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1. SEWER DISTRICT—COUNTY COMMISSIONERS HAVING ESTABLISHED—UNINCORPORATED AREA ADJOINING CITY—SEWAGE TREATMENT PLANT AND INTERCEPTOR SEWERS WITHIN CITY LIMITS—CONTRACT—COUNTY PAY PART OF COST—RIGHT OF COUNTY TO DISCHARGE SEWAGE INTO CITY SEWERS AND DISPOSAL WORKS—SECTIONS 6117.41, 6117.42, 6117.43, R. C.
2. COUNTY—COST UNDER SUCH CONTRACT—LEVY OF TAXES—ISSUANCE OF GENERAL OBLIGATION BONDS—BONDS RETIRED—PROCEEDS OF SPECIAL ASSESSMENTS—PROPERTY IN SEWER DISTRICT SERVED BY SANITARY SEWERS—SECTIONS 6117.42, 6117.43, R. C.

## SYLLABUS:

1. Under the provisions of Sections 6117.41, 6117.42 and 6117.43 of the Revised Code, a board of county commissioners having established a sewer district in an unincorporated area adjoining a city, may enter into a contract with the city whereby the county shall pay to the city a part of the cost of a sewage treatment plant and interceptor sewers to be constructed by such city entirely within the city limits, which contract gives the county the right to discharge its sewage into the city sewer and disposal works.

2. The county is authorized by Sections 6117.42 and 6117.43 Revised Code, to finance its cost in payment of its obligation to such city under such contract, by levy of taxes or by the issuance of general obligation bonds of the county, such bonds to be retired from the proceeds of special assessments levied on the property in the sewer district which will be served by the sanitary sewers constructed or proposed to be constructed by said county in said sewer district.

Columbus, Ohio, August 6, 1956

Hon. William E. Didelius, Prosecuting Attorney  
Erie County, Sandusky, Ohio

Dear Sir:

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

“The Board of County Commissioners of Erie County, Ohio, acting pursuant to the provisions of Section 6602-1 of the former General Code of Ohio, now Section 6117.01 of the Revised Code, several years ago established a sewer district known as the

'Perkins-Margaretta Sewer and Water District', the territory of which comprises parts of Perkins, Margaretta and Huron Townships adjoining the City of Sandusky, Ohio.

"The Board of County Commissioners is contemplating the construction of a system of sanitary sewers in an area of the Perkins-Margaretta Sewer and Water District adjoining the City of Sandusky; and it is the desire of the Board of County Commissioners to make arrangements for the effluent from such sanitary sewers to be discharged into the sanitary sewer system of the City of Sandusky.

"The sanitary sewers of the City of Sandusky presently empty into Sandusky Bay and one or more of its tributary streams; however, the City of Sandusky is taking steps at the present time for the construction of a sewage treatment plant and the necessary interceptor sewers. Complete plans, specifications and cost estimates for this improvement have been prepared and a bond issue to cover all or part of the cost will be submitted to the electors of the City of Sandusky at the forthcoming November election. The total cost of the improvement has been estimated at \$4,619,000.

"The City's proposed sewage treatment plant and interceptor sewers will be located entirely within the corporate limits of the City of Sandusky; however, these facilities have been designed so as to have the capacity to handle the discharge from the sanitary sewer system proposed to be constructed by the Board of County Commissioners in the Perkins-Margaretta Sewer and Water District. The consulting engineers employed by both the City of Sandusky and the Board of County Commissioners have established that the Perkins-Margaretta Sewer and Water District ultimately will enjoy approximately one-third of the benefit of the construction and operation of the City's sewage treatment plant and interceptor sewers.

"The Board of County Commissioners is desirous of ascertaining whether the Board has the power and authority, under the provisions of Sections 6117.41 to 6117.45, inclusive, of the Revised Code, to enter into a contract with the City of Sandusky providing for the construction, financing, maintenance and operation of the City's proposed sewage treatment plant and interceptor sewers on the following basis:

"(a) The City of Sandusky to construct its proposed sewage treatment plant and interceptor sewers; and the City to own, control, maintain and operate such facilities upon completion.

"(b) The Board of County Commissioners to pay approximately one-third of the cost of the construction of such facilities; and to finance such share of the construction cost by the issuance and sale of general obligation bonds of the County, such bonds to be retired from the proceeds of special

assessments to be levied on all of the property in the Perkins-Margaretta Sewer and Water District proposed to be served by the sanitary sewers proposed to be constructed in the sewer district at some time in the future.

“(c) The Board of County Commissioners to have the right to discharge sewage from the sanitary sewers of the Perkins-Margaretta Sewer and Water District into the sanitary sewers of the City of Sandusky upon the payment of such sewer rental charges as may be mutually agreed upon.

“The legal questions suggested above can be stated in more general form as follows:

“(a) May a Board of County Commissioners, having established a sewer district in an unincorporated area adjoining a city, pay part of the cost of a sewage treatment plant and interceptor sewers to be constructed by such city entirely within the city limits, and thereafter to be owned and operated by the city, under an arrangement whereby the county will have the right to discharge into such city facilities the effluent from a system of sanitary sewers to be constructed by the county in the sewer district, upon payment of mutually agreeable sewer rental charges?

“(b) If the answer to the foregoing is in the affirmative, may the county finance its share of the cost of construction of such city sewerage facilities by the issuance of general obligation bonds of the county, to be retired from the proceeds of special assessments to be levied against the property in the sewer district which will be served by the sanitary sewers proposed to be constructed in the sewer district?”

Provisions for county sewers are found in Chapter 6117 of the Revised Code. Generally speaking, they authorize the commissioners of the county to establish one or more sewer districts and to build and maintain therein sewers and sewage disposal plants. They are further authorized to assess the cost of such sewers and sewage disposal works on the property in such district which will be served thereby. Under the provisions of Section 6117.08 of the Revised Code, the commissioners are authorized to issue and sell bonds or certificates of indebtedness to pay the cost of such facilities, and read in connection with Section 6117.43 of the Revised Code to which I will later refer, such bonds are to be paid from the proceeds of special assessments on the lands to be served.

Sections 6117.41, 6117.42 and 6117.43 of the Revised Code are directly applicable to a plan such as suggested in your letter, and I believe we will find therein the answers to all your questions. These sections read as follows:

## SECTION 6117.41.

"The *board of county commissioners* of any county or the legislative authority of any municipal corporation *may enter into a contract*, upon such terms and for such period of time as are mutually agreed upon, with any other county or municipal corporation to prepare all necessary plans and estimates of cost, to connect any sewers of such county or municipal corporation with any sewers *constructed or to be constructed*, by any other county or *municipal corporation*, and to provide for the *joint use* by such contracting parties *of such sewers* and of any sewage treatment or disposal works *of such county or municipal corporation*."

(Emphasis added.)

## SECTION 6117.42.

"All contracts under section 6117.41 of the Revised Code shall provide for *payment to the county or municipal corporation owning, constructing, or about to construct* a sewer or sewage treatment or disposal works, to be jointly used, of the amount agreed upon by the county or municipal corporation so contracting for the joint use thereof. *Any such county or municipal corporation owning, constructing or agreeing to construct any such sewer improvement or sewage treatment works*, as provided in sections 6117.41 to 6117.44, inclusive, of the Revised Code, and *permitting the use thereof* by such other county or municipal corporation, *shall retain full control and management* of the construction, maintenance, repair, and operation of such sewer improvement and sewage treatment or disposal works, except when conveyed to a municipal corporation as provided in this section. Any such contract before going into effect shall be approved by the department of health. Any completed sewer improvement or sewage treatment works constructed under sections 6117.01 to 6117.45, inclusive, of the Revised Code, for the use of any sewer district and located *within any municipal corporation or within any area which may be annexed to or incorporated as a municipal corporation*, may by mutual agreement between the board of county commissioners and such municipal corporation be *conveyed to such municipal corporation*, which shall thereafter maintain and operate such sewer improvement or sewage treatment works. The board may retain the right to joint use of such sewers or treatment works for the benefit of the district. The validity of any *assessments levied* to provide means for the *payment of the cost of construction or maintenance* of such sewer improvement or sewage treatment works or any part thereof *shall not be affected by such conveyance*."

(Emphasis added.)

## SECTION 6117.43.

"The county or municipal corporation contracting under section 6117.41 of the Revised Code for the joint use of any sewer or sewage treatment or disposal works constructed or to be constructed by another county or municipal corporation *may provide*

*for payment of the agreed compensation by the levy of taxes, special assessments, or sewer rentals, as provided in the laws governing such county or municipal corporation in the construction, maintenance, repair, or operation of a sewer improvement or sewage treatment or disposal works and may issue bonds as provided by such laws in anticipation of such taxes or assessments.”*  
(Emphasis added.)

It is very apparent from these provisions that the legislature recognized fully the close relation between a municipality and the territory surrounding it, and particularly the necessity of making liberal provisions for taking care of such improvements as sewerage and sewage disposal, growing out of this close relation and the probability that such territory will become a part of the municipality by annexation.

It will be observed that the county commissioners are authorized to enter into a contract with a municipality for the use of municipal sewers and disposal plants, not only those already constructed but those which are to be constructed. It will be noted further that this contract may be upon such terms and for such period as is mutually agreed upon.

Section 6117.42 of the Revised Code authorizes the county to provide in such contract for payment of the amount agreed upon to the municipal corporation owning or about to construct a sewer or disposal works to be used jointly by the municipality and the county. This section further refers to the use of such facilities by territory located in such sewer district and within any municipal corporation or “within any area which may be annexed to or incorporated as a municipal corporation.” The same section provides that any sewerage improvement or sewage treatment works installed by the county may be conveyed to the municipal corporation which shall thereafter maintain and operate the same, and it is to be noted that such conveyance is not required to be by way of a *sale*, or based upon any consideration other than the obvious advantage which the county may receive from having the city assume the entire responsibility for taking care of the sewerage.

I call particular attention to the final sentence of this section which provides that: “The validity of any assessments levied to provide means for the payment of the cost of construction or maintenance of such sewer improvement or sewage treatment works or any part thereof shall not be affected by such conveyance.”

Section 6117.43, *supra*, authorizes the county to provide for the payment of the agreed compensation to the city “by the levy of taxes, special

assessments or sewer rentals,” and provides that the county may issue bonds as provided by law in anticipation of such taxes or assessments.

It appears to me that the plan of procedure which you set out in your letter falls completely within the provisions of the statutes above referred to. It is contemplated, and I assume that it will be embodied in the agreement that the City of Sandusky is to construct its proposed sewerage plant and interceptor sewers and is to own, control and operate the same upon completion; that the board of county commissioners is to have the right to discharge sewage from the sanitary sewers which it is to construct in its sewer district, into the sanitary sewers of the city upon the payment of such sewer rental charges as may be mutually agreed upon, and that the county, in consideration of the facilities so furnished them by the city, is to pay approximately one-third of the cost of construction, and will finance such share of such construction costs by the issue and sale of general obligation bonds of the county, such bonds to be retired from the proceeds of special assessments to be levied on the property to be served in the sewer district.

The issue of bonds in anticipation of the collection of special assessments is authorized for all subdivisions by Section 133.31, Revised Code. But such bonds are the general obligation of the county, as shown by the last sentence of that section, which reads as follows:

“Bonds or notes issued in anticipation of the levy of special assessments, or the collection thereof, shall be full general obligations of the issuing subdivision, and the full faith, credit, and revenues of such subdivision shall be pledged for the payment of the principal and interest of such bonds or notes.”

In the course of my consideration of this matter my attention has been called to four opinions of former Attorneys General, holding that the county commissioners are without power to enter into a *joint ownership* arrangement with a municipality. These opinions are: No. 2343, Opinions of the Attorney General for 1928, page 2562; No. 700, Opinions of the Attorney General for 1929, page 1072; No. 600, Opinions of the Attorney General for 1939, page 756 and No. 2391, Opinions of the Attorney General for 1940, page 553.

These opinions each rest upon the ground that no authority had been granted by the legislature to county commissioners to enter into such agreements of joint ownership and that in the absence of such grant of power the county is without authority to enter into such agreement. With these

rulings I do not in any way disagree. Their irrelevancy to the question here before me becomes clear when we consider: (1) that the proposal here resented does not in any wise contemplate joint *ownership* but merely joint *use*, and (2) that the statutes above referred to *do give express authority for contracts for such joint use and for the payment by the county of an agreed sum for the same.*

Neither your request nor the terms of the proposed agreement as set out in your letter contain any hint of joint ownership, nor do the statutes to which I have referred deal with anything other than joint use. As to such joint use and the right of the county to acquire it by contract, and to pay an agreed sum therefor and to finance the payment of the agreed compensation by the issuance of bonds, it appears to me that there is not the slightest ambiguity in the statutes.

All of the provisions of the proposed contract appear to me to be entirely consistent with the statutes quoted and may be embodied in the agreement.

In specific answer to your questions it is my opinion:

1. Under the provisions of Sections 6117.41, 6117.42 and 6117.43 of the Revised Code, a board of county commissioners having established a sewer district in an unincorporated area adjoining a city, may enter into a contract with the city whereby the county shall pay to the city a part of the cost of a sewage treatment plant and interceptor sewers to be constructed by such city entirely within the city limits, which contract gives the county the right to discharge its sewage into the city sewer and disposal works.

2. The county is authorized by Sections 6117.42 and 6117.43 Revised Code, to finance its cost in payment of its obligation to such city under such contract, by levy of taxes or by the issuance of general obligation bonds of the county, such bonds to be retired from the proceeds of special assessments levied on the property in the sewer district which will be served by the sanitary sewers constructed or proposed to be constructed by said county in said sewer district.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General