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COUNTY ENGINEER—SCHEDULE OF ASSESSMENTS—PARCEL OF REAL ESTATE—§§6131.15, 6131.01 (F) (G)., R. C.

SYLLABUS:

Under the provisions of Section 6131.15, Revised Code, it is not mandatory for the county engineer in preparing his schedule of assessments to specifically mention whether each parcel of real estate will be benefited as to each of the items noted in divisions (F) and (G) of Section 6131.01, Revised Code; and where in the opinion of the engineer several parcels of real estate will be benefited in the same form and manner, such parcels may be entered in a group on said schedule.

Columbus, Ohio, November 10, 1960

Hon. William H. Weaver, Prosecuting Attorney
Williams County, Bryan, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I am requesting your Opinion as follows:

“There has been filed with the Board of County Commissioners a single county ditch petition for the improvement of a ditch which commences outside the city limits of the City of Bryan, Ohio, passes through the City of Bryan, and terminates outside the city limits. Altogether there are approximately 2,000 property owners affected by this ditch as far as assessments are concerned.

‘Question: Having reference to Revised Code Section 6131.01 of Ohio, Subparagraph (F) and Subparagraph (G), is it mandatory for the County Engineer in preparing his schedule of assessments to specifically mention whether each parcel will be benefitted as to each of the items under each of the above subparagraphs? Also, may the County Engineer group several parcels of real estate which would be benefitted in the same form and manner in the option of the County Engineer?’

“I would appreciate your Opinion as soon as possible due to the urgency of this matter and since it is a large project which is estimated to cost approximately \$500,000.00.”

Regarding a single county ditch which would pass through a municipal corporation as in the instant case, it was held in Opinion No. 2610,

Opinions of the Attorney General for 1958, page 522 in the first paragraph of the syllabus :

“1. Where a petition is filed with a board of county commissioners for the improvement of a single county ditch with both termini outside a municipal corporation the board of county commissioners has the authority to assess benefited lands within such municipal corporation.”

The duty of the county engineer to prepare a schedule of assessments relative to a proposal for a single county ditch improvement is set forth in Section 6131.15, Revised Code, reading in part as follows :

“ * * * He shall prepare a schedule of assessments containing the name and address of each public corporation and each department, office, or institution of the state of Ohio so benefited, the amount of the appraised assessment and an explanation of the benefits upon which the assessment is based.

“The county engineer shall prepare a second schedule of assessments containing the name and address of each private owner of land and a description of the land believed to be benefited by the proposed improvement, which names and descriptions shall be taken from the tax duplicates of the county. He shall enter in such schedule the amount of the appraised assessment to be assessed to each tract of land, and an explanation of the benefits, by reason of the construction of the improvement, upon which the assessment is based. The total of these appraised assessments plus the total appraised assessments allocated to public corporations and the state of Ohio shall equal the estimated cost of the proposed improvement.

“* * *

“The county engineer, in making his estimate of the amount to be assessed each tract of land, public corporation, and the state of Ohio in accordance with this section and the board of county commissioners, in amending, correcting, confirming, and approving the assessments in accordance with section 6131.22 of the Revised Code, shall levy the assessments according to benefits. All land, public corporations, and the state of Ohio affected by an improvement shall be assessed in the proportion that it is specially benefited by the improvement, as ‘benefit’ and ‘improvement’ are defined in section 6131.01 of the Revised Code, and not otherwise.”

It is apparent from the foregoing that the county engineer in preparing his schedule of assessments must describe each tract of land to be assessed together with an explanation of the benefits, as that term is defined in Section 6131.01, Revised Code, upon which the assessment is based. The

question then is whether such explanation must contain a reference to each factor included in the term "benefits" in such section. Section 6131.01, *supra*, provides in part as follows :

"(F) 'Benefit' or 'benefits' means advantages to land and owners, to public corporations as entities, and to the state of Ohio, resulting from drainage, conservation, and control and management of water. In determining benefits, consideration shall be given to :

"(1) The watershed or entire land area drained or affected by the improvement ;

"(2) The total volume of water draining into or through the improvement, and the amount of water contributed by each land owner ;

"(3) The use to be made of the improvement by any owner, public corporation, or the state of Ohio.

"(G) 'Benefits' include *any or all* of the following factors :

"(1) Elimination or reduction of damage from flood ;

"(2) Removal of water conditions that jeopardize public health, safety, or welfare ;

"(3) Increased value of land resulting from the improvement ;

"(4) Use of water for irrigation, storage, regulation of stream flow, soil conservation, water supply, or any other purpose incidental thereto ;

"(5) Providing an outlet for the accelerated runoff from artificial drainage whenever the stream, watercourse, channel, or ditch under improvement is called upon to discharge functions for which it was not designed by nature ; it being the legislative intent that uplands which have been removed from their natural state by deforestation, cultivation, artificial drainage, urban development or other man-made causes, shall be considered as benefited by an improvement required to dispose of the accelerated flow of water from said uplands." (Emphasis added)

In view of the foregoing provisions, it is my opinion that the county engineer has the positive duty to mention at least one of the statutory factors as his reason why a given parcel or tract of land is benefited and the negative duty not to mention in his explanation of benefits that a given parcel or tract of land will be benefited by a certain factor unless the factor is one described in Section 6131.01, *supra*.

Coming to your second question, the county engineer under Section 6131.15, *supra*, has the duty to appraise the benefits to real estate and in

so doing might determine that certain parcels are benefited in the same way. In preparing his schedule of assessments the work could probably be expedited if he were to group such parcels on the schedule and I can find nothing in the law which would preclude him from so doing.

Accordingly, it is my opinion and you are advised that under the provisions of Section 6131.15, Revised Code, it is not mandatory for the county engineer in preparing his schedule of assessments to specifically mention whether each parcel of real estate will be benefited as to each of the items noted in divisions (F) and (G) of Section 6131.01, Revised Code; and where in the opinion of the engineer several parcels of real estate will be benefited in the same form and manner, such parcels may be entered in a group on said schedule.

Respectfully,

MARK McELROY

Attorney General