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WATER SUPPLY SYSTEM — SECTION 6103.13 RC GIVES AUTHORITY TO COUNTY TO LEVY ASSESSMENT FOR PORTION OF COST—SPECIAL BENEFITS CONFERRED—TOWNSHIP PROPERTY ABUTTING ON IMPROVEMENT.

SYLLABUS:

Section 6103.13, Revised Code, gives a county the authority to levy an assessment for a portion of the cost of construction of a water supply system upon property belonging to a township and abutting on such improvement, in accordance with the special benefits conferred on such property by said improvement.

Columbus, Ohio, March 20, 1956

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

Dear Sir:

Your request for my opinion reads as follows:

“There has been presented to this office the question involving the right of a political subdivision to assess another

political subdivision for the construction of a water line. We have found no satisfactory authority on this question and in view of the fact that the problem is not limited to Hamilton County, we wish to obtain your opinion.

“The facts in the matter are these:

“The Board of County Commissioners of Hamilton County, Ohio, seeks to construct a water line on Crookshank Road and to assess the abutting property owners on a front foot basis. Included in the abutting property is a tract owned by the Trustees of Green Township, which tract is used as a township park. The Trustees of Green Township have indicated that they will not pay such assessment on the grounds that said park is already supplied with water.

“We are not concerned primarily with whether or not the amount of the assessment would exceed the benefit. This, we believe, is a question of fact and could be determined in a proper court. There is, however, a substantial question as to whether or not any assessment can be placed against this property. The question turns, we believe, on the construction of RC. 6103.13, which provides in part:

“ ‘The balance of the cost and expense of such improvement * * * shall be assessed * * * upon all the property including the abutting property * * * found to be benefitted in accordance with the special benefits conferred * * *. *State land so benefitted shall bear its proportion of assessed costs* according to its special benefit. (Emphasis added.)

“We suggest that O. Jur., ‘Special Assessments,’ paragraphs 4 and 25, and the text ‘Hamilton on the Law of Special Assessments,’ paragraph 281, might be of some assistance in determining this question.”

Section 6103.13, Revised Code, to which you refer, is a part of Chapter 6103, Revised Code, relating to installation of water supply facilities in a portion of the county. Section 6103.13 provides in part as follows:

“In the construction of a main, branch, or reinforcing pipe line and water supply, the property immediately abutting upon such main, branch, or reinforcing pipe line may be assessed for local service. The balance of the cost and expense of such improvement to be paid by such assessments shall be assessed as an assessment district assessment upon *all the property*, including the abutting property, within said district found to be benefitted in accordance with the special benefits conferred, less such part of said cost as shall be paid by the county at large. State land so benefitted shall bear its proportion of assessed costs according to its special benefit. * * *” (Emphasis added.)

I recognize, at the outset, that county property is exempted by the statutes from taxation. Section 5709.08, Revised Code, provides that "public property used exclusively for a public purpose shall be exempt from taxation." Section 5709.07, Revised Code, makes a similar provision as to public school property, also public colleges and buildings used for public worship. Special assessments for public improvements are recognized as a species of taxation. But it is well settled that a special assessment is not such a tax as is contemplated by the exemption statutes. It was so held in *Lima v. Cemetery Association*, 42 Ohio St., 128, a portion of the syllabus reading as follows :

"An incorporated cemetery association is not relieved from an assessment for a street improvement by a statutory provision exempting its lands from *taxation*, such exemption being regarded as confined to taxes as distinguished from local assessments."

In the case of *Jackson v. Board of Education*, 115 Ohio St., 368, it was held :

"Section 3812, General Code, confers upon a municipality general authority to levy assessments for street improvements against property within such corporation belonging to a board of education and being used for school purposes, and no provision exists in the General Code of Ohio exempting such property from that general authority."

The statute in question authorized the assessment to be levied "upon the abutting, adjacent and contiguous or other specially benefited lots or lands in the corporation." But there is no specific authority to levy such assessments on school property. The court in the opinion cited the *Lima* case with approval.

I see no reason why county or township should be in any more favored position than is a school district. All are political and taxing subdivisions. They are treated alike by the Constitution as to exemption from taxation. Section 2 of Article XII provides :

"* * * general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institution used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal ; * * *

The conclusion above stated as to assessment against school property was applied by one of my predecessors to property owned by a county.

In Opinion No. 684, Opinions of the Attorney General for 1927, page 1162, it was held :

“Where a county or county commissioners own property within the limits of a municipal corporation, such property may be assessed for street improvements under Section 3812, General Code.”

That opinion was based on the decision above noted in the case of Jackson v. Board of Education. It would certainly be equally applicable to property owned by a township.

A further examination of Section 6103.13, *supra*, seems to me to afford confirmation for the conclusion indicated by the foregoing authorities. There it will be noted that it is provided that “all the property” benefited shall be assessed, and then follows the provision that “state land so benefited shall bear its proportion of *assessed costs*, according to its special benefit.” This special grant of a power to charge the state to the same extent as other property owners are assessed, appears to indicate strongly that the legislature recognized the propriety of having public property, *including that of the state*, bear its proper proportion of the costs of an improvement in which it shared the benefit.

Accordingly, in specific answer to your question, it is my opinion that Section 6103.13, Revised Code, gives a county the authority to levy an assessment for a portion of the cost of construction of a water supply system upon property belonging to a township and abutting on such improvement, in accordance with the special benefits conferred on such property by said improvement.

Respectfully,
C. WILLIAM O'NEILL
Attorney General