

3327.

MUNICIPAL WATER WORKS—WHERE SUPPLY DERIVED FROM STONE QUARRY LESS THAN TWENTY MILES BEYOND CORPORATE LIMITS—POWER TO PROTECT WATER SUPPLY FROM POLLUTION—OVERRULES OPINION ATTORNEY GENERAL, 1927, VOLUME 2, PAGE 914.

SYLLABUS:

A municipality owning and operating a water works which derives its water from a stone quarry less than twenty miles beyond the corporate limits, has the power by ordinance to protect such water supply from pollution.

Opinion of the Attorney General, 1927, Vol. 2, p. 914, overruled.

COLUMBUS, OHIO, December 2, 1938.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN: Your letter of recent date is as follows:

“Will you kindly render this office your opinion as to whether or not a municipality, owning and operating a water works which derives its water from a stone quarry less than twenty miles beyond the corporate limits, has the power by ordinance to protect such water supply from pollution?”

This question was under consideration in an opinion of this office found in Opinions of the Attorney General for 1927, Volume 2, page 914, the syllabus of which reads:

“1. Where the water supply of a municipality is obtained from wells, the water works plant being located outside the territorial limits of such municipality, the council of such municipality cannot under the provisions of Section 3619, General Code, by ordinance, protect such water supply from possible contamination resulting from the use of adjacent property by the owners thereof.

2. Such municipality may in order to insure the purity of its water supply proceed to appropriate under Sections 3677, et seq., General Code, so much of such adjacent property as it deems necessary to prevent pollution of its water supply.”

The then Attorney General quoted Section 3619, General Code,

granting general authority to municipalities to provide for supply of water and to prevent the pollution thereof, and then referred to Section 12784, General Code, which reads as follows:

“Whoever pollutes a running stream, the water of which is used for domestic purposes by a municipality, by putting therein a putrid or offensive substance, injurious to health, shall be fined not less than five dollars nor more than five hundred dollars. The director of public service or board of trustees of public affairs of a municipal corporation shall enforce the provisions of this section. The jurisdiction of a municipal corporation to prevent the pollution of its water supply and to provide penalty therefor, shall extend twenty miles beyond the corporate limits.”

Commenting upon the foregoing section, the then Attorney General said at page 916:

“Section 12784, General Code, provides a penalty for the pollution of a running stream, the water of which is used for domestic purposes by a municipality, and provides that the jurisdiction of a municipality to prevent the pollution of its water supply and to provide penalty therefor, shall extend twenty miles beyond the corporation limits. However, by its terms the provisions of this section are limited to running streams and do not cover a water supply secured from wells.”

Whatever may be said as to the strict construction of Section 12784, supra, adhered to by the then Attorney General in the above discussed opinion, it is my judgment that the question need not be resolved by a mere consideration of such Section 12784. Sections 3968 and 3970, General Code, relate to the same subject, protection of municipal water supply, and must accordingly be read in *pari materia* with Section 12784. These last mentioned sections were not considered or mentioned in the 1927 opinion, supra. They read as follows:

Sec. 3968: “All ordinances, except those relative to taxation or assessment, resolutions, rules and regulations relative to the construction, maintenance and operation of water works, mains, hydrants, service pipes and connections, and the protection thereof, shall operate in like manner in the territory outside the municipality when such extensions have been made, and for the enforcement thereof the jurisdiction

of the mayor and police shall extend into and over such territory."

Sec. 3970: "Such aqueducts and pipes shall be so constructed and laid as not to interfere unnecessarily with the use of such streets, roads, alleys and public highways and public grounds, and the corporation so extending and establishing any part of its water works outside of its limits shall have the same power and jurisdiction to prevent or punish pollution of or injury to the water so conveyed or injury to the works or any portion thereof as it has within the limits of such corporation."

Section 3968, *supra*, in clear and unmistakable language confers jurisdiction upon the mayor and police of the municipality beyond the territorial limits of such municipality for the purpose of not only maintaining but protecting a municipally operated water works. Section 3970, *supra*, expressly confers jurisdiction outside of the territorial limits of the municipality for the purpose of preventing the pollution or injury of a municipally owned water supply.

In view of these last two mentioned sections, it is my opinion that your inquiry must be answered in the affirmative. The opinion of this office, appearing in Opinions of the Attorney General for 1927, Volume 2, page 914, is accordingly overruled.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3328.

APPROVAL—STATE OF OHIO, THROUGH DIRECTOR OF PUBLIC WORKS, WITH THE CHESAPEAKE AND OHIO RAILWAY COMPANY, PROPOSED SALE, PARCEL, ABANDONED HOCKING CANAL LANDS, CITY OF LANCASTER, FAIRFIELD COUNTY, OHIO, PURCHASE PRICE, \$300.00.

COLUMBUS, OHIO, December 2, 1938.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your recent communication with which you submit for my examination and approval a transcript in duplicate of your proceedings as Superintendent of