

2341

WATER LINES—TRANSFER, TOWNSHIP TO COUNTY—SALE BY TOWNSHIP TO COUNTY, §505.10 R.C.—PROCEEDS OF SALE; DISPOSITION, §5705.10 R.C.—COUNTY HAS AUTHORITY TO PURCHASE, §§6103.02, 6103.20 R.C.—FIRE PROTECTION AND WATER SUPPLY.

SYLLABUS:

1. Under the provisions of Section 505.10, Revised Code, a board of township trustees has authority to sell a water line constructed by it for fire protection, if it declares by resolution that such water line is not needed; but such sale must be by auction, and pursuant to publication of notice as required by said Section 505.10, Revised Code.

2. In the absence of any bond issue for such improvement, the proceeds of such sale should be paid into a special fund of such fire district for the construction or acquisition of permanent improvements, as provided in Section 5705.10, Revised Code.

3. Under the provisions of Sections 6103.02 and 6103.20, Revised Code, a board of county commissioners has authority to purchase for general uses, including fire protection in an established sewer district, a water line constructed by a township but may not pay therefor more than its present value, as determined by the county engineer, and said county commissioners may assess the cost of such purchase against the benefitted property.

Columbus, Ohio, July 8, 1958

Hon. Calvin W. Hutchins, Prosecuting Attorney
Ashtabula County, Jefferson, Ohio

Dear Sir:

I have before me your communication requesting my opinion and reading as follows:

“We would like to request of your office a formal or an informal opinion on questions based upon the following factual situation:

“This county established, years ago, a Sewer District No. 1, which, incidentally, is in the Township of Ashtabula, and adjacent to the Municipality of Ashtabula. The county maintains in said sewer district a water supply system, and purchases water from a private corporation located within the city of Ashtabula. In the more remote areas of this Sewer District No. 1 there has been apparently substantial building of both residential and commercial structures. There was no planned water supply through

the county system available. However, the township trustees saw fit to lay six inch water mains for fire hydrants only in these particular areas. This was done in a fire district, and from monies obtained by a fire protection levy from the fire district.

"Your office has ruled previously that such fire lines may not be tapped into by adjacent land owners for the purpose of domestic use. These areas are now growing in population and residential construction is becoming more dense, requiring a domestic supply of water. If your ruling is followed concerning domestic taps on the constructed water line for fire purposes only, an additional water line would have to be laid adjacent to the already installed lines.

"Consequently, there would appear to be unnecessary duplication, because of the legal interpretation of the law, and because the township trustees are not in the water business. My questions, then, are as follows:

1. Can the County of Ashtabula purchase the fire line installed by the township, and assess the cost of said purchase on the abutting property owners, thereby making the existing water supply for fire purposes only, part of the county water supply system, for domestic use, and in addition, the township would reimburse their fire levy fund for the initial expense of laying the water line?
2. If the county cannot purchase said water line, is there any way available to transfer the ownership of said line to the county system?"

Your inquiry presents two questions: (1) as to the authority of a township to sell a water line which it has constructed for fire protection, and (2) the authority of a county to purchase a water line to be used as an addition to its established water system.

By the terms of Section 505.37, Revised Code, township trustees are given broad powers in the matter of providing fire protection. It is there provided:

"The board of township trustees may, with the approval of the specifications by the prosecuting attorney, purchase or otherwise provide such fire apparatus, mechanical resuscitators or other equipment, appliances, materials, fire hydrants, *and water supply* for fire-fighting purposes as seems advisable to the board. * * *"
(Emphasis added)

The same statute gives the township trustees power to create a fire district in a portion of the township, and for such district to provide "water supply for fire-fighting purposes".

You are correct in your statement that a township is not in the water business. In Opinion No. 6541, Opinions of the Attorney General for 1956, p. 344, to which you refer, it was held:

“1. Funds derived from a township tax levy for fire protection purposes may be used to obtain fire hydrants and water supply for fire-fighting purposes although such hydrants and water supply will benefit only a portion of the township.

“2. The authority of a board of township trustees to establish or procure water lines and to provide a water supply within the township concerned extends only to the provision of such water supply as is necessary for fire-fighting purposes.”

In the course of the opinion it was said:

“The board of trustees of townships being created by statute have no authority other than that given by statute and there is no enabling statute permitting township trustees to supply water to residents of the township. Therefore, the authority of the township trustees being limited to procuring water supply for fire-fighting purposes, they cannot supply water through lines of the township to property owners or other residents.”

As to the power of township trustees to sell property belonging to it, I direct attention to Section 505.10, Revised Code. This section reads in part:

“* * * When the township has property which the board, by resolution, finds it does not need, the board may sell and convey such property. Such sale must be by public auction and upon notice thereof being published once a week for three weeks in a newspaper published, or of general circulation, in such township, the last of such publications to be at least five days before date of sale.”

This section is broad in its terms. It may sell *any properties* which it declares by resolution it does not need. Since water lines for fire-fighting purposes are purchased under the same statutory authority by which it may purchase fire equipment, I can see no reason why it does not have as much right, under the statute last above quoted, to sell its water line as it has to sell any other part of its fire-fighting equipment.

But it must be kept in mind that any property proposed to be sold must be sold by public auction, as provided in the statute.

Your letter suggests a question incidental to the above, *viz.*, as to the disposition of the proceeds of such sale. The statute controlling the dis-

position of such proceeds, where the property sold consists of a public improvement, as the water line in question certainly is, is Section 5705.10, Revised Code, which, so far as pertinent, reads as follows:

“If a permanent improvement of the subdivision is sold, the amount received for the same shall be paid into the sinking fund, the bond retirement fund, or into a special fund for the construction or acquisition of permanent improvements; * * *. Proceeds from the sale of property other than a permanent improvement shall be paid into the fund from which such property was acquired or is maintained, or if there is no such fund, into the general fund.”

A township fire district is, by the terms of Section 5705.01, Revised Code, a subdivision for the purposes of Sections 5705.01 to 5705.47, Revised Code. Since the funds for the construction of the water line in question were provided by a special levy on the property of the district, I am assuming that no bonds were issued. It would follow therefore, from the provisions of Section 5705.10, *supra*, that the money realized from the sale of the water line would be paid into a special fund of the fire district for “the construction or acquisition of a permanent improvement”. The term “permanent improvement” is defined in Section 5705.01, Revised Code, as follows:

“(E) ‘Permanent improvement’ or ‘improvement’ means any property, asset, or improvement with an estimated life or usefulness of five years or more, including land and interests therein, and reconstructions, enlargements, and extensions thereof having an estimated life or usefulness of five years or more.”

Coming then to the power of the county commissioners to bid for and purchase the water line, I notice Section 6103.02, Revised Code, which provides in part:

“For the purpose of preserving and promoting the public health and welfare, and *providing fire protection*, any board of county commissioners may by resolution acquire, construct, maintain, and operate any public water supply or waterworks system within its county for any sewer district, * * *” (Emphasis added)

You will observe that the county commissioners may not only *construct* a waterworks system, but it may also “acquire” it. “Acquire” is certainly inclusive of “purchase”. And it is clear, also that the purpose of acquiring a water supply or system is not limited to furnishing water for domestic or commercial use, but may also include its use for fire protection.

The fact that the water line must be purchased at an auction sale, presents no serious difficulty. Section 6103.20, Revised Code, relates to the purchase of an existing water line. This auction refers to the purchase of a water supply line which has been constructed by a "corporation, individual or public institution", and provides in part as follows:

"The board, by resolution, may determine to purchase said water supply line at a cost not to exceed its present value as certified by the sanitary engineer. For the purpose of paying for the water supply line and the maintenance thereof, the board may issue bonds or certificates of indebtedness *and assess the cost against the benefited property* in the same manner as provided by law for the construction of any original water supply line." (Emphasis added)

Since the statute does not use the words "private", in connection with "corporation", I can see no reason why it does not as well authorize the purchase if the line had been built by a public corporation. A township is described by Section 503.01, Revised Code, as "a body corporate". As I have already indicated, the word "acquire" includes "purchase", and accordingly the provision just quoted from said Section 6103.20, *supra*, may be regarded as nothing more than a limitation on the amount which the commissioners may expend in making such purchase. The county commissioners might determine in advance how high they are willing to bid at the auction sale, not exceeding the appraisal certified by the engineer, and by appropriation and encumbrance of funds, set aside that maximum. As a matter of fact, it seems doubtful under all the circumstances, that they would have any competition in bidding, and the whole matter might be settled in accordance with a friendly agreement.

It will be observed that the section last quoted also disposes of the element in **your question** as to the right to assess the cost incurred in the purchase on the benefitted property.

Accordingly, it is my opinion and you are advised:

1. Under the provisions of Section 505.10, Revised Code, a board of township trustees has authority to sell a water line constructed by it for fire protection, if it declares by resolution that such water line is not needed; but such sale must be by auction, and pursuant to publication of notice as required by said Section 505.10, Revised Code.

2. In the absence of any bond issue for such improvement, the proceeds of such sale should be paid into a special fund of such fire district for

the construction or acquisition of permanent improvements, as provided in Section 5705.10, Revised Code.

3. Under the provisions of Sections 6103.02 and 6103.20, Revised Code, a board of county commissioners has authority to purchase for general uses, including fire protection in an established sewer district, a water line constructed by a township, but may not pay therefor more than its present value, as determined by the county engineer, and said county commissioners may assess the cost of such purchase against the benefitted property.

Respectfully,

WILLIAM SAXBE

Attorney General