

2923.

LOCAL PIPE LINE—MAY BE CONSTRUCTED TO SUPPLY WATER IN
A SEWER DISTRICT WHEN—HOW COST AND EXPENSE OF
CONSTRUCTION MET.

SYLLABUS:

When a board of county commissioners has declared the necessity of constructing a local pipe line in furtherance of a general plan of water supply for a sewer district, the entire cost and expense of such construction may be assessed upon the benefited property abutting thereon as provided in Section 6602-24, General Code, and the procedural steps for levying such assessments set forth in Sections 6602-17, et seq., should be complied with.

COLUMBUS, OHIO, February 6, 1931.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"In 1929, the citizens of a part of the Township of Geneva, Ohio, residing along a public highway leading west from the borough line of the established Village of Geneva, Ohio, petitioned the Commissioners of Ashtabula County, Ohio, for an extension of a pipe line for supplying water to property owners along said highway for a distance of about one and one-half miles.

Prior to the filing of said petition, a sewer district had been established through which said public highway extended. The Commissioners appointed a Sanitary Engineer to survey and draw a general plan for a water supply for the Sewer District, as provided by Section 6602-17 of the General Code of Ohio, which plans were submitted to the State Board of Health and approved. Subsequently, detailed plans and estimates of the cost of such parts of said improvement, as it was deemed necessary to then construct, were prepared and approved by the Commissioners and State Board of Health. The Commissioners adopted a resolution declaring that such improvements, describing same, location, route and termini thereof, were necessary for the preservation and promotion of public health and welfare, and providing fire protection, designating the character of materials to be used, estimates of cost and tentative assessments, etc. Said Resolution provided that the total cost of construction and maintenance should be assessed by the foot front against the benefited property, abutting on said highway. (See copy of Resolution appended.) The plans (see enclosures) provided for a six inch pipe line for supplying the property owners with the required water supply.

Objections were filed and upon hearing, it was contended by the objectors that the proceedings were illegal in that the plans provided for no assessment district within said sewer district, as provided by Section 6602-18 of the General Code, and further contended that there was no district assessment.

The Commissioners contended that the plan proposed was for local service, provision having been made for the extension of a six inch line only, rather than a main line from which branch lines would be connected, a six inch line being the smallest line that will be recognized by the fire underwriters, as sufficient for fire protection, and contended that authority was given by Section 6602-24 of the General Code, which provides that in the construction of a local pipe line the entire cost

and expense of construction and maintenance may be assessed upon the benefited property abutting thereon, according to special benefits conferred, and that the proposed six inch line, being interpreted as a local line for the benefit of abutting property owners along the highway, no specific assessment district was required to be established.

In view of this situation, would appreciate your advice as to whether or not the Commissioners have proceeded as they should. You will find enclosed herein blue prints which will aid you materially in arriving at your opinion."

Section 6602-17, General Code, confers broad powers upon boards of county commissioners to provide public water supplies for any established sewer districts within the various counties. This section provides in part as follows:

"For the purpose of preserving and promoting the public health and welfare, and providing fire protection, the boards of county commissioners of the several counties of this state may by resolution, acquire, construct, maintain and operate any public water supply or water works system within their respective counties, for any established sewer district. In this act 'public water supply' shall mean any or all of the following: Wells, springs, streams or other source 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. Any board of county commissioners may acquire, construct, maintain and operate such public water supply 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 their county, they may provide such supply of water to such sewer district, or districts from the water works of such municipality, person, firm or private corporation. * * *

Section 6602-18, General Code, is in part as follows:

"After the establishment of any sewer district the county commissioners may have prepared by the county sanitary engineer a general plan of water supply and water works for such district as complete as can be made at that time. After such general plan has been approved by them they shall have prepared by the county sanitary engineer detailed plans, specifications and estimates of cost of such part or parts of the improvement as it is necessary to then construct, together with a tentative assessment of the cost based on such estimate. Such tentative assessment shall be for the information of property owners, and shall not be certified to the auditor for collection. Such detailed plans, specifications, estimates of cost and tentative assessment, as so prepared by the engineer and approved by the board, shall be carefully preserved in the office of the board of county commissioners or the county sanitary engineer and shall be open to inspection of all persons interested in such improvements. After approval of the detailed plans, specifications, estimates of cost and tentative assessment, the board of county commissioners shall adopt a resolution declaring that such improvement or improvements, describing the same and the location, route and termini thereof, are necessary for the preservation and promotion of public health and welfare and providing fire protection,

designating the character of the materials to be used, referring to the plans, specifications, estimates of cost, and tentative assessment stating the place where they are on file and may be examined, the estimated cost of the maintenance of such improvement for one year, what part of the cost will be paid by the county at large and what part will be specially assessed against the benefited property within the sewer district. Such resolution shall also contain a description of the boundaries of that part of the sewer district to be assessed, and shall designate a time and place, to be fixed by the board, when and where objections to the improvement, to the tentative assessment, or to the boundaries of the assessment district will be heard by the board. * * * * *

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It seems clear that under this section, while it is contemplated that a general plan of water supply for the entire sewer district must first be made, only such part of the improvement as is necessary need be constructed at a time. The resolution of necessity therein provided shall describe the boundaries of "that part of the sewer district to be assessed." In the remaining portion of Section 6602-18, which I do not deem it necessary to here quote, and in the sections immediately following, reference is made to that part of the sewer district which is to be assessed for a water improvement as an "assessment district."

Section 6602-24, General Code, provides how the cost of a water improvement under this group of sections may be assessed. It is as follows:

"In the construction of a main, branch or reinforcing pipe line or pipe lines and water supply, the property immediately abutting upon such main, branch or reinforcing pipe line or pipe lines may be assessed for local service, and the balance of the cost and expense of such improvement to be paid by assessments shall be assessed, as a district assessment, upon all the property, including the abutting property, within said assessment district found to be benefited in accordance with the special benefits conferred, less such part of said cost as shall be paid by the county at large, and state land so benefited shall bear its proportion of assessed costs, according to special benefit. In the construction of a local pipe line the entire cost and expense of construction and maintenance may be assessed, upon the benefited property abutting thereon, according to special benefits conferred, and state land so benefited shall bear its proportion of assessed costs, according to special benefit."

Of course, it may be argued that since the reference throughout these sections providing the machinery for the levying of assessments is to "assessment districts," no local improvement may be made such as would be entirely assessed upon the abutting property except when such local improvement is made in connection with an improvement of a given area of somewhat greater extent comprising an assessment district. Section 6602-24, supra, does not, however, predicate the authority to assess the entire cost of a local pipe line upon abutting property upon the premise that such local pipe line may be constructed only in connection with the construction of a main or reinforcing pipe line requiring a district assessment. On the contrary, the authority to assess the entire cost of the construction of a local pipe line upon benefited property abutting thereon is a distinct and separate provision. This is in harmony with Section 6602-18, supra, which in effect provides that a county need only construct a part of a general

plan of water supply for a sewer district at any given time. In the event the improvement desired to be constructed at any time in furtherance of a general plan consists of only the construction of a local pipe line, I find nothing to prohibit the county commissioners from proceeding therewith under the provisions of Sections 6602-17, et seq. Under such circumstances, the "assessment district" would be considered the benefited property abutting on the improvement for the purposes of complying with the procedural steps for levying the entire cost thereof.

You do not specifically inquire as to whether or not the six inch line proposed to be constructed may be in fact considered as a "local pipe line." This is a question of fact to be determined in view of all the circumstances and I express no opinion thereon. I assume for the purposes of this opinion that it is a local pipe line.

It is my opinion, therefore, in specific answer to your inquiry, that when a board of county commissioners has declared the necessity of constructing a local pipe line in furtherance of a general plan of water supply for a sewer district, the entire cost and expense of such construction may be assessed upon the benefited property abutting thereon as provided in Section 6602-24, General Code, and the procedural steps for levying such assessments set forth in Sections 6602-17, et seq., should be complied with. Under such circumstances, such benefited property abutting upon such local improvement should be, for the purpose of complying with these procedural steps, considered as the "assessment district."

Respectfully,
GILBERT BETTMAN,
Attorney General.

2924.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE OTIS ELEVATOR COMPANY, CLEVELAND, OHIO, FOR ELEVATOR CONTRACT FOR STATE OFFICE BUILDING, COLUMBUS, OHIO, AT AN EXPENDITURE OF \$222,976.00—SURETY BOND EXECUTED BY THE NATIONAL SURETY COMPANY OF NEW YORK.

COLUMBUS, OHIO, February 6, 1931.

HON. CARMİ A. THOMPSON, *Chairman, State Office Building Commission, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by William Green, Elmer S. Landes, Warner P. Simpson, Carmi A. Thompson and William F. Wiley, duly appointed, acting and qualified members of the Ohio State Office Building Commission, provided for in Section 1 of House Bill No. 17 of the 88th General Assembly, passed March 14, 1929 (113 O. L. 59), and the Otis Elevator Company of Cleveland, Ohio. This contract covers the construction and completion of Elevator Contract for the Ohio State Office Building, Columbus, Ohio, in accordance with Item No. 1 of the revised form of proposal dated December 6, 1930, using alternate Item No. 2, Otis full