

**OPINION NO. 70-093****Syllabus:**

1. Where a ditch petition is filed in accordance with Section 6131.04, Revised Code, by a municipality which proposes to pay the share of each of the resident's assessments, it is necessary that the petition contain a list of the names and addresses, where known, of all the landowners affected within the municipality.

2. Where a ditch petition is so filed by a municipality, it is mandatory and jurisdictional that the notices required by Section 6131.07, Revised Code, be sent to all the owners named in the petition and of legal record on the date of the filing of the petition.

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**To: William H. Weaver, Williams County Pros. Atty., Bryan, Ohio**  
**By: Paul W. Brown, Attorney General, July 27, 1970**

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

"1. Where a ditch petition is filed in

accordance with Revised Code Section 6131.04 by a municipality, which municipality proposes to pay the share of each of its residents assessments, is it necessary that the petition contain a list of the names and addresses of all the land owners within the municipality?

"2. When a petition is filed as per Question No. 1, should the notices be sent in accordance with Revised Code Section 6131.07 to the land owners within the municipality?"

Section 6131.04, Revised Code, provides as follows:

"Any owner may file a petition with the clerk of the board of county commissioners of the county in which is located a part of the land that is averred to be benefited by the construction of a proposed improvement. The petition shall state that the construction of the improvement is necessary and will be conducive to the public welfare; shall state the nature of the work petitioned for; and may ask to locate, construct, reconstruct, straighten, deepen, widen, alter, box, tile, fill, wall, or arch any ditch, drain, watercourse, floodway, creek, run, or river, or to change the course, location or terminus thereof; or may ask to construct a levee, wall, embankment, jetty, dike, dam, sluice, revetment, reservoir, holding basin, control gate, breakwater, or other structure for control of water. The petition shall state the course and termini of the proposed improvement, and the branches, spurs, or laterals, if any are petitioned for. The petition shall contain a list of the names and addresses, where known, of all the owners of the land which the petitioner claims will be benefited or damaged by the construction of the proposed improvement. \* \* \*"  
(Emphasis added.)

The statute uses the word "shall" in connection with the listing in the petition of all the owners of the land which the petitioner claims will be benefited or damaged by the construction of the proposed improvement. It will be noted that such listing applies to the owners of all lands which the petitioner claims will be "benefited or damaged." The ditch improvement may damage as well as benefit the land affected. The owner must be listed by name and address in order to be subject to be given the notice of the view and the hearing provided by Section 6131.07, Revised Code.

The fact that the municipality proposes to pay the share of the assessments of the landowners whose lands lie within the municipality does not serve to change the mandatory character of the language underlines above in Section 6131.04, supra.

The Court in the case of Woodmansee v. Cockerill, 115 Ohio App. 409 (1961) discusses the mandatory and jurisdictional nature of the requirements set out in Chapter 6131 of the Revised Code and holds with respect to Section 6131.07, Revised Code, at page 417:

"We hold that the provisions of Section 6131.07, Revised Code, respecting notice of the owners named in the petition and of record on the date of filing of the petition are mandatory, and that a substantial compliance therewith is indispensable to the jurisdiction of the Joint Board of County Commissioners to act.\* \* \* The word 'shall' is used in practically every section of the code relating to ditch improvements. The word appears between 50 and 100 times and with respect to notice in Section 6131.07, Revised Code, it is clearly mandatory."

The reasoning of the court as set out in the foregoing language applies with equal force, in my opinion, to the mandatory character of Section 6131.04, supra, and its requirement that the petition contain the names and addresses, when known, of all the owners of land which the petitioner claims will be benefited or damaged by construction of the improvement.

Your second question is answered by the Woodmansee v. Cockerill case, supra, which held that the provisions of Section 6131.07, supra, respecting notice to the owners named in a petition for the improvement of a county ditch and to those of record on the date of the filing of such petition are mandatory. The fact that the municipality is the petitioner in this case and proposes to pay the assessments of the landowners affected by the proposed ditch improvement, whose property lies within the municipality, does not change the mandatory and jurisdictional character of the requirements.

I am therefore of the opinion and you are so advised:

1. Where a ditch petition is filed in accordance with Section 6131.04, Revised Code, by a municipality which proposes to pay the share of each of the resident's assessments, it is necessary that the petition contain a list of the names and addresses, where known, of all the landowners affected within the municipality.

2. Where a ditch petition is so filed by a municipality, it is mandatory and jurisdictional that the notices required by Section 6131.07, Revised Code, be sent to all the owners named in the petition and of legal record on the date of the filing of the petition.