

OPINION NO. 85-082**Syllabus:**

Absent express statutory authority, a municipal corporation may not levy an assessment against real property owned by the State of Ohio for the cost of planting and maintaining shade trees pursuant to R.C. 727.011.

To: Lee C. Falke, Montgomery County Prosecuting Attorney, Dayton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 26, 1985

I have before me your request for my opinion regarding the power of a municipality to levy an assessment against real property of the State of Ohio and the duty of the county auditor to place such assessment on the county's general tax duplicate. Your letter poses the following questions:

1. May a [chartered] or statutory municipal corporation levy and collect an assessment against real property owned by the State of Ohio, which assessment arises by virtue of the planting and maintaining of shade trees on real property owned by the State of Ohio?
2. If the answer to Question 1 is in the affirmative, then may such shade tree assessment be placed on a county's tax duplicate and be collected in the manner as other taxes placed upon a county tax duplicate?

R.C. Chapter 727 addresses the authority of municipal corporations to levy and collect assessments. See Home Owners' Loan Corp. v. Tyson, 133 Ohio St. 184, 188, 12 N.E.2d 478, 480 (1938) ("an assessment is levied upon property abutting or adjacent to a public improvement with reference to the special benefits conferred for the purpose of paying the cost thereof"). R.C. 727.011 authorizes a municipal corporation to levy a special assessment for planting and maintaining shade trees, by providing as follows:

For the purposes of controlling the blight and disease of shade trees within public rights of way, and for planting, maintaining, trimming, and removing shade trees in and along the streets of a municipality, the legislative authority of such municipal corporation may establish one or more districts in the municipality designating the boundaries thereof, and may each year thereafter, by ordinance, designate the district in which such control, planting, care, and maintenance shall be effected, setting forth an estimate of the cost and providing for the levy of a special assessment upon all the real property in the district, in the amount and in the manner provided in section 727.01 of the Revised Code, for planting, maintaining, trimming, and removing shade trees. The ordinance shall be adopted and published as other ordinances. Bonds and anticipatory notes may be issued in anticipation of the collection of such special assessments, under section 133.31 of the Revised Code.

See R.C. 727.01 (setting forth the methods by which an assessment may be levied).

R.C. 727.011 does not expressly address the authority of a municipal corporation to levy an assessment upon real property of the State of Ohio for the cost of planting and maintaining shade trees. Previous opinions have consistently concluded that, in the absence of express statutory authorization, a political subdivision has no power to levy or collect a special assessment upon property of the State of Ohio. See 1972 Op. Att'y Gen. No. 72-092 (in the absence of a statute to the contrary, a state university is exempt from the payment of sanitary district special assessments); 1962 Op. Att'y Gen. No. 3388, p. 870 (syllabus, paragraph one) ("[i]n the absence of legislative permission, a political subdivision of the state has no power to levy or collect a special assessment against property owned by the state"); 1961 Op. Att'y Gen. No. 2685, p. 703 (a board of county commissioners has no authority to levy an assessment against state property to pay the cost of a sewer district, absent statutory authority); 1951 Op. Att'y Gen. No. 1036, p. 386; 1949 Op. Att'y Gen. No. 658, p. 315 (absent legislative authority, a local subdivision has no power to levy and collect a special assessment for county ditches against state property); 1946 Op. Att'y Gen. No. 728, p. 51 (a municipal corporation may not levy and collect a special assessment for the construction of a flood wall against state property). See also State ex rel. Monger v. Board of County Commissioners, 119 Ohio St. 93, 162 N.E. 393 (1928). There have been no legislative or judicial developments regarding the power of a municipality to levy assessments against state property which would compel me to overrule this long line of opinions. Thus, I concur in the results reached by my predecessors and conclude that a municipality has no power, in the absence of express statutory authority, to levy an assessment against state property for the planting and maintenance of shade trees.

My conclusion is supported by the fact that the General Assembly has, in fact, expressly subjected state property to assessment in certain instances. See e.g., R.C. 6103.13 (state land benefited by a county water supply system, "pavement, sidewalk, sewage, or other improvement of value shall bear its proportion of assessed costs according to its special benefit");¹ R.C. 6131.15 (state land benefited by the construction or maintenance of any ditch, drain, watercourse or floodway may be assessed in the proportion of benefit or improvement received). If a political subdivision had the

¹ Your request specifically asks whether that portion of R.C. 6103.13 which indicates that state land may be assessed for "other improvement[s] of value" may be construed as authorizing a municipal corporation to assess state property for the planting and maintaining of shade trees. R.C. 6103.13 must be read in pari materia with the whole of R.C. Chapter 6103 which grants boards of county commissioners the authority to establish and operate county water supply systems. R.C. Chapter 6103 does not address the authority of municipal corporations to make assessments for any purpose. See generally State ex rel. Pratt v. Weygandt, 164 Ohio St. 463, 132 N.E.2d 191 (1956) (statutes relating to the same subject are in pari materia and should be read together to ascertain and effectuate legislative intent). Thus the provisions of R.C. Chapter 6103 may not be construed to enable a municipal corporation to levy an assessment against real property of the State of Ohio for the planting and maintenance of shade trees.

general authority to assess state property for assessments, such statutory language would be unnecessary. See R.C. 1.47 ("[i]n enacting a statute, it is presumed that:...(B) The entire statute is intended to be effective").

In your request, you inquire as to the authority of both a chartered and statutory municipal corporation to assess state property for shade trees, thereby suggesting that a municipality may be able, through its home rule power, to confer authority upon itself to assess state property, regardless of the lack of statutory authority therefor. See generally Ohio Const. art. XVIII, §§2, 3, 7; 1985 Op. Att'y Gen. No. 85-034. I believe that a municipality may not assess state property for shade trees, in the absence of statutory authority, regardless of whether the municipality is chartered or nonchartered, and regardless of any local provision a municipality may enact. My conclusion that a municipality lacks authority to assess state property is based upon the fact that the state is the superior governmental body, despite the home rule powers of a municipality, and that a municipality, like other political subdivisions, may not burden the state through its power of assessment. See generally Cuyahoga Metropolitan Housing Authority v. City of Cleveland, 342 F. Supp. 250, 257 (N.D. Ohio 1972), aff'd., 474 F. 2d 1102 (6th Cir. 1973); City of East Cleveland v. Board of County Commissioners, 69 Ohio St. 2d 23, 430 N.E.2d 456 (1982); Village of Willoughby Hills v. Board of Park Commissioners, 3 Ohio St. 2d 49, 209 N.E. 2d 162 (1965); Niehaus v. State ex rel. Board of Education, 111 Ohio St. 47, 144 N.E. 433 (1924); 1970 Op. Att'y Gen. No. 70-148. See also G. Vaubel, Municipal Home Rule in Ohio 1500 (1st ed. 1978). But cf. Brownfield v. State, 63 Ohio St. 2d 282, 407 N.E.2d 1365 (1980) (the state must attempt to comply with municipal zoning regulations). Thus, no municipality, whether chartered or nonchartered, has the authority, through its home rule power, to confer upon itself the power to assess state property for shade trees.

Because my response to your first question is in the negative, it is unnecessary to address your second question.

It is therefore, my opinion and you are advised, that absent express statutory authority, a municipal corporation may not levy an assessment against real property owned by the State of Ohio for the cost of planting and maintaining shade trees pursuant to R.C. 727.011.