

OPINION NO. 88-043**Syllabus:**

1. Pursuant to R.C. 307.73, the board of county commissioners may impose reasonable fees for its regulation and inspection of the construction of water or sewer lines in any unincorporated area of the county by any individual, organization, or agency of private enterprise.
2. Pursuant to R.C. 6103.02(A), the board of county commissioners may charge reasonable fees for the inspection and regulatory activities conducted by the county with regard to public water supplies as set forth in that division.
3. Pursuant to R.C. 6117.01, the board of county commissioners may charge reasonable fees for the inspection and regulatory activities conducted by the county with regard to sewers, sewer improvements, and sewage treatment plants as set forth in that statute.

To: Michael G. Spahr, Washington County Prosecuting Attorney, Marietta, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, June 21, 1988

I have before me your opinion request in which you ask, "whether a board of county commissioners has the authority to charge inspection fees for utility permits." Your question arises because an area water and sewer association has refused to pay a fee imposed by the county. Since your letter does not specify the exact nature of the fee that is in dispute, I will consider the authority of the county commissioners generally with respect to county water supplies and sewers.

I had occasion to address a related question in 1986 Op. Att'y Gen. No. 86-081, the syllabus of which states:

Permit fees collected by the county engineer from persons installing driveways or other approaches to county roads, or from persons placing utility installations across county roads, must, under R.C. 325.31 and R.C. 5705.10, be paid into the general fund of the county, unless a special fund has been established under R.C. 5705.12 for the deposit of such fees, in which case the fees are to be paid into the special fund.

The types of fees examined in Op. No. 86-081 were those imposed by the board of county commissioners upon persons installing driveways or other approaches to county roads and persons placing utility installations across county roads. Based

upon the various statutory provisions authorizing the county commissioners to regulate the installation of utilities across county roads, I concluded that a county may establish a permit system as part of its regulatory authority. The county's authority to charge fees in connection with such a permit system is based upon the principle set forth in *Prudential Co-Operative Realty Co. v. City of Youngstown*, 118 Ohio St. 204, 214, 160 N.E. 695, 698-99 (1928):

Where the authority is lodged in the [governmental entity] to inspect and regulate, the further authority to charge a reasonable fee to cover the cost of inspection and regulation will be implied. The fee charged must not, however, be grossly out of proportion to the cost of inspection and regulation....

See McGowen v. Shaffer, 65 Ohio L. Abs. 138, 111 N.E.2d 615 (C.P. Summit County 1953) (a board of health of a general health district, having the express statutory authority to regulate plumbing, has the authority to inspect for compliance with regulations and the implied authority to charge for such inspection).

In the situation about which you ask, the county commissioners have imposed a fee upon a water and sewer association. Initially, I note that a county has various powers in relation to the provision of water and sewer services within the county. Concerning the private construction of water and sewer lines, R.C. 307.73 states in pertinent part:

The board of county commissioners for any unincorporated portion of the county, upon application by any individual, organization, or agency of private enterprise, may grant permission by resolution to such individual, organization, or agency to construct water or sewer lines, or both, under the supervision of the board....

....

The county commissioners may make such rules and regulations as may be necessary to administer this section.

Further provision for county water supply systems is found in R.C. Chapter 6103. Specifically concerning the powers of the board of county commissioners, R.C. 6103.02 states in pertinent part:

(A) For the purpose of preserving and promoting the public health and welfare, and providing fire protection, any board of county commissioners may by resolution acquire, construct, maintain, and operate any public water supply¹ or water-works system within its county for any sewer district, and may provide for the protection thereof and prevent the pollution and unnecessary waste thereof. By contract with any municipal corporation, or any person, firm, or private corporation furnishing a public water supply within or without its county, the board may provide such supply of water to such district from the waterworks of such municipal corporation, person, firm, or private corporation. The sanitary engineer, or sanitary engineering department, of such county, in addition to other duties assigned to such sanitary engineer or department, shall assist the board in the performance of its duties under sections 6103.02 to 6103.30 of the Revised Code, and shall be charged with such other duties and services in relation thereto as the board prescribes. The board may adopt, publish, administer, and enforce rules for the construction, maintenance, protection, and use of public water supplies in the county outside of municipal corporations, and of public water supplies within municipal corporations in its county wherever such water supplies are

¹ R.C. 6103.01 defines the term "public water supply," as used in R.C. 6103.02-30, as meaning, "wells, springs, streams, or other sources 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."

constructed or operated by such board or are supplied with water from water supplies constructed or operated by such board, including the establishment of connections. Such rules shall not be inconsistent with the laws of the state or the rules of the environmental protection agency. No public water supplies or water pipes or mains shall be constructed in any county outside of municipal corporations by any person, firm, or corporation, except for the purpose of supplying water to such municipal corporations, until the plans and specifications for the same have been approved by the board. Any such construction shall be done under the supervision of the sanitary engineer. Any person, firm, or corporation proposing or constructing such improvements shall pay to the county all expense incurred by the board in connection therewith. The sanitary engineer may enter upon any public or private property for the purpose of making surveys and examinations necessary for the design or examination of public water supplies, and may make such surveys and examinations. (Footnote added.)

The powers of boards of county commissioners with respect to the regulation of water supplies under R.C. 307.73 and R.C. Chapter 6103 were summarized in 1979 Op. Att'y Gen. No. 79-107, at 2-337, as follows:

[T]he board of county commissioners has control over the construction of water lines by private persons in unincorporated areas of the county. R.C. 307.73 bestows on the board of county commissioners supervisory power over the construction of water lines in unincorporated portions of the county by any individual, organization, or agency of private enterprise. In addition, R.C. 6103.02 specifically empowers the board to "make, publish, and enforce rules and regulations for the construction, maintenance, protection, and use of *public water supplies* in the county outside of municipal corporations" (emphasis added)....Thus, when a private enterprise plans to install water lines in an unincorporated area of a county, it is subject to the supervision, and to the rules and regulations, of the board of county commissioners.

...R.C. 307.73 requires application by a private person to the board for permission to install water lines in unincorporated areas of the county. R.C. 6103.02 prohibits the construction of mains in unincorporated areas, except for the purpose of supplying water to municipal corporations, until the plans and specifications for the mains have been approved by the board. Consequently, no installation which is an extension of municipal lines, but which is not intended to supply water to the municipality, may be begun in an unincorporated portion of the county until an application is granted and plans and specifications for the project are approved. R.C. 6103.02 also clearly requires that the county sanitary engineer supervise the construction of a project for which plans and specifications have been approved by the board. (Footnote omitted.)

Thus, pursuant to R.C. 307.73, the board of county commissioners has authority to grant permits, by resolution, to applicants for the construction of water lines within unincorporated areas of the county. R.C. 307.73 further expressly authorizes the board of county commissioners to adopt rules and regulations which may be necessary to administer that section. Based upon the principle set forth in *Prudential Co-Operative Realty Co. v. City of Youngstown*, the county commissioners' authority under R.C. 307.73 to grant permits and to regulate the construction of water lines within unincorporated areas of the county clearly implies the power to charge a reasonable fee in connection with such permit system.

Similarly, under R.C. 6103.02(A), the board of county commissioners has authority to adopt and enforce rules for the construction, maintenance, protection, and use of certain water supplies within the county. Further, the county commissioners must approve plans and specifications prior to the construction of certain water supplies or water pipes or mains within the county, and such construction "shall be done under the supervision of the sanitary engineer." With respect to costs, R.C. 6103.02(A) states: "Any person, firm, or corporation proposing

or constructing such improvements shall pay to the county all expense incurred by the board in connection therewith." *See generally* Op. No. 79-107 (syllabus, paragraphs one through three); 1964 Op. Att'y Gen. No. 978, p. 2-142 (syllabus, paragraphs three and six); 1960 Op. Att'y Gen. No. 1842, p. 673 (syllabus, paragraph one). It is clear, therefore, that the county commissioners' regulatory powers under R.C. 6103.02(A) and the duty imposed upon persons or entities constructing improvements under that division to pay all expenses incurred by the board in connection with such construction provide ample authority for the county commissioners to charge a fee for the performance of those powers and duties vested in the county by R.C. 6103.02.

The authority of a board of county commissioners with respect to sewers within the county is governed not only by R.C. 307.73, as discussed above, but also by R.C. Chapter 6117. *See generally DeMoise v. Dowell*, 10 Ohio St. 3d 92, 94, 461 N.E.2d 1286, 1288 (1984) ("there are two methods whereby county government in Ohio can provide for the construction and utilization of sanitary sewer lines. R.C. Chapter 6117 permits county commissioners to construct public sewer lines...In contrast, R.C. 307.73 permits construction by a private entrepreneur with the permission of the county commissioners..."). Certain powers of the board of county commissioners are set forth in R.C. 6117.01, which states in pertinent part:

For the purpose of preserving and promoting the public health and welfare, boards of county commissioners may by resolution lay out, establish, and maintain one or more sewer districts within their respective counties, outside of municipal corporations, and may have a registered professional engineer make such surveys as are necessary for the determination of the proper boundaries of such district....Any such board may employ a registered professional engineer for such time and on such terms as it deems best, and may authorize such registered professional engineer to employ necessary assistants upon such terms as are fixed by said board. The board may create and maintain a sanitary engineering department, to be under its supervision and in charge of a registered professional engineer, to be appointed by such board, for the purpose of aiding it in the performance of its duties under sections 6117.01 to 6117.45 of the Revised Code, or its other duties regarding sanitation provided by law....The board may adopt, publish, administer, and enforce rules for the construction, maintenance, protection, and use of sewers and sewer improvements in its county outside of municipal corporations, and of sewers and sewer improvements within municipal corporations in its county wherever such sewers are constructed or operated by such board or discharge into sewers or sewage treatment plants constructed or operated by such board, including the establishment and use of connections. Such rules shall not be inconsistent with the laws of this state or the rules of the director of environmental protection. No sewers or sewage treatment works shall be constructed in any county outside of municipal corporations by any person, firm, or corporation until the plans and specifications for the same have been approved by the board, and any such construction shall be done under the supervision of the county sanitary engineer. Any person, firm, or corporation proposing or constructing such improvements shall pay to the county all expenses incurred by the board in connection therewith.

R.C. 6117.01 allows the board of county commissioners generally to establish one or more sewer districts within the county in areas which are outside of municipalities. *See* 1984 Op. Att'y Gen. No. 84-085 at 2-293 ("[a] board of county commissioners has the authority to establish and operate one or more sewer districts in the unincorporated area of the county. R.C. 6117.01."). Pursuant to R.C. 6117.01, the board of county commissioners has authority to adopt and enforce rules for the construction, maintenance, protection, and use of the sewers designated therein. R.C. 6117.01 also requires the board's approval of plans and specifications before sewers or sewage treatment works may be constructed outside of municipal corporations by any person, firm, or corporation, 1964 Op. No. 978 (syllabus, paragraph three); 1963 Op. Att'y Gen. No. 3531, p. 32 (syllabus, paragraph one); 1960 Op. No. 1842 (syllabus, paragraph one), and further requires such construction to be done under the supervision of the county sanitary engineer. Like R.C. 6103.02,

discussed above, R.C. 6117.01 requires any person, firm, or corporation proposing or constructing improvements as specified in that section to pay the county for "all expenses incurred by the board in connection therewith." See generally 1964 Op. No. 978 (syllabus, paragraph six). It is apparent, therefore, that R.C. 6117.01, like R.C. 6103.02, confers sufficient regulatory authority upon the board of county commissioners to allow the board to impose reasonable fees upon those entities that the county may regulate under that statute. *Co-Operative Realty Co. v. City of Youngstown*.

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. Pursuant to R.C. 307.73, the board of county commissioners may impose reasonable fees for its regulation and inspection of the construction of water or sewer lines in any unincorporated area of the county by any individual, organization, or agency of private enterprise.
2. Pursuant to R.C. 6103.02(A), the board of county commissioners may charge reasonable fees for the inspection and regulatory activities conducted by the county with regard to public water supplies as set forth in that division.
3. Pursuant to R.C. 6117.01, the board of county commissioners may charge reasonable fees for the inspection and regulatory activities conducted by the county with regard to sewers, sewer improvements, and sewage treatment plants as set forth in that statute.