

ORIGINAL

IN THE SUPREME COURT OF OHIO

NORTHEAST OHIO REGIONAL SEWER DISTRICT,

Appellant,

v.

BATH TOWNSHIP, OHIO, et al.,

Appellees.

CASE NO. 2013-1770

Appeal from Court of Appeals for the Eighth Appellate District Case No. CA-12-098728 (Consolidated with Case Nos. CA-12-098729 & CA-12-098739)

Cuyahoga County Court of Common Pleas Case No. CV-10-714945

APPENDIX TO MERIT BRIEF OF APPELLEES CITY OF BEACHWOOD; CITY OF BEDFORD HEIGHTS; CITY OF BRECKSVILLE; CITY OF INDEPENDENCE; CITY OF LYNDBURST; CITY OF STRONGSVILLE; VILLAGE OF GLENWILLOW; AND VILLAGE OF OAKWOOD

Mark I. Wallach (0010949)  
(COUNSEL OF RECORD)  
Thacker Martinsek LPA  
2330 One Cleveland Center  
1375 E. 9<sup>th</sup> Street  
Cleveland, Ohio 44114  
Tel: 216-456-3848  
Fax: 216-456-3850  
Email: mwallach@tmlpa.com

John B. Nalbandian (0073033)  
(COUNSEL OF RECORD)  
W. Stuart Dornette (0002955)  
Taft Stettinius & Hollister LLP  
425 Walnut Street, Suite 1800  
Cincinnati, Ohio 45202  
Tel: 513-381-2838  
Fax: 513-381-0205  
Email: nalbandian@taftlaw.com  
dornette@taftlaw.com

James F. Lang (0059668)  
Matthew J. Kucharson (0082388)  
Molly A. Drake (0083556)  
Calfee, Halter & Griswold LLP  
1405 East Sixth Street  
Cleveland, Ohio 44114  
Tel: 216-622-8200  
Fax: 216-241-0816  
Email: jlang@calfee.com  
mkucharson@calfee.com  
mdrake@calfee.com

Stephen M. O'Bryan (0009512)  
Gregory J. O'Brien (0063441)  
Michael J. Zbiegien, Jr. (0078352)  
Taft Stettinius & Hollister LLP  
200 Public Square, Suite 3500  
Cleveland, Ohio 44114  
Tel: 216-241-2838  
Fax: 216-241-3707  
Email: sobryan@taftlaw.com  
gobrien@taftlaw.com  
mzbiegien@taftlaw.com

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JUL 01 2014  
CLERK OF COURT  
SUPREME COURT OF OHIO

Marlene Sundheimer (0007150)  
Director of Law  
Northeast Ohio Regional Sewer District  
3900 Euclid Avenue  
Cleveland, Ohio 44115  
Tel: 216-881-6600  
Email: [sundheimer@neorsd.org](mailto:sundheimer@neorsd.org)

*Attorneys for Appellant Northeast Ohio  
Regional Sewer District*

*Attorneys for Appellees City of Beachwood,  
City of Bedford Heights, Village of  
Glenwillow, City of Independence, City of  
Lyndhurst, Village of Oakwood and City of  
Strongsville*

David J. Matty (0012335)  
Shana A. Samson (0072871)  
Justin Whelan (0088085)  
Matty, Henrikson & Greve  
55 Public Square, Suite 1775  
Cleveland, Ohio 44113  
Tel: 216-621-6570  
Fax: 216-621-1127  
Email: [dmatty@rmmglaw.com](mailto:dmatty@rmmglaw.com)  
[ssamson@rmmglaw.com](mailto:ssamson@rmmglaw.com)  
[jwhelan@rmmglaw.com](mailto:jwhelan@rmmglaw.com)

*Attorneys for Appellee City of Brecksville*

Sheldon Berns (0000140)  
(COUNSEL OF RECORD)  
Paul Greenberger (0030736)  
Benjamin J. Ockner (0034404)  
Jordan Berns (0047404)  
Timothy J. Duff (0046764)  
Gary F. Werner (0070591)  
Berns, Ockner & Greenberger, LLC  
3733 Park East Drive, Suite 200  
Beachwood, Ohio 44122  
Tel: 216-831-8838  
Fax: 216-464-4489  
[sberns@bernscockner.com](mailto:sberns@bernscockner.com)  
[pgreenberger@bernssockner.com](mailto:pgreenberger@bernssockner.com)  
[bockner@bernssockner.com](mailto:bockner@bernssockner.com)  
[jberns@bernssockner.com](mailto:jberns@bernssockner.com)  
[tduff@bernssockner.com](mailto:tduff@bernssockner.com)  
[gwerner@bernssockner.com](mailto:gwerner@bernssockner.com)

*Attorneys for Appellee Property Owners: The  
Ohio Council of Retail Merchants; The*

*Greater Cleveland Association of Building Owners and Managers; The Cleveland Automobile Dealers Association; CADA Properties, LLC; The Northern Ohio Chapter of NAIOP, the Association for Commercial Real Estate; The Northeast Ohio Apartment Association; Snowville Service Associates LLC; Boardwalk Partners, LLC; Creekview Commons, LLC; Fargo Warehouse LLC; Highlands Business Park, LLC; JES Development Ltd.; Lakepoint Office Park, LLC; Landerbrook Point, LLC; Newport Square, Ltd.; Park East Office Park LLC; Pavilion Properties, LLC; and WGG Development, Ltd.*

## CONTENTS OF THE APPENDIX

	<u>Page</u>
<i>Ohio Water Pollution Control Bd. v. City of Cleveland</i> , Cuyahoga C.P. No. 886,594 (Apr. 4, 1972).....	1
R.C. 729.46.....	29
R.C. 735.02.....	30
R.C. 6101.04.....	31
R.C. 6105.12.....	33
R.C. 6117.01.....	35
R.C. 6119.17.....	39
R.C. 6119.18.....	40
R.C. 6119.42.....	42
R.C. 6119.43.....	43
R.C. 6119.46.....	45
R.C. 6119.47.....	47
R.C. 6119.48.....	48
R.C. 6119.49.....	49
R.C. 6119.58.....	51
Ohio Constitution, Article XVIII, Section 4.....	53

2

STATE OF OHIO )  
COUNTY OF CUYAHOGA ) SS

IN THE COURT OF COMMON PLEAS  
CASE NO. 886,594  
(Consolidated)

PROCESSED BY,  
C.S.O.

OHIO WATER POLLUTION CONTROL BOARD )

Plaintiff )

vs. )

CITY OF CLEVELAND )

Defendant )

vs. )

BEDFORD HEIGHTS, ET AL )

Third Party Defendants )

\*\*\*\*\* )

CITY OF BEACHWOOD, ET AL )

Plaintiffs )

vs. )

CITY OF CLEVELAND, ET AL )

Defendants )

FILED  
APR 21 1972  
EMIL J. MAGNY,  
CLERK OF COURTS  
CUYAHOGA COUNTY, OHIO



MEMORANDUM OF DECISION  
LRJ

CASE NO. 892,711



The within action is one in which the case of the Ohio Water Pollution Control Board vs. The City of Cleveland, Ohio, Case No. 886,594, has been consolidated with Case No. 892,711, City of Beachwood, et al vs. The City of Cleveland. The parties herein are the Water Pollution Control Board of Ohio, The City of Cleveland, The Board of County Commissioners of Cuyahoga County, Ohio, City of Bedford Heights, Village of Bratenah!, Village of Brooklyn Heights, City of Cleveland Heights, City of East Cleveland, Village of Highland Heights, City of Lakewood, City of Lyndhurst, City of Maple Heights, City of Mayfield Heights, Village of Mayfield, City of Middleburg Heights, Village of North Randall, Village of Oakwood, City of Parma Heights, City of Richmond Heights, City of Seven Hills, City of South Euclid, City of University Heights, City of Warrensville Heights, Village of Woodmere, City of Beachwood, City of Brooklyn, City of Brook Park, City of Euclid, City of Garfield Heights.

4-5-72  
Katherine M. ...  
Clerk  
Page 1 of 78

Village of Gates Hills, Village of Linndale, Village of Newburgh Heights, City of Parma, City of Shaker Heights, Village of Cuyahoga Heights, Trustees of River Edge Township, and Trustees of Warrensville Township.

Every political subdivision in Cuyahoga County, Ohio whose sewage is treated and disposed of by the City of Cleveland is a party herein and has either appeared herein, or filed a pleading or is in default thereof. Those political subdivisions not parties hereto and presently served or capable of being served by sewers leading to the three waste water treatment plants, will be included in the regional district herein provided for.

Leave was also granted to the Environmental Protection Agency of the United States and the Sierra Club to appear, file a Brief and present oral arguments herein as amicus curiae.

The relief desired and prayed for by the parties hereto is the entry of such judgments and decrees as will terminate the controversies that have existed between and among parties hereto over a period of years in connection with the treatment and disposal of sewage. It is expected that the relief ordered herein will help abate the polluted and poisonous state of the waters of Lake Erie and those tributary to it.

The case of Ohio Water Pollution Control Board vs. The City of Cleveland, being Case No. 886,594, was filed in this Court on September 3, 1970. It was the claim of the Plaintiff that The City of Cleveland was inadequately and improperly treating and disposing of sewage; that this material contributed to the polluted condition of the state waters so as to endanger the public health and safety; that it had issued orders directing Cleveland to remedy the matters complained of; that Cleveland neither obeyed the orders nor appealed them and advised the Water Pollution Control Board it had decided to disregard the Board's orders; the prayer of the Complaint was one asking the Court to enjoin the City of Cleveland from violating orders of the Ohio Water Pollution Control Board; the Board further asked that the Court, "grant such other relief as Plaintiff may be entitled to in law or equity".

4-4-73  
Honor. John J. ...  
Baltes  
Page 2 of 73

Subsequent to the issuance of temporary restraining orders, the parties agreed to the issuance of a preliminary injunction on September 17, 1970 and December 2, 1970, which included the following: "It is further ordered that the hearing set for today with reference to the preliminary injunctive orders is hereby continued by consent of all parties for hearing before Judge George J. McManagle on December 1, 1971 at 9:30 A.M."

On October 16, 1970, the City of Cleveland filed its Answer in Case No. 886,594.

On March 8, 1971, twenty-one of the political subdivisions outside of Cleveland whose sewage emptied into and was treated and disposed of by the Cleveland sewage system, filed Case No. 892,711 herein, captioned, City of Beachwood, et al vs. The City of Cleveland, claiming that Cleveland was making unlawful charges against the political subdivisions, or their residents, outside of the City of Cleveland, for sewage treatment and disposal and those Plaintiffs asked that this Court, grant some specific relief and also prayed, "for such other and further relief that the Court may deem proper in law or in equity". The City of Cleveland filed an Answer in this action and also asked the Court to mandatorily enjoin three of the suburban municipalities from withholding payment of charges made against them for sewage treatment and disposal, claiming that without these charges, Cleveland did not have the funds to operate its sewage treatment and disposal facilities; that it was unable to purchase needed chemicals and it did not even have funds to purchase the paper upon which to prepare required reports for the State of Ohio. In the Answer in this action, the City of Cleveland included the following as part of its prayer, "that the costs of this action be assessed against the Plaintiffs and that the Defendants receive any other and further relief which this Court may deem proper in law or in equity".

On December 1, 1971, subsequent to leave therefor being granted by the Court, The City of Cleveland filed in Case No. 886,594, a Third Party Complaint in which it named 35 defendants. It claimed therein that because of the Preliminary Injunction that, neither additional pollution has been discharged resulting from new construction, nor have additional connections or extensions

5-4-77  
Clerk of  
Circuit  
Page 3 of 7.

sions been made within the City of Cleveland which increased the polluting properties of the effluent from its treatment and disposal plants, but that the continued development without the City of Cleveland and additional pollution discharged from new construction without the City of Cleveland, together with extensions and connections made by the Third Party Defendants into the sewage system, which flows into the Cleveland system, have increased the polluting properties of the effluent and it prayed that the Court make certain requested orders with reference to rates for sewage treatment billed as water; that the Court restrain and enjoin the Third Party Defendants from allowing new or additional pollution to be discharged into the waters of the state resulting from either new, enlarged, or converted construction and operations or allowing new or additional connections or new or additional extensions of any sewage system where the waste waters went into the Cleveland sewage disposal system. The Third Party Complaint further prayed, "that the Court grant such other and further relief as the City of Cleveland may be entitled in law and equity".

Answers were filed by the Third Party Defendants.

A counterclaim was also filed by some Third Party Defendants, asking that a money judgment in the amount of \$100,000,000.00 be entered against the City of Cleveland. The Court, on its own motion, severed this counterclaim and it is being proceeded on in Case No. 886,594A.

On February 1, 1972, Case No. 886,594 and Case No. 892,711 were consolidated into this one action by agreement of all parties.

An order was entered banning the suburbs and the City from making new sewer connections, etc., until further order of Court.

On February 1, 1972, all of the parties to the within consolidated action joined in the following stipulation:

"For the purpose of obtaining a speedy resolution of the subject action, the parties hereto stipulate, without prejudice to their rights in any other proceeding or action, that sufficient evidence has been received in the subject action upon which the Court should grant relief in the nature of that prayed for by the parties herein and/or in accordance with the Court's plenary equity powers."

4-4-72  
Entered and filed  
at Cleveland, Ohio  
Page 4 of 7

The polluted state of Lake Erie and the waters tributary to it has been clearly established. Actually, it is a fact that is so open and notorious that any Court would be warranted in taking judicial notice of it.

The increase in the amount of waste water in the Metropolitan Cleveland area resulting from the increase in population and the expansion of industry in the many political subdivisions outside of the City of Cleveland without the existence of a single governmental agency with authority to control, plan, finance, establish rates, maintain, operate, adopt, establish and enforce rules and regulations for the purpose of uniform construction procedure, materials, inspection and controls of discharge into the system, has caused recurring litigation, has caused, in part, the necessity for the issuance of injunctive orders which have had the effect of practically eliminating new construction in Cleveland and most of Cuyahoga County, Ohio, has contributed to the polluted state of Lake Erie and the waters tributary to it and has endangered the public health and safety.

The City of Cleveland and the suburbs, whose sewage is treated and disposed of by Cleveland, have for some time recognized the above stated necessity for the existence of a single governmental agency with authority to plan, control, operate, etc., the sewage treatment facilities, have, in substance, acknowledged such necessity, but have been unable to agree upon all features of such an agency.

The Court finds that the existence of this polluted state of the waters has been caused in part by the lack of a single governmental agency in Metropolitan Cleveland with authority to plan, manage, finance and control sewage collection, treatment and disposal on an area-wide basis and that such polluted state and lack of a proper agency imperils the public health and safety.

The establishment of a metropolitan sewer district under the provisions of Chapter 6119 of the Ohio Revised Code is necessary and the establishment of said district will be conducive to the public health, safety, convenience and welfare.

4-1-77  
Proceedings of  
Cuyahoga  
Page 10 of 17

On March 23, 1971, the Supreme Court of the United States, in the case of Ohio v. Wyandotte Chemicals Corp., et al., 401 U.S. 493, also reported in 57 Ohio Opinions 2d 351, held that, while it had jurisdiction to entertain an action filed by Ohio against foreign states and corporations to abate an alleged nuisance resulting from the contamination and pollution of Lake Erie, that it declined to do so where the issues were bottomed principally on local law, there were governmental agencies involved in the problem, and the case presented complex, novel and technical factual questions for whose resolution the Supreme Court claimed no expertise. It stated that, while it declined to grant Ohio's Motion for Leave to file its action, that should it do so, that the legal principles it would be called upon to decide in an action whose principal purpose was to abate the nuisance of pollution would be the same legal principals that the courts of Ohio would be called upon to apply, that is, the common law of nuisance. It stated that it was further aware, "that many competent, adjudicatory and conciliatory bodies are actively grappling with on a more practical basis."

57 O.O. 2d, page 355:

"The courts of Ohio, under modern principles of the scope of the subject matter and in personam jurisdiction, . . . would decide it under the same common law of nuisance upon which our determination would have to rest.

page 356:

In view of all this, granting Ohio's motion for leave to file would, in effect, commit this Court's resources to the task of trying to settle a small piece of a much larger problem that many competent, adjudicatory and conciliatory bodies are actively grappling with on a more practical basis."

This Court feels that it has been mandated by the Supreme Court of the United States to settle the phase of the Lake Erie pollution problem which is the subject of this action, on as practical a basis as is possible.

Counsel, of course, are aware of the broad equity powers of the Court, particularly when the public health and safety is imperiled.

The following words of the Supreme Court of the United States in Brown v. Topinka, et al., 349 US 291, 99 LEd 1083, 75 S. Ct 753, are pertinent to the authority-obligation of this Court in this action.

4-4-73  
Memorandum of  
Citation  
Page 6 of 13

page 300: "In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs."

Since the parties, although conceding the necessity for the establishment of a proper agency, have been unable to conclude an agreement with reference to its establishment, the Court, in accordance with the prayer for relief of the parties, and in order to help abate a poisonous nuisance which imperils the public health and safety, has become obligated to fashion such orders as will bring about the establishment of a single governmental agency with authority to plan, manage, finance and control sewage collection, treatment and disposal on an area-wide basis in accordance with provisions of Statutes of Ohio.

The Court herein, on December 20, 1971, ordered the City of Cleveland and the political subdivisions whose sewage was treated and disposed of by the Cleveland sewage treatment and disposal system, to prepare and file in Court a plan for a metropolitan sewer system agreeable to each side. The Court further advised the parties that if the parties were unable to agree upon a Metropolitan Sewer System that the Court would be obliged to fashion such orders as would bring about the establishment of such a system. A copy of the plan filed by Cleveland, and satisfactory to it, is attached hereto and marked Exhibit 1. A copy of the plan filed by the suburbs, and agreeable also to them, is also attached and it is marked Exhibit 2. A copy of the plan filed by the Board of County Commissioners, the Trustees of River Edge Township and the Trustees of Watrensville Township is contained in the Answer of the Board of County Commissioners which is attached hereto and marked Exhibit 3. When it became obvious to the Court that there were certain material phases of a plan for a Metropolitan Sewer System that could not be agreed to by the parties, further testimony was taken as to the type of an agency that should be the subject of the Court's Order.

In addition to evidence presented by the parties hereto, a recommendation from Governor John J. Gilligan was presented in Court by his personal representative and a copy of a resolution adopted by the Ohio Water Pollution Control Board was presented by the Attorney General of Ohio. These are

6-4-72  
Accepted by  
Clerk  
Page 1 of 13

Included in the record herein and copies are attached hereto and marked as Exhibits 3 and 4. The Court also received testimony from the following persons: Mr. Dale Bryson, Deputy Regional Enforcement Director, The Environmental Protective Agency of the United States; Mr. Carl S. Bohm, Director of the Regional Planning Commissioners; Mr. George Watkins, Three Rivers Watershed District; Mr. Seth Taft of the Cuyahoga County Board of Commissioners; Mr. Eugene D. Squires, President of the Builders Association of Greater Cleveland; Mr. George C. Fenker, Chairman of Regional Sewer Committee of Municipal Engineers; Mr. Ron Courtney, President, Cuyahoga County Municipal Engineers Association; Mr. Estel E. Sparlin, Director, Citizens League of Cleveland; Mr. Charles Pinzone, Executive Secretary, Cleveland Building Trades Council of the Cleveland AFL-CIO Federation of Labor; Mrs. Janet Hutchison, Chairman of the Pollution Control Committee of the League of Women Voters of Cuyahoga County, Ohio; Mrs. Evelyn Stebbins of the Citizens for Clean Air & Water.

There also were recommendations from the American Society of Civil Engineers, The Lake Erie Watershed Conservation Foundation and the Regional Plan Commission, which are not a part of the record. Copies of these however are attached hereto and marked Exhibits 5, 6, and 7.

The determination of the issues that are in dispute and the fashioning of the orders that are necessary to give effect to the decision of the Court, calls for the exercise of the traditional equitable powers of this Court.

Upon due consideration of the pleadings, evidence, stipulations and admissions of the parties, it is the decision of the Court that proceedings must be taken for the immediate establishment of a Cleveland regional sewer district under the provisions of Chapter 6119, as amended, of the Ohio Revised Code; that its name, location, necessity, purpose and plan for the operation of the district, territory, structure of its governing body, its plan for its financing and particular conditions and provisions with reference to it, are contained in Exhibit "A" which is attached hereto and which is a part

4-4-72  
Harcourt  
Columbus  
Page 3 of 3

herof. Said Exhibit is in the form of a petition in order to facilitate the preparation and filing of the petition required by Chapter 6119. It includes, however, the findings and determinations of the Court as to issues raised herein.

The said district shall have merged into it by transfer from the City of Cleveland to said district, the sewage treatment and disposal facilities of the City of Cleveland, including generally the Easterly, Southerly and Westerly sewage treatment and disposal plants, the sludge force main, the interceptor sewers flowing into said plants, and all land, facilities, equipment and working capital which are a part of the Cleveland Sewage Treatment and Disposal System, specifically excepting therefrom its local collection system.

Exhibit "A" includes within it a plan for the operation of the district as required by Chapter 6119. This plan chiefly consists of items upon which the parties were in agreement as is evident from Exhibits 1 and 2. The Court has included in such exhibit not only the matters upon which the parties were in agreement, but his determination of those matters upon which they were not agreed, and has incorporated all items in the petition and plan and these, when included in the Judgment Entry herein, will constitute, in part, the judgment of the Court.

Under the provisions of Section 6119.02 of the Revised Code, the procedure for the organization of a regional sewer district is initiated by a petition filed in the office of the Clerk of Courts of the Common Pleas Court which shall be signed by one or more municipalities, corporations or counties after having been authorized by the legislative authority of the political subdivision. The legislative authority of any municipality, corporation or the Board of County Commissioners of any County may act in behalf of any part of their respective political subdivision. Since all of the concerned political subdivisions are located in Cuyahoga County, Ohio, the Court has determined that the Defendant, Board of County Commissioners of Cuyahoga County, Ohio, should initiate the required statutory proceedings by authorizing and filing the required petition in a form which contains and reflects the decision of

4-4-77  
JAMES M. ...  
Clerk of Courts  
Cuyahoga County, Ohio

the Court in the premises.

The Court has had the benefit of excellent cooperation by all parties in attempting to expeditiously bring about the results that are necessary for the public health, safety and welfare. This has included the suburbs in the persons of Mayor John Petruska of Parma, Mayor Raymond A. Stachowicz of Garfield Heights, their Law Directors and other legal representatives; the Council of the City of Cleveland, whose representatives, Lawrence W. Duggan, Michael Zora and Robert C. McCall participated in Court proceedings herein with Mayor Ralph J. Perk and Utilities Director Raymond P. Kadukis, Law Director Richard Hollington, Jr., Assistant Law Directors Louis Rego and Nicholas DeVito, Charles A. Crown, Commissioner of Water Pollution Control and Lawrence M. Politzer, Chief Electrical Engineer, the County of Cuyahoga, by Hugh A. Corrigan, President of the Board of County Commissioners, Member Seth Taft, John H. Puzenski, Sanitary Engineer and A. M. Braun, Assistant Prosecuting Attorney.

The creation or establishment of the regional sewer district shall be in conformity with the proceedings specified in Ohio Revised Code Section 6119.02, 03, 04 and the Defendant Board of County Commissioners will be mandatorily enjoined to authorize and file the designated petition. The Defendant, City of Cleveland, will be mandatorily enjoined to transfer its sewage treatment and disposal facilities to the regional sewer district by appropriate deeds or other instruments of conveyance in accordance with an ordinance authorizing the appropriate officers of the City of Cleveland to do so upon execution of an Agreement by the Board of Trustees of the district to cause the amount determined by the Court to be credited to Cleveland users.

A brief discussion of matters which were in dispute and have been resolved by the Court follows:

1. The Type of Agency.

After a complete review of the laws of Ohio with reference to the power and authority of a sewer district as contained in Chapters 6117 and 6119 together with a consideration of all of the circumstances and conditions therewith contemplated in the within lawsuit, the Court has decided that a Chapter 6119 district should be established.

4-4-77  
Respectfully  
Submitted  
Per Court

2. Board of Trustees.

a. Consideration has been given by the Court to the contentions of all parties and witnesses as to the number of persons that should constitute the Board of Trustees, their compensation and the manner of designation or appointment. The Court does not feel that the source of a member's appointment is of the importance ostensibly maintained by some persons. It must be remembered that the procedure established for the appointments will prevail for a great number of years and that changes in the personnel of the appointing authorities are inevitable.

b. Each member, when he takes office will be vested with the same authority and the same responsibility for the protection of the health, safety and welfare of millions of persons. The Court cannot conceive of any appointing authority designating a member of the Board of Trustees who would subvert the performance of his duties because of the source of his appointment. Each member is to provide protection for every concerned city, village and township and each of its citizens.

c. The Court feels that the Board of Trustees will best function if it consists of seven persons; three appointed by the Mayor of Cleveland, two by the Commissioners of Cuyahoga County and two by the Governor of Ohio. The authority vested by law in the State of Ohio with respect to pollution control and related matters, together with the pending threat that it may itself take over the Cleveland sewer facilities, has inclined the Court to include the Governor of Ohio as an appointing authority.

The fact that there is a substantially greater percentage of water billed as sewage to the residents and businesses in Cleveland, than to those in the suburban communities, warrants the appointment by the Mayor of Cleveland of 50 percent more members than the Board of County Commissioners, even though the population difference is not of the same proportion.

d. Compensation of Trustees. It is not anticipated that the duties of the Trustees will be of the occasional perfunctory, rubber-stamp type. They will have duties involving over 40 political entities. The time spent in connection with this work will not be limited to that spent at formal meetings.

4-8-72  
Department of  
Public Health  
Cleveland, Ohio

Neither will it constitute full time employment. Membership on public boards and commissions without compensation, or with token compensation, is commendable. Many capable persons, however, have not reached the status in life where they can afford such luxury. It is not expected that the romance and glamour of membership on a sewer board will be an acceptable substitute for monetary compensation. The sum of \$3,600.00 per year for each member and \$5,200.00 per year for the chairman, constitutes reasonable compensation.

Cleveland's contentions that those Trustees appointed by its Mayor should be sufficient in number to actually control the Board have not been convincing for the reasons previously stated. Further, the plan for operation of the district provides for its operation by Cleveland for four years under contract with the district.

The Court is satisfied that the City of Cleveland, the State of Ohio, the County of Cuyahoga and every political subdivision within its area, together with their residents and businesses will be adequately represented by the members of the Board and that the rights and interests of each will be protected. The contentions of the suburbs that they have, as a practical matter, been the subjects of a taxation without representation situation will be without any validity.

The qualifications for the members appointed by the Governor will be the same as required by Section 6111.02 for membership on the Water Pollution Control Board of Ohio. The regular term of the members of the Board will be for five years subject, however, to varying terms for those first appointed as indicated in Exhibit "A".

### 3. Territory.

The territory initially included within the district is described in detail in Exhibit "A". Chapter 6119 makes adequate provision for the expansion of territory in the district - even outside of Cuyahoga County.

4. Determination of a reasonable sum to be charged to the suburban users and credited to the City of Cleveland users for the suburban share of the Cleveland facilities being transferred to the district that were not amortized during the period of suburban contribution to the cost thereof.

4-4-72  
Reorganized  
Ordinance  
Page 12 of

It obviously has become the obligation of the Court as part of his requiring the establishment of a regional sewer district for the public health and safety to set a basis for equalization of contributions to the District.

Testimony as to an amount that would represent a reasonable sum to be used as a basis for disposition of this issue was presented in the form usually presented for the determination of utility rates in accordance with Ohio Revised Code §4909.05.

We are not concerned with utility rates in this phase of this matter nor does this constitute the sale of assets of one party to another nor the appropriation of one's property for the benefit of another.

The transfer of Cleveland facilities in the organization of the District constitutes an incorporation of facilities operated by one governmental agency into another governmental agency having a broader base and with authority for expansion to conform to changing needs.

It is to be expected that all communities that are becoming a part of the District should contribute, on a proportional basis, for its physical facilities -- that a proportional equalization in this respect be achieved. This is conceded by all parties. Since all facilities will originally come from the City of Cleveland the suburban users are to provide compensation to the Cleveland users for the suburban share of the facilities. This can only be done by an addition to the suburban rate which will be utilized as a reduction in the Cleveland rate. It would not be practical to attempt to achieve this equalization in a few years.

The testimony as to how such amount should be arrived at was interesting and covered a broad area. All witnesses applied the Reconstruction Cost Now Depreciated (RCND) approach.

All computations started with the original costs to Cleveland of the various facilities. These were then expanded by the application of trading factors according to charts published by the Engineering News Record and reduced by varying depreciation calculations. There was also testimony that

due to technological advances and the imposition of new Federal or State standards that a substantial portion of the present facilities might well become functionally obsolete within a relatively short time. Computations made by each side indicated that facilities which had been in use for generations have present values which are many times that of the original costs. Such valuation procedures are necessary in determining rates and they are important, although not controlling, for a determination of a basis to be used to achieve an equalization of contributions in a new agency being established for the protection of the public health and safety.

If a new agency was not being established, Cleveland would not have its rates reduced because it was being reimbursed by others for a part of its old facilities; nor would the suburbs be surcharged for the amounts credited to Cleveland for such reimbursement. Cleveland would remain possessed of such facilities, for which it would never be reimbursed by another agency. At the same time, the suburbs would receive the benefit of the use of such facilities but they would never be required to so reimburse Cleveland for them.

Some of the facilities with which we are concerned have been in use for generations; they consist of masonry imbedded in the earth and are performing the functions for which they were designed, and either possess useful lives in excess of that upon which the depreciation allowances were based or may become obsolete in a relatively short time.

All valuations other than the original costs that were testified to at the trial are, of course, both theoretical and arbitrary. They will never be utilized for any purpose other than the consideration given them by this Court in arriving at a basis for requiring a decrease in the Cleveland rate and an increase in the suburban rate as a means of equalizing contributions to the District.

There are no statutes or judicial precedents by which the Court is bound. The decision of the Court is one that is discretionary with it and is predicated upon the application of the equitable principles being applied.

fashioning of all the orders herein which are necessary for the public health and safety.

Contributions by the suburbs to the cost of the facilities being transferred were assumedly being deducted from the calculations testified to by the witnesses. However, Cleveland refused to acknowledge any such contributions for the years of 1970, 1971 and 1972, although they obviously were made but in form different from that of prior years. Federal and State grants were supposed being deducted from the original costs of the facilities. Yet, U.S. Government P.W.A. grants totalling \$3,104,630.44 during the years of 1935 through 1939 were not deducted in the Cleveland calculations. They probably were not deducted when costs were used as a factor in computing rates either.

Testimony included averments that certain units apparently listed in the original cost totals had become obsolete or had been scrapped. There was also testimony that some of the historical costs included engineering changes and that the 15% add-on included in Cleveland's calculation was subject to question.

While some of the items have been in use for generations others are almost brand new and in some instances the amounts included as historical costs really constitute the total amount of some contracts which had not as yet been completed. Approximately 50% of the historical costs of facilities at the Easterly plant are in the "almost brand new" category.

The portion of the plan of operations agreed to by the parties include the assumption by the suburbs of all of the cost of four of the presently planned interceptors as a portion of their equalization contributions looking to the time when, years in the future, there actually will be a uniform regional rate.

Upon due consideration of all the evidence, pleadings, arguments, briefs, admissions, stipulations, and exhibits; the Court has determined that based upon equitable consideration, a reasonable sum to be used as the basis for equalization of contributions, as of May 1, 1972, is the sum of \$29,869,250.00. Any addition to the costs of the facilities after May 1, 1972, shall be computed on the basis of 30.0% of the actual cost.

The facilities that necessarily must be transferred are the sewage treatment and disposal plants and the interceptors.

This equalization shall be carried out by including in the Sub-district No. 2 rates such amount as will total the said sum over a period of 25 years together with interest on said sum at 5-1/4% interest computed quarterly and which amounts shall be credited to and used as a deduction from rates for water-billed as sewage for the Cleveland (Subdistrict No. 1) users during said period of time.

The following shall be the procedure to be followed for the establishment and organization of the Regional Sewer District:

(1) The Board of County Commissioners will authorize and file the petition hereinafore referred to as Exhibit "A" forthwith and not later than Tuesday, April 18, 1972.

(2) The Presiding Judge of the Cuyahoga County Common Pleas Court will designate a Judge to sit as Judge in the proceedings in accordance with Chapter 6119 of the Ohio Revised Code, and if such Judge determines that such petition complies with the requirements of Chapter 6119 of the Ohio Revised Code as to form and content, he shall fix the time and place of a final hearing on such petition which shall be no later than sixty (60) days and not earlier than (25) twenty-five days after such filing.

(3) The Clerk of Courts of Cuyahoga County shall give notice of the hearing for four (4) weeks as required by Ohio Revised Code §6119.04.

(4) During said period of publication and prior to said final hearing, the defendant, the City of Cleveland shall take the necessary steps by ordinance to authorize the execution by appropriate officials of deeds or other proper instruments of conveyance transferring the sewage treatment and disposal facilities of the City of Cleveland, free and clear of any indebtedness bonded or otherwise, to the Regional Sewer District upon execution of an agreement by the Board of Trustees of the District that the amounts as specified by the Court shall be charged to the suburban users and credited to the Cleveland users. Equalization of the contributions of the suburbs to the District:

(5) Upon final hearing on said petition, the Court will make the proper findings and orders with reference to the creation and organization of the new Regional Sewer District.

(6) Pending the hearing described in No. 5, the injunctive orders heretofore existing will be continued subject to further order of the Court.

(7) Upon the conclusion of the hearing referred to in No. 5 above, and with Cleveland having completed the proceedings with reference to the transfer of said facilities as provided in No. 4, the Court will immediately schedule a hearing for the purpose of determining the necessity for the continuance of the sewer connection ban against the City of Cleveland and the suburban communities. The necessity for further mandatory orders or other sanctions for the enforcement of orders of the Court may require the continuance or extension of such injunctive orders.

(8) The Court will not direct the Ohio Water Pollution Board to take any steps to initiate action under Senate Bill No. 105, unless the Court determines that facts, conditions or circumstances presently unknown and inconceivable to the Court make the establishment and organization of a Regional Sewer District under Chapter 6119 of the Ohio Revised Code impossible within a reasonable time.

(9) Jurisdiction of the within action will be retained by this Court for the implementation of the orders entered in accordance herewith and for such further proceedings as the Court deems necessary to carry the provisions of its decree into effect.

Coming now to a consideration of the issues raised by the answer of the defendant, The Village of Cuyahoga Heights, Ohio, the Court finds that under date of August 11, 1916, the City of Cleveland and the Village of Beach Heights entered into a contract which made it possible to locate the South side sewage disposal plant in what was then Beachburgh Heights and is now in Cuyahoga Heights, Ohio. This contract was thereafter the subject of two (2) lawsuits.

In each of these lawsuits the Court upheld the validity of the contract, its applicability to the Village of Cuyahoga Heights, and that it

City of Cleveland could not levy a sewer charge on the inhabitants of the Village, either Industrial or private. (See Cleveland v. Cuyahoga Heights, Common Pleas Court Case No. 566,906, 37 Ohio Ops. 36, its affirmation in Court of Appeals Case No. 20692 (6/16/1947), 81 Ohio App. 191; and also the case of Cuyahoga Heights v. Cleveland, as reported in 80 Ohio Law Abs. 530 (1959).)

The obvious benefits of the contract to the various Cuyahoga County governmental subdivisions in the treatment and disposal of their sewage cannot be continued without also continuing the benefits to the Village of Cuyahoga Heights and its residents. The District must therefore assume all rights, powers, responsibilities, duties and obligations of Cleveland under said contract.

The following pertains to issues not previously discussed in detail.

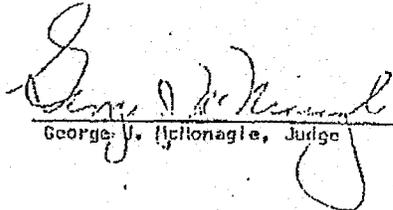
Prayers for relief herein required a determination of issues which were raised because of the inability of parties to agree on rates for water billed as sewage for suburban defendants for the period following July 1st, 1969. By entry herein dated February 2, 1972, the Court found that any further negotiations with reference to attempting to agree on said sewer rates would be in vain; that the resolution of these issues required the Court in the exercise of its equitable jurisdiction to find and determine what sums did constitute reasonable rates for the periods involved, so that action by the Court in such respects would have the effect of completing and continuing the contract of the parties.

The Court has heretofore adopted and approved the report of Theodore H. Mann who was appointed a Referee herein to make designated determinations in connection with such issues.

Upon due consideration of the report of the Referee, the evidence, pleadings, arguments, briefs, admissions, stipulations, and exhibits, the Court's finding with respect to the issues as to said rates is in favor of Cleveland and against the municipal defendants.

The amount heretofore unpaid by the defendants, The City of East Cleveland and The City of Cleveland Heights shall be forthwith paid over to The City of Cleveland.

A Judgment Entry in accordance with this opinion of the Court has been prepared, signed and filed with the Clerk of Courts.

  
George J. McManagle, Judge

4 April 1972



STATE OF OHIO  
OFFICE OF THE GOVERNOR  
COLUMBUS 43215

JOHN J. GILLIGAN  
GOVERNOR

February 11, 1972

The Honorable George J. McMonagle  
Judge, Court of Common Pleas  
County of Cuyahoga  
Cleveland, Ohio 44113

Dear Judge McMonagle:

Thank you for your invitation to testify concerning sewage collection and treatment in the metropolitan Cleveland area. I have long hoped that the City of Cleveland and its neighboring communities would agree to the kind of equitable and regional system that is necessary to treat sewage in an effective and economical manner. I applaud your courage and determination to establish such a system.

On February 8, 1972 the Ohio Water Pollution Control Board adopted the following resolution:

Resolved, that the Water Pollution Control Board hereby requests the Attorney General to file with Judge George J. McMonagle, of the Common Pleas Court of Cuyahoga County in Case No. 886,594, a motion to fashion a regional sewer authority of the general type provided for in Chapter 6119 of the Ohio Revised Code as amended and to inform Judge McMonagle that if the Court determines that a regional sewer authority cannot be fashioned the Board is prepared to initiate Senate Bill No. 105 proceedings against the other parties to said case at anytime.

Although I generally support this resolution, I believe you should also seriously consider establishing a sewer district as provided for in Chapter 6117.

On December 1, 1971 I wrote to all the parties concerned indicating that unless they could agree on an adequate regional sewerage system, the state would have to take further action. The formation of a sewer authority by your court now seems to be the last hope for a prompt resolution of this problem. If you are unsuccessful in your efforts, the state will take those steps which are necessary to invoke the power of the Ohio Water Development Authority to establish a regional sewerage system in the Cleveland area.

Exhibit 3/1/66 Governor Gilligan's  
Page 1

4-4-72  
Memorandum  
DeLeon  
Page 53 of

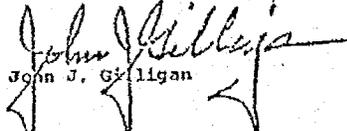
The Honorable George J. McMonagle

Page Two

I will be happy to assist you in any way possible in this matter.

With warmest personal regards,

Sincerely yours,

  
John J. Gilligan

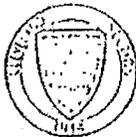
JJG/mjv

Exhibit 3 - Governor Gilligan's  
Page 2

4-4-72  
Memorandum of  
Galligan  
Page 54 of 72

OFFICERS

1 - President  
2 - Vice President  
3 - Treasurer  
4 - Secretary  
7 Mesquitebrook Blvd.  
Cleveland 112, Ohio 44110  
Home - 371-1754  
Bus. - 795-7474



AMERICAN SOCIETY OF CIVIL ENGINEERS  
CLEVELAND, OHIO

DIRECTORS

Richard E. Pank  
Roger L. Hoff  
Donald W. Brenzel  
Robert H. Billman, Jr.  
Norman L. Liver  
Linnus W. Curtis, Jr.  
Jack W. Clark  
Robert P. Hoff

February 22, 1972

Honorable Judge George J. McMonagle  
Court of Common Pleas  
1 Lakeside Avenue  
Cleveland, Ohio 44114

Your Honor:

I am enclosing a resolution adopted by the Cleveland Section of the American Society of Civil Engineers which is directly related to the hearings you are now holding on a proposed metropolitan sewer district. Our 550 man organization in the Greater Cleveland area is concerned about the inability of the existing governmental bodies to achieve the united front necessary to successfully clean up our environment, and believe a regional sanitation authority is a step in the right direction.

If you have any questions or if we may be of some help, please call us.

Sincerely,

Clyde D. Riffle - Secretary  
Cleveland Section A.S.C.E.

CDR:dar  
cc: Ralph E. Scott, President

American Society of Civil Engineers

Exhibit 5

Page 1

4-4-72

Memorandum of

Opinion

Page 59 of 7

HOST: 1972 ASCE NATIONAL MEETING - "STRUCTURAL ENGINEERING" - APRIL 24, 1972

1914  
President - Vice Pres.  
Treasurer  
Secretary  
City Hall  
Cleveland, Ohio 44114  
Tel. - 571-3301  
Hou. - 691-2381



Frank E. Kay  
Richard E. Tamek  
Roger L. Hyde  
Kenneth A. Tyrpek  
Richard A. Dennis  
William R. Watkins  
William T. Collier

AMERICAN SOCIETY OF CIVIL ENGINEERS  
CLEVELAND, OHIO

RESOLUTION

WHEREAS, the Greater Cleveland area is facing a serious environmental problem due to the lack of comprehensive planning for solid wastes disposal and regional sewer planning. Both matters are of immediate concern to the County and the various political subdivisions; and

WHEREAS, resolution of these problems will be best handled on a regional basis, which should be not less than County in scope; and

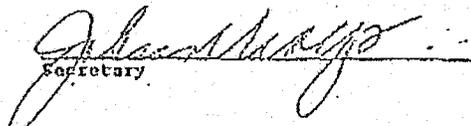
WHEREAS, these programs must be carefully planned and evaluated by competent engineering personnel; and

WHEREAS, the County Mayors and City Managers Association has expressed concern over the problems of sanitation and solid wastes; and

WHEREAS, this Society as a leader in environmental control, wishes to lend support to civic officials; and

NOW, THEREFORE, the Cleveland Section of the American Society of Civil Engineers recommends that a regional authority be initially established on a County basis, to administer a regional sanitation and solid waste disposal authority, and respectfully recommends that the Association request the County Commissioners to join and establish such an authority under any one of several prevailing enabling acts of the General Assembly, authorizing the formation of such regional bodies staffed by competent professional engineers.

The Cleveland Section of the American Society of Civil Engineers pledges its active professional support of its members to achieve this goal.

  
Secretary

ADOPTED APRIL 17, 1970  
BY THE BOARD OF DIRECTORS  
OF THE CLEVELAND SECTION OF  
THE AMERICAN SOCIETY OF CIVIL ENGINEERS

Exhibit 5 - Am. Society of Civil Engineers  
Page 2

4-14-72  
Memorandum of  
Opinion  
Page 60 of 73

THE LAKE ERIE WATERSHED CONSERVATION FOUNDATION  
1917 SUPERIOR BUILDING  
CLEVELAND, OHIO 44114

Telephone: 696-9340

March 10, 1972

Honorable George J. McMonagle, Judge  
Common Pleas Court  
Lakeside Court House  
Cleveland, Ohio 44113

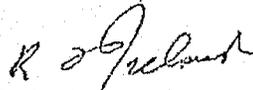
Dear Judge McMonagle:

The Trustees of the Foundation met yesterday and passed the attached resolution.

They appreciate your efforts.

To the extent the private sector of this metropolitan community needs to do more to marshal support for regional management of the sewerage system, you may count on us to continue our efforts.

Sincerely,



R. J. Ireland  
President and Chairman of the Board

RL:kep  
attach.

P. S. (For your information, I have attached a list of the Trustees)

Lake Erie Watershed Conservation Foundation

EXHIBIT G  
Page 1

4-6-72  
Memorandum of  
Dorinton  
Page 61 of 111

THE LAKE ERIE WATERSHED CONSERVATION FOUNDATION  
1817 SUPERIOR BUILDING  
CLEVELAND, OHIO 44114

Telephone: (988-3343)

CLEVELAND METROPOLITAN SEWERAGE SYSTEM

WHEREAS the City of Cleveland and some thirty of its suburbs, directly or through Cuyahoga County, are joined together in a sewerage system that constitutes a metropolitan system, and

WHEREAS pollution from this system has not been abated, and

WHEREAS lawsuits over pollution from and operation of the system have brought the issues into the Common Pleas Courtroom of Judge McMonagle, and

WHEREAS the situation reflects adversely upon Metropolitan Cleveland and its citizens,

NOT THEREFORE BE IT RESOLVED that the Lake Erie Watershed Conservation Foundation supports the early dissolution of the existing barriers to abatement of water pollution in the Cleveland area and calls upon the citizens of this area to support the principle of regional management of their sewerage system.

Adopted by Trustees of the Lake Erie Watershed Conservation Foundation  
March 9, 1972

Exhibit 6 - Lake Erie Watershed  
Conservation Foundation  
Page 2

4-4-72  
Memorandum  
By Inlet  
Page 62 of 72

- R. L. Ireland - Consolidation Coal Co, Executive (ret.)
- Dr. N. P. Auburn - President Emeritus, Akron University
- P. E. Helcher - Chairman, First National Bank of Akron
- M. A. Bradley - Director of Public Relations, Hanna Mining Co.
- T. L. Boardman - Editor, Cleveland Press
- J. B. Beach - Manager, Aron Development, C.E.I.
- R. P. Carpenter - Vice President, Environmental Control, Republic Steel Corp.
- H. A. Corrigan - President, Cuyahoga County Board of Commissioners
- W. H. Tills - Regional Manager, Civic and Governmental Affairs, Ford Motor Co.
- J. F. Fjoberg - Vice President and General Counsel, Firestone Tire & Rubber Co.
- F. C. Mann - Public Affairs Counsel, U. S. Steel Corp.
- Dr. W. R. Hara - Associate Dean, School of Engineering, Case Western Reserve Univ.
- L. R. Reeve - Assistant to President, Harshaw Chemical Co.
- R. N. Simonsen - Senior Environmental Consultant, Standard Oil Co. (Ohio)
- R. F. Smith - Plant Manager, General Motors Corp, Fisher Body Division
- T. V. Vail - Executive Editor, Plain Dealer
- R. M. Whitt - Assistant to Director of Environmental Control, Sherwin-Williams Co.

Exhibit 6 - Lake Erie Watershed  
Conservation Foundation  
Page 3

4-11-72  
Memorandum of  
Opinion  
Page 52 of 77

REGIONAL PLANNING COMMISSION

County of Cuyahoga

Carl S. Bohm, Director

415 The Arcade / Cleveland, Ohio 44114 / 216-861-6805

March 16, 1972

The Honorable George J. McMonagle  
Judge of Court of Common Pleas  
County of Cuyahoga  
Cleveland, Ohio 44113

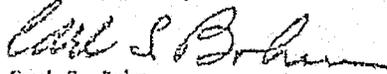
Re: Ohio Water Pollution Control Board  
vs. City of Cleveland, et al.  
Cuyahoga County Common Pleas  
Court Case No. 886,594  
(Consolidated Case)

Dear Judge McMonagle:

The Executive Committee of the Regional Planning Commission has directed me to offer the Commission's assistance as a friend of the Court in Case No. 886,594.

Any records, data or other resources we may have are at the Court's disposal. If there is any analysis the Court would like us to perform, we will be pleased to cooperate. We are offering our services in the interest of the citizens of Cuyahoga County.

Sincerely yours,

  
Carl S. Bohm  
Director

CSB/at

Regional Planning Commission  
EXHIBIT 7 - Page 1

4-4-72  
Memorandum of  
Bohm  
Page 54 of 75

JT. CMTY. APPX.00027

CITIZEN LEADERS

Klein, Howard B., President  
The Higbee Company  
Public Square  
Cleveland, Ohio 44113  
579-3576

Hartman, Ray C., Vice President  
T. W. Grogan Company  
640 Hanna Building  
Cleveland, Ohio 44115  
241-5080

Gallagher, Patrick J.  
Ohio Bell Telephone Company  
100 Erieview Plaza  
Cleveland, Ohio 44114  
822-2857

Rawson, Robert H.  
The Empire Plow Company  
3140 East 65th Street  
Cleveland, Ohio 44127  
641-2290

Welsh, Philip H.  
Kaiser Foundation  
55 Public Square  
Cleveland, Ohio 44113  
621-5600

COUNTY MEMBERS

County Commissioners

Corrigan, Hugh A., Pres.  
Polerny, Frank R.  
Taft, Seth C.  
County Administration Bldg.  
1219 Ontario Street  
Cleveland, Ohio 44113  
241-2700

County Engineer

Porter, Albert S.  
1926 Standard Building  
Cleveland, Ohio 44113  
861-5211

CSD  
EJS  
NRK

MUNICIPAL MEMBERS

Miscell, Howard  
City of Shaker Heights  
1525 Investment Plaza  
Cleveland, Ohio 44114  
621-5383

Briers, James  
City of Bay Village  
Ohio Bell Telephone Company  
100 Erieview Plaza--Room 553  
Cleveland, Ohio 44114  
822-8690

Christman, Ralph E., Mayor  
City of North Olmsted  
5206 Dover Center Road  
North Olmsted, Ohio 44070  
777-8000

Clegggett, Stanley H.  
Village of Woodmere  
East Ohio Gas Company  
1717 East 9th Street  
Cleveland, Ohio 44114  
522-2187

Konigsberg, Irving W., Mayor  
City of University Heights  
2300 Warrensville Center Road  
University Heights, Ohio 44118  
932-7800 361-6090

Lisy, Emil J., Jr., Mayor  
City of Maple Heights  
5353 Leo Road  
Maple Heights, Ohio 44137  
662-6000

Petruska, John, Mayor  
City of Parma  
6611 Ridge Road  
Parma, Ohio 44129  
886-2323

Storey, Robert  
City of Cleveland  
Burke, Harbor & Berick  
1500 Central National Bank Bldg.  
Cleveland, Ohio 44115  
771-2700

Baldwin's Ohio Revised Code Annotated

Title VII. Municipal Corporations

Chapter 729. Assessments--Sidewalks; Sewers (Refs & Annos)

General Provisions--Sewers

R.C. § 729.46

729.46 Repairs of sewers and ditches

Currentness

The legislative authority of a municipal corporation may provide for the repair or reconstruction of any sewer, ditch, or drain and the proceedings for that purpose shall be the same, so far as applicable, as are required for the original construction thereof.

**CREDIT(S)**

(1953 H 1, eff. 10-1-53; GC 3889)

Notes of Decisions (5)

R.C. § 729.46, OH ST § 729.46

Current through Files 1 to 113, 122, 124, 125, 128, 134, 136 to 138 and Statewide Issue 1 of the 130th GA (2013-2014).

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Baldwin's Ohio Revised Code Annotated  
Title VII. Municipal Corporations  
Chapter 735. Public Service (Refs & Annos)  
Department of Public Service

R.C. § 735.02

735.02 General duties; records

Currentness

The director of public service shall manage and supervise all public works and undertakings of the city, except as otherwise provided by law.

The director shall supervise the improvement and repair of streets, avenues, alleys, lands, lanes, squares, wharves, docks, landings, market houses, bridges, viaducts, aqueducts, sidewalks, playgrounds<sup>1</sup> sewers, drains, ditches, culverts, ship channels, streams, and watercourses, the lighting, sprinkling, and cleaning of public places, and the construction of public improvements and public works, except those having reference to the department of public safety, or as otherwise provided in Title VII of the Revised Code.

The director shall manage municipal water, lighting, heating, power, garbage, and other undertakings of the city, and parks, baths, playgrounds, market houses, cemeteries, crematories, sewage disposal plants, and farms, and shall make and preserve surveys, maps, plans, drawings, and estimates. He shall supervise the construction and have charge of the maintenance of public buildings and other property of the city not otherwise provided for in Title VII. He shall have the management of all other matters provided by the legislative authority of the city in connection with the public service thereof.

Such director shall keep a record of his proceedings, a copy of which, certified by him, shall be competent evidence in all courts.

**CREDIT(S)**

(1953 H 1, eff. 10-1-53; GC 4324, 4325, 4326)

Notes of Decisions (17)

Footnotes

<sup>1</sup> So in original; should this read "playgrounds,"?

R.C. § 735.02, OH ST § 735.02

Current through Files 1 to 113, 122, 124, 125, 128, 134, 136 to 138 and Statewide Issue 1 of the 130th GA (2013-2014).

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Baldwin's Ohio Revised Code Annotated  
Title LXI. Water Supply--Sanitation--Ditches  
Chapter 6101. Conservancy Districts (Refs & Annos)  
Organization of Conservancy District

R.C. § 6101.04

6101.04 Organization and purposes of conservancy districts

Currentness

Any area or areas situated in one or more counties may be organized as a conservancy district in the manner and subject to the conditions provided by this chapter for any of the following purposes:

- (A) Preventing floods;
- (B) Regulating stream channels by changing, widening, and deepening the stream channels;
- (C) Reclaiming or filling wet and overflowed lands;
- (D) Providing for irrigation where it may be needed;
- (E) Regulating the flow of streams and conserving their waters;
- (F) Diverting or in whole or in part eliminating watercourses;
- (G) Providing a water supply for domestic, industrial, and public use;
- (H) Providing for the collection and disposal of sewage and other liquid wastes produced within the district;
- (I) Arresting erosion along the Ohio shore line of Lake Erie.

This section does not terminate the existence of any district organized prior to July 19, 1937, entirely within a single county.

The purposes of a district may be altered by the same procedure as provided for the establishment of the district.

**CREDIT(S)**

(2000 H 617, eff. 9-21-00; 1953 H 1, eff. 10-1-53; GC 6828-2)

Notes of Decisions (8)

**6101.04 Organization and purposes of conservancy districts, OH ST § 6101.04**

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R.C. § 6101.04, OH ST § 6101.04

Current through Files 1 to 113, 122, 124, 125, 128, 134, 136 to 138 and Statewide Issue 1 of the 130th GA (2013-2014).

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Baldwin's Ohio Revised Code Annotated  
Title LXI. Water Supply--Sanitation--Ditches  
Chapter 6105. Watershed Districts (Refs & Annos)  
Administrative Provisions

R.C. § 6105.12

6105.12 Powers and duties

Currentness

The board of directors of a watershed district, for the purpose of assisting to obtain the orderly development and the most beneficial use of the water resources within the territorial boundaries of the district, may:

- (A) Review and recommend plans for the development of the water resources within the territorial boundaries of the district;
- (B) Recommend appropriate means to resolve water conflicts among water user interests and between geographic areas within the territorial boundaries of the district;
- (C) Make studies and review plans relative to the development of water resources of the district, hold hearings thereon, and make such recommendations as are consistent with the beneficial use of water within the district;
- (D) Prepare a comprehensive plan for the development and control of the water resources within the district for the purpose of promoting the beneficial use of water within the district which plan shall be submitted to the environmental protection agency;
- (E) Counsel with public agencies or private interests seeking advice and assistance relative to the beneficial use of water within the district;
- (F) Assist governmental agencies and private interests in the planning and development of water resources within the district;
- (G) Have access to all information, statistics, plans, and data relative to the water resources of the district which any governmental agency has available;
- (H) Make contracts with any person or agency for the purpose of carrying out sections 6105.01 to 6105.21 of the Revised Code;
- (I) Designate specific reaches in the channel of any watercourse, within the territorial boundaries of the district, as a restricted channel and any specific area appurtenant to a restricted channel as a restricted floodway under section 6105.131 of the Revised Code;

**6105.12 Powers and duties, OH ST § 6105.12**

---

(J) Issue permits authorizing the construction, change, or alteration of a structure or obstruction in a restricted channel or relocation, alteration, restriction, deposit, or encroachment into or change of grade of a restricted channel or floodway under section 6105.133 of the Revised Code;

(K) Petition for the creation of a conservancy district or conservancy subdistrict under section 6101.05 or 6101.71 of the Revised Code.

**CREDIT(S)**

(1972 S 397, eff. 10-23-72; 132 v H 791; 130 v Pt 2, H 5; 130 v S 202; 129 v 348)

R.C. § 6105.12, OH ST § 6105.12

Current through Files 1 to 113, 122, 124, 125, 128, 134, 136 to 138 and Statewide Issue 1 of the 130th GA (2013-2014).

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Baldwin's Ohio Revised Code Annotated  
Title LXI. Water Supply--Sanitation--Ditches  
Chapter 6117. Sewer Districts; County Sewers (Refs & Annos)  
Sewer Districts

R.C. § 6117.01

6117.01 Definitions; sewer districts

Effective: October 16, 2009

Currentness

(A) As used in this chapter:

(1) "Sanitary facilities" means sanitary sewers, force mains, lift or pumping stations, and facilities for the treatment, disposal, impoundment, or storage of wastes; equipment and furnishings; and all required appurtenances and necessary real estate and interests in real estate.

(2) "Drainage" or "waters" means flows from rainfall or otherwise produced by, or resulting from, the elements, storm water discharges and releases or migrations of waters from properties, accumulations, flows, and overflows of water, including accelerated flows and runoffs, flooding and threats of flooding of properties and structures, and other surface and subsurface drainage.

(3) "Drainage facilities" means storm sewers, force mains, pumping stations, and facilities for the treatment, disposal, impoundment, retention, control, or storage of waters; improvements of or for any channel, ditch, drain, floodway, or watercourse, including location, construction, reconstruction, reconditioning, widening, deepening, cleaning, removal of obstructions, straightening, boxing, culverting, tiling, filling, walling, arching, or change in course, location, or terminus; improvements of or for a river, creek, or run, including reinforcement of banks, enclosing, deepening, widening, straightening, removal of obstructions, or change in course, location, or terminus; facilities for the protection of lands from the overflow of water, including a levee, wall, embankment, jetty, dike, dam, sluice, revetment, reservoir, retention or holding basin, control gate, or breakwater; facilities for controlled drainage, regulation of stream flow, and protection of an outlet; the vacation of a ditch or drain; equipment and furnishings; and all required appurtenances and necessary real estate and interests in real estate.

(4) "County sanitary engineer" means either of the following:

(a) The registered professional engineer employed or appointed by the board of county commissioners to be the county sanitary engineer as provided in this section<sup>3-1</sup>;

(b) The county engineer, if, for as long as and to the extent that engineer by agreement entered into under section 315.14 of the Revised Code is retained to discharge duties of a county sanitary engineer under this chapter.

(5) "Current operating expenses," "debt charges," "permanent improvement," "public obligations," and "subdivision" have the same meanings as in section 133.01 of the Revised Code.

(6) "Construct," "construction," or "constructing" means construction, reconstruction, enlargement, extension, improvement, renovation, repair, and replacement of sanitary or drainage facilities or of prevention or replacement facilities, but does not include any repairs, replacements, or similar actions that do not constitute and qualify as permanent improvements.

(7) "Maintain," "maintaining," or "maintenance" means repairs, replacements, and similar actions that constitute and are payable as current operating expenses and that are required to restore sanitary or drainage facilities or prevention or replacement facilities to, or to continue sanitary or drainage facilities or prevention or replacement facilities in, good order and working condition, but does not include construction of permanent improvements.

(8) "Public agency" means a state and any agency or subdivision of a state, including a county, a municipal corporation, or other subdivision.

(9) "Combined sewer" means a sewer system that is designed to collect and convey sewage, including domestic, commercial, and industrial wastewater, and storm water through a single-pipe system to a treatment works or combined sewer overflow outfall approved by the director of environmental protection.

(10) "Prevention or replacement facilities" means vegetated swales or median strips, permeable pavement, trees and tree boxes, rain barrels and cisterns, rain gardens and filtration planters, vegetated roofs, wetlands, riparian buffers, and practices and structures that use or mimic natural processes to filter or reuse storm water.

(11) "Homestead exemption" means the reduction of taxes allowed under division (A) of section 323.152 of the Revised Code.

(12) "Low- and moderate-income person" has the same meaning as in section 175.01 of the Revised Code.

(B)(1) For the purpose of preserving and promoting the public health and welfare, a board of county commissioners may lay out, establish, consolidate, or otherwise modify the boundaries of, and maintain, one or more sewer districts within the county and outside municipal corporations and may have a registered professional engineer make the surveys necessary for the determination of the proper boundaries of each district, which shall be designated by an appropriate name or number. The board may acquire, construct, maintain, and operate within any district sanitary or drainage facilities that it determines to be necessary or appropriate for the collection of sewage and other wastes originating in or entering the district, to comply with the provisions of a contract entered into for the purposes described in sections 6117.41 to 6117.44 of the Revised Code and pursuant to those sections or other applicable provisions of law, or for the collection, control, or abatement of waters originating or accumulating in, or flowing in, into, or through, the district, and other sanitary or drainage facilities, within or outside of the district, that it determines to be necessary or appropriate to conduct the wastes and waters to a proper outlet and to provide for their proper treatment, disposal, and disposition. The board may provide for the protection of the sanitary and drainage facilities and may negotiate and enter into a contract with any public agency or person for the management, maintenance, operation, and repair of any of the facilities on behalf of the county upon the terms and conditions that may be agreed upon with the agency or person and that may be determined by the board to be in the best interests of the county. By contract with any public agency or person operating sanitary or drainage facilities within or outside of the county, the board may provide a proper outlet for any of the wastes and waters and for their proper treatment, disposal, and disposition.

(2) For purposes of preventing storm water from entering a combined sewer and causing an overflow or an inflow to a sanitary sewer, the board may acquire, design, construct, operate, repair, maintain, and provide for a project or program that separates storm water from a combined sewer or for a prevention or replacement facility that prevents or minimizes storm water from entering a combined sewer or a sanitary sewer.

(C) The board of county commissioners may employ a registered professional engineer to be the county sanitary engineer for the time and on the terms it considers best and may authorize the county sanitary engineer to employ necessary assistants upon the terms fixed by the board. Prior to the initial assignment of drainage facilities duties to the county sanitary engineer, if the county sanitary engineer is not the county engineer, the board first shall offer to enter into an agreement with the county engineer pursuant to section 315.14 of the Revised Code for assistance in the performance of those duties of the board pertaining to drainage facilities, and the county engineer shall accept or reject the offer within thirty days after the date the offer is made.

The board may create and maintain a sanitary engineering department, which shall be under its supervision and which shall be headed by the county sanitary engineer, for the purpose of aiding it in the performance of its duties under this chapter and Chapter 6103. of the Revised Code or its other duties regarding sanitation, drainage, and water supply provided by law. The board shall provide suitable facilities for the use of the department and shall provide for and pay the compensation of the county sanitary engineer and all authorized necessary expenses of the county sanitary engineer and the sanitary engineering department. The county sanitary engineer, with the approval of the board, may appoint necessary assistants and clerks, and the compensation of those assistants and clerks shall be provided for and paid by the board.

(D) The board of county commissioners may adopt, publish, administer, and enforce rules for the construction, maintenance, protection, and use of county-owned or county-operated sanitary and drainage facilities and prevention or replacement facilities outside municipal corporations, and of sanitary and drainage facilities and prevention or replacement facilities within municipal corporations that are owned or operated by the county or that discharge into sanitary or drainage facilities or prevention or replacement facilities owned or operated by the county, including, but not limited to, rules for the establishment and use of any connections, the termination in accordance with reasonable procedures of sanitary service for the nonpayment of county sanitary rates and charges and, if so determined, the concurrent termination of any county water service for the nonpayment of those rates and charges, the termination in accordance with reasonable procedures of drainage service for the nonpayment of county drainage rates and charges, and the establishment and use of security deposits to the extent considered necessary to ensure the payment of county sanitary or drainage rates and charges. The rules shall not be inconsistent with the laws of this state or any applicable rules of the director of environmental protection.

(E) No sanitary or drainage facilities or prevention or replacement facilities shall be constructed in any county outside municipal corporations by any person until the plans and specifications have been approved by the board of county commissioners, and any construction shall be done under the supervision of the county sanitary engineer. Not less than thirty days before the date drainage plans are submitted to the board for its approval, the plans shall be submitted to the county engineer. If the county engineer is of the opinion after review that the facilities will have a significant adverse effect on roads, culverts, bridges, or existing maintenance within the county, the county engineer may submit a written opinion to the board not later than thirty days after the date the plans are submitted to the county engineer. The board may take action relative to the drainage plans only after the earliest of receiving the written opinion of the county engineer, receiving a written waiver of submission of an opinion from the county engineer, or passage of thirty days from the date the plans are submitted to the county engineer. Any person constructing the facilities shall pay to the county all expenses incurred by the board in connection with the construction.

(F) The county sanitary engineer or the county sanitary engineer's authorized assistants or agents, when properly identified in writing or otherwise and after written notice is delivered to the owner at least five days in advance or is mailed at least five days in advance by first class or certified mail to the owner's tax mailing address, may enter upon any public or private property for

**6117.01 Definitions; sewer districts, OH ST § 6117.01**

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the purpose of making, and may make, surveys or inspections necessary for the laying out of sewer districts or the design or evaluation of county sanitary or drainage facilities or prevention or replacement facilities. This entry is not a trespass and is not to be considered an entry in connection with any appropriation of property proceedings under sections 163.01 to 163.22 of the Revised Code that may be pending. No person or public agency shall forbid the county sanitary engineer or the county sanitary engineer's authorized assistants or agents to enter, or interfere with their entry, upon the property for that purpose or forbid or interfere with their making of surveys or inspections. If actual damage is done to property by the making of the surveys and inspections, the board shall pay the reasonable value of the damage to the property owner, and the cost shall be included in the cost of the facilities and may be included in any special assessments to be levied and collected to pay that cost.

**CREDIT(S)**

(2009 H 1, eff. 10-16-09; 2008 H 562, eff. 9-23-08; 2000 H 549, eff. 3-12-01; 1984 H 551, eff. 9-21-84; 1975 H 367; 1972 S 397; 1969 H 151; 127 v 622; 1953 H 1; GC 6602-1)

Notes of Decisions (58)

Footnotes

1 So in original.

R.C. § 6117.01, OH ST § 6117.01

Current through Files 1 to 113, 122, 124, 125, 128, 134, 136 to 138 and Statewide Issue 1 of the 130th GA (2013-2014).

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Baldwin's Ohio Revised Code Annotated

Title LXI. Water Supply--Sanitation--Ditches

Chapter 6119. Regional Water and Sewer Districts (Refs & Annos)

Powers and Duties of Board of Trustees

R.C. § 6119.17

6119.17 Issuance of bonds in new district; submission to voters; anticipation notes

Currentness

Upon the creation of a regional water and sewer district, the board of trustees thereof may submit to the electors within the territorial limits of the district the question of issuing bonds of such district and also the necessity of the levy of a tax outside the limitation imposed by Section 2 of Article XII, Ohio Constitution, to pay the interest on and to retire the bonds. Such bonds when so approved by the electors may be issued to pay any portion of the cost of one or more water resource projects or parts thereof and may include any portion of the cost of water resource projects to be specially assessed. The proceedings for such election and for the issuance and sale of such bonds shall be as provided by Chapter 133. of the Revised Code. If a majority of those voting upon the proposition vote in favor thereof, the board of trustees of such district may proceed to issue such bonds and to levy a tax outside the ten-mill limitation sufficient in amount to pay the interest on and retire such bonds at maturity. Notes may be issued in anticipation of such bonds as provided in section 133.22 of the Revised Code.

**CREDIT(S)**

(1989 H 230, eff. 10-30-89; 1971 S 166)

R.C. § 6119.17, OH ST § 6119.17

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Title LXI. Water Supply--Sanitation--Ditches

Chapter 6119. Regional Water and Sewer Districts (Refs & Annos)

Powers and Duties of Board of Trustees

R.C. § 6119.18

6119.18 Levy for current expenses of district; anticipation notes

Effective: September 29, 2011

Currentness

The board of trustees of a regional water and sewer district, by a vote of two-thirds of all its members, may declare by resolution that it is necessary to levy a tax in excess of the ten-mill limitation for the purpose of providing funds to pay current expenses of the district or for the purpose of paying any portion of the cost of one or more water resource projects or parts thereof or for both of such purposes, and that the question of such tax levy shall be submitted to the electors of the district at a general or primary election. Such resolution shall conform to the requirements of section 5705.19 of the Revised Code, except as otherwise permitted by this section and except that such levy may be for a period not longer than ten years. The resolution shall go into immediate effect upon its passage and no publication of the resolution is necessary other than that provided for in the notice of election. A copy of such resolution shall, immediately after its passage, be certified to the board of elections of the proper county or counties in the manner provided by section 5705.25 of the Revised Code, and such section shall govern the arrangements for the submission of such question and other matters with respect to such election to which such section refers. Publication of the notice of that election shall be made in one newspaper of general circulation in the district once a week for two consecutive weeks prior to the election, or as provided in section 7.16 of the Revised Code. If the board of elections operates and maintains a web site, the board of elections shall post notice of the election on its web site for thirty days prior to the election.

If a majority of the electors voting on the question vote in favor thereof, the board may make the necessary levy within the district at the additional rate or at any lesser rate on the tax list and duplicate for the purpose or purposes stated in the resolution.

The taxes realized from such levy shall be collected at the same time and in the same manner as other taxes on such tax list and duplicate and such taxes, when collected, shall be paid to the district and deposited by it in a special fund which shall be established by the district for all revenues derived from such levy and for the proceeds of anticipation notes which shall be deposited in such fund.

After the approval of such levy, the district may anticipate a fraction of the proceeds of such levy and, from time to time, during the life of such levy, issue anticipation notes in an amount not exceeding fifty per cent of the estimated proceeds of such levy to be collected in each year up to a period of five years after the date of issuance of such notes, less an amount equal to the proceeds of such levy previously obligated for each year by the issuance of anticipation notes, provided that the total amount maturing in any one year shall not exceed fifty per cent of the anticipated proceeds of such levy for that year. Each issue of notes shall be sold as provided in Chapter 133. of the Revised Code, and shall, except for such limitation that the total amount of such notes maturing in any one year shall not exceed fifty per cent of the anticipated proceeds of such levy for that year, mature serially in substantially equal installments during each year over a period not to exceed five years after their issuance.

**CREDIT(S)**

(2011 H 153, eff. 9-29-11; 2006 H 3, eff. 5-2-06 (Implemented eff. 6-1-06); 1989 H 230, eff. 10-30-89; 1971 S 166)

R.C. § 6119.18, OH ST § 6119.18

**6119.18 Levy for current expenses of district; anticipation notes, OH ST § 6119.18**

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Baldwin's Ohio Revised Code Annotated  
Title LXI. Water Supply--Sanitation--Ditches  
Chapter 6119. Regional Water and Sewer Districts (Refs & Annos)  
Water Resource Projects

R.C. § 6119.42

6119.42 Special assessments

Currentness

Any regional water and sewer district may levy and collect special assessments as provided in Chapter 6119. of the Revised Code. The board of trustees of such district may assess upon abutting, adjacent, contiguous, or other specially benefited lots or lands in the district all or any part of the cost connected with the improvement of any street, alley, or public road or place, or a property or easement of the district by constructing any water resource project or part thereof which the board declares conducive to the public health, safety, convenience, or welfare by any one or more of the following methods:

- (A) By a percentage of the tax value of the property assessed;
- (B) In proportion to the benefits which result from the project;
- (C) By the foot front of the property bounding and abutting upon the project.

The proceedings looking to such assessment may include more than one street, alley, or public road or place, or parcel of property or easement of the district.

**CREDIT(S)**

(1971 S 166, eff. 11-19-71)

R.C. § 6119.42, OH ST § 6119.42

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Title LXI. Water Supply--Sanitation--Ditches  
Chapter 6119. Regional Water and Sewer Districts (Refs & Annos)  
Water Resource Projects

R.C. § 6119.43

6119.43 Purposes for assessments

Currentness

The cost of constructing a water resource project to be paid for directly or indirectly, in whole or in part, by funds derived from special assessments may include but need not be limited to:

- (A) The purchase price of real estate or any interest therein when acquired by purchase, or when acquired by appropriation;
- (B) The cost of preliminary and other surveys;
- (C) The cost of preparing plans, specifications, profiles, and estimates;
- (D) The cost of printing, serving, and publishing notices and any legislation required;
- (E) The cost of all special proceedings;
- (F) The cost of labor and material, whether furnished by contract or otherwise;
- (G) Interest on bonds or notes issued in anticipation of the levy and collection of the special assessments;
- (H) The total amount of damages resulting from the project which are assessed in favor of any owner of lands affected by the project, and interest thereon;
- (I) The cost incurred in connection with the preparation, levy, and collection of the special assessments, including legal expenses incurred by reason of the project;
- (J) Incidental costs connected with the project.

**CREDIT(S)**

(1971 S 166, eff. 11-19-71)

R.C. § 6119.43, OH ST § 6119.43

6119.43 Purposes for assessments, OH ST § 6119.43

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Title LXI. Water Supply--Sanitation--Ditches

Chapter 6119. Regional Water and Sewer Districts (Refs & Annos)

Water Resource Projects

R.C. § 6119.46

6119.46 Filing of resolution of necessity

Currentness

When it is considered necessary to construct a water resource project to be paid for in whole or in part by special assessments levied under Chapter 6119. of the Revised Code, plans, specifications, and profiles of the proposed project showing the anticipated grade of the project after completion with reference to any property abutting thereon, and an estimate of the cost of the project shall be prepared and filed in the office of the secretary of the board of trustees of the regional water and sewer district and shall be open to the inspection of all persons with interests therein. After such plans, specifications, profiles, and estimate of cost of the project have been filed in the office of the secretary, the board may declare the necessity of constructing such project by the passage of a resolution.

Such resolution shall:

- (A) State the nature and location of the project and the lots or parcels of land to be assessed for the project;
- (B) Approve the plans, specifications, profiles, and estimate of cost of the proposed project on file as provided in this section;
- (C) State that the entire cost of the project is to be specially assessed or state what part of the cost is to be paid for by the district and what part is to be specially assessed;
- (D) State the method or methods of levying the special assessments in accordance with section 6119.42 of the Revised Code;
- (E) State the mode of payment and the number of annual installments of the special assessments to be levied;
- (F) State whether or not bonds shall be issued in anticipation of the collection of the special assessments;
- (G) Provide for the preparation of a list of estimated assessments in accordance with the method or methods of assessment set forth in the resolution, showing the amount of the assessment against each lot or parcel of land to be assessed. Such list of estimated assessments shall be filed in the office of the secretary of the board of trustees.

**CREDIT(S)**

(1971 S 166, eff. 11-19-71)

R.C. § 6119.46, OH ST § 6119.46

6119.46 Filing of resolution of necessity, OH ST § 6119.46

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Baldwin's Ohio Revised Code Annotated  
Title LXI. Water Supply--Sanitation--Ditches  
Chapter 6119. Regional Water and Sewer Districts (Refs & Annos)  
Water Resource Projects

R.C. § 6119.47

6119.47 Notice of estimated assessment to owner

Currentness

Notice of the passage of a resolution of necessity and the filing of the estimated assessments under section 6119.46 of the Revised Code shall, after the estimated assessments have been prepared and filed as provided by such section, be served by the secretary of the board of trustees of the regional water and sewer district, or a person designated by such secretary, upon the owners of the lots or parcels of land to be assessed for the proposed project, in the same manner as service of summons in civil cases, or by certified mail addressed to such owners at their last known addresses or to the addresses to which tax bills are sent, or by a combination of the foregoing methods. If it appears by the return of service or the return of the certified mail notice that one or more of the owners cannot be found, such owners shall be served by publication of the notice once in at least one newspaper having a general circulation within the district. The notice shall also set forth the place where such estimated assessments are on file and are open for public inspection. The return of the person serving the notice or a certified copy thereof or a returned receipt for notice forwarded by certified mail accepted by the addressee or anyone purporting to act for him shall be prima-facie evidence of the service of notice under this section.

**CREDIT(S)**

(1971 S 166, eff. 11-19-71)

R.C. § 6119.47, OH ST § 6119.47

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Baldwin's Ohio Revised Code Annotated  
Title LXI. Water Supply--Sanitation--Ditches  
Chapter 6119. Regional Water and Sewer Districts (Refs & Annos)  
Water Resource Projects

R.C. § 6119.48

6119.48 Filing of objection to estimated assessment

Currentness

The owner of any lot or parcel of land who objects to the assessment against such lot or parcel as set forth in the estimated assessments filed under section 6119.46 of the Revised Code shall file such objection, in writing, with the secretary of the board of trustees of the regional water and sewer district within twenty-eight days from the date of completion of the notice required under section 6119.47 of the Revised Code. Such objection shall include the address for mailing of the notice provided in section 6119.49 of the Revised Code. An owner who fails so to file such an objection shall be deemed to have waived any objection to his assessment.

**CREDIT(S)**

(1971 S 166, eff. 11-19-71)

R.C. § 6119.48, OH ST § 6119.48

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Title LXI. Water Supply--Sanitation--Ditches

Chapter 6119. Regional Water and Sewer Districts (Refs & Annos)

Water Resource Projects

R.C. § 6119.49

6119.49 Assessment equalization board

Currentness

In the event that the owner of any lot or parcel of land to be assessed objects to the estimated assessments as provided in section 6119.48 of the Revised Code, the board of trustees of the regional water and sewer district shall appoint an assessment equalization board consisting of three disinterested persons residing in the district, and shall fix the time and place for the hearing by such board of such objections, and the secretary of the board of trustees shall notify, by certified mail, the persons so objecting of the time and place of such hearing. Such notice shall be mailed at least five days before the date of such hearing. In the event that all lands within the district are to be subject to assessment, the assessment equalization board shall consist of three disinterested persons residing outside the district.

On the day appointed by the board of trustees for that purpose, the assessment equalization board shall meet and take an oath before a proper officer to honestly and impartially discharge its duties. It shall at such meeting, or at any adjournment thereof, hear and determine all objections to the estimated assessments which have been filed under section 6119.48 of the Revised Code, and shall equalize such estimated assessments as it thinks proper to conform to the standard or standards prescribed in the resolution adopted under section 6119.46 of the Revised Code.

If the assessment equalization board determines to increase the estimated assessment against any lot or parcel of land or to assess any lot or parcel of land not included in the estimated assessments, the assessment equalization board shall notify the owner of such lot or parcel by certified mail of such fact and set a time and place for a hearing on such increase or assessment. Such notice shall be mailed at least ten days before the date of such hearing.

After the completion of all hearings provided for in this section, the assessment equalization board shall report to the board of trustees its recommendations, including any changes which should be made in the estimated assessments.

The board of trustees may approve or disapprove the report, including any changes recommended by the assessment equalization board in the estimated assessments.

In the event the board of trustees disapproves the report of the assessment equalization board, it shall appoint a new equalization board and shall fix the time and place for the hearing by such new board of objections to the estimated assessments. Such new board shall have the same powers and duties and shall proceed in the same manner as the original board.

**CREDIT(S)**

(1971 S 166, eff. 11-19-71)

Notes of Decisions (4)

R.C. § 6119.49, OH ST § 6119.49

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Title LXI. Water Supply--Sanitation--Ditches

Chapter 6119. Regional Water and Sewer Districts (Refs & Annos)

Water Resource Projects

R.C. § 6119.58

6119.58 Assessments for planning purposes

Effective: September 29, 2011

Currentness

In order to obtain funds for the preparation of plans, specifications, estimates of cost, tentative assessments, and a plan of financing for any water resource project or part thereof, the board of trustees of a regional water and sewer district may levy upon the property in such district to be benefited by such project assessments apportioned in accordance with one or more of the methods set forth in section 6119.42 of the Revised Code. The aggregate of such assessments shall not exceed the amount determined by the board of trustees to be necessary for such purpose, including costs of financing, legal services, and other incidental costs, and shall be payable in such number of annual installments, not less than one, as the board of trustees prescribes, together with interest on any water resource revenue notes and bonds which may be issued in anticipation of the collection of such assessments.

If the board of trustees proposes to obtain funds in accordance with this section, it shall determine by resolution that it is necessary to construct the water resource project and to maintain and operate the same on behalf of the district.

Prior to the adoption of the resolution making such determination, the board of trustees shall give notice of the pendency thereof and of the proposed determination of the necessity of the construction of such project therein generally described, and such notice shall set forth a description of the properties to be benefited by such project and the time and place of a hearing of objections to, and endorsements of, such project. Such notice shall be given by publication in one newspaper of general circulation in the district once a week for two consecutive weeks or as provided in section 7.16 of the Revised Code, the first publication to be at least two weeks prior to the date set for the hearing, provided that the board of trustees may give, or cause to be given, such alternative or further notice of such hearing as it finds to be necessary or appropriate. At such hearing, or at any adjournment thereof, of which no further notice need be given, the board of trustees shall hear all owners whose properties are proposed to be assessed and such other evidence as is considered to be necessary, and may then adopt its resolution determining that the proposed project is necessary and should be undertaken by the district. In such resolution, the board of trustees shall direct the preparation of the estimated assessments upon the benefited properties and by whom they shall be prepared.

After such assessments have been prepared and filed in the office of the secretary of the board of trustees and prior to the adoption of the resolution levying such assessments, the board of trustees shall give notice of the pendency of such resolution and of the proposed determination to levy such assessments, and such notice shall set forth the time and place of a hearing of objections to such assessments. Such notice shall be given by publication once in one newspaper of general circulation in the district, such publication to be made at least ten days prior to the date set for the hearing, provided that the board of trustees may give or cause to be given, such alternative or further notice of such hearing as it finds to be necessary or appropriate. At such hearing, or at any adjournment thereof, of which no further notice need be given, the board of trustees shall hear all persons whose properties are proposed to be assessed, shall correct any errors and make any revisions in the estimated assessments that appear to be necessary or just, and may then adopt a resolution levying upon the properties determined to be benefited the assessments as originally prepared or as so corrected and revised.

**6119.58 Assessments for planning purposes, OH ST § 6119.58**

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The board of trustees shall have the power at any time to levy additional assessments upon such properties to complete the payment of the costs for which the original assessments were levied or to provide funds for any additional plans, specifications, estimates of cost, tentative assessments, and other incidental costs, provided that the board shall first have held a hearing on objections to such additional assessments in the same manner as required by this section with respect to such original assessments. Such additional assessments shall be payable in such number of annual installments, not less than one, as the board of trustees prescribes, together with interest on any water resource revenue notes and bonds which may be issued in anticipation of the collection of such assessments.

The board of trustees may authorize contracts to carry out the purposes for which such assessments have been levied without the prior issuance of water resource revenue notes and bonds, provided that the payments to be made by the district do not fall due prior to the times when such assessments shall be collected.

**CREDIT(S)**

(2011 H 153, eff. 9-29-11; 1971 S 166, eff. 11-19-71)

Notes of Decisions (1)

R.C. § 6119.58, OH ST § 6119.58

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Constitution of the State of Ohio (Refs & Annos)  
Article XVIII. Municipal Corporations (Refs & Annos)

OH Const. Art. XVIII, § 4

O Const XVIII Sec. 4 Municipality may acquire public utility or contract for utility services

Currentness

Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the products or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or produce of any such utility.

**CREDIT(S)**

(1912 constitutional convention, adopted eff. 11-15-12)

Notes of Decisions (234)

Const. Art. XVIII, § 4, OH CONST Art. XVIII, § 4

Current through Files 1 to 113, 122, 124, 125, 128, 134, 136 to 138 and Statewide Issue I of the 130th GA (2013-2014).

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**CERTIFICATE OF SERVICE**

A copy of this **Appendix to Merit Brief of Appellees City Of Beachwood; City Of Bedford Heights; City Of Brecksville; City Of Independence; City Of Lyndhurst; City Of Strongsville; Village Of Glenwillow; and the Village Of Oakwood** has been served this 1st day of July 2014, by Regular U.S. mail, postage prepaid, upon:

Mark I. Wallach, Esq.  
(COUNSEL OF RECORD)  
Thacker Martinsek LPA  
2330 One Cleveland Center  
1375 E. 9<sup>th</sup> Street  
Cleveland, Ohio 44114  
[mwallach@tmlpa.com](mailto:mwallach@tmlpa.com)  
*Attorneys for Appellant, Northeast Ohio  
Regional Sewer District*

John B. Nalbandian, Esq.  
(COUNSEL OF RECORD)  
W. Stuart Dornette, Esq.  
Taft Stettinius & Hollister LLP  
425 Walnut Street, Suite 1800  
Cincinnati, Ohio 45202  
[nalbandian@taftlaw.com](mailto:nalbandian@taftlaw.com)  
[dornette@taftlaw.com](mailto:dornette@taftlaw.com)  
*Attorneys for Appellees City of Beachwood,  
City of Bedford Heights, Village of  
Glenwillow, City of Independence, City of  
Lyndhurst, Village of Oakwood and City of  
Strongsville*

James F. Lang, Esq.  
Matthew J. Kucharson, Esq.  
Molly A. Drake, Esq.  
Calfee, Halter & Griswold LLP  
1405 East Sixth Street  
Cleveland, Ohio 44114  
[jlang@calfee.com](mailto:jlang@calfee.com)  
[mkucharson@calfee.com](mailto:mkucharson@calfee.com)  
[mdrake@calfee.com](mailto:mdrake@calfee.com)  
*Attorneys for Appellant, Northeast Ohio  
Regional Sewer District*

Stephen M. O'Bryan, Esq.  
Gregory J. O'Brien, Esq.  
Michael J. Zbiegien, Jr., Esq.  
Taft Stettinius & Hollister LLP  
200 Public Square, Suite 3500  
Cleveland, Ohio 44114  
[sobryan@taftlaw.com](mailto:sobryan@taftlaw.com)  
[gobrien@taftlaw.com](mailto:gobrien@taftlaw.com)  
[mzbiegien@taftlaw.com](mailto:mzbiegien@taftlaw.com)  
*Attorneys for Appellees City of Beachwood,  
City of Bedford Heights, Village of  
Glenwillow, City of Independence, City of  
Lyndhurst, Village of Oakwood and City of  
Strongsville*

Marlene Sundheimer, Esq.  
Director of Law  
Northeast Ohio Regional Sewer District  
3900 Euclid Avenue  
Cleveland, Ohio 44115  
[sundheimer@neorsd.org](mailto:sundheimer@neorsd.org)  
*Attorneys for Appellant, Northeast Ohio  
Regional Sewer District*

Sheldon Berns (0000140)  
(COUNSEL OF RECORD)  
Paul Greenberger (0030736)  
Benjamin J. Ockner (0034404)  
Jordan Berns (0047404)  
Timothy J. Duff (0046764)  
Gary F. Werner (0070591)  
Berns, Ockner & Greenberger, LLC  
3733 Park East Drive, Suite 200  
Beachwood, Ohio 44122  
Tel: 216-831-8838  
Fax: 216-464-4489  
[sberns@bernscockner.com](mailto:sberns@bernscockner.com)  
[pgreenberger@bernssockner.com](mailto:pgreenberger@bernssockner.com)  
[bockner@bernssockner.com](mailto:bockner@bernssockner.com)  
[jberns@bernssockner.com](mailto:jberns@bernssockner.com)  
[tduff@bernssockner.com](mailto:tduff@bernssockner.com)  
[gwerner@bernssockner.com](mailto:gwerner@bernssockner.com)

*Attorneys for Appellee Property Owners: The  
Ohio Council of Retail Merchants; The  
Greater Cleveland Association of Building  
Owners and Managers; The Cleveland  
Automobile Dealers Association; CADA  
Properties, LLC; The Northern Ohio Chapter  
of NAIOP, the Association for Commercial  
Real Estate; The Northeast Ohio Apartment  
Association; Snowville Service Associates  
LLC; Boardwalk Partners, LLC; Creekview  
Commons, LLC; Fargo Warehouse LLC;  
Highlands Business Park, LLC; JES  
Development Ltd.; Lakepoint Office Park,  
LLC; Landerbrook Point, LLC; Newport  
Square, Ltd.; Park East Office Park LLC;  
Pavilion Properties, LLC; and WGG  
Development Ltd.*

David J. Matty, Esq.  
Shana A. Samson, Esq.  
Justin Whelan, Esq.  
Matty, Henrikson & Greve  
55 Public Square, Suite 1775  
Cleveland, Ohio 44113  
[dmatty@rmmglaw.com](mailto:dmatty@rmmglaw.com)  
[ssamson@rmmglaw.com](mailto:ssamson@rmmglaw.com)  
[jwhelan@rmmglaw.com](mailto:jwhelan@rmmglaw.com)  
*Attorneys for Appellee City of Brecksville*

Elizabeth Wells Rothenberg, Esq.  
Assistant Director of Law  
City of Cleveland Heights  
40 Severance Circle  
Cleveland Heights, Ohio 44112  
[erothenberg@clvhts.com](mailto:erothenberg@clvhts.com)  
*Attorney for Appellee City of Cleveland  
Heights*

Gregory Sponseller, Law Director  
City of Olmsted Falls  
26100 Bagley Road  
Olmsted Falls, Ohio 44138  
[gsponseller@olmstedfalls.org](mailto:gsponseller@olmstedfalls.org)

And by e-mail only upon:

Luke McConville, Esq.  
Waldheger Coyne Co., LPA  
1991 Crocker Road, Suite 550  
Westlake, Ohio 44145  
[luke@healthlaw.com](mailto:luke@healthlaw.com)  
*Attorneys for Amicus Curiae Village of  
Newburgh Heights*

Gregory J. DeGulis, Esq.  
McMahon Degulis LLP  
The Caxton Building, Suite 650  
812 Huron Road  
Cleveland, OH 44115-1168  
[gdegulis@mdllp.net](mailto:gdegulis@mdllp.net)  
*Attorneys for Amici Curiae National  
Association of Clean Water Agencies  
(NACWA) and Association of Ohio  
Metropolitan Wastewater Agencies (AOMWA)*

Barbara Langhenry, Esq.  
Director of Law  
City of Cleveland  
Harold A. Madorsky, Esq.  
Shirley A. Tomasello, Esq.  
601 Lakeside Avenue, Room 106  
Cleveland, Ohio 44114  
[blanghenry@city.cleveland.oh.us](mailto:blanghenry@city.cleveland.oh.us)  
[hmadorsky@city.cleveland.oh.us](mailto:hmadorsky@city.cleveland.oh.us)  
[stomasello@city.cleveland.oh.us](mailto:stomasello@city.cleveland.oh.us)  
*Attorneys for Amicus Curiae City of Cleveland*

Andrea M. Salimbene, Esq.  
Counsel of Record  
McMahon Degulis LLP  
1335 Dublin Road Suite 216A  
Columbus, OH 43215  
[Asalimbene@mdllp.net](mailto:Asalimbene@mdllp.net)  
*Attorneys for Amici Curiae National  
Association of Clean Water Agencies  
(NACWA) and Association of Ohio  
Metropolitan Wastewater Agencies (AOMWA)*

Erica M. Spitzig, Esq.  
McMahon Degulis LLP  
The Monastery  
1055 St. Paul Place  
Cincinnati, Ohio 45202  
[espitzig@mdllp.net](mailto:espitzig@mdllp.net)  
*Attorneys for Amici Curiae National  
Association of Clean Water Agencies  
(NACWA) and Association of Ohio  
Metropolitan Wastewater Agencies (AOMWA)*

Eric Luckage, Esq.  
Counsel of Record  
John Albers, Esq.  
Albers and Albers  
88 N. Fifth Street  
Columbus, Ohio 43215  
[Eric.Luckage@alberslaw.com](mailto:Eric.Luckage@alberslaw.com)  
[John.Albers@alberslaw.com](mailto:John.Albers@alberslaw.com)  
*Attorneys for Amici Curiae Coalition of Ohio  
Regional Districts, Deerfield Regional Storm  
Water District and ABC Water and Storm  
Water District*

Rosalina M. Fini, Esq.  
Cleveland Metropolitan Park District  
4101 Fulton Parkway  
Cleveland, Ohio 44141  
[rmfl@clevelandmetroparks.com](mailto:rmfl@clevelandmetroparks.com)  
*Attorneys for Amicus Curiae Cleveland  
Metropolitan Park District*

Michael L. Hardy, Esq.  
Karen E. Rubin, Esq.  
Devin A. Barry, Esq.  
Thompson Hine LLP  
3900 Key Center  
127 Public Square  
Cleveland, Ohio 44114  
[Mike.Hardy@ThompsonHine.com](mailto:Mike.Hardy@ThompsonHine.com)  
[Karen.Rubin@ThompsonHine.com](mailto:Karen.Rubin@ThompsonHine.com)  
[Devin.Barry@ThompsonHine.com](mailto:Devin.Barry@ThompsonHine.com).  
*Attorneys for Amicus Curiae Cleveland  
Metropolitan Park District*

Yvette McGee Brown, Esq.  
Chad Readler, Esq.  
JONES DAY  
325 John H. McConnell Boulevard, Suite 600  
PO Box 165017  
Columbus, Ohio 43216-5017  
[ymcgeebrown@jonesday.com](mailto:ymcgeebrown@jonesday.com)  
*Attorney for Amici Curiae Village of Cuyahoga  
Heights, Village of Moreland Hills, and  
Orange Village*

Scott Claussen, Esq.  
City of Brooklyn  
7619 Memphis Avenue  
Brooklyn, Ohio 44144  
[sclaussen@brooklynohio.gov](mailto:sclaussen@brooklynohio.gov)  
*Attorneys for Amicus Curiae City of Brooklyn*

Jerome Dowling, Esq.  
Village of Brooklyn Heights  
20800 Center Ridge Road, Suite 222  
Rocky River, Ohio 44116  
[jdowling6@cox.net](mailto:jdowling6@cox.net)  
*Attorneys for Amicus Curiae Village of  
Brooklyn Heights*

Thomas P. O'Donnell, Esq.  
Village of Highland Hills  
3700 Northfield Road, Suite 11  
Highland Hills, Ohio 44122  
[todonnell@todlaw.com](mailto:todonnell@todlaw.com)  
*Attorneys for Amicus Curiae Village of  
Highland Hills*

Joseph W. Diemert, Jr., Esq.  
Jopseh Diemert and Associates  
1360 S.O.M. Center Road  
Cleveland, Ohio 44124  
[receptionist@diemertlaw.com](mailto:receptionist@diemertlaw.com)  
*Attorneys for Amicus Curiae Mayfield Village*

Timothy G. Dobeck, Esq.  
Parma City Hall  
6611 Ridge Road  
Parma, Ohio 44129  
[law@cityofparma-oh.gov](mailto:law@cityofparma-oh.gov)  
*Attorneys for Amicus Curiae City of Parma*

William M. Ondrey Gruber, Esq.  
City of Shaker Heights  
3400 Lee Road  
Shaker Heights; Ohio 44120  
[william.gruber@shakeronline.com](mailto:william.gruber@shakeronline.com)  
*Attorneys for Amicus Curiae City of Shaker Heights*

Dale F. Pelsozy, Esq.  
Cuyahoga County Prosecutor's Office  
1200 Ontario Street, Justice Center 8<sup>th</sup> Fl.  
Cleveland, Ohio 44113  
[dpelsozy@prosecutor.cuyahogacounty.us](mailto:dpelsozy@prosecutor.cuyahogacounty.us)  
*Attorneys for Amicus Curiae Olmsted Township*

Michael P. Lograsso, Esq.  
City of South Euclid  
1349 South Green Road  
South Euclid, Ohio 44121  
[mlograsso@seuclid.com](mailto:mlograsso@seuclid.com)  
*Attorneys for Amicus Curiae City of South Euclid*

Teresa Metcalf Beasley, Esq.  
Calfee, Halter & Griswold LLP  
The Calfee Building  
1405 East Sixth Street  
Cleveland, Ohio 44114  
[tmbeasley@calfee.com](mailto:tmbeasley@calfee.com)  
*Attorneys for Amicus Curiae City of Warrensville Heights*

Peter H. Hull, Esq.  
City of Middleburg Heights  
15700 Bagley Road  
Middleburg Heights; Ohio 44130  
[peterhull@gmail.com](mailto:peterhull@gmail.com)  
*Attorneys for Amicus Curiae City of Middleburg Heights*

Michael Pokorny, Esq.  
City of Parma Heights  
6281 Pearl Road  
Parma Heights, Ohio 44130  
[law@parmaheightsoh.gov](mailto:law@parmaheightsoh.gov)  
*Attorneys for Amicus Curiae City of Parma Heights*

David Lambros, Esq.  
Village of Valley View  
One Berea Commons, Suite 216  
Berea, Ohio 44017  
[dalambrose@yahoo.com](mailto:dalambrose@yahoo.com)  
*Attorneys for Amicus Curiae Village of Valley View*

Eric E. Murphy, Esq.  
Michael J. Hendershot, Esq.  
Jeffrey Jarosch, Esq.  
Aaron S. Farmer, Esq.  
30 East Broad Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215  
[eric.murphy@ohioattorneygeneral.gov](mailto:eric.murphy@ohioattorneygeneral.gov)  
*Attorneys for Amicus Curiae State of Ohio*

And via Regular U.S. mail, postage prepaid, only upon:

Eugene P. Holmes, Pro Se  
23507 Royalton Road  
Columbia Station, Ohio 44028  
Olmsted Township, Ohio  
Attn: Jim Carr, Trustee  
26900 Cook Road  
Olmsted Township, OH 44138

Penny Sisson, Pro Se  
Box 266  
Spencer, Ohio 44275

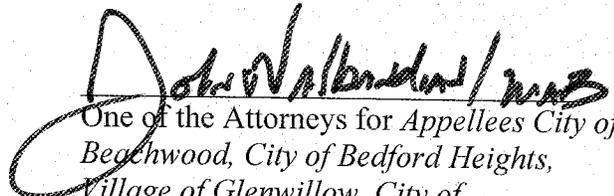
And by e-mail only upon:

<u>Party/Municipality</u>	<u>Attorney Representative</u>	<u>Service Address</u>
Bath Township	Mary Ann Kovach Michael D. Todd	<a href="mailto:kovach@prosecutor.summitoh.net">kovach@prosecutor.summitoh.net</a> <a href="mailto:toddm@prosecutor.summitoh.net">toddm@prosecutor.summitoh.net</a> See also: Summit County Defendants
Bedford	Kenneth A. Schuman Charles A. Bakula	<a href="mailto:kas@rgm-law.com">kas@rgm-law.com</a> <a href="mailto:charlesbakula@netscape.net">charlesbakula@netscape.net</a>
Berea	Gregory M. Sponseller	<a href="mailto:gsponseller@bereaohio.com">gsponseller@bereaohio.com</a>
Boston Heights	Constance A. Hesske	<a href="mailto:attyhesske@hesske.com">attyhesske@hesske.com</a> See also: Summit County Defendants
Bratenahl	David J. Matty Shana A. Samson Erin Hooper	<a href="mailto:dmatty@rmmglaw.com">dmatty@rmmglaw.com</a> <a href="mailto:ssamson@rmmglaw.com">ssamson@rmmglaw.com</a> <a href="mailto:ehooper@rmmglaw.com">ehooper@rmmglaw.com</a>
Broadview Heights	Vince Ruffa Ann C. Oakar	<a href="mailto:vruffa@oakarandruffa.com">vruffa@oakarandruffa.com</a> <a href="mailto:aoakar@oakarandruffa.com">aoakar@oakarandruffa.com</a> <a href="mailto:annieoakar@hotmail.com">annieoakar@hotmail.com</a>
Brook Park	Neal M. Jamison	<a href="mailto:njamison@cityofbrookpark.com">njamison@cityofbrookpark.com</a> <a href="mailto:neal.jamison@yahoo.com">neal.jamison@yahoo.com</a>
Brooklyn	Scott D. Claussen	<a href="mailto:sclaussen@brooklynohio.gov">sclaussen@brooklynohio.gov</a> <a href="mailto:scott.claussen@lakewoodoh.net">scott.claussen@lakewoodoh.net</a>
Brooklyn Heights	Jerome E. Dowling	<a href="mailto:benru677@att.net">benru677@att.net</a> <a href="mailto:kbaciak@brooklynhts.org">kbaciak@brooklynhts.org</a>
Cleveland	Catherine Ma Shirley Tomasello	<a href="mailto:cma@city.cleveland.oh.us">cma@city.cleveland.oh.us</a> <a href="mailto:stomasello@city.cleveland.oh.us">stomasello@city.cleveland.oh.us</a> <a href="mailto:jscott@city.cleveland.oh.us">jscott@city.cleveland.oh.us</a>
Columbia Township	Dennis P. Will Gerald A. Innes	<a href="mailto:lcp@lcprosecutor.org">lcp@lcprosecutor.org</a>
Cuyahoga Heights	Jonathan D. Greenberg Aimee W. Lane	<a href="mailto:jgreenberg@walterhav.com">jgreenberg@walterhav.com</a> <a href="mailto:alane@walterhav.com">alane@walterhav.com</a> <a href="mailto:docket@walterhav.com">docket@walterhav.com</a>
East Cleveland	Ronald K. Riley	<a href="mailto:rriley@eastcleveland.org">rriley@eastcleveland.org</a>
Euclid	L. Christopher Frey	<a href="mailto:cfrey@cityofeuclid.com">cfrey@cityofeuclid.com</a>
Garfield Heights	Timothy J. Riley Kevin P. Weiler	<a href="mailto:lawtjr@aol.com">lawtjr@aol.com</a> <a href="mailto:triley@garfieldhts.org">triley@garfieldhts.org</a> <a href="mailto:kweiler@garfieldhts.org">kweiler@garfieldhts.org</a>
Gates Mills	Charles T. Riehl Aimee W. Lane	<a href="mailto:criehl@walterhav.com">criehl@walterhav.com</a> <a href="mailto:alane@walterhav.com">alane@walterhav.com</a> <a href="mailto:docket@walterhav.com">docket@walterhav.com</a>
Highland Heights	Timothy G. Paluf	<a href="mailto:tpaluf@highlandhts.com">tpaluf@highlandhts.com</a>
Highland Hills	Thomas P. O'Donnell	<a href="mailto:todonnell@todlaw.com">todonnell@todlaw.com</a>
Hudson	Charles T. Riehl	<a href="mailto:criehl@walterhav.com">criehl@walterhav.com</a> <a href="mailto:docket@walterhav.com">docket@walterhav.com</a>
Lakewood	Kevin Butler Scott Claussen	<a href="mailto:law@lakewoodoh.net">law@lakewoodoh.net</a> <a href="mailto:Kevin.Butler@lakewoodoh.net">Kevin.Butler@lakewoodoh.net</a>
Linndale	George T. Simon	<a href="mailto:hellogorgesimon@gmail.com">hellogorgesimon@gmail.com</a>

<b><u>Party/Municipality</u></b>	<b><u>Attorney Representative</u></b>	<b><u>Service Address</u></b>
Macedonia	Joseph W. Diemert, Jr. Thomas M. Hanculak Mark V. Guidetti	<a href="mailto:receptionist@diemertlaw.com">receptionist@diemertlaw.com</a> <a href="mailto:jwdiemert@diemertlaw.com">jwdiemert@diemertlaw.com</a> <a href="mailto:tmhanculak@diemertlaw.com">tmhanculak@diemertlaw.com</a> <a href="mailto:mvguidetti@diemertlaw.com">mvguidetti@diemertlaw.com</a> See also: Summit County Defendants
Maple Heights	John J. Montello	<a href="mailto:jmontello@bedfordlawyers.com">jmontello@bedfordlawyers.com</a> <a href="mailto:mainoffice@bedfordlawyers.com">mainoffice@bedfordlawyers.com</a>
Mayfield Heights	L. Bryan Carr	<a href="mailto:carrlawfirm@aol.com">carrlawfirm@aol.com</a>
Mayfield Village	Joseph W. Diemert, Jr. Diane A. Calta	<a href="mailto:receptionist@diemertlaw.com">receptionist@diemertlaw.com</a> <a href="mailto:dacalta@diemertlaw.com">dacalta@diemertlaw.com</a> <a href="mailto:jwdiemert@diemertlaw.com">jwdiemert@diemertlaw.com</a>
Middleburg Heights	Peter H. Hull	<a href="mailto:peterhhull@gmail.com">peterhhull@gmail.com</a>
Moreland Hills	Margaret Anne Cannon	<a href="mailto:mcannon@walterhav.com">mcannon@walterhav.com</a>
Newburgh Heights	Luke F. McConville	<a href="mailto:luke@healthlaw.com">luke@healthlaw.com</a>
North Randall	Leonard A. Spremulli	<a href="mailto:sprenullil@aol.com">sprenullil@aol.com</a>
North Royalton	Donna M. Vozar Thomas A. Kelly	<a href="mailto:dvozar@northroyalton.org">dvozar@northroyalton.org</a> <a href="mailto:tkelly@northroyalton.org">tkelly@northroyalton.org</a> <a href="mailto:dvoz74@hotmail.com">dvoz74@hotmail.com</a> <a href="mailto:tak@kellyandkelly.us">tak@kellyandkelly.us</a> <a href="mailto:carolyn@kellyandkelly.us">carolyn@kellyandkelly.us</a>
Northfield (Village)	Bradric Bryan	<a href="mailto:bbryan@gsb-llp.com">bbryan@gsb-llp.com</a> <a href="mailto:gsbillp@gsb-llp.com">gsbillp@gsb-llp.com</a> See also: Summit County Defendants
Northfield Center Township	Mary Ann Kovach Michael D. Todd	<a href="mailto:kovach@prosecutor.summitoh.net">kovach@prosecutor.summitoh.net</a> <a href="mailto:toddm@prosecutor.summitoh.net">toddm@prosecutor.summitoh.net</a> See also: Summit County Defendants
Orange Village	Stephen L. Byron	<a href="mailto:sbyron@walterhav.com">sbyron@walterhav.com</a>
Parma	Timothy Dobeck	<a href="mailto:tdobeck@parmalaw.org">tdobeck@parmalaw.org</a> <a href="mailto:bwirtz@cityofparma-oh.gov">bwirtz@cityofparma-oh.gov</a>
Parma Heights	Marcia E. Hurt Thomas A. Kelly C. Anthony Stavole	<a href="mailto:mehurt@stavoleandmiller.com">mehurt@stavoleandmiller.com</a> <a href="mailto:admin@stavoleandmiller.com">admin@stavoleandmiller.com</a> <a href="mailto:tak@kellyandkelly.us">tak@kellyandkelly.us</a> <a href="mailto:carolyn@kellyandkelly.us">carolyn@kellyandkelly.us</a>
Pepper Pike	Stephen L. Byron	<a href="mailto:sbyron@walterhav.com">sbyron@walterhav.com</a> <a href="mailto:docket@walterhav.com">docket@walterhav.com</a>
Richfield (Village of)	Charles T. Riehl William R. Hanna	<a href="mailto:criehl@walterhav.com">criehl@walterhav.com</a> <a href="mailto:whanna@walterhav.com">whanna@walterhav.com</a> <a href="mailto:docket@walterhav.com">docket@walterhav.com</a> See also: Summit County Defendants
Richfield Township		See: Summit County Defendants
Richmond Heights	R. Todd Hunt Aimee W. Lane	<a href="mailto:rthunt@walterhav.com">rthunt@walterhav.com</a> <a href="mailto:alane@walterhav.com">alane@walterhav.com</a>

<u>Party/Municipality</u>	<u>Attorney Representative</u>	<u>Service Address</u>
		<a href="mailto:docket@walterhav.com">docket@walterhav.com</a>
Sagamore Hills	Jeffrey J. Snell	<a href="mailto:jeff@attorneysnell.com">jeff@attorneysnell.com</a> See also: Summit County Defendants
Seven Hills	Richard A. Pignatiello Patrick DiChiro	<a href="mailto:pignatiellolaw@aol.com">pignatiellolaw@aol.com</a> <a href="mailto:sevenhillslaw@aol.com">sevenhillslaw@aol.com</a>
Shaker Heights	William M. Ondrey Gruber	<a href="mailto:william.gruber@shakeronline.com">william.gruber@shakeronline.com</a>
Solon	David J. Matty Shana A. Samson Erin Hooper	<a href="mailto:dmatty@rmmglaw.com">dmatty@rmmglaw.com</a> <a href="mailto:ssamson@rmmglaw.com">ssamson@rmmglaw.com</a> <a href="mailto:ehooper@rmmglaw.com">ehooper@rmmglaw.com</a>
South Euclid	Michael P. Lograsso	<a href="mailto:lograssolaw@aol.com">lograssolaw@aol.com</a>
Twinsburg	David M. Maistros	<a href="mailto:dmaistros@twinsburg.oh.us">dmaistros@twinsburg.oh.us</a> <a href="mailto:davidmaistros@maistroslaw.com">davidmaistros@maistroslaw.com</a> See also: Summit County Defendants
Twinsburg Township	Alfred E. Schrader	<a href="mailto:alschrader@choiceonemail.com">alschrader@choiceonemail.com</a> See also: Summit County Defendants
University Heights	Kenneth J. Fisher	<a href="mailto:kfisher@fisher-lpa.com">kfisher@fisher-lpa.com</a>
Valley View	David A. Lambros	<a href="mailto:law2direct@aol.com">law2direct@aol.com</a>
Walton Hills	John J. Montello Blair N. Melling	<a href="mailto:jmontello@bedfordlawyers.com">jmontello@bedfordlawyers.com</a> <a href="mailto:mainoffice@bedfordlawyers.com">mainoffice@bedfordlawyers.com</a>
Warrensville Heights	Sean P. Ruffin	<a href="mailto:sruffin@cityofwarrensville.com">sruffin@cityofwarrensville.com</a> <a href="mailto:khughes@cityofwarrensville.com">khughes@cityofwarrensville.com</a> <a href="mailto:sruffin@ruffinlegal.com">sruffin@ruffinlegal.com</a>
Willoughby Hills	Thomas Lobe	<a href="mailto:tomlobe@yahoo.com">tomlobe@yahoo.com</a> <a href="mailto:lawdirector@willoughbyhills-oh.gov">lawdirector@willoughbyhills-oh.gov</a>
Summit County Defendants: Bath Township Boston Heights Hudson Macedonia Northfield Village Northfield Center Township Richfield (Village) Richfield Township Sagamore Hills Twinsburg Twinsburg Township	Sherri Bevan Walsh Mary Ann Kovach Michael D. Todd	<a href="mailto:kovach@prosecutor.summitoh.net">kovach@prosecutor.summitoh.net</a> <a href="mailto:toddm@prosecutor.summitoh.net">toddm@prosecutor.summitoh.net</a>
Bishop Lennon Intervenors	L. James Juliano Matthew J. Fitzsimmons Michael E. Cicero	<a href="mailto:juliano@nicola.com">juliano@nicola.com</a> <a href="mailto:fitzsimmons@nicola.com">fitzsimmons@nicola.com</a> <a href="mailto:cicero@nicola.com">cicero@nicola.com</a>
Intervenor, The	Adrian D. Thompson	<a href="mailto:athompson@taftlaw.com">athompson@taftlaw.com</a>

<u>Party/Municipality</u>	<u>Attorney Representative</u>	<u>Service Address</u>
Cleveland Municipal School District Board of Education	Brian E. Ambrosia	<a href="mailto:bambrosia@taftlaw.com">bambrosia@taftlaw.com</a>

  
One of the Attorneys for Appellees City of  
Beachwood, City of Bedford Heights,  
Village of Glenwillow, City of  
Independence, City of Lyndhurst, Village of  
Oakwood and City of Strongsville

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