

**OPINION NO. 84-045**

**Syllabus:**

1. To the extent such costs are not otherwise funded, the costs of acquiring real property or interests therein in order to construct an improvement under R.C. Chapter 1515 may be calculated as a part of the costs of construction for which an assessment may be levied pursuant to R.C. 1515.24.

2. The board of supervisors of a soil and water conservation district or the board of county commissioners may determine a reasonable schedule for the inspection of improvements constructed pursuant to R.C. Chapter 1515 in order to ascertain the need for maintenance or repairs.

**To: Richard B. Hauser, Huron County Prosecuting Attorney, Norwalk, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, July 31, 1984**

I have before me your request for my opinion in response to the following question: "Once a [Revised Code] section 1515 project is certified by the Soil and Water Conservation District Board of Supervisors to the County Commissioners, can the Commissioners treat it as a county petition project and use the [Revised Code] section 6131 petition procedures." Conversations with your office have revealed that your question actually involves two issues. Your first query is whether the costs of acquiring real property or interests therein pursuant to R.C. 1515.08 and R.C. 1515.21 may be calculated under R.C. 1515.24 as a part of the costs assessed against property within the project area of an improvement undertaken pursuant to R.C. Chapter 1515. You also have asked whether improvements constructed pursuant to R.C. Chapter 1515 may be reviewed on the same schedule as improvements constructed under authority of R.C. Chapter 6131, in order to ascertain whether maintenance or repairs may be necessary.

The purpose of the provisions of R.C. Chapter 1515 is to establish and empower governmental units to control and prevent flooding and soil erosion, and to assist in the abatement of agricultural pollution and urban sediment pollution through research, development, and implementation of necessary measures and works of improvement; where required, such efforts are to be conducted in cooperation with the Ohio Agricultural Research and Development Center or the Ohio Department of Natural Resources. R.C. 1515.03; R.C. 1515.08(A), (B), (C), (L). R.C. 1515.03 establishes soil and water conservation districts<sup>1</sup> as political subdivisions coextensive with the geographic area of each county of the state.<sup>2</sup> The board of supervisors of each such district is authorized, inter alia, to conduct research and develop plans regarding control of soil erosion and works of improvement for flood prevention, and regarding the conservation, utilization and disposal of water within the district; to construct, maintain, and operate such preventive and control measures and works of improvement; to acquire, hold, encumber or dispose of real property or interests therein for such purposes. R.C. 1515.08. See R.C. 1515.05. When the supervisors of a district find that construction of an improvement authorized under R.C. 1515.08 will benefit the lands in the district and that the costs of the proposed improvement will be less than the benefits, the supervisors must determine the areas benefited and certify the findings and determinations to the board of county commissioners of each county containing territory within the benefited area; the certification is to be accompanied by a map of the benefited areas and a plan of the proposed improvement. R.C. 1515.20. Upon receipt of the certification, the board of county commissioners may approve or disapprove construction of the improvement; if the plan is approved, the board is granted those powers conferred upon the supervisors of the district pursuant to R.C. 1515.08(C). R.C. 1515.21.

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<sup>1</sup> In addition to creating soil and water conservation districts, R.C. Chapter 1515 provides for establishment of the Ohio Soil and Water Conservation Commission. R.C. 1515.02. This Commission is authorized, inter alia, to determine distribution of certain state aid, recommend levels of appropriations to assist districts, seek cooperation and assistance from federal agencies for the districts, and recommend project priorities and legislation "which will encourage proper soil, water, and other natural resource management and promote the economic and social development of the state." R.C. 1515.02.

<sup>2</sup> A municipal corporation may remove itself from or reinstate itself in the territory of a soil and water conservation district. R.C. 1515.03.

The powers granted to a board of supervisors of a soil and water conservation district pursuant to R.C. 1515.08(C), are extended to a board of county commissioners under R.C. 1515.21. These powers include the authority "to acquire, by purchase or gift, and to hold, encumber, or dispose of real or personal property or interests therein" for purposes of, inter alia, construction, repair, maintenance, and operation of works of improvement for natural resource conservation and development, flood prevention, and the conservation, utilization and disposal of water within the district. The board of county commissioners is further authorized by R.C. 1515.21 to acquire real property or a right of way or other easement for conservation works of improvement by appropriation in accordance with R.C. Chapter 163.

Provision is made for assessment of the costs of soil and water conservation improvements under R.C. 1515.24 which states, in pertinent part:

Upon receipt of a certification made by the supervisors of a soil and water conservation district pursuant to section 1515.20 of the Revised Code, the board of county commissioners may levy upon the property within the project area an assessment at a uniform or varied rate based upon the benefit to the area certified by the supervisors, as necessary to pay the cost of construction of the improvement not otherwise funded and to repay advances made for purposes of the improvement from the fund created by section 1515.15 of the Revised Code. The assessment shall be certified to the county auditor, and by him to the county treasurer. The collection of such assessment shall conform in all matters to Chapter 323. of the Revised Code. (Emphasis added.)

See R.C. 1515.01(H) and (I). With regard to your first query, the dispositive issue is whether the costs of acquiring real property or interests therein may be considered a part of "the cost of construction of the improvement not otherwise funded."

Funding for improvements undertaken pursuant to R.C. Chapter 1515 may be derived from sources other than the assessment authorized by R.C. 1515.24. For example, state aid is available from the Ohio Department of Natural Resources pursuant to R.C. 1515.14 and R.C. 1515.16. A board of county commissioners may also seek an advance of moneys from the Soil and Water Conservation Special Account in the State Special Revenue Fund "to pay all or part of the cost of surveys and plans, appraisals, estimates of cost, land options, and other incidental expenses in constructing works of improvement for a soil and water conservation district." R.C. 1515.15. While such moneys are ordinarily to be repaid to the state by the board of county commissioners, provision is made to relieve this repayment obligation under certain circumstances. R.C. 1515.15. In addition, a board of county commissioners may levy a tax within the ten-mill limitation and appropriate the proceeds from such levy, as well as money from the general fund to a special fund for the credit of the soil and water conservation district; such moneys may be used by the district for, inter alia, employment of personnel, purchase of equipment and materials, construction and maintenance of improvements, and for other expenses of the district. R.C. 1515.10. Furthermore, pursuant to R.C. 1515.02(C), the Ohio Soil and Water Conservation Commission may seek the cooperation and assistance of federal agencies to aid soil and water conservation districts.

As noted earlier, the board of supervisors of a soil and water conservation district, as well as the board of county commissioners, are authorized to acquire by purchase or gift or otherwise encumber real property or interests therein for purposes of implementation, construction and maintenance of works of improvement undertaken in accordance with R.C. Chapter 1515. R.C. 1515.08(C); R.C. 1515.21. A board of county commissioners is also empowered to appropriate real property, a right-of-way, or other easement for such purposes. R.C. 1515.21. Such acquisition or encumbrance of interests in real property is essential to proceeding with construction of an improvement where such construction will interfere with the rights of private property owners. See 1984 Op. Att'y Gen. No. 84-021. There is no specific provision for payment of the costs of such acquisition or encumbrance from a particular fund. I, therefore, conclude that the legislature

intended that such cost be paid in the same manner as other costs incurred when constructing an improvement pursuant to R.C. Chapter 1515.<sup>3</sup> Consequently, if such costs are not funded from one of the sources previously discussed or otherwise, such costs may be assessed under R.C. 1515.24.

Your second query concerns the scheduling of inspections of improvements constructed pursuant to R.C. Chapter 1515, in order to ascertain the need for maintenance or repairs. The board of supervisors of a soil and water conservation district, and the board of county commissioners, are empowered to maintain and repair works of improvement under R.C. 1515.08(C) and R.C. 1515.21. The authority to inspect improvements in order to determine the need for maintenance or repair is necessarily implied from this grant of power. See R.C. 1515.08(M) (the supervisors of a district may "do all acts necessary or proper to carry out the powers granted" in R.C. Chapter 1515). You have indicated that such inspections are performed at six-year intervals for improvements constructed under R.C. Chapter 6131,<sup>4</sup> and have asked whether a similar schedule may be adopted for the inspection of improvements undertaken pursuant to R.C. Chapter 1515.

Neither R.C. 1515.08(C) nor any other provision of R.C. Chapter 1515 sets forth a time period during which maintenance inspections must be made.<sup>5</sup> Rather, the authorization to maintain improvements is expressed in general terms. "Where authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner." *Jewett v. Valley Railway Co.*, 34 Ohio St. 601, 608 (1878). Accordingly, if the board of supervisors of a district, or the board of county commissioners, determines that it is reasonable to perform maintenance, inspections at six-year intervals, such a schedule may be adopted.

Based on the foregoing, it is my opinion, and you are advised:

1. To the extent that such costs are not otherwise funded, the costs

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<sup>3</sup> R.C. 6131.15 expressly authorizes assessment of such costs for projects undertaken pursuant to R.C. Chapter 6131 by providing, in pertinent part:

The county engineer shall also estimate the value of land or other property necessary to be taken and the damages to be sustained by any owner as a result of the construction of the proposed improvement and the subsequent maintenance of the improvement. The engineer shall prepare a schedule of damages containing the name and address of each owner alleged to be damaged, the amount of the estimated damages, and an explanation of the injury upon which the estimate is based. The engineer's schedule of damages shall also contain the value of the land or other property necessary to be taken, the name and address of the owner, and a complete description of the land or other property. The engineer shall include the total of the estimated damages and valuations as part of his estimate of the total cost of construction of the improvement.

While such express language has not been employed in R.C. 1515.24, I note that R.C. Chapter 6131 provides for all aspects of implementation of ditch and drainage improvements with far more particularity than does R.C. Chapter 1515.

<sup>4</sup> This inspection schedule is apparently related to the requirement imposed pursuant to R.C. 6137.11 that the permanent base of maintenance assessments for improvements constructed under R.C. Chapter 6131 be reviewed at six-year intervals.

<sup>5</sup> Pursuant to R.C. 1515.21 assessments for maintenance of improvements constructed under R.C. Chapter 1515 may be levied in any year if the board of county commissioners determines that funds are not otherwise available for maintenance and repair.

of acquiring real property or interests therein in order to construct an improvement under R.C. Chapter 1515 may be calculated as a part of the costs of construction for which an assessment may be levied pursuant to R.C. 1517-24.

2. The board of supervisors of a soil and water conservation district or the board of county commissioners may determine a reasonable schedule for the inspection of improvements constructed pursuant to R.C. Chapter 1515 in order to ascertain the need for maintenance or repairs.