

act in its proprietary capacity in the operation of such a utility, it nevertheless may not be denied that the property is acquired for and held for a municipal use.

In the case of *State, ex rel. v. Shriver*, 113 O. S. 171, a question was presented with reference to the power of a municipality to sell a municipal light plant. Council had apparently authorized the sale which had been approved by the board of public affairs as required by statute, which board had later disapproved of the procedure. An action in mandamus was instituted to require the contract to be executed. The court expressly pointed out in denying the writ that:

“Before the municipal authorities are authorized, much less required to sell, any property belonging to a municipality, it must appear that such property is not needed for any municipal purpose. There is no such averment in the petition.”

From the foregoing, it will be observed that notwithstanding the Travelers Ins. Co. case, supra, the court adheres to the proposition that the property in connection with a municipal light plant is held for a municipal use or purpose, which must be protected. In the case you mention as pointed out by you, there are a number of sections which provide ample authority for the payment of a judgment. This special provision made for the benefit of judgment creditors of a municipal corporation which is not provided in connection with judgments against private corporations, is another argument against the levy. In other words, where the general law provides for the collection of a judgment by means of a levy and further provides a special method whereby judgments against municipalities may be collected, it may well be argued that the legislature having provided a special method for the payment of judgments against municipalities, other methods are not available. If no method had been provided for the payment of such judgments and the property under consideration was no longer needed for municipal purposes, it is probable that a levy could be made. However, in the case under consideration the property is used for municipal purposes. There is already, as hereinbefore indicated, a method provided for the payment of judgments and it is against public policy to undertake to levy upon the property.

In specific answer to your inquiry, it is my opinion that where a municipality owns a municipal light plant which is being operated by it, the property so held is not subject to being levied upon in pursuance of a judgment against said municipality for wrongful death.

Respectfully,

GILBERT BETTMAN,
Attorney General.

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2875.

APPROVAL, BONDS OF VILLAGE CEDARVILLE, GREENE COUNTY, OHIO
—\$50,000.00.

COLUMBUS, OHIO, January 27, 1931.

Industrial Commission of Ohio, Columbus, Ohio.