

Albers Firm Helps to Exempt Districts from Most of ORC Chapter 5705

As you may recall from our last issue, the Albers Firm has been working with the Ohio Rural Water Association regarding the applicability of Chapter 5705 to regional water and sewer districts. Until recently, Chapter 5705 was thought to be inapplicable to regional water and sewer districts that did not levy a voted tax. However, an Attorney General opinion from 1999 stated that regional water and sewer districts that do not levy taxes must adopt a tax budget nonetheless, simply because they fall within the definition of “taxing units”. The Attorney General concluded that water & sewer districts were NOT exempt from filing a tax budget because the General Assembly had not specifically exempted them. Additionally, all of Chapter 5705 was held to be applicable to Chapter 6119 districts.

Thanks to our combined efforts, House Bill (HB) 262 was recently enacted to correct this situation. HB 262 became effective June 8, 2000.

HB 262 specifically exempts water & sewer districts (and other “taxing units”) that do not levy taxes from the requirement of adopting a tax budget. **Instead, on or before July 15 of each year**, the taxing authority of a water and sewer district must adopt an **operating budget** for the district for the ensuing fiscal year.

The operating budget does NOT have to be filed with the county auditor or the county budget commission, but should be kept on file in the event of an audit. The operating budget must include the following information:

- An estimate of receipts from all sources,
- A statement of all taxing unit expenses that are anticipated to occur, and
- The amount required for debt charges during the fiscal year.

Those rare districts that are funded through a voted tax levy will be required to prepare a tax budget.

Finally, HB 262 also requires that total appropriations from each fund of a district (that does not levy a tax) cannot exceed the total estimated revenue available for expenditures from the fund. Furthermore, the appropriations must be made from each fund only for the purposes for which the fund is established.

If the district does NOT levy a tax, it is not a “taxing unit” for purposes of the tax levy law. However, it must continue to comply with the following sections of the ORC:

- 5705.28 (the operating budget provision);
- 5705.36 (certification of available revenue from each fund created by or for a taxing authority);
- 5705.38 and 5705.40 (passing, amending, or supplementing appropriation measures);
- 5705.41 (restrictions on the appropriation and expenditure of moneys);
- 5705.43 and 5705.44 (execution of contracts for improvements paid by special assessments and contracts running beyond a fiscal year);
- 5705.45 (liability for wrongful payments from public funds).

We are proud to have played a part in the passage of HB 262.

ANNEXATION – SB 289

Senate Bill 289, a sweeping annexation reform proposal was introduced on April 11th. Although SB 289 contains multiple specific changes, it generally seeks to:

- Promote cooperation between townships and cities.
- Provide county commissioners more discretion and authority in annexation matters.
- Provide additional flexibility and more timely processes for annexation.

To date, SB 289 has received extensive consideration, but has not yet passed either house of the General Assembly. Please call me if you need more information on SB 289.

LEGAL CASE UPDATE

In a decision from 1999, the Ohio Supreme Court ruled that a municipality may exercise eminent domain over public utility facilities owned by a regional water and sewer district, but only if the water and sewer district is not thereby (economically) destroyed.

“A taking may be enjoined if it will result in the destruction of an existing public use or the destruction, including economic destruction, of an existing public utility operated by a municipality or political subdivision.” [Northwood v. Wood City, Regional Water & Sewer Dist. (1999), 86 Ohio St.3d 92]

When the district was formed in 1991, the city of Northwood elected not to join, even though they received services from the district. Various facilities owned by the district were located in the city. Northwood later decided to own and operate its own system, and resolved to purchase the district’s facilities located within the city for the same use. The district rejected the offer, and the city declared an intent to appropriate the facilities through eminent domain. The district then tried to prevent the appropriation.

The Court concluded that, clearly, the *use* of the facilities would not be destroyed, because the city would use them exactly as the district was currently using them. However, the Supreme Court returned the case to the trial court to determine if this particular taking would destroy the *District*.

Burr Oak Update

After lengthy negotiations with the State of Ohio, the Burr Oak Regional Water District (BORWD) recently took a giant leap forward with the signing of a transfer agreement and raw water agreement with the State of Ohio. With these agreements, the BORWD will assume control of the former Burr Oak Water System, which had been owned and operated by the Ohio Department of Natural Resources. Congratulations on a job well done!

Sylvania District Progressing at Top Speed

The Albers Firm has the distinct honor of working with The Sylvania Township Water & Sewer District. This district was formed on March 2, 2000. Since that time, they have organized funding, developed a plan, and begun construction of a sanitary sewer project. This unprecedented pace is directly attributable to the consistent hard work and cooperative effort of the Township and District Board.

New Associate at Albers Firm

We are pleased to announce the addition of Eric Luckage to the Albers Firm. Eric joined the Firm as an associate on June 5, 2000. He spent the last 5 years as the Public Affairs Director for USDA Rural Development, one of the major funding sources for rural water & sewer systems. Prior to the USDA, he spent 5 years in the Ohio Senate as a constituent and legislative aide. We know you will all enjoy working with Eric in the future, and we are very glad to have him as part of our firm.

John Albers to Present “Township Agreements” At OTA Summer Conference

John Albers will present a discussion on *Township Agreements* at the Ohio Township Association’s Summer Conference. *The Township Agreements* session is scheduled for **Friday, August 4, 2000, from 10:45 a.m. – 12:15 p.m.** The conference will take place August 2-5, at the Holiday Inn French Quarter in Perrysburg, Ohio.