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CONSERVANCY DISTRICTS—BOARD OF DIRECTORS OF SUCH DISTRICT MAY SIGN PETITION, § 6101.71 RC, FOR ESTABLISHMENT OF SUBDISTRICT—COURT, § 6101.07 RC, CONSISTS OF ONE JUDGE OF THE COURT OF COMMON PLEAS FROM EACH COUNTY WITHIN OR PARTLY WITHIN THE CONSERVANCY DISTRICT; SUCH COURT IS COURT FOR SUBDISTRICT.

SYLLABUS:

(1) The board of directors of a conservancy district may sign the petition prescribed by Section 6101.71, Revised Code, for the establishment of a conservancy subdistrict.

(2) The court established by Section 6101.07, Revised Code, and consisting of one judge of the court of common pleas from each county within or partly within a conservancy district, is the conservancy court for a subdistrict established within the district.

Columbus, Ohio, September 26, 1957

Hon. Karl H. Weaner, Jr., General Counsel
Maumee Watershed Conservancy District, Defiance, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"1. Can the board of Directors of a Conservancy district, as the governing body of a public corporation, petition the Court for establishment of a sub-district?

2. How may Judges sit as a Conservancy Court of a sub-district (the full Conservancy Court, or only the Judges of Counties within the sub-district)?"

Section 6101.71, Revised Code, reads as follows :

"Whenever it is desired to construct improvements wholly within or partly within and partly without any conservancy district, which improvements will affect only a part of said district, for the purpose of accomplishing such work, sub-districts may be organized upon petition of the owners of real property within or partly within and partly without the district. Such petition shall fulfill the same requirements concerning the subdistricts as the petition outlined in section 6101.05 of the Revised Code is required to fulfill concerning the organization of the main district, and shall be filed with the clerk of the same court of common pleas, and shall be accompanied by a bond as provided for in section 6101.06 of the Revised Code. All proceedings relating to the organization of such subdistricts shall conform in all things to sections 6101.01 to 6101.84, inclusive, of the Revised Code, relating to the organization of districts. Whenever the court by its order entered of record decrees such subdistricts to be organized, the clerk of said court shall thereupon give notice of such order to the board of directors of the conservancy district, which shall thereupon act also as the board of directors of the subdistrict. Thereafter, the proceedings in reference to the subdistrict shall in all matters conform to such sections; except that in appraisal of benefits and damages for the purposes of such subdistricts, in the issuance of bonds or notes, in the levying of assessments or taxes, and in all other matters affecting only the subdistrict, such sections shall apply to this subdistrict as though it were an independent district, and it shall not, in these things, be amalgamated with the main district.

The board of directors, board of appraisers, chief engineer, attorney, secretary of the conservancy district, and other officers, agents, and employees of the district shall, so far as it is necessary, serve in the same capacities for such subdistrict, and contracts and agreements between the main district and the subdistrict may be made in the same manner as contracts and agreements between two districts. The distribution of administrative expense between the main district and subdistrict shall be in proportion to the interests involved and the amount of service rendered. Such division shall be made by the board of directors with an appeal to the court establishing the district. This section does not prevent the organization of independent districts for local improvements under

other laws within the limits of a district organized under sections 6101.01 to 6101.84, inclusive, of the Revised Code, as provided in sections 6101.68 and 6101.69 of the Revised Code.”

The requirements for a valid petition for the creation of a subdistrict are the same as those for the creation of a full district, and are prescribed by Section 6101.05, Revised Code, the portion of which pertinent to your inquiry reads as follows:

“Proceedings for the establishment of a conservancy district shall be initiated only by the filing of a petition in the office of the clerk of the court of common pleas of one of the counties containing territory within the proposed district, which petition shall be signed either by five hundred freeholders, or by a majority of the freeholders, or by the owners of more than half of the property, in either acreage or value, within the limits of the territory proposed to be organized into a district. Such a petition may be signed by the governing body of any public corporation lying wholly or partly within the proposed district, in such manner as it prescribes, and when so signed by such governing body such a petition on the part of the said governing body shall fill all the requirements of representation upon such petition of the freeholders of such public corporation, as they appear upon the tax duplicate; and thereafter it is not necessary for individuals within said public corporation to sign such a petition. Such a petition may also be signed by the railroads and other corporations owning lands.”

“Public corporation” is defined in the following terms by Section 6101.01 (C), Revised Code:

“(C) “Public corporation” or “political subdivision” means counties, townships, municipal corporations, school districts, road districts, ditch districts, park districts, levee districts, and all other governmental agencies clothed with the power of levying general or special taxes.”

The board of directors of a conservancy district is empowered to levy taxes. See Sections 6101.45, 6101.55, and 6101.64, Revised Code.

Clearly the board of directors of a conservancy district is the governing body of a public corporation lying in part within a proposed subdistrict. After the filing of the petition, such board can take no further official action upon the creation of a subdistrict, all further powers in that regard being conferred upon the conservancy court established under Section 6101.07, Revised Code. Thus initiating the procedure for creating a subdistrict by filing a petition is in no way inconsistent with any official power or duty of the board of directors.

Further, it would appear that the board of directors of a conservancy district may be the public authority within a conservancy district best qualified to recognize the need for a subdistrict.

For these reasons I am of the opinion that it was not the intention of the General Assembly to exclude the board of directors of a conservancy district from the governing bodies of public corporations within the district authorized to petition for the creation of a conservancy subdistrict.

As to your second question, I refer you initially to the following language from Section 6101.07, Revised Code :

* * * "Except as otherwise provided by sections 6101.08 to 6101.84, inclusive, of the Revised Code, such court has, for all purposes of sections 6101.01 to 6101.84, inclusive, of the Revised Code, original and exclusive jurisdiction coextensive with the boundaries and limits of the district or proposed district and of the lands and other property included in, or proposed to be included in, such district or affected by such district, without regard to the usual limits of its jurisdiction. * * *"

The next paragraph of the same section also provides that only the full court of the district can act to establish a subdistrict.

You will recall that Section 6101.71, *supra*, provides that, with enumerated exceptions, the proceedings of subdistricts shall in all things conform to the proceedings provided for full districts. The same section provides that the officers of the full district shall serve for the subdistrict.

At first impression, certain language in Section 6101.71, *supra*, seems to imply that a subdistrict becomes an independent entity and might have its own officers, court, *etc.* But further study shows that the separateness and independence of a subdistrict extends only to certain enumerated matters. Nothing in the statutes appears to create any exception applying generally to subdistricts to the rule stated above that the jurisdiction of the full court of a conservancy district shall be exclusive within the district.

Accordingly, it is my opinion, and you are advised :

(1) The board of directors of a conservancy district may sign the petition prescribed by Section 6101.71, Revised Code, for the establishment of a conservancy subdistrict.

(2) The court established by Section 6101.07, Revised Code, and

consisting of one judge of the court of common pleas from each county within or partly within a conservancy district, is the conservancy court for a subdistrict established within the district.

Respectfully,

WILLIAM SAXBE

Attorney General