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1. COUNTY COMMISSIONERS—SEWER DISTRICT ESTABLISHED—BOARD HAS AUTHORITY TO CONTRACT WITH CITY ADJACENT TO SEWER DISTRICT—FACILITIES NECESSARY TO OBTAIN WATER SUPPLY—COST MAY BE PAID OUT OF COUNTY GENERAL FUND—SECTIONS 6602-1 et seq., 6602-32a, 6602-32b, G. C.
2. COST TO OBTAIN WATER SUPPLY MAY BE ASSESSED UPON PROPERTY IN DISTRICT IN ACCORDANCE WITH BENEFITS CONFERRED—UPON COLLECTION OF ASSESSMENTS, GENERAL FUND MAY BE REIMBURSED FOR AMOUNT ADVANCED—SECTION 6602-24 ET SEQ., G. C.

SYLLABUS:

1. A board of county commissioners, having established a sewer district, as authorized by Section 6602-1 et seq. of the General Code, has authority under Sections 6602-32a and Section 6602-32b, General Code, to contract with a city adjacent to such sewer district for such facilities as are deemed necessary to obtain a water supply for such district and its inhabitants, and may pay the cost of the same out of the general fund of such county.

2. Under the provisions of Section 6602-24 et seq., General Code, the cost to the county of obtaining such water supply may be assessed upon the property in such district in accordance with the benefits conferred, and upon collection of such assessments, the general fund may be reimbursed for the amount advanced.

Columbus, Ohio, November 1, 1951

Hon. Harry C. Johnson, Prosecuting Attorney
Guernsey County, Cambridge, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“The Board of County Commissioners of Guernsey County, Ohio, has asked me to obtain your opinion in the following matter:

“The political subdivision of Browns Heights, which is adjacent to the city of Cambridge, is desirous of having a water main extended along the streets of said subdivision. The council of the city of Cambridge is not willing to extend this water line unless there is a contribution in the way of material to the extent of \$5000.00. The total estimate of the project would be approximately \$12,000.00. The county commissioners are ready, able and

willing, and have the money in the general fund and would not have to resort to any bond issue or any special assessment, to pay the \$5,000.00 to get this water main extended into this subdivision.

"The Browns Heights Subdivision was laid out many years ago and most of the lots have been built on, and is not owned by any one group of individuals.

"We understand the provisions of law relative to the creating of a sanitary district but the commissioners feel that this is such a small project that it would not be advisable to create such a district.

"No. 1. Is it legal for the county commissioners to pay said money on said project?

"No. 2. May the county auditor and the county treasurer levy an assessment against said property owners upon the special consent given by each individual property owner by signing a contract to pay his proportionate share of the \$5,000.00 over a period of years together with his regular taxes?"

1. Taking up your first question as to possible agreement with the City of Cambridge, I call your attention to two laws which were enacted on the same day. The first is the law relating to county sewer districts, and comprises Sections 6602-1 to 6602-14, inclusive, General Code. Section 6602-1 reads in part as follows:

"For the purpose of preserving and promoting the public health and welfare, the boards of county commissioners of the several counties of this state, may, by resolution, lay out, establish and maintain one or more sewer districts within their respective counties, outside of incorporated municipalities, and may cause to be made by a competent sanitary engineer such surveys as may be necessary for the determination of the proper boundaries of such district. * * *"

The above law is referred to only because it forms the basis for action under the second set of statutes relating directly to a county water supply. These are Sections 6602-17 to 6602-33c, General Code. Section 6602-17 reads in part:

"For the purpose of preserving and promoting the public health and welfare, and providing fire protection, the boards of county commissioners of the several counties of this state may by resolution, acquire, construct, maintain and operate any public water supply or water works system within their respective counties, *for any established sewer district.* * * * By contract with any

municipal corporation, or any person, firm or private corporation furnishing a public water supply within or without their county, they may provide such supply of water to such sewer district or districts from the water works of such municipality, person, firm or private corporation. * * *” (Emphasis added.)

It will be noted that the procedure above indicated for providing a water supply for territory outside municipalities, is limited to the territory of an “established sewer district.” Accordingly the establishment of a sewer district appears to be a condition precedent to the establishment of a county water supply.

The steps necessary for the establishing of a sewer district are comparatively simple, and ordinarily are altogether within the control of the commissioners; and it does not appear that the commissioners, having in view only a provision for water supply, need go any further in the matter of sewerage than the establishment of the district.

Section 6602-32a, General Code, appears to afford authority to make the kind of agreement with the City of Cambridge outlined in your letter. That section reads as follows:

“At any time after the formation of any sewer district the board of county commissioners may enter into a contract upon such terms and conditions and for such period of time as may be mutually agreed upon with any city or village or any other county to prepare necessary plans and estimates of cost and to construct any water supply improvement or improvements to be used jointly by the contracting parties, and to provide for the furnishing of water and for the joint use by such contracting parties of such water supply improvement or the joint use of any suitable existing water supply or water mains belonging to either of such parties.”

Section 6602-32b, General Code, further elaborates the provisions which may be embodied in such contract. Your attention is called to the requirement that such contract must have the approval of the Ohio state department of health.

As to the use of money in the general fund of the county for this purpose, we may note the provision of Section 5625-5, General Code, relative to the uses to which that fund may be put. It reads in part:

“The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expenses of

any kind may be made, and the taxing authority of a subdivision may include in such levy the amounts required for the carrying into effect of *any of the general or special powers granted by law to such subdivision, including the acquisition or construction of permanent improvements * * *.*" (Emphasis added.)

Accordingly, I have no hesitancy in holding that the cost to the county of procuring the necessary facilities for the proposed water service may be paid from the general fund. Furthermore, I can see no reason why that fund should not be reimbursed by proceeds of assessments levied on benefited property. Section 6602-27, General Code, provides:

"* * * All assessments when collected, together with all interest thereon, shall be applied respectively to the purposes for which such assessments have been made and to no other purpose."

2. As to assessing the cost of the improvement payable by the county, upon benefited property, you will note the provision of Section 6602-24, General Code, as to such assessment. That section reads as follows:

"In the construction of a main, branch or reinforcing pipe line or pipe lines and water supply, the property immediately abutting upon such main, branch or reinforcing pipe line or pipe lines may be assessed for local service, and the balance of the cost and expense of such improvement to be paid by assessments shall be assessed, as a district assessment, upon all the property, including the abutting property, within said assessment district found to be benefited in accordance with the special benefits conferred; less such part of said cost as shall be paid by the county at large, and state land so benefited shall bear its proportion of assessed costs, according to special benefit. In the construction of a local pipe line the entire cost and expense of construction and maintenance may be assessed, upon the benefited property abutting thereon, according to special benefits conferred, and state land so benefited shall bear its proportion of assessed costs, according to special benefits."

The sections which immediately follow, provide the technique of the procedure leading to the assessments. Section 6602-22, General Code, provides for a waiver and consent which, if signed by all of the property owners of lots and lands to be annexed, will dispense with much of the formal procedure, and permit the assessment to be levied without delay. Such waiver would be effective both as to the amount of the assessment and as to any right of appeal therefrom.

The assessment must be made by the county commissioners who constitute the "taxing authority" of the county. Section 5625-1, General Code. The county auditor and county treasurer have no authority in the matter.

It is accordingly my opinion :

1. A board of county commissioners, having established a sewer district, as authorized by Section 6602-1 et seq., of the General Code, has authority under Section 6602-32a and Section 6602-32b, General Code, to contract with a city adjacent to such sewer district for such facilities as are deemed necessary to obtain a water supply for such district and its inhabitants, and may pay the cost of the same out of the general fund of such county.

2. Under the provisions of Section 6602-24 et seq., General Code, the cost to the county of obtaining such water supply may be assessed upon the property in such district in accordance with the benefits conferred, and upon collection of such assessments, the general fund may be reimbursed for the amount advanced.

Respectfully,

C. WILLIAM O'NEILL
Attorney General