

**OPINION NO. 82-021****Syllabus:**

R.C. 6137.05 authorizes a board of county commissioners to use a fund established under R.C. 6137.02 for the maintenance of township ditches improved pursuant to petitions initiated under former R.C. 6139.01 (repealed 1981).

**To: Ronald J. Mayle, Sandusky County Prosecuting Attorney, Fremont, Ohio**  
**By: William J. Brown, Attorney General, April 6, 1982**

I have before me your letter which asks whether a board of township trustees or a board of county commissioners has primary responsibility for the maintenance of township ditches, and whether R.C. Chapter 6137 provides the proper statutory authority for the maintenance of such ditches. It is my understanding, based upon conversations between your office, the office of the county engineer, and a member of my staff, that you are concerned with two ditches which run cross-

county to provide drainage for agricultural or other land,<sup>1</sup> each located wholly within a township and within a single county.

Boards of county commissioners and boards of township trustees may act only when statutorily authorized to do so. State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (syllabus, paragraphs 1, 2) ("[a] board of county commissioners is a creature of statute alone. . . [and] possesses only such power and jurisdiction as are conferred expressly by statutory enactment"); Hopple v. Trustees, 13 Ohio St. 311, 324 (1862) (boards of township trustees "only possess the powers expressly conferred upon them, as such body and officers respectively, by the statute. . ."). Thus it is necessary to examine the pertinent statutes to determine whether either of these boards is authorized to maintain these ditches.

R.C. Chapter 6137 mandates the establishment of a fund for the maintenance of ditches within each county. R.C. 6137.02 provides, in part:

The board of county commissioners of each county shall establish and maintain a fund within each county for the repair, upkeep, and permanent maintenance of each improvement constructed under Chapter 613L of the Revised Code. . . . If the improvement affects only a single county of the state, the board of county commissioners of that county shall establish and maintain the fund.

R.C. 6137.05 authorizes the board of county commissioners to use this fund under certain conditions by providing, in part:

The maintenance fund created under authority of section 6137.01<sup>2</sup> of the Revised Code shall be subject to use of the board of county commissioners. . . for the necessary and proper repair or maintenance of any improvement constructed under sections 613L.01 to 613L.64, 6133.01 to 6133.15, and 6135.01 to 6135.27<sup>3</sup> of the Revised Code. (Emphasis added.)

Therefore, a board of county commissioners would be authorized to maintain township ditches if improvements to such ditches were "constructed under sections 613L.01 to 613L.64. . . of the Revised Code."

It is my understanding, based upon conversations between your office, the office of the county engineer, and a member of my staff, that these two ditches were improved pursuant to petitions filed with the township clerk as permitted under former R.C. 6139.01 (repealed 1981) which provided:

A petition for the improvement of a ditch or drain which is located wholly within a township, which does not pass into or through a municipal corporation, which has an outlet within the township in a public watercourse, which does not benefit or damage land outside of the township, and which has not theretofore been located as a county

<sup>1</sup>The term "township ditch" as used herein, therefore, refers only to this type of cross-county ditch. Such ditches are to be distinguished from township roadside ditches which were, in part, the subject of 1981 Op. Atty Gen. No. 81-039.

<sup>2</sup>R.C. 6137.01 is merely a definitional section. The maintenance fund is created under authority of R.C. 6137.02 as this sentence clearly intended to state.

<sup>3</sup>R.C. Chapter 6133 concerns improvement of joint county ditches. R.C. Chapter 6135 concerns improvement of interstate county ditches. Accordingly, neither of these chapters are relevant to the question addressed herein.

ditch, may be filed with the clerk of such township instead of with the county auditor as provided in sections 6131.01 to 6131.64, inclusive, of the Revised Code. If such petition is filed with the clerk of the township, he shall at his office do all things required to be done by the auditor, and the board of township trustees shall at its usual place of meeting do all things required to be done by the board of county commissioners in drainage improvements as is provided in such sections. The proceedings for such improvement shall be had in accordance with sections 6131.01 to 6131.64, inclusive, of the Revised Code, and shall be governed by such sections, except as modified in sections 6139.01 to 6139.05, inclusive, of the Revised Code. (Emphasis added.)

It is necessary to determine whether the legislature intended that improvements to township ditches constructed pursuant to proceedings "had in accordance with sections 6131.01 to 6131.64, inclusive, of the Revised Code, and . . . governed by such sections" should be considered, for the purpose of R.C. 6137.05, "improvement[s] constructed under. . . [R.C.] 6131.01 to 6131.64," and, therefore, appropriate subjects for expenditure of maintenance funds under R.C. Chapter 6137. See Carter v. City of Youngstown, 146 Ohio St. 203, 65 N.E.2d 65 (1946) (syllabus, paragraph 1) ("[I]n the construction of statutes the purpose in every instance is to ascertain and give effect to the legislative intent. . ."). The legislature has set forth under R.C. 1.49 certain rules of statutory construction to aid courts in the determination of legislative intent by providing, in part, that:

If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters:

- (A) The object sought to be attained;
- (B) The circumstances under which the statute was enacted;
- (C) The legislative history;
- (D) The common law or former statutory provisions, including laws upon the same or similar subjects;
- (E) The consequences of a particular construction. . . .

If the phrase "any improvement constructed under. . . [R.C.] 6131.01 to 6131.64" is interpreted so as to exclude township ditches improved pursuant to petitions initiated under former R.C. 6139.01, the maintenance fund established under R.C. Chapter 6137 could not be used for maintenance of the township ditches in question despite the requirement under former R.C. 6139.01 that proceedings in the improvement process "shall be had in accordance with sections 6131.01 to 6131.64, inclusive, of the Revised Code, and shall be governed by such sections. . . ." Such an interpretation would, therefore, lead to the result that a maintenance fund established under R.C. 6137.02 could be used for the maintenance of some ditches improved pursuant to the proceedings set forth in R.C. Chapter 6131, but not for others. This consequence, which necessarily flows from a narrow construction of the pertinent phrase, would seem to be unreasonable. Such a narrow interpretation of R.C. 6137.05, accordingly, is inconsistent with the following rule of statutory construction.

The General Assembly will not be presumed to have intended to enact a law producing unreasonable or absurd consequences. It is the duty of the courts, if the language of a statute fairly permits or unless restrained by the clear language thereof, so to construe the statute as to avoid such a result.

State ex rel. Cooper v. Savord, 153 Ohio St. 367, 92 N.E.2d 390 (1950) (syllabus, paragraph 1).

A narrow construction of R.C. 6137.05 would also lead to an unreasonable situation in which no public body would have the authority to maintain these ditches. The statutes pertaining to maintenance of township ditches were formerly set forth under R.C. Chapter 6141. Under those statutes, boards of county commissioners had the duty and authority to maintain township ditches. See R.C. 6141.02 to 6141.04 (repealed 1981) (authorizing boards of county commissioners to

delegate this duty to the county engineer or another individual who would act as ditch supervisor for the township(s), would supervise cleaning out and repair of ditches constructed by a board of township trustees or a board of county commissioners, and who was under the control of the board of county commissioners; see also 1927 Op. Att'y Gen. No. 1362, vol. IV, p. 2483 (syllabus, paragraph 1) ("county commissioners are vested with sole authority in regard to the constructing, cleaning and repair of township ditches, except that the township trustees have authority under the provisions of Section 6603, General Code [later R.C. 6139.01], to improve a township ditch or drain within the limitations contained in said section"). R.C. Chapters 6139, concerning improvement of township ditches, and 6141, concerning maintenance of township ditches, were repealed by Am. H.B. No. 268, 1980 Ohio Laws, Part V 810 (eff. April 9, 1981), which also repealed or amended numerous other statutes relating to ditch and drainage improvements and maintenance. Clearly, upon repeal of R.C. Chapter 6141, the grant of authority to boards of county commissioners was removed, unless it was subsumed under some other statutory provision.

The analysis of Am. H.B. 268 provided by the Legislative Service Commission to members of the legislature during consideration of the bill stated that R.C. Chapter 6141 "constitutes the current law for cleaning and repairing ditches. The bill, which largely incorporates these present statutes in other statutes, repeals this chapter." The analysis further stated that the bill "[t]ransfers to boards of county commissioners or repeals boards of township trustees' drainage powers and duties." While courts do not regard these analyses as determinative of legislative intent, they are another of the factors which may be considered when construing statutes. See Meeks v. Papadopoulos, 62 Ohio St. 2d 187, 191, 404 N.E.2d 159, 162 (1980); State ex rel. Consolidation Coal Co. v. Industrial Commission, 62 Ohio St. 2d 147, 149, 404 N.E.2d 141, 143 (comment in Legislative Service Commission analyses is an aspect of the circumstances under which the analyzed statutes were enacted).

Based upon the foregoing, it is clear that county commissioners have long had the duty to maintain township ditches of the type in question. Am. H.B. 268 which revised the ditch laws shows no clear intention to repeal this authority or to create a void of authority in the area of township ditch maintenance. Rather, the bill was intended to transfer the authority to other statutory sections upon the repeal of R.C. Chapter 6141. Currently, only R.C. Chapter 6137 provides authority to maintain ditches within a county. That authority is vested in the board of county commissioners. Absent clear statutory language which demonstrates such an intention, it would be improper to construe R.C. 6137.05 so as to exclude township ditches and cause confusion or other unreasonable consequences.

I therefore conclude, and you are advised, that R.C. 6137.05 authorizes a board of county commissioners to use a fund established under R.C. 6137.02 for the maintenance of township ditches improved pursuant to petitions initiated under former R.C. 6139.01 (repealed 1981).