

Water, Sewer and Storm Sewer Districts, Revisited

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Formation Of Districts

A regional water, sewer or storm sewer district is an independent political subdivision of the State of Ohio. It is not a subdivision of the township or the county. Additionally, the finances of the district, once established, are completely independent of the township.

Townships, counties or municipalities can establish regional districts for purposes of providing central potable water services, central sanitary sewer services and for storm water management purposes. (More about that later). A district can be established for a portion of a township or county or municipality, for the entire township or county or municipality, or for any combination of territory in several political subdivisions.

Typically, the first step to establish a district is for the governing body of the political subdivision (township, county, municipality) forming the district to obtain professional legal and engineering services. For my clients, I usually advise that they obtain a preliminary feasibility report from an engineering firm to determine the economic feasibility of establishing a district within the territory in question. This preliminary feasibility report is a simple document which reviews the territory in question to determine whether services can be provided economically to the customer within the proposed district and the approximate costs of providing such services. If this report is favorable, the political subdivision(s) forming the district can take the next step, which is to have a public meeting regarding the proposed establishment of a district. Electors residing within the proposed district must be notified by regular U.S. mail of this meeting. At the meeting a study of reasons for the proposed establishment of the district is presented for discussion. After the meeting is concluded, the township, county, municipality, etc. is free to file a petition to establish the district in the court of common pleas of the county where the district is to be located.

After the petition is filed, a Plan for the Operation of the district must be filed. The Plan is typically prepared by an engineering firm; it establishes how the district intends to provide central water and/or sanitary sewer services and/or storm sewer management services to the residents of the district. The Plan also contains estimates of costs for providing such services and providing for alternatives, including the possible purchase of services from neighboring service providers as well as possible construction by the district of its own facilities. Thereafter, the court of common pleas holds a hearing on the establishment of the district at which anyone "affected by the organization of the district" may object to the formation or the Plan of Operation. Over the years, I have seen objections by neighboring municipalities, counties, residents of the proposed district, the Ohio EPA and many others. The courts have almost uniformly viewed such objections with skepticism. They recognize when objections are made by self-serving entities who, after all, only seek to advance their own interests.

After disposing of objections, if it appears that the proposed district is necessary and conducive to the public health, safety, convenience and welfare, and that the Plan is economical,

feasible, fair and reasonable, the court may enter a final finding and order declaring the district to be organized and established as a political subdivision of the State of Ohio.

Storm Sewer Districts

An emerging area of concern to local governments, including townships, is the 1972 Clean Water Act/NPDES Phase II Storm Water Regulations. That federal law is administered by the Ohio Environmental Protection Agency which is developing and enforcing regulations related to storm water runoff. Townships which own or maintain roadways, catch basins, curbs, gutters, ditches or storm drains may qualify as having a “municipal separate storm sewer system” under 40 CFR 122.26(b)8. Townships which operate such systems may be regulated by the Ohio EPA and can be required to comply with the regulations for such systems. Such regulations include notice to EPA by March 10, 2003, and preparation of a storm water management plan. Storm water runoff is water that flows over land from rainfall or storm melts, often causing flooding, erosion and pollution problems. It includes water from storm drains and natural drainage courses, serving industrial, commercial, residential, undeveloped, recreational and agricultural lands. It is considered by the EPA to be a leading cause of water pollution to our rivers and streams.

Townships have traditionally provided limited storm sewer services within their jurisdictions, including ditch cleaning, storm sewer repair, emergency storm water pumping, etc. To pay for such maintenance activities, townships must rely on general revenues, and in some cases, moneys received from gas tax and license plate fees.

By contrast, if a township establishes a storm sewer district, such district can perform the full range of construction and maintenance activities required for those facilities, including EPA compliance, the construction of all storm sewer improvements, catch basin cleaning, ditch maintenance and upgrade, log jam and debris removal, pollution prevention, water quality maintenance, planning and public education, etc. The district can also implement storm water management plans and standards, and enforce those standards. Further, the district can levy assessments against benefitted landowners for the construction of such facilities, and can levy user charges on properties benefitted by such construction or maintenance. Finally, the district can hire its own employees to perform such construction, maintenance and enforcement activities. With respect to financing, a storm sewer district has independent means of funding such facilities including loans from the Ohio Water Development Authority (OWDA) for the planning and construction of such projects, developer financing and payment for such projects, use of tax increment financing (TIFs) as well as the full range of grant and low interest loans, including the Ohio Public Works Commission (OPWC) (Issue II Funds), the Ohio Department of Development, the Ohio Environmental Protection Agency and the United States Department of Agriculture, Rural Development.

Powers, Duties Upon Formation

Once established, districts have very broad authority and power to provide central water and/or sanitary sewer, and/or storm sewer management services, and the district is not regulated by the Public Utilities Commission of Ohio. Districts may enter into agreements with other service providers and political subdivisions; acquire property by eminent domain, if necessary; issue bonds and notes to finance projects of the district; borrow planning and construction monies from the OWDA; levy taxes and property assessments; adopt rules and regulations to protect projects of the district; etc. Basically, districts have the same authority that municipalities and counties have to construct central water, sewer and storm sewer facilities, or

purchase such services from others. Districts even have authority to sell services outside their district boundaries.

Financing Of District Planning And Construction Projects

Districts have several means of financing their activities. They can, for example, borrow funds from the OWDA, an agency of the State of Ohio, for planning purposes. Such loans can be used for any number of items, for example hydrogeological testing to locate water well sites and to drill test wells; options to purchase real estate; the engineering design of facilities; professional legal and accounting services; survey work; payment for employees of the district, etc. They can also be used to reimburse townships, counties or municipalities for costs advanced to establish the district. OWDA planning loans need not be repaid for a five-year period, and are a line of credit. For start-up districts, the OWDA may require the district to levy a planning assessment in order to receive an OWDA planning loan.

When it comes to constructing facilities, there are many financing options available for districts. Districts may issue bonds and notes, and may borrow funds from the OWDA, the USDA Rural Development (formerly the Farmer's Home Administration), and other governmental agencies. Also, OPWC Issue II low-interest loans and grant funds are often available for district projects; federal Community Development Block Grant Funds (CDBG) are sometimes available for low and moderate income areas. Typically, districts finance their improvements with assessments of benefitted landowners, and often enter into tap agreements with developers. At least one district, the Carroll Water & Sewer District in Carroll Township, Ottawa County, financed a township-wide water project through a voted tax levy.

Annexation: The Effect of Regional Districts

Many people view Districts solely as tools to hinder annexation. It is no secret that regional districts, since they provide necessary services, discourage annexation.

However, the fact is, that the prohibition of annexation is not a legitimate reason for the formation of a Regional District. Districts may only be formed if it is necessary and conducive to the public health, safety, convenience, and welfare of the community served. In other words, the District typically must be correcting a problem unaddressed by other entities. Who could fault political leaders who take the initiative to abate pollution or bring potable water to a community in need?

Municipalities, counties, and Regional Districts are all political subdivisions able to provide water and sewer services. Each entity wishes to provide for its citizens. If one entity provides a service when no other entity was willing or able to provide that service in that community, then the District spells good news for the beneficiaries. And, since Ohio law does not grant exclusive rights to provide these services, community leaders who take initiative and solve problems should be applauded, not accused of political maneuvering to somehow stop annexation.

Cost to Establish a District

The cost to establish a district depends upon your situation. Smaller districts providing fewer services to fewer customers will be less expensive to establish than larger districts servicing a larger number of customers. You can expect to spend in the neighborhood of \$10,000 to \$50,000, sometimes more, to establish a district. This sum includes legal, engineering, surveying, hydrogeological engineering and other professional services which may be required.

The Future of Regional Water and Sewer Districts

The future of regional water, sewer and storm sewer districts looks bright. Many districts have been established, providing much needed services to previously ignored areas.

Nevertheless, as the demographics of Ohio change and as the population within townships increases, it can be expected that water and sewer districts will play an ever increasingly important role in providing needed water, sewer and storm sewer services.

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