

**OPINION NO. 69-066****Syllabus:**

1. A village may enter into a contract with a non-profit water corporation whereby the corporation will supply bulk water to the village, to be used and distributed as the village sees fit, without ratification by a vote of the electors under Section 743.24, Revised Code.

2. A village may not enter into a contract with a non-profit corporation whereby the village is to supply water to the corporation, if the village waterworks does not possess a surplus of water.

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**To: Angus B. Wilson, Brown County Pros. Atty., Georgetown, Ohio**  
**By: Paul W. Brown, Attorney General, June 23, 1969**

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

"May a village legislative authority, in lieu of Section 743.24 Revised Code of Ohio, enter into a binding agreement with a private non-profit corporation providing that said corporation will furnish a certain amount of water to the village, for its own use and the use of citizens thereof, without ratification by a vote of the electors of said village?"

"The company will furnish treated water and will supply the same by hooking on to the Villages' existing mains. The village and not the citizens will be metered by the company. The village will be required, if necessary, to furnish the company with the same amount of water during any given month, that the village purchases from said company. The contract is for a period of 40 years and the rates charged to the village may be adjusted at five year intervals. The villages' water system is subject to a first and second mortgage which contain no provisions prohibiting the purchase of water elsewhere."

Section 743.24, Revised Code, provides as follows:

"A municipal corporation may contract with any individual or an incorporated company for supplying water for fire purposes, or for cisterns, reservoirs, streets, squares, and other public places within its limits, or for the purpose of supplying the citizens of such municipal corporation with water for such time, and upon such terms as is agreed upon. Such contract shall not be executed or binding upon the municipal corporation until it has been ratified by a vote of the electors thereof, at a special or general election. The municipal corporation shall have the same power to protect such water supply and prevent the pollution thereof as though the water works were owned by such municipal corporation."

My predecessors have had occasion to consider the proper application of the original version of Section 743.24, Revised Code, (Section 3981, General Code), which is not materially different as it pertains to the question before me. In Opinion No. 484, Opinions of the Attorney General for 1915, page 987, my predecessor concluded that "a contract between a municipal corporation and a private corporation, whereby the latter is to furnish a supply of water to the former, which is to filter and distribute the same is not governed by Section 3981, General Code, and need not be submitted to a vote of the people." In essence, this conclusion draws a distinction between the water supplier who supplies bulk "raw water" to a village and the water supplier who supplies treated water directly to the village citizens. It is the former supplier the Opinion holds who is not subject to the provisions of Section 3981, General Code.

In Opinion No. 2475, Opinions of the Attorney General for 1934, page 424, my predecessor concluded in branch one of the syllabus:

"Where the council of a city enacts an ordinance authorizing and directing the director of public service of said city to enter into a contract with a private water company for the furnishing of water and service to the city from and at various fire hydrants located on the mains of said company, for the use of the fire department of said city and for other municipal purposes, it is not necessary, that the same be ratified by a vote of the electors of the city unless such ratification is made necessary by reason of charter provision."

The basis for this conclusion was that a contract entered into between a municipality and a private individual or a private water company is controlled by other and later legislation. In this connection, the Opinion cites Section 9324, General Code, now Section 4933.04, Revised Code, as authority to make such a contract without ratification of the voters.

Section 4933.04, Revised Code, provides as follows:

"The proper officers of any municipal

corporation or the board of township trustees of any township in which a gas, sewage disposal system company, or water company is organized may contract with such company for lighting, disposal of sewage, or supplying with water the streets, lands, lanes, squares, and public places in such municipal corporation or township."

Opinion No. 272, Opinions of the Attorney General for 1945, is the most recent Opinion considering a similar matter. In this case, my predecessor considered whether a village could buy land for the impoundment of water, the water to be used for recreational purposes and as a source of water for the village. Branch one of the syllabus reads as follows:

"Under the powers granted by Section 4 of Article XVIII of the Constitution a municipality may acquire any public utility, including a water system by condemnation or otherwise, and may contract with others for the product or service of any such utility."

Section 4, Article XVIII of the Ohio Constitution, reads as follows:

"Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility."

In interpreting this Section of the Constitution, my predecessor made the following comment:

"This language would seem to give a wide latitude of discretion to the municipalities to make any contract which it finds necessary or advisable for securing its water supply so long as it is not limited by any law which the legislature is authorized to enact; and the courts have declared that a municipality in the exercise of the power given by the section above quoted is left practically free from any possible interference on the part of the legislature."

The Court of Common Pleas, Paulding County, also considered the proper application of Section 743.24, Revised Code, in Cook v. Village of Paulding, 33 Ohio Op. 2d, 165 (1965). It stated in the second branch of the syllabus:

"A 'perpetual lease' for the acquisition of raw water to be processed by the waterworks of the lessee village is not such a contract as was subject to the ratification of the elec-

tors under Section 3981, General Code (now Section 743.24, Revised Code)."

At page 169 of the Opinion, the Court made the following comment:

"If it be asked what purpose Sec. 3891, General Code (still retained as Sec. 743.24, Revised Code), can then possibly serve, it would seem its purpose is to prevent a privately owned waterworks from entering into a contract with a municipality, binding upon all water users, the obligation of which is forever unimpairable, without a vote of the electors."

It is obvious that when Section 3891, General Code, now Section 743.24, Revised Code, has been considered in the past, it has been strictly construed in order to permit villages to contract with water companies, without requiring that the contracts be submitted to a vote of the electors. I am in agreement with the prior interpretations of Section 743.24, supra.

The facts as presented to me indicate that the water company is to supply bulk water to the village and the village will be metered and charged for the water supplied. The village, in turn, will then utilize the water for whatever purposes it deems desirable and the village will continue to meter the water which it supplies to the village citizens. Under these facts, it is apparent that the proposed contract is not one for supplying water for fire purposes; it is not for supplying water for cisterns, reservoirs, streets, squares, and other public places within the corporate limits; it is not one for supplying water for the citizens, since the bulk water is to be supplied to the village which will then determine for what purpose the water will be used and then distribute it for that purpose.

Therefore, it appears to me that Section 743.24, supra, does not require the proposed contract to be submitted to a vote of the people.

It is noted that the facts also indicate that the proposed contract calls for the village to furnish the water company with the same amount of water during any given month that the village purchases from said company.

Section 743.18, Revised Code, in pertinent part, reads:

"A municipal corporation which has water works or electric works may contract with any other municipal corporation to supply it or its inhabitants with water or electricity upon such terms as are agreed upon by their respective legislative authorities. A municipal corporation which has a water works may dispose of surplus water, for manufacturing or other purposes, by lease or otherwise, upon such terms as are agreed upon by the director of public service of a city or the board of trustees of public affairs of a village and approved by the legislative authority thereof. Moneys received for such surplus water in either case shall be applied to the payment of the principal and interest of the bonds issued for the construction of such

water works, or for other expenses incident to the maintenance thereof, but no lease shall be made for a longer term than twenty years."

While this Section authorizes municipal corporations to supply water "for manufacturing or other purposes," the authority granted is based upon the fact that the municipal corporation has a surplus of water. It is obvious that the village in this case does not have a surplus of water. Accordingly, the village is without power to make a contract to supply water to the water company.

In conclusion, it is my opinion and you are advised:

1. A village may enter into a contract with a non-profit water corporation whereby the corporation will supply bulk water to the village, to be used and distributed as the village sees fit, without ratification by a vote of the electors under Section 743.24, Revised Code.
2. A village may not enter into a contract with a non-profit corporation whereby the village is to supply water to the corporation, if the village waterworks does not possess a surplus of water.