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LOCAL SCHOOL DISTRICT BOARD OF EDUCATION—MAY CONSTRUCT WATER MAIN FOR PURPOSE OF SECURING WATER SUPPLY AND MAY PERMIT PRIVATE PROPERTY OWNERS TO TAP SUCH MAIN. LOCAL DISTRICT BOARD OF EDUCATION—MAY CONTRACT FOR AND PAY FOR OBTAINING A SCHOOL WATER SUPPLY. §§ 3313.17, 3313.37, R.C.

SYLLABUS:

1. A local school district board of education for the purpose of obtaining a school water supply may contract for and pay the reasonable cost of procuring such service under the authority of Section 3313.37, Revised Code.

2. A local school district board of education may construct a water main from its school to a nearby unincorporated community for the purpose of securing a water supply for its school and, after so doing, may permit private property owners to tap such water main, provided a suitable fee is charged for the privilege, under the authority of Section 3313.17, Revised Code.

Columbus, Ohio, November 13, 1959

Hon. James H. Estill, Prosecuting Attorney
Holmes County, Millersburg, Ohio

Dear Sir:

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

“The bearer of this letter is the Principal of the Big Prairie-Lakeville Local School District of Holmes County, Ohio. Some time ago this district voted a bond issue to construct a new high school building. The site for the school was chosen and construction was commenced this summer by the drilling of water wells. In so drilling it was found after two attempts that no water supply could be found upon the site, and therefore the board will have to look elsewhere for an adequate water supply.

“The community of Big Prairie, Ohio, an unincorporated village, is not too far away from the site and is presently serviced by a privately owned non-profit water company. The present plan is to extend a water line from the unincorporated village to the school site which would involve some considerable costs of construction of a line for a considerable distance. The water company is fi-

nancially hard pressed to obtain the necessary funds to build such a line and would desire some type of financial assistance from the school board.

“Two solutions present themselves: First, I have advised the school board that under authority of Section 9.30 R.C. the school board might contract with the water company for the water service and could conceivably pay such yearly amounts as they might agree upon. From the language of this section it would appear that those yearly contract payments could be substantial, enough to assist the water company in the payment of the cost of the line.

“The second solution would be for the school board themselves to build the line under authority of Section 3313.37 R.C. However certain problems are presented by this method. I take it from 1945 OAG No. 326 and 1952 OAG 1912 that the school board has authority to construct such a line but cannot join with others in the construction. One problem presented is that after such line is in existence what position is the board placed in by other private parties who may build along said line requesting to tap it for water service. 1945 OAG No. 326 would indicate that this could not be done since it would then place the board in the position of a utility operator.

“Also the problem of financing arises with the school board building. The 1952 opinion indicates that Sec. 133.24 could be used for providing the necessary revenue and Sec. 133.04 would allow the creation of the necessary indebtedness. The board had received advice from certain parties in Columbus that a tax of less than 1 mill could be levied by the board and without a vote of the people to reduce and pay this created indebtedness. I have advised that I know of no provision that would allow the board to levy such a tax over the 10 mill limitation without a vote of the people of the district.

“The basic questions arising from the above facts are these:

“(1) Under Sec. 9.30 R.C. may the board of education contract with the private water company for services and pay such substantial amounts yearly as well assist the company in the payment for the lines?

“(2) If the board should construct the line themselves under authority of the opinions cited and Sec. 133.24 R.C. would private owners be prevented in the future from tapping said line for service while owned by the board?

“(3) If the board should construct the line as stated in (2) above and finance it by a created indebtedness under Sec. 133.04 R.C. is there any provision which would allow the board to levy a tax to pay said indebtedness above the 10 mill limitation?

The general authority of a board of education to construct and maintain school buildings and related facilities is found in Section 3313.37, Revised Code, which reads as follows :

“The board of education of any school district, except a county school district may build, enlarge, repair, and furnish the necessary schoolhouses, purchase or lease sites therefor, or rights of way thereto, or purchase or lease real estate to be used as playgrounds for children or rent suitable schoolrooms, either within or without the district, and provide the necessary apparatus and make all other necessary provisions for the schools under its control.”

In Opinion No. 326, Opinions of the Attorney General for 1945, page 352, a question very similar to your first query was answered. That opinion, with which I am in agreement, held that a board of education of a local school district, for the purpose of obtaining a water supply for its school building and property, may contract for and pay the reasonable cost of procuring such service. The then Attorney General stated in part :

“Accordingly, it would be quite within the authority of the board of education to ascertain the cost to it of procuring a water supply for the school building and premises, and to contract for such service, if in the exercise of a sound discretion it considers that the school would be benefited by such expenditure. The method by which such cost is computed is not important so long as it is fixed and reasonable.”

This should provide a complete answer to your first question.

As to the second question you pose concerning the power of a local board of education to construct its own water line, this has also been answered by one of my predecessors. In Opinion No. 1912, Opinions of the Attorney General for 1952, page 735, it was held that bonds could be issued under Section 2293-2, General Code (now Section 133.24, Revised Code), by a local board of education to finance the laying of a water main from the school grounds to the edge of an incorporated village for the purpose of purchasing water from the village. This would seem to clearly authorize the local board to lay a similar water main to an unincorporated community to purchase water from a privately owned water company.

Concerning the added problem of whether a local board of education which constructs its own water main to provide water for its school building may properly permit private property owners to tap such water main for their own use, this has not been answered directly by any of the opinions

mentioned above. In Opinion No. 4588, Opinions of the Attorney General for 1932, page 10066, it was held as follows:

“* * *

“2. When a board of education finds itself in possession of property which is not needed for school purposes and which it cannot advantageously dispose of by sale, it may lawfully permit the temporary use of said property for some purpose other than a school purpose, and it may lawfully accept money for such use. Any agreement whereby third parties are permitted to use said premises under circumstances as mentioned, should contain a limitation to the effect that at any time the school board might determine that the property was needed for school purposes, or that it should be sold, the right to the use of the premises by said third parties would terminate.”

This opinion was followed and approved in Opinion No. 2534, Opinions of the Attorney General for 1953, page 158; and in Opinion No. 7225, Opinions of the Attorney General for 1965, page 738. It is, I believe, a correct interpretation of the general powers conferred on a local board by Section 3313.17, Revised Code. From your inquiry I presume that the private owners would pay a fee or rental for the privilege of tapping the board's water main. I view this as closely analogous to the rental by the board of property it desires to retain but is currently unable to use for school purposes. As the latter is a proper exercise of the board's general corporate powers, I consider permitting private property owners to tap the board's water main a similarly proper act, provided of course a suitable fee is charged by the board for this privilege. It should be remembered also, however, that should tapping of the water main by private owners ever interfere with the board's use of the water main, such tapping would have to be immediately discontinued.

I find nothing in my predecessor's opinion, Opinion No. 326, Opinions of the Attorney General for 1945, page 352, cited above, which would in any way limit this power. That opinion merely barred the formation of a pro tanto partnership among the local board and adjacent private owners for the construction of such a water main, but did not touch on rental of taps after the board should construct its own main. The latter would be an owner-tenant relationship and not a joint undertaking.

In answer to your third question, I know of no provision which would permit a local school board to levy a tax above the ten mill constitutional limitation without submitting such a proposed levy to a vote of the electors residing in the school district.

It is, therefore, my opinion and you are accordingly advised that :

1. A local school district board of education for the purpose of obtaining a school water supply may contract for and pay the reasonable cost of procuring such service under the authority of Section 3313.37, Revised Code.

2. A local school district board of education may construct a water main from its school to a nearby unincorporated community for the purpose of securing a water supply for its school and, after so doing, may permit private property owners to tap such water main, provided a suitable fee is charged for the privilege, under the authority of Section 3313.17, Revised Code.

Respectfully,
MARK McELROY
Attorney General