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BOARD OF COUNTY COMMISSIONERS CANNOT CONTRACT WITH PRIVATE PERSON TO INSTALL STORM SEWER WHICH BENEFITS BOTH PARTIES AND SHARE COSTS OF SUCH INSTALLATION UNLESS SAID SEWER IS INSTALLED UNDER PROVISIONS OF 6131.62, REVISED CODE—§§6131.62, 6131.22, R.C.

## SYLLABUS:

There is no authority for a board of county commissioners to enter into a contract with a private individual whereby the county and such individual are to share the cost of installing a storm sewer which will benefit each of them; however, such board may proceed to install such a sewer in accordance with Section 6131.62, Revised Code, in which case the cost of such installation would be borne by the county and the persons benefited thereby according to the benefit each would receive from such sewer as provided for in Section 6131.22, Revised Code.

Columbus, Ohio, August 10, 1961

Hon. Geo. C. Steinemann, Prosecuting Attorney  
Erie County, Sandusky, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"This office has been requested to give an opinion as to the legal right of the Erie County Commissioners to enter into an arrangement whereby a private developer of a subdivision pays to Erie County a sum of money which represents what would have been his cost to install a storm sewer of a certain size in a county right-of-way in return for Erie County installing said storm sewer in a larger size so as to meet County roadside drainage requirements and then permitting this developer to drain into the newly constructed County sewer.

"Section 307.15 of the Ohio Revised Code permits the Board of County Commissioners to enter into contracts with other units of government but I find no authority for a County to enter into such a contract with a private individual whereby private financing by the terms of the contract pays a part of the cost of the County installation.

"Your advice as to a possible means of entering into an enforceable arrangement along the lines outlined above will be appreciated."

A board of county commissioners has only such powers as are conferred by statute. *Elder v. Smith*, 103 Ohio St., 369 (1921). I have been unable to find any statutory authority for such a board to enter into a contract with a private individual whereby the individual pays part of the cost of installing a storm sewer in a county road right-of-way in exchange for the privilege of draining into said sewer.

Regarding the drainage of county roads, however, your attention is directed to Section 5543.12, Revised Code, reading in part as follows :

“The county engineer or anyone acting under his authority, when authorized by the board of county commissioners or board of township trustees, may enter immediately :

“(A) Upon any lands adjacent to any of the highways in the county for the purpose of opening an existing ditch or drain, or for digging a new ditch or drain for the free passage of water for the drainage of highways ;

“\* \* \*

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Your attention is also directed to Section 6131.62, Revised Code, providing in part as follows :

“When in the opinion of the board of county commissioners, by resolution entered on its journal, any land owned by the county or any highway therein, under its supervision, is in need of drainage, *and such drainage will also specially benefit other land*, the board may file a petition without bond for such improvement in the court of common pleas of the county. Upon the filing of such petition, the court shall act in the same manner, conduct the same proceedings, and make the same findings and orders as are provided in sections 6131.01 to 6131.64, inclusive, of the Revised Code, for a board of county commissioners. \* \* \*”  
(Emphasis added)

Section 5543.12, *supra*, is obviously designed to provide only for the drainage of a county road. On the other hand, Section 6131.62, *supra*, is designed to provide drainage for other land as well as land owned by the county. Since it is proposed that the county install a storm sewer in a large size so as to meet county roadside drainage requirements as well as the drainage requirements of a private developer, it is my opinion that the board of county commissioners could proceed in accordance with the provisions of Section 6131.62, *supra*. By proceeding in accordance with such section, the cost of the improvement could be assessed against the county and private developer according to the benefit each would receive. See Section 6131.22, Revised Code.

It is my opinion, therefore, and you are accordingly advised that there is no authority for a board of county commissioners to enter into a contract with a private individual whereby the county and such individual are to share the cost of installing a storm sewer which will benefit each of them ; however, such board may proceed to install such a sewer in accordance with Section 6131.62, Revised Code, in which case the cost

of such installation would be borne by the county and the persons benefited thereby according to the benefit each would receive from such sewer as provided for in Section 6131.22, Revised Code.

Respectfully,  
MARK McELROY  
Attorney General