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DITCHES—SINGLE COUNTY—MUNICIPAL CORPORATIONS,
ASSESSMENT OF LANDS WITHIN—COUNTY COMMISSION-
ERS, ONLY ASSESSING AUTHORITY UNDER CHAPTER 6131.,
R.C.

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.
2. Only a board of county commissioners may assess lands benefited by a single county ditch pursuant to the procedure authorized by the provisions of Chapter 6131., Revised Code.

Columbus, Ohio, August 26, 1958

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

Dear Sir:

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

“Where a petition for the improvement of a single county ditch is filed with the County Commissioners asking for the improvement of a natural watercourse which would begin outside the limits of a municipality, and flows through the municipality, and would end outside the municipality, with the majority of the improvement to be done on that part of the ditch lying within the municipality:

- “1. Can the County Commissioners levy an assessment against the individual property owners living within the municipality?
- “2. Can the municipality as such be assessed in one lump sum and then the municipality assess the individual property owners?
- “3. Assuming that the City Council and the Mayor would voluntarily agree to have the County assess the individual property owners within the municipality, what procedural steps would be necessary?”

The problems raised by your inquiry must be considered in view of the familiar rule of law set forth in 14 Ohio Jurisprudence 2d, page 259, where it is stated:

“Boards of county commissioners, being the creatures of statute, have such powers, and such only, as are conferred by statute or as are necessarily implied from those expressly given, and a board of county commissioners can act for and bind the county only within the limits of such authority. * * *”

Section 6131.01, Revised Code, provides in part:

“(A) ‘Owner’ means any owner of any right, title, estate, or interest in or to any real property, and includes persons, partnerships, associations, private corporations, public corporations, boards of township trustees, boards of education of school districts, the mayor or legislative authority of a municipal corporation, the director of any department, office, or institution of the state of Ohio, and the trustees of any state, county, or municipal public institution. * * *”

Section 6131.02, Revised Code, provides:

“When the board of county commissioners, at a regular or called session, upon the filing of a petition as provided in sections 6131.01 to 6131.64, inclusive, of the Revised Code, finds that the granting of the petition and the construction of an improvement is necessary for disposal or removal of surplus water, for controlled drainage of any land, for irrigation, for storage of water to regulate stream flow, or to prevent the overflow of any land in the county, or for water conservation, and further finds that the construction of the improvement will be conducive to the public welfare and that the cost of the proposed improvement will be less than the benefits conferred by its construction, such board of county commissioners may locate, construct, reconstruct, straighten, deepen, widen, alter, box, tile, fill, wall, dam, or arch any ditch, drain, or watercourse, floodway, creek, run, or river, or change the course, location or terminus thereof, or construct any levee, or straighten, deepen, or widen any river, creek, or run, wall, embankment, jetty, dike, dam, sluice, revetment, reservoir, holding basin, control gate, breakwater, or other structure for control of water, or vacate any ditch, or drain, by proceedings as provided in sections 6131.01 to 6131.64, inclusive, of the Revised Code.”

In view of the provisions of these sections, the only question, concerning jurisdiction, to be determined is whether or not the fact that a county ditch located, in part, in a municipal corporation ousts the otherwise perfect jurisdiction of the county commissioners.

In *Pleasant Hill v. Commissioners*, 71 Ohio St., 133, the ditch under consideration being of purely local need, the court held that unless specifically authorized by statute the county commissioners were without authority to construct a county ditch within the corporate limits of a municipality.

When the improvement is essentially a county project the courts have reached a different result. In *Greek v. Joy*, 81 Ohio St., 315, the ditch commenced on farm lands outside the limits of an incorporated village and extended through the village to an outlet. In distinguishing the *Pleasant Hill* case, *supra*, and holding that the township trustees had jurisdiction, the court, on page 328, said:

“* * * The ditch under consideration in that case was wholly within the village, and its drainage being amply provided for by the municipal code, action by the commissioners was not necessary to full relief. But proceedings for a township ditch could not be entertained by a village council to drain lands outside of the corporation, such as farm lands in this case.”

Opinions of the Attorney General are of like effect. Opinion No. 2429, Opinions of the Attorney General for 1925, p. 255; Opinion No. 4712, Opinions of the Attorney General for 1955, p. 23. In Opinion No. 347, Opinions of the Attorney General for 1927, p. 597, it is said:

“The county ditch law seems complete in itself and while it cannot be contended that the authorities of the municipality therein have no jurisdiction over the ditch, yet it is plain that the provisions of Section 6443 give to county commissioners complete jurisdiction and there are no other provisions of law which take it away. Whatever jurisdiction the municipality has over the ditch is concurrent with that of the commissioners.”

Concluding on the basis of the above that jurisdiction in the case you have presented is vested in the county commissioners, your first question is answered in the affirmative.

I now shall consider the second and third questions that suggest a procedure that was discussed at length in *Greek v. Joy*, *supra*.

In the above cited 1927 Opinion, *supra*, on page 598, this procedure was commented on as followed:

“Under an earlier form of the drainage laws as they were written prior to the recent codification it was provided by Section 6494, General Code, that the council of a municipal corporation might authorize the mayor to present a petition, signed by him officially and addressed to the county commissioners, to locate and construct a ditch described in the resolution or they might author-

ize the mayor to sign officially a petition for a ditch to be presented to the county commissioners by parties interested whose lands are without the limits of the corporation. In the later codification this statute in such form was omitted and there was substituted in its place Section 6442 * * *.”

Although the drainage laws have been revised since the writing of the opinion last quoted, the procedure there referred to has not been changed in any manner affecting the problem here under consideration.

Section 6131.15, Revised Code, provides :

“During the survey and preparation of plans, the county engineer shall appraise the benefits accruing to public corporations and any department, office, or institution of the state of Ohio. He shall determine the per cent of total construction cost of the improvement which each public corporation and any department, office, or institution of the state of Ohio shall be assessed by reason of the benefit to public health, safety, convenience, and welfare, or as the means of improving any street, road, or highway under the control or ownership of such public corporation or any department, office, or institution of the state of Ohio, or for benefit to any land owned by any public corporation or any department, office, or institution of the state of Ohio. 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 shall also appraise the value of land or other property necessary to be taken and the damages to be sustained by any owner as a result of the construction of the proposed improvement and the subsequent maintenance of such improvement. He shall prepare a schedule of damages containing the name and address of each owner appraised to be damaged, the amount of the appraised damages, and an explanation of the injury upon which said appraisal is based. The engineer's schedule of damages shall also contain the value of the land or other property

necessary to be taken, and the name and address of the owner, and a complete description of such land or other property. He shall include the total of such appraised damages and valuations as part of his estimate of the total cost of constructing the 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.”

Section 6131.43, Revised Code, provides that the county auditor, on order of the board of county commissioners, shall reduce the assessments to conform to the final cost of construction, and that he shall place said levied assessments upon the duplicates of the county.

Since the procedure for assessments for single county ditches as outlined above is the only method authorized by the legislature, it follows that your second question must be answered in the negative simply because the legislature has not provided for any distinction to be made in the procedure for assessing property for the costs of a single county ditch depending on whether the property is within or without a municipal corporation. Your third question may also be answered by noting the obvious—there is no provision in the law to give any effect to an agreement by the mayor and the city council to approve an assessment by the board of county commissioners of property in a city for a single county ditch.

Therefore, it is my opinion:

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.

2. Only a board of county commissioners may assess lands benefited by a single county ditch pursuant to the procedure authorized by the provisions of Chapter 6131., Revised Code.

Respectfully,
WILLIAM SAXBE
Attorney General