

1984

THERE IS NO AUTHORITY FOR A BOARD OF COUNTY COMMISSIONERS TO CREATE A WATERWORKS BOARD TO OPERATE THE PUBLIC WATER SYSTEM OF THE COUNTY—
§6103.02 R.C.

SYLLABUS:

There is no authority for a board of county commissioners to create a waterworks board to operate the public water system of the county and, under Section 6103.02, Revised Code, such system is operated by the board of county commissioners with the assistance of the sanitary engineer, or sanitary engineering department of the county.

Columbus, Ohio, February 2, 1961

Hon. Dennis J. Callahan, Prosecuting Attorney
Lawrence County, Ironton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

Re: Sanitary Sewer District No. 1, Lawrence County, Ohio

"I have been requested by the County Commissioners of Lawrence County, Ohio, to secure an Opinion concerning the establishment of an Operating Board for the administration and operation of the above captioned Sanitary Sewer District No. 1, located in the unincorporated areas of Burlington and Sybene, in Lawrence County, Ohio.

"The former Board of County Commisisoners on December 5, 1960, created by Resolution an operating board for the administration and operation of the aforementioned system of public water supply and distribution, and stated it was in compliance with Section 6103.02, Revised Code of Ohio. The Resolution reads in part as follows:

"Be it Resolved by the Board of County Commissioners of Lawrence County, Ohio:

"Section 1. That for the purpose of providing an adequate organization for the proper administration and functioning of the public water supply and distribution system in Sanitary Sewer District No. 1, Lawrence County, Ohio, without divesting any of the basic responsibilities resting in the several County offices, the authority, duties, and responsibilities of which are prescribed by law, the following board and officers are hereby created:

A Waterworks Board which shall administer and operate said public water supply and distribution system in accordance with the provisions of this resolution. Said Board to consist of five (5) members who shall be residents of Sanitary Sewer District No. 1, and be appointed by the Board of County Commissioners for a term of four (4) years, commencing December 6th, 1960, for a term of four (4) years, the members of the Waterworks Board shall be George R. Beckett, Jerry H. Adkins, Mike Viglianco, Oscar A. Botts and Philip Lyles."

"The aforementioned motion or resolution was offered by Mr. Dory Brammer, who was then County Commissioner, and was seconded by Mr. Carlton Davidson, upon roll call.

“It is presently contended by a majority of the new Board of County Commissioners, composed of Charles McClellan, Jesse Brammer and W. H. Kaiser, who took office on January 1, 1961, that the above resolution establishing the operating board was not proper, in that no bond was furnished, and there is no authority vested in the County Commissioners to establish such an operating board. However, it might be possible to have established an advisory board.

“I would appreciate an Opinion as to the legality of this board, and if it would be possible for the present board of county commissioners to abolish, or discontinue it.”

It has long been settled in this state that the board of county commissioners has such powers and jurisdiction, and only such, as are conferred by statute. *Elder v. Smith*, 103 Ohio St., 369. I can find no authority for a board of county commissioners to create a waterworks board to operate the public water system in the county. The authority to operate a public water system in a county is vested in the board of county commissioners, who shall be assisted by the sanitary engineer, or sanitary engineering department, of such county. Section 6103.02, Revised Code.

Since there is no authority for a board of county commissioners to create a waterworks board, it follows that the resolution of December 5, 1960 purporting to create such waterworks board is of no force or effect. Having never been legally created, there is no such waterworks board and no need, therefore, to abolish or discontinue it.

Accordingly, it is my opinion and you are advised that there is no authority for a board of county commissioners to create a waterworks board to operate the public water system of the county and, under Section 6103.02, Revised Code, such system is operated by the board of county commissioners with the assistance of the sanitary engineer, or sanitary engineering department of the county.

Respectfully,
MARK McELROY
Attorney General