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WATER—COUNTY COMMISSIONERS—AUTHORITY TO INSTALL DISTRIBUTING SYSTEM—SUPPLY WATER IN SEWER DISTRICT—DISTRIBUTING MAINS—MAY FINANCE COST BY ISSUANCE OF REVENUE BONDS—NOT REQUIRED TO CONSTRUCT WATER WORKS SYSTEM—SECTIONS 6602-17, 2293-16a G. C.

SYLLABUS:

Pursuant to the authority of Section 6602-17, General Code and of Section 2293-16a, General Code, the county commissioners have authority to install a distributing system for supplying water in a sewer district by laying distributing mains, and may finance the cost of the same by issuing revenue bonds as prescribed by Section 2293-16a, *supra*, and are not required in order so to do, to construct a water works system.

Columbus, Ohio, January 22, 1952

Hon. Mathias H. Heck, Prosecuting Attorney
Montgomery County, Dayton, Ohio

Dear Sir :

I have before me your request for my opinion, reading as follows :

“Section 2293-16a provides that any county which acquires, constructs or extends any sewers, sewage treatment plant or disposal works, or *any public water supply or water works system*, (emphasis ours) may issue bonds therefor secured only by a pledge of and lien on the revenues derived by the county from the operation of such project.

“Certain areas of Montgomery County outside of incorporated municipalities, are in need of a water supply, but due to local conditions, it is more practical for the county to purchase water from an established supply rather than construct a complete water works system for such area or areas.

“The question is: May a county issue bonds under authority of Section 2293-16a for the purpose solely of constructing or extending a distribution system without also constructing or acquiring a complete water works system? In other words, may a county install a sewer distribution system in a sewer district and issue revenue bonds to finance the project without also constructing a water works, but by providing a supply of water by purchasing the same from a water works already established and being operated by another political subdivision?

“As this question is of much importance to Montgomery county, I am enclosing a memorandum of my consideration of the request.”

Section 6602-17, General Code, is a part of an act passed in 1917 (107 Ohio Laws, p. 432), authorizing the county commissioners to provide a water supply system for any established sewer district. The pertinent portion of Section 6602-17 is as follows:

“For the purpose of preserving and promoting the public health and welfare, and providing fire protection, the boards of county commissioners of the several counties of this state may by resolution, acquire, construct, *maintain and operate any public water supply* or water works system within their respective counties, for any established sewer district. In this act ‘public water supply’ shall mean *any or all* of the following: Wells,

springs, streams or other source of water supply, pumping equipment, treatment or purification plants, *distributing mains*, cisterns, reservoirs, necessary equipment for fire protection, other equipment, and lands, rights-of-way and easements necessary for the proper development and distribution of the supply. Any board of county commissioners may acquire, construct, maintain and operate such public water supply and may provide for the protection thereof and prevent the pollution and unnecessary waste thereof. * * *

(Emphasis added.)

Other provisions of the act provide for the financing of the improvement contemplated by that section. Section 6602-20, General Code, provides that for the purpose of paying a part or all of the cost of the construction, maintenance, repair or operation of any such improvement, the county commissioners may borrow money by the issuance of certificates of indebtedness payable over a period of five years, or may issue bonds or may appropriate money from any funds in the county treasury available.

Section 2293-16a, General Code, to which you refer, was passed in 1949, and is found in 123 Ohio Laws, page 446. That section, in so far as pertinent, reads as follows :

“Any county which *acquires, constructs, or extends* any sewers, sewage treatment or disposal works or any public water supply or water works system, for one or more established sewer districts, or which acquires, constructs or operates a system of garbage or refuse collection or disposal, and desires to raise money for such purposes and establishes rates or charges of rents for the use of any such facilities or any such operations, designed or intended to provide a surplus for the payment of the interest and principal on any debt incurred in connection therewith, or for the creation of a sinking fund for the payment of such debt, *in addition to any power to issue general obligation bonds* for financing the same, may issue revenue bonds therefor beyond the general limit of bonded indebtedness otherwise prescribed by law and shall not be counted in such indebtedness; provided that such revenue bonds issued beyond the general limit of bonded indebtedness prescribed by law shall be secured only by a pledge of and lien upon the revenues of such county derived from such rates or charges, and the covenant of the county to maintain sufficient rates and charges to produce adequate revenues for such purpose. Such bonds shall be negotiable instruments but shall not constitute general obligations of the county and the general credit and taxing power of the county shall not be pledged to the payment thereof, or any part thereof. * * *

(Emphasis added.)

An examination of these two sections shows that they have reference to the same subject, to wit, the provision for water supply for one or more established sewer districts, and confer powers upon the same officers, to wit, the county commissioners, as to financing the cost of such improvement. Very evidently, the latter section is designed to provide an additional method of financing such projects. Accordingly, it seems manifest that these sections may and should be considered as being in *pari materia*.

Your sole question appears to be whether in order to provide for the desired distribution system to supply the sewer district in question, it is necessary under these statutes for the county commissioners to construct a complete water works system. A reading of Section 6602-17, *supra*, appears to me to make it very clear that the authority there conferred upon the commissioners is either to acquire, maintain and operate a public water supply or to acquire, construct, maintain and operate a water works system. The language of the statute is, "may by resolution, acquire, construct, maintain and operate any public water supply or water works system." The statute goes on to describe what is meant by public water supply, and says that it shall mean any or all of the following: "Wells, springs, streams or other source of water supply, pumping equipment, treatment or purification plants, *distributing mains*, * * *" This language appears to me to make it quite clear that the county commissioners, for the purpose of securing a water supply for the district in question, may acquire any or all of the facilities named, but there is certainly nothing in the statute which would obligate them in order to procure a water supply, to build a complete water works plant. The same section provides:

"By contract with any municipal corporation, or any person, firm or private corporation furnishing a public water supply within or without their county, *they may provide such supply of water to such sewer district or districts from the water works of such municipality*, person, firm or private corporation. * * *"

(Emphasis added.)

This language clearly assumes that the municipality or other person with whom such contract may be made already has a water works system and contemplates that the county may contract merely for the supply of the water and as already indicated, may, pursuant to the same section construct distributing mains as a part of the process of supplying water.

Referring again to Section 2293-16a, supra, I call especial attention to the following provision contained therein :

“Any county which acquires, constructs *or extends* any * * * public water supply or water works system * * * and desires to raise money for such purposes and establishes rates or charges of rents for any such facilities * * * in addition to any power to issue general obligation bonds for financing the same, may issue revenue bonds therefor.” (Emphasis added.)

Here is express authority to issue such revenue bonds for the purpose of extending any public water supply. In so far as such extension consists of the laying of distributing mains it appears to me that this additional method of financing was intended to apply to the cost of such extension.

Accordingly, it is my opinion and you are advised that pursuant to the authority of Section 6602-17, General Code and of Section 2293-16a, General Code, the county commissioners have authority to install a distributing system for supplying water in a sewer district by laying distributing mains, and may finance the cost of the same by issuing revenue bonds as prescribed by Section 2293-16a, supra, and are not required in order so to do, to construct a water works system.

Respectfully,

C. WILLIAM O'NEILL
Attorney General