

722

GARBAGE PLANT, MAY BE PAID FOR BY COUNTY AT LARGE—OPERATION COST MAY NOT BE INCLUDED IN BOND ISSUE FOR CONSTRUCTION OF PLANT—§§343.04, 5705.19, R.C.

SYLLABUS:

1. Under the provisions of Chapter 343., Revised Code, if the county commissioners so determine, the entire cost of the installation of a garbage and refuse disposal plant may be paid by the county at large, and the cost thereof may be provided by a tax authorized by electors of the county under Section 5705.19, Revised Code.

2. The cost of operation of a garbage disposal plant constructed under authority of Chapter 343., Revised Code, could not be included in a single bond issue covering the cost of construction, and therefore could not be included in a tax levy voted pursuant to the provisions of Section 5705.19, Revised Code.

3. Where it has been determined by the county commissioners that the entire cost of a garbage and refuse disposal plant constructed under authority of Chapter 343., Revised Code, shall be borne by the county at large, all of the residents of the county are entitled to vote for a tax levy therefor, under the provisions of Section 5705.19, Revised Code; and the taxes levied pursuant thereto must be levied on all the taxable property of the county.

4. The provision of Section 343.04, Revised Code, as to mailing notice of hearing to owners of property who are to be served by the organization of a garbage and refuse disposal district, and the installation therein of a plant for disposal of such materials, require such notice to be sent although no assessments for the use of such facilities are contemplated.

Columbus, Ohio, July 23, 1959

Hon. Marlowe Witt, Prosecuting Attorney
Henry County, Napoleon, Ohio

Dear Sir:

I have before me your communication requesting my opinion and reading as follows:

“Our County is proposing to establish a garbage disposal district, but not a collection service, under the provisions of Revised Code 343.04, for the benefit of all persons outside the municipal corporation and those municipal corporations which may be interested within the County.

“It is the belief of the commissioners, that, since it is for the benefit of the county, as a whole, that the operation and

construction of the dump should be paid for by the county alone, from, if possible, the general fund.

“Under the terms of Revised Code, Section Number 343.07, the improvement may be paid for by revenue bonds, or in the case of the portion construed as being the county’s share by general obligation bonds.

“I have this question: ‘May this district, both as to acquisition of equipment and sites, as well as general operating expenses, be paid for from a levy passed under the authority of Revised Code, Section Number 5705.19, instead of a bond issue?’”

“I felt that this is possible for the reason that Revised Code, Section Number 5705.19, paragraph F, gives authority to have a levy for the following purposes:

‘For the construction or acquisition of any specific permanent improvement or class of improvements which the taxing authority of said subdivision may include in a single bond issue.’

and Revised Code, Section Number 133.06, as well as Revised Code, Section Number 343.07, grant authority to issue bonds for the purpose of operating and maintaining and constructing garbage disposal systems.

“My second question is this: ‘Is the construction and acquisition of sites and the operation of such dumps a single purpose under Revised Code, Section Number 5705.19?’

“I, personally, felt it was, since the basic purpose is a complete operation, and the construction and acquisition of sites is impossible without operating funds, or vice-versa.

“I have two further questions under the terms of Chapter 343 of the Revised Code:

“Under Revised Code, Section Number 343.03, the statute gives the County jurisdiction over and right to provide garbage disposal to a municipal corporation or portion thereof if the municipal corporation approves the contracts, estimated cost to be borne by the corporation, etc.

“My question regarding this section is: ‘If the municipal corporation approves all of the items required for its approval, according to the terms of the statute, may the inhabitants of such municipal corporation be taxed as a portion of the district if a levy is put on the ballot and passed under the terms of Revised Code, Section Number 5705.19?’

“My second question, regarding this Chapter, comes from Section Number 343.04, a portion of which reads as follows:

'The board shall cause such resolution to be published once a week, for two consecutive weeks, in a newspaper of general circulation within the county, and on or before the date of the second publication it shall send a notice of the time and place of such hearing, by mail, to the owner of every property to be served by such facilities.'

"As you will note, this section deals with the notices required.

"If this dump may be financed and operated by a levy, is it necessary to notify all landowners in the proposed district?"

"It seems to me this would be wasted effort, under the circumstances, since we *do not* propose to have assessments against the property owners, which is normally the reason for such notice."

We will keep in mind your statement at the outset that the county commissioners deem installation of the garbage disposal plant a benefit to the entire county, and have concluded, therefore, that the whole cost of such installation shall be paid by the county at large. This is permissible under the terms of Chapter 343, Revised Code. Section 343.01, Revised Code, contemplates the establishment of a garbage disposal district outside of municipal corporations, but Section 343.03, Revised Code, authorizes the inclusion of the territory of one or more municipal corporations.

As to the payment of cost, Section 343.04, Revised Code, contains this provision:

"* * * After approval of the detailed plans, specifications, and estimates of cost, the board shall adopt a resolution declaring that such improvement is necessary for the preservation and promotion of public health and welfare * * * and stating *what part of the costs of such improvement 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 improvement as provided by section 343.07 of the Revised Code. (Emphasis added)

"* * *"

Section 343.07, Revised Code, reads in part as follows:

"The board of county commissioners may issue bonds of the county for the purpose of paying a part *or the whole cost* of the acquisition, construction, or repair of any improvement provided for in sections 343.01 to 343.08, inclusive, of the Revised Code. * * *" (Emphasis added)

This paragraph further authorizes the issuance of revenue bonds payable solely from revenues, but further authorizes the issuance of general

obligation bonds in compliance with the Uniform Bond Act to pay that part of the cost of the improvement which is to be borne by the county at large.

You inquire whether the entire cost of the equipment *as well as general operating expense* may be paid from a levy passed under the authority of Section 5705.19, Revised Code, instead of a bond issue. Said Section 5705.19, insofar as pertinent, reads as follows:

“The taxing authority of any subdivision at any time prior to the fifteenth day of September, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes:

“* * *”

“(F) For the construction or acquisition of any specific permanent improvement or class of improvements which the taxing authority of said subdivision *may include in a single bond issue*;

“* * *”

The language of that section would plainly authorize the payment of the cost of the improvement in question by a tax levy instead of by issuing bonds, if that procedure is found practicable.

You will note that only such tax can be levied under this section for an “improvement” as could be covered by a “single bond issue.” This brings us to the question of incorporating operating expense in the tax voted pursuant to the section just quoted.

Plainly, operating costs of any public improvement do not form a part of the cost of the improvements. This is evident from the definition of “improvement” as shown in Section 5705.01, Revised Code, which reads as follows:

“(E) ‘Permanent improvement’ or ‘improvement’ means any property, asset, or improvement with an estimated life or usefulness of five years or more, including land and interests therein, and reconstructions, enlargements, and extensions thereof having an estimated life or usefulness of five years or more.”

Manifestly, operating costs do not have an “estimated life or usefulness of five years or more,” but are transitory. Furthermore, it is provided in Section 133.24, Revised Code:

“* * * No subdivision or other political taxing unit shall create or incur any indebtedness for current operating expenses, except as provided in sections 133.27 to 133.31, inclusive, of the Revised Code.”

Sections 133.27 to 133.31, Revised Code, here mentioned as exceptions, do not afford any provisions for borrowing for operating expense, with the possible exception of Section 133.30, which authorizes a subdivision to issue notes in anticipation of the collection of current taxes. Accordingly, your proposition to include operating expense with the cost of construction in a single tax levy can have no sanction in the law.

The above appears to me to dispose of your first and second questions.

Coming then to your third question as to the inclusion of municipal territory in the levy of taxes, I call your attention to the fact that since the entire cost of the installation of his system is to be paid *by the county at large*, any tax levied would of necessity fall alike on every taxable property in the county, including that within the bounds of every municipality, and the electors of such municipalities would, of course, have the right to vote for the levy of taxes under Section 5705.19, *supra*. And this is true even as to a municipality or parts thereof which are not within the district as established.

In this connection, it should be noted that if the district is to include any part of a municipality, it must be with the consent of the municipal council.

Your fourth and last inquiry raises a question as to the necessity of notice to be served by mail on the owner of every property to be served by such facilities. The provision of Section 343.04, *supra*, as to such notice, reads as follows:

“* * * and on or before the date of the second publication it shall send a notice of the time and place of such hearing, by mail, to the owner of every property to be served by such facilities.

* * *”

The notice to which this provision refers is a part of the procedure leading to the final formation of the district. The commissioners are required by the same section to hold a hearing at which objections to the plan or to the boundaries of the district may be presented, and the notice relates to that hearing.

If we bear in mind that the district proposed does not include the entire county and that the service is only to be to those within the district, and the further fact that *no garbage or refuse collection is contemplated*, it would appear that many objections might be urged to the plan.

As to your reference to the fact that no "assessments" are contemplated, it may be observed that the relevant statutes make no provisions for assessments.

Accordingly, I see no escape from the requirement of said Section 343.04, Revised Code, as to sending notice to "the owner of every property to be served by such facilities."

It is accordingly my opinion, and you are advised :

1. Under the provisions of Chapter 343, Revised Code, if the county commissioners so determine, the entire cost of the installation of a garbage and refuse disposal plant may be paid by the county at large, and the cost thereof may be provided by a tax authorized by the county under Section 5705.19, Revised Code.

2. The cost of operation of a garbage disposal plant constructed under authority of Chapter 343., Revised Code, could not be included in a single bond issue covering the cost of construction, and therefore could not be included in a tax levy voted pursuant to the provisions of Section 5705.19, Revised Code.

3. Where it has been determined by the county commissioners that the entire cost of a garbage and refuse disposal plant constructed under authority of Chapter 343., Revised Code, shall be borne by the county at large, all of the residents of the county are entitled to vote for a tax levy therefore, under the provisions of Section 5705.19, Revised Code; and the taxes levied pursuant thereto must be levied on all the taxable property of the county.

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Respectfully,

MARK McELROY

Attorney General