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DITCHES, COUNTY, DRAINS OR WATER COURSES — COST TO CLEAN AND REPAIR AFTER DIVISION AND ALLOTMENT OF WORKING SECTIONS — MAY BE ASSESSED AGAINST BENEFITED PROPERTY WITHOUT FURTHER NOTICE OR HEARING TO PROPERTY OWNERS.

SYLLABUS:

The cost of cleaning and repairing county ditches, drains or water courses, after division and allotment of working sections has been made may be assessed against the benefited property without further notice or hearing to the property owners.

Columbus, Ohio, July 22, 1941

Hon. Thomas J. O'Connor, Prosecuting Attorney,
Toledo, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“The Ditch Supervisor of Lucas County is called upon frequently to perform ditch cleaning and repair work by employing the necessary labor and purchasing the necessary materials whenever the total cost thereof is under \$50. This work is done by authority of General Code Section 6701.

It has always been my opinion that the cost of the above work could, under the first paragraph of General Code Section 6702, be assessed against the benefited property without any further notice or hearing to the property owners, and that such notice and hearing would be necessary only where the work had been done as a unit under the supervision of the Ditch Supervisor as provided for in the second and third paragraphs of said section.

Some of the Lucas County officials, however, have disagreed with this view and contend that notice and hearing are necessary in all cases. In order to clear up this situation your opinion will be very much appreciated.”

With reference to the cleaning and repairing of ditches, drains or water courses, Section 6697, General Code, provides that the ditch supervisor or supervisors for the township through which a ditch, drain or water course runs shall divide it into working sections and apportion such sections to the owners of the lands according to the benefits that will be received by such cleaning or repair. It is further provided that upon petition of the owners of two-thirds in amount of the apportionment of the work to clean and repair, the supervisor may cause the work to be done as a unit and shall apportion the costs of such work among the owners of the land affected thereby according to benefits. Provision is also made for notice and hearing in case of protest against the apportionment of any working section to any individual owner, and each owner when properly notified is required to clean out or repair the portion of the ditch, drain or water course so apportioned to him, and when necessary, to reclean such portion without further notice.

Section 6700, General Code, provides in substance that if the owner to whom an apportionment is allotted neglects or refuses within the time set by the ditch supervisor to clean out or repair such ditch, the supervisor shall sell the work of cleaning or repairing at public outcry to the lowest responsible bidder. Separate contracts are required for each working section and in accordance with Section 6701, General Code, if the estimated cost is under \$50.00, the supervisor may at his option award the contract without advertising or proceed to complete the work by employing the necessary labor and materials.

Section 6702, General Code, referred to in your inquiry, provides as follows:

“Upon the completion of the work as provided in this chapter, whether by contract or otherwise, the supervisor shall certify the cost thereof to the commissioners, who shall examine and correct the same, and shall order the auditor to place the correct amount upon the duplicates to be collected as other taxes and assessments; and this shall be credited to the general ditch improvement fund; such cost shall be a lien on the land to which said work was apportioned from the date of the filing of such certificate with the auditor. In all cases where the work has been under the supervision of the ditch supervisor and where the ditch repair or clean out has been done as a unit, the ditch supervisor shall make an estimate of the cost of such improvement, and shall apportion the estimated cost thereof according to benefits to the several tracts of land benefited, and shall file such estimates with the auditor; the auditor shall report such apportionments to the commissioners, and the commissioners shall correct and approve such assessments, and shall heard which shall be not more than twenty days after the date of filing such estimates. Upon the fixing of such time, ten days’ notice of such hearing, as provided in chapter one of this title shall be given by the ditch supervisor and the hearing shall proceed the same as the hearing on the report of the surveyor in chapter one of this title, and all parties shall have the rights and remedies as provided in chapter one of this title. The commissioners shall correct and approve such assessments, and shall order the ditch supervisor to let the contract according to sections 6700 and 6701. Upon the letting of the contract the auditor shall place the assessments as finally confirmed by the board of county commissioners against the lands of each owner for collection by the county treasurer as other assessments are collected and said assessments shall be a lien against the lands upon which assessment is placed until the assessment is paid.”

In view of the aforementioned sections, the substance of which is above set forth, it seems apparent that the provisions of Section 6702, supra, with respect to notice and hearing apply only in those instances when the cleaning and repairing has been performed on a unit basis. The provision for notice and hearing in such case affords the owners comprising the unit an opportunity to contest the findings of the ditch supervisor with respect to his estimation of the costs to be borne by each individual land owner.

Where there has been a division of the ditch and the working sections and apportionment has been made on this basis, rather than on the unit plan, there is no necessity for notice or hearing for the purpose of ascertaining the proper apportionment of the costs entailed in clean-

ing and repairing, and this is true regardless of the amount of said costs.

The land owner to which a working section of the ditch has been allotted is responsible for the costs involved in cleaning and repairing his section. Since separate contracts or separate itemized statements are required for each working section cleaned or repaired under the supervision of the ditch supervisor, the element of cost is readily ascertainable.

The provisions for protest and hearing set forth in Section 6697, General Code, afford the land owner an opportunity to object to the division of the working sections. After the division and the allotment of the working section has been made any subsequent requirement for notice and hearing with respect to the apportionment of the cost would defeat the very purpose of the allotment. Any doubt as to the safeguards of due process is removed by Section 6699, General Code, which establishes the procedure for reapportionment upon the petition of the land owner.

In specific answer to your question, therefore, I am of the opinion that the cost of cleaning and repairing county ditches, drains or water courses, after division and allotment of working sections has been made, may be assessed against the benefited property without further notice or hearing to the property owners.

Respectfully,

THOMAS J. HERBERT,

Attorney General.