

## Regional Water and Sewer Districts

This law authorizes the establishment of regional water and sewer districts to provide a water supply for domestic, industrial and public use and to provide for collection and disposal of storm and sanitary sewage and other liquid waste, both within and without a district.<sup>1</sup> A district may include territory in any unincorporated part of a county or contiguous counties or in one or more municipalities, or both. It is not required that the area of a district be "all in one piece" so long as the parts are so situated that public health, safety, convenience, or welfare will be promoted by organization as a single district.

The Act borrows heavily from the Sanitary District<sup>2</sup> and Conservancy District<sup>3</sup> Acts with respect to procedure for district organization. A significant difference is that private persons may not initiate action under this statute. It may be done only by one or more municipalities or counties, or both.

If a proposed district lies entirely in one county the petition is filed with the clerk of courts of that county and the matter finally determined by a common pleas judge of the county on the merits. If more than one county is involved the petition is filed with the clerk of courts of one of the counties to be overlapped and the formal sufficiency of the petition is passed upon by a common pleas judge of that county. The question of incorporation *vel non* is determined by a collegial court consisting of one common pleas judge from each county with territory in the proposed district. The hearing on a petition is held after newspaper publication and an opportunity afforded any person residing in the affected area or a political subdivision lying in it to file his objections.

The petition must state, among other things, (1) the necessity for the proposed district and (2) that it will be conducive to the public health, safety, convenience or welfare, and describe generally the purpose of the unit. If it appears, on the hearing, that allegations (1) and (2) above are made out, the court must find and declare the district organized and give it a corporate name. That action, entered of record, brings the district into being. There is no express provision for an appeal.<sup>4</sup>

The powers of a district are vested in a board of trustees. The number of members, the manner of their selection, their terms and

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<sup>1</sup> Amended Senate Bill No. 198.

<sup>2</sup> OHIO GEN. CODE §6602-34 *et seq.*

<sup>3</sup> OHIO GEN. CODE §6828-1 *et seq.*

<sup>4</sup> Doubtless an appeal on questions of law to the court of appeals would be available under OHIO GEN. CODE §12223-27. See *County of Miami v. City of Dayton*, 92 Ohio St. 215, 110 N.E. 726 (1915).

their compensation must be stated in the petition and, presumably, that governs.

Section 6, in addition to a twenty-paragraph delegation of specific powers, contains a unique clause devolving upon a district all powers conferred upon any petitioning unit of government under the Ohio Constitution or statutes with respect to water and sewer facilities, except as otherwise limited in the act. Municipalities have constitutional home rule power to own and operate public utilities.<sup>5</sup> Would a petitioning village or city be deemed to have transferred some of this authority by force of Section 6?<sup>6</sup> Or does the provision simply mean that the district is to have the same powers in this respect as a petitioning unit?

Section 8 empowers a board to adopt and enforce regulations, not inconsistent with those of the State Department of Health, to protect district facilities, control their use and preserve order in their vicinity. They are supported by civil, but not penal, sanctions.

Certain actions of the board are, by force of Section 9, subject to written objection within 30 days by any person affected. Objections are passed upon, after hearing, by the court having jurisdiction over the organization of the district. It is governed by the same general criteria as in case of original organization, namely, whether action is necessary, and so on. This applies to the fixing of rates, acquisition of facilities by contract, joint construction with another local unit and authorization and sale of bonds. One wonders about the practicability of this scheme of review of board action. It means, for example, that an award of revenue bonds, at public sale and on terms favorable to the district, could not be effective for 30 days, at best, and not for a much longer period if timely objection were filed. It appears rather artificial, moreover, to pass upon an objection to such an award by reference to necessity and to whether it conduces to public health.

By Section 12 a district is authorized to issue bonds for operation and maintenance of facilities as well as for capital outlay. This is an unusual policy. There is some confusion in this section as to the character of the obligation of district bonds. The section first declares that all bonds shall be secured by the general credit of the district and then provides that they shall be paid from either special assessment proceeds or a limited percentage of project gross revenues, or both. Section 13 clarifies the matter by ordaining that "such revenue bonds" be paid solely from funds derived from facility revenue. It and the two sections which follow are apparently intended to cover the whole ground as to revenue bond borrowing

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<sup>5</sup> OHIO CONST. ART. XVIII, §4.

<sup>6</sup> Home rule powers are conferred by the Constitution upon "municipalities." Might a municipal governing body abdicate them?

under the act. Special assessment bonds, on the other hand, are, by Section 31, made subject to the Uniform Bond Act. Presumably, this would apply to bonds secured by both special assessment proceeds and project revenues.

Revenue bond financing by units of this character is something new in Ohio. Sanitary districts and conservancy districts do not have authority to issue revenue bonds. At the discretion of its board, subject to judicial review as previously noted, revenue bonds may be issued with or without the additional security of a mortgage of physical properties. Section 14 authorizes trust agreements to secure revenue bond issues. While the Act is none too clear in this respect, presumably it would permit use of the device to spell out the security for a simple revenue bond issue as well as to encumber physical properties. A trust agreement may provide for an operating receivership "on behalf of the district" in the event of default.<sup>7</sup>

Section 16 makes a bond issue open-end unless otherwise specified in the bond resolution or trust agreement. This facilitates issuance of parity bonds where necessary to provide additional funds to complete a project.

Special assessments may be imposed by a board upon property specially benefited to cover (1) any part of the cost or expense connected with the improvement of any street, alley, public road or place by draining, by constructing sewers, drains, water courses or water mains or by laying water pipe, and (2) any part of the cost of changing or improving any stream or watercourse. For procedure Section 18 borrows the provisions of Ohio General Code, Sections 3812 to 3837, and 3892 to 3911, which govern municipal street improvement assessments.

The act contains, in Sections 32 through 38, rather elaborate provisions as to planning water and sewer projects. It authorizes a special levy, subject to electoral approval, or a short-term bond issue to meet planning expenses. Completed plans are subject to approval by the State Department of Health. With respect to sewerage, however, a district board is not limited to this pattern of planned development. Section 30 authorizes a board, if it deems that course expedient, to provide for construction of main sewers and drains and branch sewers and drains without previously adopting a plan. Sections 19 through 29, moreover, authorize a board, in the absence or insufficiency of a plan under Section 32, to provide a system of sewerage under a plan of (1) dividing the primary dis-

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<sup>7</sup>Section 16 requires that bond proceeds be used solely for the payment of project costs. In a revenue bond project it may be necessary to capitalize interest during the period of construction. Thus, the problem would be to make such interest out to be a project cost.

tract into as many sewer districts as might be deemed necessary to secure efficient sewerage and (2) establishing at least one main sewer in each subordinate district.

There are a number of provisions concerned with intergovernmental relations. Section 6 (11) authorizes one district to merge or combine with any other created under the act on the terms agreed upon by two-thirds of the members of the board of each. Doubtless, this means board, not individual, action. Section 6 (12) authorizes joint construction with any other political subdivision of any works the district is authorized by law to construct. By Section 6 (14) authority is granted to enter into contracts to sell water and sewer services to the United States, the State of Ohio, or any Ohio political subdivision. Section 43 authorizes contracts with the United States, private parties, public corporations and the state government of Ohio and other states and with improvement districts in this or other states for cooperation or assistance in planning, constructing, operating or protecting works of a district.

*J. B. F.*