

Legal Summary

Questions re: Chapter 942

Exemptions: Marvin Evans found that the National Park would be required to pay the utility, as would any federal, state, or locally owned property. Such entities, including nonprofits, churches, and schools are still required to pay assessments and other utility bills such as water and sewer. As a matter equal application and to avoid an immense administrative project, we recommend not expanding exemptions other than ones required by state code.

Immunity: As with any other utility, there will be limited liability. The District would not be held liable for decisions to do or not do a project; however if a project is done negligently, the District can be held liable. Township governments will not have any liability under this proposal.

Eminent Domain: Yes, the District would have the same eminent domain powers as the Department of Sanitary Sewer Services, unless a project is done under the ditch petition process, where easements would be granted and the District would only pay damages.

Opting Out: Since the settlement with the Northeast Ohio Regional Sewer District is strictly worded, we were advised to not include an opt-out clause. The settlement agreement also says that the new program must have a steady and reliable source of funding, so putting in a fee reduction is also not advised. However; the Prosecutor's office and Executive's Law Department state that since County Council has the authority to alter the District (see Marvin's code citation below), townships can petition Council to leave the District at any point.

Authority: From Marvin Evans:

R.C. 6117.01(B)(1) provides that the establishment of a storm water district or districts is a discretionary power of County Council. It is proposed for SCCO Chapter 942 that any township, village, or city that wishes to have a storm water district established within its geographical territory provide County Council with a resolution supporting such action by the county. Chapter 6117 makes no specific provision for townships to approve, disapprove or request the formation of districts. This is in contrast to R.C. 6117.03, which allows the county to include part or all of a municipality only with the municipality's agreement pursuant to an ordinance or resolution enacted by the municipality.

Pursuant to R.C. 302.13(M), County Council may "By ordinance or resolution make any rule, or act in any matter not specifically prohibited by general law; provided that, in the case of conflict between the exercise of powers pursuant to this division and the exercise of powers by a municipality or township, the exercise of power by the municipality or township shall prevail, and further provided that the board may levy only taxes authorized by general law." With respect to townships and the establishment of storm water districts, there are two questions: 1) can the county impose by rule a condition that a township provide a resolution of support or make an application relative to the creation of a storm water district, and 2) do the township trustees have authority to make such a resolution or application?

Pursuant to R.C. 302.13(M), it appears clear that the county can make a rule that conditions the creation of a storm water district within a particular political subdivision on the support or application of the legislative authority of that subdivision. By enacting such a rule, it is not contemplated that the township would control the actions of County Council, rather Council would make the final decision as to whether the district was created under R.C. 6117.01. There is no provision of law that prohibits such a rule. There is no inherent conflict with the exercise of any powers of the townships since Council has the absolute right under R.C. 6117.01 to create districts in the unincorporated areas of the county.

It is a longstanding rule in Ohio that township trustees are a creature of statute and therefore possess only those powers expressly conferred by statute or necessarily inferred therefrom. See Ohio Atty. Gen. Op. No. 2015-006, citing *In re Petition for Incorp. of the Vill. of Holiday City*, 70 Ohio St. 3d 365, 370, 639 N.E.2d 42 (1994) (recognizing that “absent a specific directive from the General Assembly, township trustees are powerless to” act); *Trs. of New London Twp. v. Miner*, 26 Ohio St. 452, 456 (1875) (“[township] trustees can exercise only those powers conferred by statute, or such others as are necessarily to be implied from those granted”); 1982 Op. Att’y Gen. No. 82-012, at 2-42 (“[s]ince townships are creatures of statute, township trustees may exercise only those powers conferred by statute or such others as are necessarily to be implied from those granted, in order to enable them to perform their duties”). R.C. 505.705 allows township trustees to commit township general revenue funds through grants or loans for the construction and administration of storm water drainage projects in conjunction with any other political subdivision with authority to perform such projects. The township may make such commitment of funds upon terms that the trustees deem appropriate. It appears consistent with this authority to address drainage issues that a township has discretion to ask the county to exercise its authority under R.C. 6117.01 to administer drainage projects within the township. Inherent in the authority to commit funds is an authority to agree that projects will be undertaken by the other political subdivision, or to request of the other political subdivision that it exercise its authority to undertake projects. In this circumstance, discretion to establish the district and undertake projects remains with the county. Chapter 942 would just set out a process by which the county authorizes the townships can make the request to the county to perform a needed function that the township is not authorized to perform.

With respect to Sagamore Hills Twp, and the other four municipalities that are NEORSD members, in order to address the restrictions placed on them by the NEORSD settlement agreement related to an opt-out provision in a county program, the county may need to prohibit opting out of districts by the relevant political subdivision. Chapter 6117 does not address this issue in terms of political subdivisions opting out. Rather, R.C. 6117.01(B)(1) allows County Council to modify districts and their boundaries at Council’s discretion. Appropriate language may need to be included in the legislation as to those five communities, or generally. This is an issue that may need to be negotiated with NEORSD in order to avoid litigation. Whether or not this is an issue will depend on whether those five communities all agree to be a part of the county program. This should not change the initial district creation process.

Ballot issues: On a closely related matter that was questioned, Chapter 6117 makes no provision for putting the creation of a district to the voters. Furthermore, we can find no provision in the Revised Code that authorizes a township to place such an issue on the ballot. In this respect the axiom that

townships are creatures of statute applied. In effect, such a vote would be advisory in nature and could not be binding upon County Council. R.C. 505.705 places any decisions about intergovernmental cooperation on storm water issues within the authority of the trustees. Direct voter approval is not contemplated. As such, townships are without authority to place the question of district creation on the ballot.

For your reference, here is R.C. 505.705.

A board of township trustees may agree to appropriate township general revenue fund moneys to, and may agree to grant or lend moneys from the township general revenue fund to, any political subdivision with authority to provide water, sanitary sewerage, or storm water drainage within the township, for the purpose of providing moneys to the political subdivision to pay for the planning of or actual costs, fees, debt retirement, or any other expense, including, but not limited to, administrative and professional fees, incurred in supplying one or more of these purposes within the township, or the planning of or actual construction, maintenance, repair, or operation of water, sanitary sewerage, or storm water drainage within the township. A board of township trustees that grants or lends moneys to a political subdivision for this purpose shall expressly state the terms of the grant or loan agreement in a written memorandum.