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COUNTY COMMISSIONERS CANNOT LEVY ASSESSMENT AGAINST STATE OWNED ARMORY PROPERTY TO PAY FOR MAINTENANCE OF SEWER DISTRICT WITHOUT LEGISLATIVE PERMISSION—§ 6117.32, R.C.

SYLLABUS:

In the absence of legislative permission, a board of county commissioners has no authority to levy an assessment under Section 6117.32, Revised Code, against state-owned armory property to pay the cost of the maintenance and operation of a sewer district.

Columbus, Ohio, December 11, 1961

Hon. Robert Webb, Prosecuting Attorney  
Ashtabula County, Jefferson, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Sewer District No. 1, in Ashtabula County, has a special levy for the maintenance of sewers in the District, which is charged upon, and collected from, each property within the district.

“There is an Armory within the area. Officers from the U. S. Army appeared at the office of the County Auditor, last week, objecting to the payment of this special assessment which is charged on Armory property. We know no exception in the statutes which would permit the omission of this property from the assessments charged.

“Your opinion will be appreciated.”

I assume that Sewer District No. 1 in Ashtabula County was established pursuant to Section 6117.01, Revised Code, reading in part as follows:

“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 competent sanitary engineer make such surveys as are necessary for the determination of the proper boundaries

of such district. Each district shall be designated by an appropriate name or number. \* \* \*

In answer to my inquiry, you have informed me that the levy in question is a "maintenance assessment" levied by the board of county commissioners. I assume that the "maintenance assessment" was levied pursuant to Section 6117.32, Revised Code, reading in part as follows :

"\* \* \* The board may, at such intervals as it deems expedient, assess the lots and parcels of land specified in said notice of assessment and levy taxes upon the taxable property of the district so improved, to pay the cost of the maintenance and operation of any such improvement, including disposal of sewage, after completion thereof, and for the purpose of keeping clean and in repair ditches, drains and water courses serving such improvements. \* \* \*

You have further informed me that the armory in question is owned by the state of Ohio.

Regarding special assessments against state property, it was stated in Opinion No. 658, Opinions of the Attorney General for 1949, page 315 :

"In the absence of legislative permission, officers or agents of a local subdivision are without legal authority to levy and collect a special assessment for the repair, maintenance or improvement of county ditches to the extent that the same is made against property belonging to the State of Ohio."

Referring to the case of *State, ex rel. Monger, Director v. Board of County Commissioners*, 119 Ohio St., 93, it is stated at page 320 of said Opinion No. 658:

"It is believed that the emphasized matter in the opinion of *State, ex rel. Monger v. Board of County Commissioners*, supra, indicates, at least to some extent, that there is no authority to levy and collect an assessment against property belonging to the state. Therefore, in the absence of any legislative permission with respect to the matter, I am impelled to conclude, and it is my opinion, that the officers or agents of a local subdivision are without legal authority to levy and collect a special assessment for the repair, maintenance or improvement of county ditches to the extent that the same is made against property belonging to the State of Ohio."

The only legislative permission which I have been able to find allowing a board of county commissioners to levy an assessment against state prop-

erty in the case of sewer districts is Section 6117.30, Revised Code, reading as follows:

*“The cost and expense of the construction of a main, branch, or intercepting sewer or sewerage treatment or disposal works to be paid by assessment shall be assessed, as an assessment district assessment, upon all the property within such district found to be benefited in accordance with the special benefits conferred, less such part of said cost as is paid by the county at large, and state lands so benefited shall bear its proportion of assessed cost according to special benefit.”* (Emphasis added)

You will note that Section 6117.30, *supra*, refers specifically to the cost of construction and makes no reference to the cost of maintenance; and under the doctrine of *expressio unius est exclusio alterius*, I must conclude that the legislature has not granted permission to a board of county commissioners under Section 6117.30, *supra*, to levy a “maintenance assessment” against state property.

It is my opinion, therefore, and you are accordingly advised that, in the absence of legislative permission, a board of county commissioners has no authority to levy an assessment under Section 6117.32, Revised Code, against state-owned armory property to pay the cost of the maintenance and operation of a sewer district.

Respectfully,

MARK McELROY

Attorney General