

OPINION NO. 1579**Syllabus:**

1. The cost of construction and superintendence of improvements of a sanitary district organized under Chapter 6115, Revised Code, may not be financed by the issuance of revenue bonds.
2. The entire cost of construction and superintendence of improvements of a sanitary district organized under Chapter 6115, Revised Code, must be paid out of the "bond fund" created by Section 6115.45, Revised Code, and consisting of the proceeds from levies against special assessments of property benefited.

To: C. Howard Johnson, Franklin County Pros. Atty., Columbus, Ohio
By: William B. Saxbe, Attorney General, December 4, 1964

I have before me your request for my opinion which reads as follows:

"The Board of County Commissioners of Franklin County, Ohio has had for the past two years several meetings with officials of local political subdivisions in Franklin County for the purpose of finding ways and means for disposing of garbage and refuse on a county-wide basis.

"After several meetings and lengthy and thorough discussions of this matter in very general terms, most of the interested parties, including the County Commissioners, are of the view that the vehicle most responsive to the needs and desires of those involved is a metropolitan type of authority such as a Sanitary District authorized pursuant to Chapter 6115, Revised Code. An outline of the system was recently presented to the Commissioners and Municipal officials. Most of the concern was focused upon the method of financing the project. It was the opinion of this office the only method of paying for a garbage and refuse facility initiated under Chapter 6115, was by special assessment against benefited property.

"The general consensus favored revenue bonds as a preferable method to finance the cost of the project in mind, the bonds to be retired from rates and charges for use of the facility constructed.

"Consequently, pursuant to the request of the Board of County Commissioners and because this question is one which may well affect other counties throughout the State, the purpose of this request is to respectfully seek your review of said Chapter 6115 and your opinion as to whether a garbage and refuse disposal system constructed under this Chapter could be financed in whole or in part by issuing and selling revenue bonds, the same to be retired from rates and charges for use of the facility."

It is well established that townships and counties possess only such powers and privileges as may be delegated to or conferred upon them by statute. Hopple v. Brown Twp., 13 Ohio St., 311; Lake County v. Ashtabula County, 24 Ohio St., 393. It is just as clear that sanitary districts being creatures of statute possess only those powers and privileges specifically granted to them under Chapter 6115, Revised Code.

Your request specifies that your purpose for establishing a sanitary district is the disposal of garbage and refuse on a county-wide basis. The authority for doing so is specifically granted in Section 6115.04, Revised Code, which states:

"Such districts may be established for any of the following purposes:

* * * * *

"(G) To collect and dispose of garbage;

"(H) To collect and dispose of any other refuse that may become a menace to health."

Your request asks for the proper method of financing the construction of the facilities. Section 6115.45, Revised Code, sets out the different funds of the sanitary district and the uses to which they may be put. It states:

"The moneys of every sanitary district shall consist of three separate funds:

"(A) The 'preliminary fund' consisting of the proceeds of the ad valorem tax authorized by sections 6115.01 to 6115.79, inclusive, of the Revised Code, and such advancements as are made from the general county funds as provided in section 6115.46 of the Revised Code;

"(B) The 'bond fund' consisting of the proceeds of levies made against the special assessments of benefits equalized and confirmed under sections 6115.01 to 6115.79, inclusive, of the Revised Code;

"(C) The 'maintenance fund' consisting of a special assessment to be levied annually for the purpose of upkeep, administration, and current expenses as provided in section 6115.53 of the Revised Code, except that the maintenance fund for improved water supply for domestic, municipal, and public use shall be derived from the sale of water provided in such section.

"The cost of preparing the official plan, the appraisal, except as paid out of the preliminary fund, the entire cost of construction and superintendence, including all charges incidental thereto, and the cost of administration during the period of construction shall be paid out of the bond fund. No vouchers shall be drawn against the preliminary fund, except for advances from the general county funds, or against the maintenance fund provided for purposes other than improved water supply for domestic, municipal, and public use, until a tax-levying resolution has been properly passed by the board of directors of the sanitary district, and duly entered upon its records. No bonds shall be issued against the bond fund until an assessment-levying resolution has been properly passed by the board and duly entered upon its records, and until the property owners have been given an opportunity for a period of not less than thirty days to pay the assessments so levied against their respective properties. In case the purposes of the district include both improved sanitation and improved water supply, the funds for these purposes shall be kept separate." (Emphasis added)

It is very clear from this statute that there are only three funds available to a sanitary district and it is the bond fund which is to be used to finance the cost of construction. No other fund may be used for this purpose. It is also made clear that this fund is to consist of levies against special assessments of property benefited and the bonds are to be redeemed by means of these levies.

The procedure for levying assessments for the bond fund is in Section 6115.48, Revised Code.

After thoroughly researching the above mentioned statutes, I have found no cases or opinions of the Attorney General concerning them. The statutes are explicitly clear, however, and leave no room for any other conclusion.

Therefore, it is my opinion and you are advised that:

1. The cost of construction and superintendence of improvements of a sanitary district organized under Chapter 6115, Revised Code, may not be financed by the issuance of revenue bonds.
2. The entire cost of construction and superintendence of improvements of a sanitary district organized under Chapter 6115, Revised Code, must be paid out of the "bond fund" created by Section 6115.45, Revised Code, and consisting of the proceeds from levies against special assessments of property benefited.