district under authority of Section 6602-1 et seq., General Code, the commissioners may lawfully arrange for the construction of a main sewer line sufficient in size to receive the sewage which is expected to originate in an adjoining area, even though such adjoining area is so sparsely populated that its inclusion in such district is not presently warranted.

2. Under the provisions of Section 6602-8h, General Code, the owners of premises in an area adjacent to a sewer district may, by contract, be permitted to connect the sewage system within such adjacent area to the system already existing within such district; and the payment for such service by such individuals may, under the provisions of this section, be made by special assessment on the lots or parcels of land involved, but such assessments may not be less than the original assessment for similar property within the district. Such contract payments, however, even though made by way of special assessments, do not constitute such a reapportionment of the cost of the main sewer line in such original sewer district as would permit the diminution of the assessments originally laid on the owners of property within such original districts, but any funds raised under such arrangements may properly be appropriated for the use and benefit of the original sewer district and specifically may be used to pay the cost of maintenance and operation of the original improvement with the result that the necessity for the levy of taxes on the tangible property in such district for such purposes, under the provisions of Section 6602-8b, General Code, will be diminished or avoided altogether.

Respectfully,

C. WILLIAM O'NEILL
Attorney General