

3629.

DITCH SUPERVISORS—HAVE SAME AUTHORITY AS TO THAT PART OF COUNTY DITCH LYING WITHIN MUNICIPALITY AS THEY HAVE WITH RESPECT TO PART OF DITCH LYING OUTSIDE OF MUNICIPALITY—EXCEPTION—CLEANING AND REPAIRING OF COUNTY DITCHES.

*When acting under sections 6505 to 6508 G. C. (109 O. L., 248) ditch supervisors have the same authority as to that part of a county ditch lying within a municipality as they have with respect to the part of the ditch lying outside the municipality. This general rule, however, may be subject to exception, in cases where the limits of a municipality coincide with those of a township.*

*Quaere, whether a municipality may under sections 3812 et seq., G. C., proceed independently of sections 6505 et seq. in the matter of the cleaning and repair of that part of a county ditch within municipal limits.*

COLUMBUS, OHIO, September 23, 1922

HON. A. S. BEACH, *Prosecuting Attorney, Mansfield, Ohio.*

DEAR SIR:—You have recently requested the opinion of this office as to the following:

“Has the council of a village authority under section 3812 G. C., or any other statute, to make an assessment upon owners of lots in the village to pay for cleaning a county ditch, when said council has been notified by the township ditch supervisor, under section 6506 G. C., of the section of said ditch apportioned to the village, or should the ditch supervisor notify each individual lot owner of his apportionment and proceed under last named section?”

Section 6506 in its present form is found as amended in 109 O. L., 249. As so amended, said section appears as part of the group of sections 6505 to 6508, all of which were amended at the same time as section 6506. The purpose of such amendments was to restore the office of ditch supervisor, which had been abolished with the passage of the new ditch code in 108 O. L., 926. Said group of sections, as amended, provides in general for the apportionment of sections of a ditch to benefitted land owners for the purpose of cleaning out and repair. Section 6506 is to lengthy to quote in full; but the first sentence thereof reads:

“For the cleaning and keeping in repair of ditches, the ditch supervisor or supervisors for the township or townships, through which such ditch runs, shall divide them into working sections and apportion such sections to the land owners, corporate roads, railroads, township, boards of education, municipalities and county according to the benefits received, and shall upon completion notify such owners in writing of the apportionment made to them respectively \* \* \* \*”

It is believed that the inclusion of municipalities in the list of those to whom apportionment is to be made was not for the purpose of charging the municipality with the cleaning out and repair of all of a ditch that might lie within the municipi-

pal limits, but rather for the purpose of charging the municipality with cleaning out and repair of only so much of the ditch as might benefit lands owned by the municipality itself. Stating this proposition in another form, the intention of the quoted language was to give the municipality the same status, and to charge it with the same duty, as to municipally owned lands, as applies to any other owner in respect to his lands.

Moreover, it is to be noted that said sections 6505 to 6508 make no distinction as between townships in which a municipality is in whole or in part located, and those not embracing the whole or part of a municipality. It follows that the powers and duties of ditch supervisors extend to that part of a ditch, and the lands benefited thereby, as lie within the confines of a municipality situate within the township in which the ditch supervisor is serving as such. See in this connection an opinion of this department, Vol. 2, Report of the Attorney General 1911-1912, page 1321. The general rule just stated is possibly subject to an exception in case the corporate limits of a municipality become identical with those of a township. See Annual Reports of the Attorney General for 1913, Vol. 2, page 1650.

In view of what has been said, it is the conclusion of this department that ditch supervisors are fully empowered to carry out the same procedure as to that part of the ditch in question within the municipality as would apply to that part of a ditch outside of a municipality.

The foregoing, it is believed, will answer your question for practical purposes. It is possible that a procedure on the assessment plan might be carried out by the municipality itself entirely independent of the ditch supervisor. See an opinion of this department of date June 10, 1919, Opinions of the Attorney General for 1919, Vol. 1, page 626; see also section 3889 G. C. However, the opinion just cited, in so far as it discussed the assessment plan, dealt more with the improvement of a street or a public place by the construction of a ditch, than with the direct question of a ditch which might have been constructed primarily for the benefit of adjacent lands. Hence to go into the question of whether the assessment procedure provided by sections 3812 et seq. is available in the case you have at hand, would require additional data as to the location of the ditch in question and the purpose of its original construction. Therefore no opinion as to the availability of procedure under sections 3812 et seq., in the case you describe, is here expressed.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

3630.

TAXES AND TAXATION—WHERE CHURCH SOCIETY LEASES TRACT OF LAND OWNED BY IT FOR OIL—AGREED RENT AND ROYALTY—PROCEEDS OF SUCH OIL LEASE APPLIED TO SUPPORT OF CHURCH—HOW TAXED.

*A church society leases a tract of land owned by it for oil at an agreed rent from year to year during the term of the lease and a royalty on the oil to be obtained. The proceeds of such oil lease are applied to the support of the church.*

*HELD, (1) that the land so leased is subject to taxation against the church as an entity and at a valuation including both the value of the fee of the soil and that of the oil in place, unless the latter can be separately valued on the prin-*