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WATER LINE CONSTRUCTED TO SUPPLY INHABITANTS OF DISTRICT OUTSIDE MUNICIPALITY—COUNTY COMMISSIONERS WITHOUT AUTHORITY TO SELL OR CONVEY EXCEPT TO A MUNICIPALITY—SECTION 6602-32b G.C.

## SYLLABUS:

Where county commissioners have constructed a water line for supplying the inhabitants of a district outside of a municipality, such commissioners are without authority to sell or convey the same, except to a municipality under the conditions set forth in Section 6602-32b, of the General Code.

Columbus, Ohio, February 26, 1952

Hon. Roland Pontius, Prosecuting Attorney  
Ashtabula County, Jefferson, Ohio

Dear Sir:

I am in receipt of your request for my opinion as to the power of the Board of County Commissioners of Ashtabula County to sell to an individual or privately owned corporation a water line constructed by the County of Ashtabula in approximately the year 1920. It appears from your letter that for many years such line has been leased by the county to a privately owned water company and that it is now the desire of the county commissioners, if possible, to sell such line.

From your statement that the water line in question was laid in about the year 1920, I assume that it was laid pursuant to the provisions of

Sections 6602-17 to 6602-32 of the General Code. The act embodying these provisions was passed March 20, 1917, and is found in 107 Ohio Laws, page 432. The title of the act is:

“To authorize boards of county commissioners to construct, maintain and operate any water supply or waterworks system within their respective counties not outside of any established sewer district, and to provide penalties for violation of its provisions.”

Section 1 of this act, codified as Section 6602-17, General Code, then provided 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, construct, maintain and operate any public water supply or waterworks system within their respective counties, *not outside of any established sewer district.* \* \* \* 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 waterworks of such municipality, person, firm or private corporation. \* \* \*”

(Emphasis added.)

This provision appears in said Section 6602-17 as it now reads, in identical language, except that the words “not outside of any established sewer district” are changed to “for any established sewer district.”

I do not find in this act, as originally passed, any provision authorizing the county commissioners to sell a water line or any other improvement contemplated by the act. Nor do I find any such provision in any of the amendments that have been made to the original act, except in supplementary Sections 6602-32a and 6602-32b, General Code, found in 110 Ohio Laws, page 338.

Section 6602-32a, General Code, reads as follows:

“At any time after the formation of any sewer district the board of county commissioners may enter into a contract upon such terms and conditions and for such period of time as may be mutually agreed upon with any *city or village or any other county* to prepare necessary plans and estimates of cost and to construct any water supply improvement or improvements *to be used jointly by the contracting parties*, and to provide for the furnishing of water and for the joint use by such contracting parties of

such water supply improvement or the joint use of any suitable existing water supply or water mains belonging to either of such parties.” (Emphasis added.)

Section 6602-32b, General Code, provides in part :

“\* \* \* Any completed water supply or water works system, as defined in section 6602-17, General Code, for the use of any sewer district, constructed under the provisions of sections 6602-17 to 6602-33, inclusive, General Code, and any part thereof, and located within any municipality or within any area which may be incorporated as a municipality or annexed to an existing municipality, or which provides water for such area, may by mutual agreement between the county commissioners and such municipality, *be conveyed to such municipality*, which shall thereafter maintain and operate such water supply and waterworks.  
\* \* \*” (Emphasis added.)

This provision authorizing the conveyance of a water supply improvement constructed by the county, it will be noticed, is limited to a conveyance to a municipality under the circumstances stated, and I find no authority in the statutes above referred to for any conveyance to any other person, nor do I find any other statute authorizing such action. The provisions of Section 2447, General Code, relative to disposal by the county commissioners of real estate belonging to the county do not appear broad enough to cover the sale of the water line in question. That section, so far as pertinent, provides:

“If, in their opinion, the interests of the county so require, the commissioners *may sell any real estate* belonging to the county, and *not needed for public use*, or may lease the same, but no such lease shall be for a longer term than one year; \* \* \*.” (Emphasis added.)

By the terms of Section 2447-1, General Code, such sale, if ordered, is to be made to the highest bidder after advertisement.

The general policy of the law relative to public water supply provided by a county may be indicated by reference to Section 6602-32, General Code, which authorizes the county commissioners to purchase any water lines which have been constructed by a private corporation or individual.

Having in mind the familiar rule that county commissioners have only such power as the General Assembly has conferred, and those neces-

sarily implied from the granted powers, I am of the opinion that where county commissioners have constructed a water line for supplying the inhabitants of a district outside of a municipality, such commissioners are without authority to sell or convey the same, except to a municipality under the conditions set forth in Section 6602-32b of the General Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General