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A MUNICIPAL LEGISLATURE'S AUTHORITY TO REQUIRE THE MAKING OF SEWERS AND ASSESSMENTS FOR THE COST—§§729.06, 729.10, 727.30, 727.33, 727.05 R.C. (repealed)

SYLLABUS:

1. Under Section 729.06, Revised Code, a municipal legislative authority may require the making of sewer and water connections by the owners of lots and parcels of land.

2. When under Section 729.06, Revised Code, an owner is notified to make sewer and water connections, and does not do so within thirty days from the date of service of the notice, the municipal corporation may do the necessary work and assess the cost thereof plus a forfeiture of five per cent against the lots and lands for which the connections were made.

3. Pursuant to Section 729.10, Revised Code, the procedure for the collection of assessments made under the authority of Section 729.06, Revised Code, is governed by the procedure contained in Sections 727.30 and 727.33, Revised Code.

4. Under Section 729.06, Revised Code, a landowner may be assessed all the costs of the installation of water and sewer connections between the municipal owned water and sewer main and his lots and lands, including the costs of any connections which may be beyond the inner line of the curb.

Columbus, Ohio, October 26, 1962

Hon. Thomas E. Ray, Prosecuting Attorney
Morrow County, Mt. Gilead, Ohio

Dear Sir :

I have your request for an opinion which reads as follows :

“1. Subsequent to the repeal of Revised Code Section 727.05 of the State of Ohio, said repeal being effective 1/1/62, does the legislative authority of a village or any subdivision of the village government have the power and authority to compel the making of sewer and water connections?

“2. If the answer to Question 1 is yes, what portion of any of the cost shall be borne by the property owner to whose property such a connection is made and what are the procedural steps by which the proper charges may be made a charge against the real estate so as to be collected as taxes should the land owner fail or refuse to pay same?

“3. Where the existing lines of the village owned sewage system are on the opposite side of the street from a residence unserved by said system may the owner of said property be caused to share all or any part of the cost of extending a sewer line under the street to the curb line and from the curb line to the residence in order to tap onto or into said public owned sewage system?”

As to your first question, the relevant statute is Section 729.06, Revised Code, which reads as follows :

“In addition to the power conferred upon municipal corporations under section 727.01 of the Revised Code to levy and collect special assessments, the legislative authority of a municipal corporation may require the installation of sewer or water connections and assess the cost thereof provided in this section.

“Whenever the legislative authority of a municipal corporation deems it necessary, in view of contemplated street paving or as a sanitary regulation, that sewer or water connections or both be installed, the legislative authority shall cause written notice thereof to be given to the owner of each lot or parcel of land to which such connections are to be made, which notice shall state the number and the character of connections required.

“The notice under this section shall be served by the clerk of the legislative authority, or a person designated by such clerk, upon the owners of the lots or parcels of land to which such

connections are to be made in the same manner as service of summons in civil cases, or by certified mail addressed to such owner at his last known address or to the address to which tax bills are sent, or by a combination of the foregoing methods. If it appears by the return of service or the return of the certified mail notice that one or more of such owners cannot be found, such owners shall be served by publication of the notice once in a newspaper of general circulation within the municipal corporation. The return of the person serving the notice or a certified copy thereof or a returned receipt for notice forwarded by certified mail accepted by the addressee or anyone purporting to act for him shall be prima-facie evidence of the service of notice under this section.

“If said connections are not installed within thirty days from the date of service of such notice, the work may be done by the municipal corporation and the cost thereof together with a forfeiture of five per cent, assessed against the lots and lands for which such connections are made.”

Under the provisions of this section, a municipal corporation may require the installation of sewer and water connections by the owner of lots and parcels of land within such municipal corporation. A similar provision formerly appeared in Section 727.05, Revised Code, but was repealed by Amended Substitute House Bill No. 262 of the 104th General Assembly, effective January 1, 1962. This same bill enacted the above provisions of Section 729.06, Revised Code, the intention obviously being that said provisions would replace the former Section 727.05, Revised Code. (Note: A new Section 727.05, Revised Code, was enacted by the bill. It has no relation to the former section.)

As to the first part of your second question, the portion of the cost to be borne by the landowner to whose property such connection is made is established by Section 729.06, *supra*. This section provides that “the cost thereof, together with a forfeiture of five per cent,” shall be assessed against the lots and lands to which such connections are made when the work is performed by the municipal corporation.

As to the second part of your second question, the pertinent statute is Section 729.10, Revised Code, which reads as follows:

“The provisions of sections 727.26 to 727.43, inclusive, of the Revised Code, shall apply to and govern the proceedings taken under and the assessments levied under sections 729.01 to 729.09, inclusive, of the Revised Code. The proceedings taken under sections 729.01 to 729.10, inclusive, of the Revised Code

shall be construed in accordance with the provisions of section 727.40 of the Revised Code.”

Sections 727.26 to 727.43, inclusive, Revised Code, deal generally with special assessments and their collection. Said Sections are by Section 729.10, *supra*, made applicable to assessments levied under Sections 729.01 to 729.09, inclusive, Revised Code. As to procedural steps in the collection of assessments, Section 727.30, Revised Code, reads as follows :

“When any special assessment is levied under section 727.25 of the Revised Code, and bonds or notes of the municipal corporation are issued in anticipation of the collection thereof, the clerk of the legislative authority, on or before the second Monday in September of each year, shall certify such assessment to the county auditor, stating the amounts and the time of payment. The auditor shall place the assessment upon the tax list in accordance therewith. The county treasurer shall collect the assessment in the same manner and at the time as other taxes are collected, and shall pay the amounts collected, together with interest and penalty, to the treasurer of the municipal corporation, to be applied by him to the payment of such bonds or notes and interest thereon, and for no other purpose.

“For the purpose of enforcing such collection, the county treasurer shall have the same power and authority as allowed by law for the collection of state and county taxes. Each installment of such assessments remaining unpaid after becoming due and collectible shall be delinquent and bear the same penalty as delinquent taxes. The city solicitor or the authorized legal representative of any such municipal corporation may act as attorney for the county treasurer in actions brought for the enforcement of the lien of such delinquent assessments.”

Accordingly, assessments of costs incurred by legislative action pursuant to Section 729.06, Revised Code, are to be certified to the county auditor by the clerk of the municipal legislative authority, then placed on the county tax list by the county auditor, and collected by the county treasurer “in the same manner and at the time as other taxes are collected.” Upon payment by the landowner, the county treasurer “shall pay the amounts collected, together with interest and penalty, to the treasurer of the municipal corporation * * *.”

A penalty for unpaid assessments is provided for by Section 727.33, Revised Code, which reads as follows :

“The legislative authority of a municipal corporation may order the clerk of the legislative authority or any other proper

officer of the municipal corporation to certify any unpaid assessment levied under section 727.25 of the Revised Code to the county auditor, and the amount so certified shall be placed upon the tax list by the auditor, and shall, with a ten per cent penalty to cover interest and cost of collection, be collected with and in the same manner as state and county taxes and credited to the municipal corporation. Such ten per cent penalty shall in no case be added unless at least thirty days have intervened between the date of the passage of the ordinance making the levy and the time of certifying it to the auditor for collection."

As to your third question, it appears that the Legislature intended the "cost thereof," as that language is used in Section 729.06, Revised Code, should include the total cost of the connection to a sewer or water main including the cost of such connection beyond the landowner's curb line. There is nothing in the present law indicating that a contrary conclusion may be reached.

Former Section 727.05, Revised Code (repealed effective January 1, 1962) did provide:

"* * * * * * * * *

"* * * No property owner shall be required to construct such connections further from the street main or sewer than the inner line of the curb. * * *"

Since the above language does not appear in Section 729.06, Revised Code, nor anywhere else in the statutes so far as I can ascertain, I can only conclude that the Legislature intentionally left this language out of the new statute, and that a property owner can now be assessed a portion of the cost of such sewer and water connection to the municipal water or sewer main beyond the inner line of the curb. I thus answer your third question in the affirmative.

Accordingly, it is my opinion and you are advised:

1. Under Section 729.06, Revised Code, a municipal legislative authority may require the making of sewer and water connections by the owners of lots and parcels of land.

2. When under Section 729.06, Revised Code, an owner is notified to make sewer and water connections, and does not do so within thirty days from the date of service of the notice, the municipal corporation may do the necessary work and assess the cost thereof plus a forfeiture of five per cent against the lots and lands for which the connections were made.

3. Pursuant to Section 729.10, Revised Code, the procedure for the collection of assessments made under the authority of Section 729.06, Revised Code, is governed by the procedure contained in Sections 727.30 and 727.33, Revised Code.

4. Under Section 729.06, Revised Code, a landowner may be assessed all the costs of the installation of water and sewer connections between the municipal owned water and sewer main and his lots and lands, including the costs of any connections which may be beyond the inner line of the curb.

Respectfully,
MARK MCELROY
Attorney General