

12.

COUNTY COMMISSIONERS—ABSENCE OF HOME RULE
CHARTER—POWER TO CONTRACT WITH UNITED
STATES GEOLOGICAL SURVEY FOR GROUND WATER
SURVEY.

SYLLABUS:

In the absence of home rule charter, county commissioners are creatures of statute and have only such powers as are expressly delegated by statute and such implied powers as are necessary to carry into effect the powers expressly delegated.

The statutes of Ohio delegate no power to county commissioners to enter into a contract with the United States Geological Survey Water Bureau for a ground water survey of their county on a fifty per cent participation basis.

COLUMBUS, OHIO, January 15, 1937.

HON. DAVID C. WARNER, *Executive Secretary, State Water Conservation Board, Columbus, Ohio.*

DEAR SIR: Permit me to acknowledge receipt of your communication of January 12, 1937, as follows:

“For nearly two years I have been trying to help the Manufacturers and Municipalities in Hamilton and Butler counties to procure a more adequate ground water supply through the Mill Creek Valley Conservation Association.

I recommended that the County Commissioners of both counties, Hamilton and Butler, should make a 50-50 contract with the U. S. Geological Survey Water Bureau for a ground water survey of the Mill Creek Valley and environs.

In joint session of the commissioners of both counties they (the county commissioners) agreed to sponsor a preliminary survey and signed such a contract with the U. S. G. S., which preliminary survey was made during November, 1936, on condition that the Mill Creek Valley Conservation Association pay the 50 per cent participation with the Federal Government.

The complete survey should be made by the Commissioners cooperating with the U. S. G. S. on a 50-50 basis, but the County Prosecutor of Hamilton County has ruled that the Commissioners have no legal right to make such a contract with the U. S. G. S. and appropriate the money from county funds.

The U. S. G. S. can cooperate only with states, counties or municipalities for such surveys. Otherwise, the Association would have made the contract themselves a long time ago.

The question at issue is the legal right of the County Commissioners of these two counties to contract with the U. S. G. S. for a complete ground water survey in the counties of Hamilton and Butler on a 50-50 basis. That is, the counties to pay half and the Federal Government pay the other half and make the survey with the U. S. G. S. engineers."

The question involved in your communication is, whether or not county commissioners are authorized under the law to expend county moneys for a ground water survey. This is a feature of water conservation and while doubtless most commendable, the question of the right of the county commissioners to make the expenditure becomes of primary importance. It is fundamental that county commissioners are creatures of statute and have only such powers as are expressly delegated to them by the General Assembly, together with such incidental powers as are necessary to carry the express powers into effect. County commissioners are the business administrators of counties and they have been given many general powers by statute, but water conservation is not one of them. In the exercise of these general administrative powers the right to contract follows as a necessary incident and if the General Assembly had delegated to county commissioners general powers relative to water conservation there would be in all probability no question as to their right to enter into such a contract as you inquire of, but a search of the statutes develops the entire absence of such delegation of power. There is another feature to which I desire to call your attention, namely, that this contract involves the expenditure of public moneys and it is likewise fundamental that *all* statutes involving the expenditure of money raised by taxation must be construed strictly.

I am of the opinion that the county commissioners are without statutory authority to enter into the contract set out in your communication.

Respectfully,

HERBERT S. DUFFY,
Attorney General.