

4703.

APPROVAL, BONDS OF BARBERTON CITY SCHOOL DISTRICT, SUMMIT COUNTY, OHIO—\$27,194.00.

COLUMBUS, OHIO, October 24, 1932.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4704.

APPROVAL, BONDS OF CUYAHOGA FALLS CITY SCHOOL DISTRICT, SUMMIT COUNTY, OHIO—\$22,000.00.

COLUMBUS, OHIO, October 25, 1932.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4705.

COUNTY COMMISSIONERS — MAY APPOINT AGENT TO COLLECT WATER RENTS—AGENT ENTITLED TO REASONABLE COMPENSATION FOR SERVICES.

SYLLABUS:

1. *A board of county commissioners may lawfully appoint an agent for the collection of water rents due to the county, which grow out of the supplying or furnishing of water from a county water supply or county waterworks system.*

2. *Where a contract is entered into employing an agent for the collection of water rents incident to the operation of a county waterworks system, and no mention is made therein of an amount to be paid for the service thus rendered, it will be implied that the reasonable value of those services may be paid to the agent from the special county waterworks fund, unless it appears from the surrounding circumstances, and the acts of the parties, that the agent rendering the service did not intend to charge for it and the service is accepted with knowledge of that intention.*

COLUMBUS, OHIO, October 26, 1932.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads as follows:

“In December, 1921, the Commissioners of Montgomery County passed a resolution, copy of which is herewith enclosed, appointing

the Winters National Bank to act as the agents for the county to receive and collect all revenues due the county on account of the county's water supply system. There was no compensation stipulated with this resolution. On instruction of one of our examiners, the Winters National Bank paid depository interest upon the funds so collected.

The Winters National Bank is now presenting to the County Commissioners a bill for \$3300.00 for services in the collection of these water rents.

Question: May this bill, or any part of it, be legally paid by the county, either out of the general county fund or out of the special water fund?

It would seem from the enclosed resolution that the commissioners passed under date of December 31, 1930, favorably upon the bill and allowed \$2925.54; this amount, however, has not been paid to the Winters National Bank, and will not be paid until the legality of the claim is determined.

We are enclosing herewith all papers in our hands in connection with the matter."

By force of Section 6602-17 to 6603-33c of the General Code, boards of county commissioners are authorized to acquire, construct, maintain and operate a public water supply or waterworks system within their respective counties for any established sewer district. Where the distributing pipes for any such waterworks system, or the source of supply, are owned by the county or district the commissioners are authorized "to fix reasonable rates to be charged for water." See Section 6602-17, General Code.

The authority conferred on boards of county commissioners to maintain and operate waterworks systems and to fix reasonable rates to be charged for water clearly includes, in my opinion, the power to collect the "water rents" or charges which accrue from the sale or furnishing of water to customers of the said water supply or waterworks system.

The method of making these collections is left by the statute to the discretion of the commissioners. Obviously, these collections, in the larger counties at least, must necessarily be made by employes or agents of the county commissioners or by some agency designated by the commissioners and the power to procure or appoint an agent or agents for that purpose included the power to pay for the services rendered as it would not be supposed that the services could be procured for nothing.

When these water rents are collected they should be paid into the county treasury and there kept as a separate fund. Section 6602-17, General Code, provides with reference thereto as follows:

"* * * All money collected as rents or for water works purposes from any district shall be paid to the county treasurer and kept in a separate and distinct fund to the credit of such district. Such fund shall be applied first to the conduct, management and operation of such water supply or water works system, and any surplus thereafter remaining shall be applied to the enlargement or extension thereof, to the payment of interest or principal of any loan; indebtedness or liability incurred in connection therewith, or for the creation of a sinking fund for the liquidation of any debt created in connection

therewith; but in no case shall money so collected be expended otherwise than for the use and benefit of such district."

It appears from the journal of the commissioners of Montgomery County, under date of December 21, 1921, that the commissioners of said county by unanimous vote passed a resolution on said date appointing the Winters National Bank to receive and collect all revenues due to the county of Montgomery on account of its county water supply system. The said resolution reads as follows:

"BE IT FURTHER RESOLVED, that the Winters National Bank is herewith appointed to act as the agents for the County to receive and collect all revenues due the County on account of said Water Supply System. Said collections are to be made in accordance with the statements to be prepared and mailed by the County Sanitary Engineer.

BE IT FURTHER RESOLVED, that all money collected as rents or for Waterworks purposes for said district shall be paid to the County Treasurer and kept in a separate and distinct fund to the credit, management and operation of such water supply or waterworks system, and any surplus thereafter remaining shall be applied to the enlargement or extension thereof, to the payment of interest or principal of any loan, indebtedness or liability incurred in connection therewith, or for the creation of a sinking fund for the liquidation of any debt created in connection therewith; but in no case shall money so collected be expended otherwise than for the use and benefit of such district."

It will be observed from the terms of the foregoing resolution, that the Winters National Bank was duly authorized to act as the agent for the county to receive and collect revenues due the county on account of its water supply system, but no provision was made therein for the payment to the Winters National Bank for the services due to be rendered.

The bank having satisfactorily rendered the services contemplated by the resolution of December 21, 1921, from that time until November 12, 1930, presented to the commissioners a bill for what it considered the reasonable value of its services, in the sum of \$3,300.00. The commissioners allowed \$2,925.54 by a proper resolution spread on their minutes under date of December 31, 1930, and the prosecuting attorney of Montgomery County approved the action so taken. The copy of this resolution is as follows:

"RESOLUTION APPROVING THE PAYMENT OF THE WINTERS NATIONAL BANK AND TRUST COMPANY FOR SERVICES RENDERED IN COLLECTING WATER RENTS.

WHEREAS, On the 21st day of December, 1921, this Board of County Commissioners did employ The Winters National Bank and Trust Company to collect water rents from various consumers of Montgomery County, and

"WHEREAS, from said date until July 28, 1930, said Winters National Bank and Trust Company, did collect said water rents and render services necessary to be performed under said employment and have presented to the Board of County Commissioners a state-

ment for their services in the sum of Three Thousand, Three Hundred (\$3,300.00) Dollars, approved by the Prosecuting Attorney of Montgomery County, Ohio, and

WHEREAS, This Board finds that said service has been performed and that said Winters National Bank and Trust Company is entitled to compensation therefor in the sum of Twenty-nine Hundred, Twenty-five and 54/100 (\$2,925.54) Dollars and recognize the same as an obligation of Montgomery County; Now, Therefore

BE IT RESOLVED, That said statement for services be and hereby is approved in the sum of \$2,925.54 and that the Auditor be authorized to issue a voucher for said amount payable from the General County Fund.

Mr. moved the adoption of the foregoing resolution. It was seconded by Mr. and carried by the following vote: Mr., aye; Mr., aye; Mr., aye."

The questions presented are whether or not the action of the commissioners in allowing the claim of the bank was legal and whether or not payment may now lawfully be made to the bank of the sum of \$2,925.54 as approved by the commissioners.

As stated above, the method of collecting water rents accruing to a county in the operation of a county waterworks system is a matter which is within the discretion of the commissioners. Whether or not the commissioners of Montgomery County, in their discretion, selected the best and cheapest method of making these collections, is a matter with which we have no concern. The method selected was, in my opinion, clearly within the power of the commissioners.

It is a general rule of law, as stated in Ohio Jurisprudence, Volume 9, page 478, that:

"Where work is done upon request, or under an express contract, and there is no agreement as to the amount of compensation, a promise to pay the reasonable value of such services is implied."

See Page on Contracts, Section 1442. I have never known this rule to be limited to contracts between private parties.

For reasons of public policy, the case of a public officer is made an exception to the general rule that a request for the rendition of services implies a contract to pay therefor. (*Clark vs. Lucas County*, 58 O. S., 107.) This exception has not been extended to include public employes. (Page on Contracts, Section 1443.)

However, if one renders services for another without any intention at the time of charging therefor, and the services are accepted with knowledge of that intention, the person rendering the services cannot later change his mind and recover the reasonable value as upon an implied contract even though the services were rendered at the request of the second party. (Page on Contracts, Section 1446.)

The principle stated in the preceding paragraph is not limited to cases where there is an express agreement that no compensation shall be made, but extends to cases where, from the acts of the parties and the surrounding circumstances, it is apparent that the party by whom the services were rendered did not intend to charge for those services, and the party for whom the services were rendered accepted them in reliance upon such intention.

So far as appears, no other or further agreement existed between the Winters National Bank and Montgomery County with reference to the collection of water rents than what appears in the resolution of the county commissioners under date of December 21, 1921. No promise was made therein for the payment of compensation. Whether or not the terms of this agreement may be so construed that payment for the services contracted for is implied, depends, to a great extent on the intention of the parties at the time the agreement was made, which intention is to be gathered from the terms of the resolution, the surrounding circumstances and the conduct of the parties at that time, and thereafter.

I have nothing whatever before me to indicate what the intention of the parties with reference to this matter might have been other than the circumstance that no claim was presented by the bank until nine years after the rendition of the services started and not until the same was discontinued. That circumstance of course is of some significance but is not by any means conclusive.

I have no information whatever that would justify me in saying the parties never intended that this service should be paid for. No facts are presented that indicate anything other than that the parties had always expected the services of the bank to be compensated at their reasonable value. On the other hand, no facts are presented that indicate that the intention of the parties at the time was that these services should be paid for. I have nothing before me upon which to base an opinion one way or the other on this question. The fact that a claim for these services was eventually presented and allowed by the commissioners who are in a better position to judge of the matter, than I am, is some evidence at least, that it was the intention of the parties to reimburse the bank for the services rendered by it in pursuance of the agreement of December 21, 1921. The commissioners probably had before them many facts that I do not have.

Of course, if there is no legal basis for this claim, its mere allowance by the commissioners is not binding on anyone. *Jones vs. Commissioners of Lucas County*, 57 O. S., 189; *Higgins vs. Commissioners of Logan County*, 62 O. S., 621. If the claim has a legal basis the amount of it is for the commissioners to fix, and having fixed and allowed the claim, it is binding and conclusive on both the claimant and the county until it is impeached for fraud, collusion or manifest mistake or vacated by appeal on the part of the claimant in accordance with Section 2461 of the General Code. Thereafter, it is the duty of the county auditor to draw his warrant for the amount allowed. The auditor's duty in this respect is purely ministerial. *Hoel vs. Goubeaux, Auditor*, 110 O. S., 287.

Under the circumstances the commissioners having allowed this claim and no facts appearing that would justify me in saying that the intention of the parties in making this arrangement for the collection of water rents was anything other than what the commissioners must have considered it to be in making this allowance, I am of the opinion that the only way the payment of the claim may now be prevented, if at all, is by a proper action in a court of competent jurisdiction where all the facts and surrounding circumstances would be before the court so that the court might judge of just what the intention of the parties was at the time of making the agreement. Unless the payment of this claim is enjoined, I am of the opinion that it is the duty of the Auditor of Montgomery County to draw his warrant in favor of the Winters National Bank in payment of the claim as allowed by the commissioners.

It will be observed that the resolution of the commissioners directs that this money should be paid from the general county fund. While I do not wish

to be understood as saying that claims of this kind may not be paid from the general county fund under certain circumstances, I am of the opinion that such claims should be paid from the special waterworks fund of the county if there are sufficient moneys in that fund to meet the claim, as the claim is for something that is an incidental expense in the operation of the county waterworks system.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4706.

APPROVAL, BONDS OF CITY OF AKRON, SUMMIT COUNTY, OHIO—
\$85,000.00.

COLUMBUS, OHIO, October 26, 1932.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

4707.

APPROVAL, LEASE TO STATE RESERVOIR LANDS AT BUCKEYE
LAKE TO BE USED FOR BOATHOUSE, DOCKLANDING AND
WALKWAY PURPOSES.

COLUMBUS, OHIO, October 26, 1932.

HON. EARL H. HANEFELD, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination a certain reservoir land lease to Harry G. Green, of Thornville, Ohio, for property at Buckeye Lake, valued at \$150.00, and to be used for boathouse, docklanding and walkway purposes.

Finding said lease to be executed in proper legal form, I have endorsed my signature upon same and upon the duplicate and triplicate copies thereof, all of which are returned herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4708.

APPROVAL, BONDS OF CITY OF YOUNGSTOWN, MAHONING
COUNTY, OHIO—\$65,000.00.

COLUMBUS, OHIO, October 27, 1932.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.