

AMENDEMENT SCARE FROM GENERAL ASSEMBLY

Last year, the Ohio senate adopted an amendment that would have prevented regional districts from installing any water lines or other “water resource projects” within 1,000 feet of an existing county or municipal water facility (which included lines). As you can imagine, this would have been particularly devastating to many regional water & sewer districts, but it also would have wrecked havoc among some counties and municipalities as well. Our office worked closely with the Ohio Township Association and Senate staff to fully educate the General Assembly about the ramifications of this amendment. In the end, the amendment was removed by the Conference Committee charged with reconciling the different Senate and House versions of the Bill.

THE COALITION OF REGIONAL DISTRICTS (CORD)

We have just about completed the formation of a trade association comprised of regional water & sewer districts (“6119 Districts”). The latest attempt to restrict regional districts (see above) has convinced us that now is the time for action. Future attempts to limit 6119 Districts are imminent, based on the things we’ve been hearing. Thus, we have commenced the formation of the **Coalition of Regional Districts, or “CORD”** to further and protect the interests of 6119 Districts, especially before the Ohio General Assembly. CORD will also advance the interests of Districts with such state and federal agencies as the Ohio Environmental Protection Agency, the Ohio Water Development Authority, and USDA Rural Development. CORD is NOT intended to replace any other association or entity. We urge you to continue membership, or join if you are not a member, the Ohio Rural Water Association, which has been providing excellent information and guidance to local governments related to water and sewer systems. CORD is intended to act solely as an active and loud voice in behalf of regional districts statewide. We will provide further information in the near future. We encourage all districts to consider membership in this very much needed organization. Please call us if you’d like to discuss it more.

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In case you haven’t seen it yet, the Albers and Albers web site is now complete and posted for view at www.alberslaw.com. We hope the site will benefit our existing clients while serving as a source of information for everyone. The site will be a work in progress, so check back periodically for new information. If you have any suggestions for the site, please contact us and we’ll see what we can do.

Legal Update

SUPREME COURT CONFIRMS OUR ADVICE

Over the years, we've heard a lot of confusion expressed over the effect of annexation on water or sewer lines within the annexed territory. The Ohio Supreme Court confirmed our advice in **Hudson v. Summit County**, 97 Ohio St.3d 296, 779 N.E.2d 758. Between 1977 and 1993, several housing developers had built certain water lines in Hudson Township. After their construction, the water lines were conveyed to Summit County and connected to the County's system. In 1994, the Village of Hudson and Hudson Township merged to create the City of Hudson. The water lines in question were now physically within the City of Hudson. Summit County subsequently sought buyers for the water system and planned to sell the water system to the City of Akron. The City of Hudson sought a restraining order to block the purchase, claiming that it had acquired ownership of the lines automatically upon its incorporation. Hudson also claimed that the County could not transfer the lines to Akron because none of the lines were physically located within Akron.

The Court ruled that the Ohio Constitution states that a municipality "may acquire, construct, own, lease and operate within or without its corporate limits any public utility." Similarly, R.C. 6103.22 provided that a water system within a municipal corporation may be conveyed to such municipal corporation. Neither of these makes transfer automatic." ***In other words, when a municipality acquires land through annexation or incorporation and that land contains water lines, those lines are not automatically conveyed to the municipality. The municipality would be required to commence eminent domain proceedings to acquire the lines, and even then, the exercise of eminent domain may only occur if the taking will not result in the destruction of an existing public use.***

ADDITIONAL CHANGES IN BUDGET BILL

The state budget DID include two provisions worth mentioning. First, **the competitive bidding threshold for Regional Water and Sewer Districts and for Counties was increased from \$15,000 to \$25,000.**

In addition, it created ORC Section 153.691, the Professional Design Services selection process (hiring of engineering services). Although it was understood prior to the enactment of this Section, the law now specifically prohibits public authorities planning to contract for professional design services from seeking any form of fee estimate, fee proposal, or other estimate or measure of compensation from a professional design firm prior to the public authority's ranking and selection of the firms who have submitted statements of Qualification. Any fee estimates or discussions must be reserved until the subsequent contract negotiation phase of the selection process. Another change also clarifies that when establishing criteria to rank the firms, the public authority may use "any other relevant factors as determined by the public authority."

ANOTHER USDA DECISION FROM FEDERAL COURT

As many of you are aware, we have, in the past, frequently provided speeches for the Ohio Township Association and the Ohio Rural Water Association regarding "conflicts over service territory". Now, a new case has been decided related to this topic. In **Northern Ohio Rural Water v. Erie County Board of County Commissioners (2004)**, the U.S. District Court for the Northern District of Ohio, Western Division, examined the protections of 7 U.S.C. Section 1926(b), otherwise known as the "USDA protection". Both NORW and Erie County claimed the right to provide water service in a disputed territory. In this case, NORW applied for and received a USDA loan to provide services in the disputed area. The County opposed the District's plan to service the area, proceeded to secure Ohio Water Development Authority (OWDA) financing, and installed the lines. The District filed suit claiming the USDA protection precluded the County from installing the lines and providing services and that the District enjoyed exclusive rights to service the area. Ultimately, the Court ruled in favor of the County and issued a preliminary injunction prohibiting the District from installing any new lines or providing new service in the disputed area where there is existing County water service. Because the District had lines in the areas surrounding the disputed territory, but not within or adjacent to the areas at issue, and because the District had not procured necessary easements for their project, the Court decided that the District had no present legal right or lawful ability to install lines in the disputed area. The Court also used the "balancing test" we've mentioned in our speeches. As we often state, the "first in the ground" will usually prevail. Here, it was the County.