

1802

1. SANITARY DISTRICT ACT OF OHIO—SANITARY DISTRICTS MAY BE ESTABLISHED ONLY BY COURTS OF COMMON PLEAS.
2. TERRITORY OF SANITARY DISTRICT MUST INCLUDE TWO OR MORE POLITICAL SUBDIVISIONS OR PORTIONS THEREOF.
3. GOVERNING BODY OF ANY PUBLIC CORPORATION—SITUATED WHOLLY OR PARTLY WITHIN TERRITORY OF PROPOSED SANITARY DISTRICT—MAY SIGN PETITION REQUIRED BY SECTION 6602-36 G. C. FOR FREEHOLDERS OF PUBLIC CORPORATION.

SYLLABUS:

1. Under the Sanitary District Act of Ohio, sanitary districts may be established only by courts of common pleas.
2. Under Section 6602-36, General Code, the territory of a sanitary district must include two or more political subdivisions or portions thereof.
3. The governing body of any public corporation, which is situated wholly or partly within the territory of a proposed sanitary district, may sign the petition required by Section 6602-36, General Code, for the freeholders of such public corporation.

Columbus, Ohio, May 25, 1950

Hon. Seabury H. Ford, Prosecuting Attorney
Portage County, Ravenna, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“A question has come up in this county as to whether or not a township can set up a sanitary district by action of the Township Trustees only. Under section 6602-1 to 6602-106 inclusive, there is authority for the County Commissioners to so act. Under Section 6602-34 et seq. the political subdivision of a township is included in a definition of the words, ‘public corporation.’

“Does this mean that a township, by action of its Trustees only, (may) set up a sanitary district within its boundaries?”
(Parenthetical matter added.)

The “Sanitary Districts Act of Ohio” comprises Sections 6602-34 to 6602-106, General Code, inclusive. Sanitary districts of Ohio may be established in accordance with Section 6602-35, General Code, which reads in part as follows:

“The court of common pleas of any county in this state, is hereby vested with jurisdiction, power and authority, when the conditions stated in the third section of this act are found to exist, to establish sanitary districts, within the county in which said court is located. * * *”

From this, it can be seen that the court of common pleas is the only body which can actually establish a sanitary district.

Before the court can do this, a signed petition must be filed in said court in accordance with Section 6602-36, General Code, which reads in part as follows:

“Before any court shall establish a district as outlined in section 2, a petition shall be filed in the office of the clerk of said court, signed by five hundred freeholders, or by a majority of the freeholders, or by the owners of more than half of the property, in either acreage or value, within the limits of the territory proposed to be organized into a district. Such a petition may be signed by the governing body of any public corporation lying wholly or partly within the proposed district, in such manner as it may prescribe, and when so signed by such governing body such a petition on the part of said governing body shall fill all

the requirements of representation upon such petition of the freeholders of such public corporation, as they appear upon the tax duplicate; and thereafter it shall not be necessary for individuals within said public corporation to sign such a petition.
* * *

“* * * Said territory shall include two or more political subdivisions or portions thereof, * * *.”

A public corporation as used in the Sanitary District Act of Ohio is defined in Section 6602-34, General Code, which reads in part as follows:

“* * * Similarly, the words ‘public corporation’ shall be taken to mean counties, townships, cities, villages, school districts, road districts, ditch districts, park districts, levee districts, and all other governmental agencies clothed with the power of levying general or special taxes. * * *”

It is well established that the trustees of a township constitute the governing body of such public corporation.

It should be noted that it is necessary that a sanitary district include two or more political subdivisions or portions thereof. Therefore, it would be contrary to the legislative intent and the statute to allow a township to establish a sanitary district entirely within its own boundaries. A careful examination of Section 6602-36, General Code, reveals that it provides for three alternatives relative to the necessary signers of the petition. It may be signed by one of the following:

- (1) five hundred freeholders of the territory,
- (2) a majority of the freeholders of the territory, or
- (3) the owners of more than half of the property, in either acreage or value, within the territory proposed to be organized into a district.

The provision concerning the signing by the governing body of any public corporation is a substitute method of obtaining the signatures of the freeholders of the public corporation. That is, in order to facilitate the necessary action of the freeholders, the legislature has seen fit to authorize their representatives to act for them in this situation. Therefore, the governing body of any public corporation may sign the above mentioned petition in lieu of the freeholders. Since a sanitary district must consist of portions of at least two political subdivisions, the signatures of the

trustees of one township are insufficient to bring the petition to the attention of the common pleas court. Therefore, it is my opinion that :

1. Under the Sanitary District Act of Ohio, sanitary districts may be established only by courts of common pleas.

2. Under Section 6602-36, General Code, the territory of a sanitary district must include two or more political subdivisions or portions thereof.

3. The governing body of any public corporation, which is situated wholly or partly within the territory of a proposed sanitary district, may sign the petition required by Section 6602-36, General Code, for the freeholders of such public corporation.

Respectfully,

HERBERT S. DUFFY,
Attorney General.