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ASSESSMENTS, SANITARY SEWERS—TRACTS OF GROUND RESERVED FOR THE COMMUNITY—PLAT ACCEPTED BY COUNTY COMMISSIONERS—SUCH LAND SHOULD NOT BE ASSESSED—§6117.01 *et seq.* RC—COSTS TO BE BORNE BY COUNTY, §6117.06 RC.

SYLLABUS:

Tracts of ground designated on a plat as "reserved for the community", and intended for use by the public as access to Indian Lake, such plat having been accepted by the county commissioners, should not be assessed for a sanitary sewer constructed pursuant to Section 6117.01, *et seq.*, Revised Code, but the cost attributable to such tracts should be included in the portion of the entire cost assumed by the county as provided in Section 6117.06, Revised Code. However, if such assessments have been placed against such tracts, they may be paid out of the county's general fund.

Columbus, Ohio, December 12, 1957

Hon. Mary F. Abel, Prosecuting Attorney
Logan County, Bellefontaine, Ohio

Dear Madam:

Your request for my opinion reads as follows:

"I would appreciate your formal opinion on the following matter: The dedicated plat of Seminole Shores, Subdivision 1, and Seminole Shores, Subdivision 2, contains the following statement:

'All easements (marked E) are reserved for the community.'

Seven of these lots marked E were assessed for sanitary sewer in a total of $3036.31. It is the contention of our County Engineer that in view of the language in the dedication that these assessments should be removed against these lots.

I will appreciate your answer to this question as to whether or not they should be assessed."

You have forwarded to me copies of two plats representing the subdivision known as "Seminole Shores", being designated as Subdivision 1 and Subdivision 2. The lots to which you have referred as "easements" are shown on the plat of Subdivision No. 1; one of the lots, however, No. 34, being also indicated on the plat of Subdivision No. 2. I note that these subdivisions were made and the plats filed in 1944, and were accepted by the County Commissioners of Logan County on the 11th day of December, 1944.

In the dedication by the platter there appears the following:

"The Street or Drive and one center strip road park as indicated on the accompanying plat are hereby dedicated to public use forever. All other Easements (E) are reserved for the community."

The use of the word "easements" in this connection is somewhat puzzling, as is also the reservation of such easements "for the community". An examination of Plat No. 1, however, shows that all of the tracts so designated lead from the Seminole Shore Drive to Indian Lake. Most of the lots designated as "easements" have the appearance of regular lots and bear their regular serial numbers. In the main they are 40 feet wide but there is one tract, to-wit, Lot No. 34 at the upper end of the plat and adjoining Plat No. 2, which would appear to have a frontage on the street of about 200 feet and almost as great a frontage on the lake, and which is bisected by a 50 foot strip marked "roadway".

I think it is a fair assumption that in the main these lots leading from the highway to the lake were designed as a means of public access to the lake, while Lot No. 34 could readily be assumed to have been intended for purposes of a public park.

The designation of these lots as "easements" can only suggest that they were designed to enable the people of the community, and probably the public generally, to have easy access to the lake without trespassing

on private property. The purpose of the dedicator as to these easements is somewhat clouded by the statement that they are "reserved for the community". Just what was intended by the use of the word "community" must be merely a matter of surmise. The word is frequently used as referred to a group of people living near together or in the same general neighborhood, but one of the permissible definitions as given by Webster is "the public or people at large". I am inclined to think that the latter must be the definition here intended because it is quite evident that parcels laid out and reserved as these tracts were, could not by any process be restricted to the people living in this subdivision or the immediate community, but could be easily resorted to by the public in general.

Accordingly, it is my opinion that the effect of the reservation of the tracts in question was to dedicate them to the common use of the public for the purposes which I have already indicated, to-wit, as means of access to the lake and as public grounds for use as parks, *etc.*

Though the dedication of these "easements" does not mention the county as the grantee, I must consider the county commissioners as the recipients of the grant, in trust for the public use. It is stated in 17 Ohio Jurisprudence 2d page 17, that a dedication of land to the use of the public does not require the designation or even the existence of a definite grantee. Citing Cincinnati v. White, 6 Pet. 431; Carter v. Swan, 66 Ohio Law Abstract, 526. It is my opinion further that the acceptance by the County Commissioners of the plats including the dedication of the "easements", puts them in the virtual ownership of the county for the public uses above indicated.

Speaking of dedication for public uses generally, it is said in 17 Ohic Jurisprudence 2d, page 49:

> "When a proprietor of lots or grounds within a municipal corporation subdivides or lays them out for sale, and designates certain areas on the plat thereof for streets, alleys, ways, *commons, or other public uses,* the plat having been subscribed and acknowledged by the proprietor or his agent, approved or accepted by the proper officials, and recorded in the office of the county recorder, the plat so recorded shall thereupon be a sufficient conveyance to vest in the municipal corporation the fee of the parcel of land designated or intended for streets, alleys, ways, commons, or other public uses, to be held in the corporate name in trust to and for the uses and purposes set forth in the instrument. * * *" (Emphasis added)

Similar provision is made in Section 711.11, Revised Code, as to outlying subdivisions. It is there provided:

> "The plats, mentioned in section 711.01 of the Revised Code, shall be a sufficient conveyance to vest a fee simple title of all such parcels of land as are therein expressed, named, *or intended for public use, in the county* in which the village is situated, for the uses and purposes therein named, expressed, or intended, and for no other use or purpose." (Emphasis added.)

Under the provisions of Section 6117.01, *et seq.*, Revised Code, County Commissioners are authorized to lay out and establish sewer districts within their respective counties, outside of municipal corporations, and to construct therein sewers and drains and to assess the cost thereof on "benefitted property" within such district.

Section 6117.06, Revised Code, provides that after approval of the plans and estimates of cost and a tentative assessment, to be prepared by the County Sanitary Engineer, the County Commissioners shall adopt a resolution determining "what part of the cost will be paid by the county at large and what part will be specially assessed against the benefited property within the district."

It is manifest that the frontage of the lots above referred to as "easements", as well as street or road intersections, increase the cost of the sewer line in proportion to their frontage, and the essence of your question appears to be whether such properties dedicated to the public use should be assessed like other abutting property. I think it is well settled that property abutting on an improvement of this character belonging to a public body may be subject to assessment and if the tracts here in question were lots owned by a municipality or a board of education, or other like body, it is my opinion that they would be subject to assessment the same as if owned by private owners. In 36 Ohio Jurisprudence, page 944, it is said:

> "* * * But it appears to be established in Ohio, as a general rule, that an assessment may be levied against public property where the payment or collection of such assessment may be enforced by means or remedies other than the sale of the property. * * *"
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> Citing Jackson v. Board of Education, 115 Ohio St., 368.

In this case, however, the tracts in question are in the ownership of the county commissioners in trust for the public for uses above indi-

cated, and it would appear absurd for the county to levy an assessment upon its own property.

Accordingly, it is my opinion that the county commissioners, in the resolution above referred to, in which they consider the tentative assessment outlined by the engineer and determine what portion of the entire cost of the improvement should be borne by the county, should not have levied assessments against the several tracts designated as "easements" but should have considered and included them in the portion of the cost which they determined to place upon the county, and should have provided that the balance of the cost be assessed against the private property abutting on the improvement. However, since the assessments were placed on the property belonging to the county, I do not consider that the validity of the balance of the assessments was, in any way affected, and the county may pay the amount levied against its property out of its general fund.

It is accordingly my opinion, and you are advised that tracts of ground designated on a plat as "reserved for the community", and intended for use by the public as access to Indian Lake, such plat having been accepted by the county commissioners, should not be assessed for a sanitary sewer constructed pursuant to Section 6117.01, *et seq.*, Revised Code, but the cost attributable to such tracts should be included in the portion of the entire cost assumed by the county as provided in Section 6117.06, Revised Code. However, if such assessments have been placed against such tracts, they may be paid out of the county's general fund.

Respectfully,
WILLIAM SAXBE
Attorney General