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GARBAGE DISPOSAL DISTRICT—PRELIMINARY COSTS AND EXPENSES — CONSTRUCTION OF DISPOSAL PLANTS — FUNDS MAY BE ADVANCED FROM GENERAL FUND OF COUNTY—SALE, REVENUE BONDS—PORTION OF PROCEEDS FROM BONDS MAY BE USED TO REIMBURSE GENERAL FUND FOR MONIES SO ADVANCED—SECTION 6600 ET SEQ., 6600-6 G. C.

SYLLABUS:

For the purpose of paying the preliminary costs and expenses involved in the establishment of a garbage disposal district and constructing disposal plants as contemplated by Section 6600, General Code, funds may be advanced from the general fund of the county, and upon the sale of revenue bonds for such purpose as provided by Section 6600-6, General Code, a portion of the proceeds from such bonds may be used to reimburse the general fund for monies so advanced.

Columbus, Ohio, October 25, 1951

Hon. C. Watson Hover, Prosecuting Attorney
Hamilton County, Cincinnati, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“The Board of County Commissioners of Hamilton County, Ohio, has established a garbage disposal district pursuant to Section 6600 et seq. Ohio General Code. It is proposed that the whole cost of acquisition of land and construction of the improvement, including all engineering expense, will be financed by the issuance of revenue bonds as is provided by law.

"Considerable preliminary work will be necessary in the preparation of improvement plans and acquisition of property before revenue bonds can be sold. The Sanitary Engineer of Hamilton County will enter into contracts for the acquisition of this land and employment of private engineers to prepare the improvement plans. These contracts will require the usual certification of the Auditor relative to the availability of funds.

"Two methods are being proposed :

- "1. To appropriate a sufficient amount from the general fund to be repaid by the subsequent issuance of revenue bonds.
- "2. The Sanitary Engineer from other unencumbered appropriations will earmark sufficient funds for which he will be reimbursed from the subsequent issue of revenue bonds.

"In view of the fact that the garbage disposal laws are new and that these questions will undoubtedly be raised by other counties in the State, your opinion is respectfully requested as to the legality of either or both of the plans outlined."

Section 6600, General Code, to which you refer, is a part of an Act relating to garbage and waste disposal districts, embracing Sections 6600 to 6600-7, inclusive, of the General Code, effective October 26, 1949.

Section 6600 reads in part as follows :

"For the purpose of preserving and promoting the public health and welfare, the boards of county commissioners of the several counties of this state may, by resolution, lay out, establish and maintain one or more garbage and refuse disposal districts within their respective counties, outside of incorporated municipalities, and may cause to be made by a *competent sanitary engineer* such surveys as may be necessary for the determination of the proper boundaries of such districts. * * * The Sanitary engineer, if any, or sanitary engineering department, if any, of such county shall, in addition to other duties assigned to such engineer or department, assist the commissioners in the performance of their duties under this act and shall be charged with such other duties and services in relation thereto as the commissioners may prescribe. * * *

(Emphasis added.)

Since reference is made in the above section, and in other sections of the General Code, to the "sanitary engineer, if any," it may be noted that the statutes do not definitely establish or require the establishment of such an office. The reference here, is probably to Section 6602-1,

General Code, which relates to the establishment by a board of county commissioners of county sewer districts, and wherein it is provided :

“Any such board of county commissioners *may employ* a competent sanitary engineer for such time or times, on such terms as they deem best, and may authorize such engineer to employ necessary assistants upon such terms as may be fixed by said board. In any county having a population exceeding 100,000, the board of county commissioners *may create and maintain* a sanitary engineering department, to be under their supervision and in charge of a competent sanitary engineer, to be appointed by such board of county commissioners, for the purpose of aiding them in the performance of their duties under sections 6602-1 to 6602-13, inclusive, of the General Code, *or their other duties regarding sanitation provided by law; * * **” (Emphasis added.)

Section 6600-3, General Code, being part of this act, was amended by the 99th General Assembly, and in so far as pertinent, reads as follows :

“After the establishment of any garbage and refuse disposal districts the county commissioners may have prepared by the county sanitary engineer a general plan of garbage and refuse disposal facilities for such district. After such general plan has been approved by them they shall have prepared by the county sanitary engineer detailed plans, specifications and estimates of the cost of such improvement, which upon approval by the board of county commissioners shall be carefully preserved in the office of the board or the county sanitary engineer, and shall be open to inspection of all persons interested in such improvement. After approval of the detailed plans, specifications and estimates of cost, the board of county commissioners shall adopt a resolution declaring that such improvement is necessary for the preservation and promotion of public health and welfare, designating the character of the improvement referring to the plans, specifications and estimates of cost, stating the place where they are on file and may be examined, and what part of the cost thereof, if any, shall be paid by the county at large, and what part shall be paid by the issuance of bonds payable from the revenues of the improvements as hereinafter provided. * * *”

Then follows a provision requiring the board to set a hearing on the plans and publish notice thereof, such hearing to be not less than twenty-four days after the first publication; written objections may be filed within five days after such hearing.

Section 6600-4, General Code, authorizes the board, after said five day period to determine whether it will proceed with the improvement

or revise the plans; if they are revised, a like notice of a further hearing after twenty-four days shall be given, and the board may thus declare again its intention to proceed.

Section 6600-5, General Code, provides that after the passage of such resolution, "no further action shall be taken or work done in connection therewith until ten days have elapsed" during which time any property owner may take an appeal to the court of common pleas, in which case "said work shall not be proceeded with until the matters appealed from, which shall be limited to the cost of the improvement and the boundaries of the district shall have been disposed of by the court.

Obviously, these proceedings may occupy many weeks, possibly many months after the plans and specifications have been prepared by the sanitary engineer (if any) or by private engineers employed, as suggested in your letter, for that purpose. These considerations, in my opinion, emphasize the propriety and necessity of meeting the preliminary costs of these proceedings from some source while awaiting the ultimate issue and sale of the bonds.

Section 6600-6, General Code, as originally enacted, provided for the issuance of revenue bonds to cover the cost of any improvement provided for in the act. This section was amended at the last session of the General Assembly, and in so far as pertinent, reads as follows:

"For the purpose of paying a part or the whole cost of the acquisition, construction or repair of any improvement provided for in this act, *including the expenses of the sanitary engineer and all other expenses necessary and incidental thereto*, the board of county commissioners may issue bonds of the county. The cost of any such improvement shall include, without limiting the same, to the cost of acquiring any necessary real estate, and any trucks, rolling stock or equipment necessary for the proper operation of the improvement. Such bonds shall state the particular improvement on account of which they are issued and the date of the resolution of the board authorizing their issuance. * * * The board of county commissioners shall in the legislation authorizing their issuance provide that such bonds shall not constitute general obligations of the county and shall not be secured by the general credit and taxing power of the county, but shall be payable solely as to principal and interest from the revenues of the improvement constructed with the proceeds of the sale of the bonds as derived from the rates or charges established for such services, as hereinafter provided. * * *" (Emphasis added.)

Attention is called to the language of this section, which specifically includes "the expenses of the sanitary engineer and all of the expenses necessary and incidental thereto." Plainly, this is intended to cover the cost involved in the making of surveys and the preparation of plans, specifications and estimates, all of which, in accordance with the order of procedure set out in the statute just quoted, precedes the passage of the resolution determining to proceed with the improvement and to issue bonds. I note from your letter that the entire expense of your contemplated improvement is to be paid by "revenue bonds as is provided by law." I take it that you have reference to the provisions of Section 6600-6, supra, which, in its original form, made no provision for any other bonds than revenue bonds which were to be paid out of the revenues derived from the improvement and were not in any sense to be general obligations of the county. This section in its amended form, gives additional authority to issue general obligation bonds to pay a portion of the cost of the improvement.

It is obvious that your proposal to issue revenue bonds for the project in question does not contemplate action under the authority of Section 12 of Article XVIII of the Constitution of Ohio. Compliance with that provision would require the inclusion in the bond ordinance of a franchise to be exercised in case of foreclosure of the mortgage securing such bonds, which does not appear from your letter to be contemplated. In addition to the authority granted by said Section 6600-6, I note a new section added by the last General Assembly to the Uniform Bond Act, to-wit, Section 2293-16a, General Code, which authorizes in somewhat similar terms the issuance of revenue bonds for certain purposes, including garbage or refuse collection systems. This section became effective on September 13, 1951, two days after the effective date of the other amendments to which I have called attention. I am not able to see that this new statute either adds to or takes from Section 6600-6, supra, so far as affects your problem.

It is true that these statutes do not contain any specific provision for financing the cost of preliminary work involved, pending the issuance and sale of the bonds. Accordingly, I come to a consideration of your suggestion that recourse might be had to the general fund of the county. By the terms of Section 5625-5, General Code, the purpose and intent of the general fund is set out. That section reads in part, as follows :

"The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expenses of any kind may be made, and the taxing authority of a subdivision may include in such levy the amounts required *for the carrying into effect of any of the general or special powers granted by law to such subdivision, including the acquisition or construction of permanent improvements.* * * *." (Emphasis added.)

It will be noted that the purposes for which this fund may be used are very broad, and I have no hesitancy in concluding that it may be drawn on for expenses such as you suggest in the preliminary work of preparing plans for the improvement; also for other necessary and incidental advance expenses. That would certainly be "carrying into effect one of the special powers granted by law" to the county.

Having in mind that the statute relative to the garbage and waste disposal improvement clearly contemplates that all expenses, including these preliminary costs, are to be paid out of the bonds when issued, the only question remaining is whether or not when the proceeds of such bonds are made available, the general fund may be reimbursed. I can see no reason why this may not be done. It would appear to me to be merely the application of sound business practice to the conduct of public business. It would not, in my opinion, involve a *transfer* of funds as contemplated by Sections 5625-13 and 5625-13a, General Code, which can be done only under certain conditions. Under the terms of Section 5625-9, General Code, certain funds are required to be established, among others, a special fund for each bond issue. Section 5625-13, General Code, which provides for transfers from various funds authorizes among others, transfers as follows:

"a. *The unexpended balance in a bond fund that is no longer needed for the purpose for which such fund was created shall be transferred to the sinking fund or bond retirement fund from which such bonds are payable.* * * *

"d. Unless otherwise provided by law, the unexpended balance in any special fund, other than an improvement fund, existing in accordance with section 5625-9, paragraphs (d), (f), or (g), or section 5625-11 of the General Code, may be transferred to the general fund or to the sinking fund or bond retirement fund *after the termination of the activity, service or other undertaking for which such special fund existed, but only after the payment of all obligations incurred and payable from such special fund.*" (Emphasis added.)

Section 5625-13a, General Code, provides:

“In addition to the transfers authorized by section 5625-13, the taxing authority of any political subdivision may, in the manner hereinafter provided, transfer from one fund to another any public funds under its supervision *except the proceeds of balances of loans, bond issues, or special levies for the payment thereof, and except the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose or purposes, and except the proceeds or balances of any license fees imposed by law for a specified purpose or purposes.*” (Emphasis added.)

It is obvious from reading the statutes just quoted that these transfers which the law authorizes have reference to unexpended balances in funds which have been established, *after the purpose of their establishment has been fully completed.* We are not here concerned with the disposition of a balance remaining in a bond fund “that is no longer needed for the purpose for which such fund was created,” but rather with the proper distribution of the fund itself, in carrying out the very purposes for which it was created.

If, as I have suggested, money is advanced from the general fund to meet these expenses, the repayment to that fund of the proceeds of the bonds when issued is certainly not an attempt to transfer an unneeded balance, but is a direct application of the funds to the original purpose for which they are raised. In other words, reimbursement is an entirely different matter from a transfer such as is contemplated by the statutes.

The view which I express may seem to conflict in some measure with the theory of Opinion No. 701, Opinions of Attorney General for 1949, page 350, rendered by my immediate predecessor. There he was considering the validity of an ordinance which undertook to reimburse the general fund for advances of preliminary expenses connected with sundry improvements which were ultimately financed by bond issues. He held that an ordinance attempting to make these reimbursements by *transferring sums from various bond funds to the general fund* was invalid as being in violation of Sections 5625-13 and 5625-13a, General Code. I am inclined to think that if the council had worded its ordinance differently, so as to provide for reimbursement of the general fund instead of transfers from bond funds to the general fund, or the Attorney General had recognized the real purpose and effect of the ordinance, his opinion might have been different. At any rate, I do not feel bound by it in the present case.

I am therefore of the opinion that the preliminary expenses required in preparation for an improvement such as is contemplated by Section 6600, General Code, may be made from the general fund, and upon the issuance and sale of bonds therefor, a portion of the proceeds of such sale may be used to reimburse the general fund for such purpose.

I cannot see the propriety of using for this purpose portions of other unencumbered appropriations. By the very terms of their creation these other funds have been provided for, and are dedicated to other specific purposes, and it would in my opinion be an unlawful diversion to use them as an advance for a wholly unrelated purpose.

Accordingly, in specific answer to your question, it is my opinion that for the purpose of paying the preliminary costs and expenses involved in the establishment of a garbage disposal district and constructing disposal plants as contemplated by Section 6600, General Code, funds may be advanced from the general fund of the county, and upon the sale of revenue bonds for such purpose as provided by Section 6600-6, General Code, a portion of the proceeds from such bonds may be used to reimburse the general fund for monies so advanced.

Respectfully,

C. WILLIAM O'NEILL
Attorney General