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THORITY TO ISSUE BONDS—SECTION 6602-17b, G. C.

## SYLLABUS:

1. The board of county commissioners of Butler County when duly authorized by the council of the city of Middletown, Ohio, has authority to establish a sewer district within the boundaries of said city and to provide sewer improvements and to maintain and operate the same as provided by Section 6602-1b, General Code; and the board of county commissioners has authority, subject to other provisions of law, to issue bonds of the county in anticipation of the collection of special assessments to pay for the same.

2. After establishing a sewer district, as set forth in part 1 of this syllabus, the board of county commissioners of Butler County has authority to provide water supply improvements and to maintain and operate the same within such sewer district, as provided by Section 6602-17b, General Code; and the board of county commissioners has authority, subject to other provisions of law, to issue bonds of the county in anticipation of the collection of special assessments to pay for the same.

Columbus, Ohio, July 20, 1951

Hon. Jackson Bosch, Prosecuting Attorney  
Butler County, Hamilton, Ohio

Dear Sir:

Your letter requesting my opinion reads as follows:

“The County Commissioners have created a sewer district pursuant to the provisions of Section 6602-1, adjoining the boundaries of the City of Middletown, Ohio. They desire to form a new sewer district contiguous to the existing sewer district, but entirely within the boundaries of the City of Middletown. They

propose to install a water supply system therein. All of this will be done with the consent of the City of Middletown. The system is proposed to be constructed and operated under the provisions of the second paragraph of Section 6602-17b. Bonds, of course, will be issued in anticipation of the collection of special assessments proposed to be levied to pay for this improvement.

“The question we would like to ask is whether or not in your opinion this procedure would be legal and whether or not bonds issued in anticipation of such special assessments would be legal obligations of Butler County, Ohio.”

You have also by a subsequent letter given me the following information:

“What the county would like to do is to set up a new sewer district entirely inside the boundaries of the City of Middletown. The new sewer district would not, of course, be as large as the City of Middletown, but would only be a very small part of this city.”

The first question presented is, may the board of county commissioners lay out, establish and maintain a sewer district within the boundaries of the city of Middletown, Ohio. It is provided in Section 6602-1, General Code, that a board of county commissioners may establish sewer districts within their respective counties outside of incorporated municipalities.

Section 6602-1a, General Code, provides for the establishment of such sewer districts which lie in whole or in part within a municipality, and reads as follows:

“Whenever duly authorized by the council of any incorporated municipality, the board of county commissioners may, by resolution, lay out, establish and maintain one or more sewer districts within their respective counties to include a part or all of the territory within such municipality as the whole or a part of such sewer district. Such authority shall be evidenced by an ordinance or resolution of the council of said municipality, entered upon its records.”

It is to be noted that the above statute provides “to include a part \* \* \* of the territory within such municipality as the whole \* \* \* of such sewer district.”

Section 6602-1b, General Code, reads as follows:

“The authority of the board of county commissioners to pro-

vide sewer improvements and to maintain and operate the same within sewer districts which include a part or all of the territory within one or more incorporated municipalities shall be the same as provided by law within sewer districts wholly outside of municipalities, *including the levying of assessments, provided, however, that such authority, except as hereinafter provided, shall be limited to main works only*, and shall not include construction and maintenance of lateral sewers for local service within such municipality, and further provided that the plans, specifications and estimated cost of any improvement within the corporate limits of such municipality shall be approved by the council of such municipality prior to the letting of any contract for the construction thereof. All road surfaces, curbs, sidewalks, sewers, water pipes or other public property disturbed or damaged by such construction shall be restored to their original condition within a reasonable time, by the board of county commissioners, and the cost thereof shall be a part of the cost of such improvement. After such main works are constructed, such municipality shall have the right to use the same as an outlet for branch and local sewers constructed by such municipality for the service and use only of that part of such municipality as lies within the area assessed or to be assessed for the cost of such main works, subject to such rules and regulations as may be established by the board of county commissioners and subject to all requirements of the state department of health.

“At any time after a sewer district is established comprising or including a part or all of the territory within any municipality, the council of such municipality may by ordinance or resolution authorize the board of county commissioners to proceed with the construction or the maintenance, repair and operation of any sewer improvement for local service within such municipality. After such authority has been granted, the board of county commissioners may proceed with the construction, or the maintenance and operation of said improvements in the same manner as provided by law for improvements in sewer districts wholly outside of municipalities, under the same restrictions as hereinbefore provided for main works.” (Emphasis added.)

It would follow, and I am of the opinion that when duly authorized by the council of the city of Middletown, the board of county commissioners of Butler county has authority to establish a sewer district within the boundaries of the city of Middletown and to provide sewer improvements and to maintain and operate the same, as provided by Section 6602-1b, General Code, above quoted.

You also inquire as to whether the board of county commissioners

may issue bonds to provide for the payment of such improvement in anticipation of the collection of special assessments.

Your attention is directed to the provisions of the Uniform Bond Act applicable to counties, and particularly to Section 2293-1, General Code, which includes a county in its definition of a subdivision, and the county commissioners in its definition of "taxing authority" or bond issuing authority. The definition found therein of a permanent improvement would include a sewer improvement. Also note Section 2293-2, General Code, which authorizes a taxing authority to issue the bonds of a subdivision for the purpose of constructing a permanent improvement.

As reported in 112 Ohio Laws, 275, et seq., the legislature amended Sections 6602-1b, 6602-2 and 6602-3, and added Section 6602-3a, General Code, to the then existing law. After certain preliminary steps have been taken, including the determination of the assessment, as provided for in Sections 6602-2 and 6602-3, General Code, the board of county commissioners under authority of this latter section may determine to issue bonds in anticipation of the collection of special assessments by virtue of that portion of this section which reads as follows:

"\* \* \* After the board shall have ratified the plans for the improvement, the character and termini thereof, the boundaries of the assessment district and the tentative assessment, either as originally presented or as amended, and if they shall decide to proceed therewith, a resolution, to be known as the improvement resolution, shall be adopted by such board. Said improvement resolution shall declare the determination of such board to proceed with the construction of the improvement or improvements provided for in the resolution of necessity, in accordance with the plans and specifications provided for such improvement or improvements as ratified or amended and whether bonds or certificates of indebtedness shall be issued in anticipation of the collection of special assessments, as hereinafter provided, or that money in the county treasury unappropriated for any other purpose be appropriated to pay for said improvement or improvements."

The board of county commissioners may then proceed to issue and sell bonds as provided for in Section 6602-3a, General Code, which reads as follows:

"After the passage of the resolution to proceed with such improvement no further action shall be taken or work done in connection therewith until ten days have elapsed. If at the expiration of such period no appeal has been effected by any property owner,

as provided in sections 6602-3b to 6602-3q, inclusive, of the General Code, as the same are hereby enacted, the action of the board shall be final and conclusive and the board may proceed to issue and sell bonds or certificates of indebtedness and to construct such improvement. If, at the end of ten days, any owner of property to be assessed or taxed for the improvement shall have effected such appeal, then said work shall not be proceeded with until matters appealed from shall have been disposed of in court."

It would seem, therefore, that there is no question that under the provisions of the above statutes the board of county commissioners may issue bonds to provide for the payment of sewer improvements for such district.

I am therefore of the opinion that the board of county commissioners has authority, subject to the other provisions of law, to issue bonds in anticipation of the collection of special assessments to pay for the establishment of a sewer improvement as set out in Section 6602-1b, General Code, for a sewer district within the limits of the city of Middletown.

Assuming the establishment of such a sewer district, you further inquire as to the authority of the board of county commissioners to provide water supply improvements for such sewer district and to issue bonds to pay for the same in anticipation of the collection of special assessments. The following mentioned sections were amended as reported in 112 Ohio Laws, 275, et seq: Sections 6602-17, 6602-17b, 6602-18 and 6602-19, General Code. And Section 6602-19a was added to the then existing law.

Section 6602-17, General Code, provides generally for the establishment of a public water supply or waterworks system by the board of county commissioners, while Section 6602-17b provides for the establishment of water supply improvement in a sewer district within the limits of a city as follows:

"The authority of the board of county commissioners to provide water supply improvements and to maintain and operate the same within sewer districts which include a part or all of the territory within one or more incorporated municipalities shall be the same as provided by law within sewer districts wholly outside of municipalities, including the levying of assessments, provided, however, that such authority, except as hereinafter provided, shall be limited to main works only, and shall not include construction and maintenance of lateral water mains for local service within such municipality, and further provided that

the plans, specifications and estimated cost for any improvement within the corporate limits of such municipality shall be approved by the council of such municipality prior to the letting of any contract for the construction thereof. All road surfaces, curbs, sidewalks, sewers, water pipes or other public property disturbed or damaged by such construction shall be restored to their original condition within a reasonable time by the board of county commissioners, and the cost thereof shall be a part of the cost of such improvement. After such main works are constructed such municipalities shall have the right to use the same as a supply for branch and lateral water mains, for the service and use only of that part of such municipality as lies within the area assessed or to be assessed for the cost of such main works, subject to such rules and regulations as may be established by the board of county commissioners and subject to all requirements of the state department of health.

“At any time after a sewer district is established comprising or including a part or all of the territory within any municipality, the council of such municipality may by ordinance or resolution authorize the board of county commissioners to proceed with the construction or the maintenance, repair and operation of any water improvement for local service within such municipality. After such authority has been granted, the board of county commissioners may proceed with the construction, or the maintenance, repair and operation of said improvement in the same manner as provided by law for improvements in sewer districts wholly outside of municipalities, under the same restrictions as hereinbefore provided for main works.” (Emphasis added.)

It is to be noted that the above quoted statute specifically authorizes the board of county commissioners to provide water supply improvements and to maintain and operate the same within a sewer district within a municipality, but limited to main works only, except as otherwise provided therein, and subject to the approval of the council of such municipality.

Your attention is again called to the provisions of the Uniform Bond Act, and what has been said previously in relation to the authority of the county commissioners to issue bonds of the county to pay for sewer improvements is likewise applicable to the issuing of bonds to provide water supply improvements.

After complying with the preliminary steps as set forth in Sections 6602-18 and 6602-19, including the determination of the assessment, the board of county commissioners under authority of this latter section, may

determine to issue bonds in anticipation of the collection of special assessments by virtue of that portion of this section which reads as follows:

“\* \* \* After the board shall have ratified the plans for the improvement, the character and termini thereof, the boundaries of the assessment district and the tentative assessment, either as originally presented or as amended, and if they shall decide to proceed therewith, a resolution, to be known as the improvement resolution, shall be adopted by such board. Said improvement resolution shall declare the determination of such board to proceed with the construction of the improvement or improvements provided for in the resolution of necessity, in accordance with the plans and specifications provided for such improvement or improvements, as ratified or amended, and whether bonds or certificates of indebtedness shall be issued in anticipation of the collection of special assessments, or that money in the county treasury unappropriated for any other purpose be appropriated to pay for said improvement or improvements.”

The board of county commissioners may then proceed to issue bonds as provided in Section 6602-19a, which reads as follows:

“After the passage of the resolution to proceed with such improvement no further action shall be taken or work done in connection therewith until ten days have elapsed. If at the expiration of such period no appeal has been effected by any property owner, as provided in sections 6602-3b to 6602-3q, inclusive, of the General Code, as the same are hereby enacted, the board may proceed to issue and sell bonds or certificates of indebtedness and to construct such improvement. If at the end of ten days, any owner of property to be assessed or taxed for the improvement shall have effected such appeal, then said work shall not be proceeded with until the matters appealed from shall have been disposed of in court.”

I am therefore of the opinion that after the board of county commissioners has established a sewer district within the limits of the city of Middletown, it has authority to provide water supply improvements for such sewer district, and is authorized to issue bonds of the county, subject to other provisions of law, in anticipation of the collection of special assessments to pay for such improvement.

Respectfully,

C. WILLIAM O'NEILL

Attorney General