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THERE IS NO AUTHORITY FOR A MUNICIPAL CORPORATION TO CERTIFY UNPAID SEWER TAP-IN CHARGES TO THE COUNTY AUDITOR FOR COLLECTION—§729.49, R.C. 96, O.L., 96, §729.06, R.C.

SYLLABUS:

Under Section 729.49, Revised Code, there is no authority for a municipal corporation to certify unpaid sewer tap-in charges to the county auditor for collection.

Columbus, Ohio, November 14, 1962

Hon. George E. Schroeder, Prosecuting Attorney
Putnam County, Ottawa, Ohio.

Dear Sir:

Your request for my opinion reads as follows:

"The Village of Ottawa has enacted Ordinance No. 594 which is a sewer tap-in charge ordinance. Said ordinance provides that all residential property owners in the Village, who improved their property subsequent to the assessment made at the time of the installation of the sewer system, and which did not pay an

assessment on said improved property, pay this tap-in charge of $350.00 upon tapping into the sewer system. This charge was originally designed to take the place of the assessment that said property would have paid had it been in existence at the time of the passage of the assessing ordinance.

"Said ordinance No. 594 provides no method for collecting this assessment and that is the purpose of this letter. Section 729.49 of the Revised Code of Ohio provides that the legislative authority of the Village, may by ordinance establish just and equitable rates or charges of rents to be paid for the use of such services, which charges shall constitute a lien upon the property served by such connection, and if not paid when due, shall be collected in the same manner as other municipal corporation taxes.

"The specific question upon which your opinion is requested is as follows: 'Under said Ordinance No. 594 and Section 729.49 of the Revised Code of Ohio, can the Village certify any unpaid tap-in charges to the County Auditor for collection?'. Section 729.49 refers to 'rates or charges of rents'. Is this the same as a tap-in charge? We have another ordinance providing for rates of charges to be paid for the use of the facilities. There is no question as to the Village's authority to certify the charges under the ordinance providing for sewer rental charges, but your opinion is needed on the former question."

Since I do not have a copy of Ordinance No. 594 before me, I shall assume for the purposes of this opinion that said ordinance has been validly adopted. See *The State ex rel, Stoeckle* v. *Jones,* 161 Ohio St., 391 (1954).

Section 729.49, Revised Code, provides as follows:

"The legislative authority of a municipal corporation which has installed or is installing sewerage, a system of sewerage, sewage pumping works, or sewage treatment or disposal works for public use, by ordinance, establish just and equitable rates or charges of rents to be paid to the municipal corporation for the use of such services, by every person, firm, or corporation whose premises are served by a connection thereto. Such charges shall constitute a lien upon the property served by such connection and if not paid when due shall be collected in the same manner as other municipal corporation taxes. The legislative authority may change such rates or charges from time to time as is deemed advisable. The legislative authority of a municipal corporation operating under a charter may establish such schedule of rates and provide for its administration by designating the department or officer to be charged with the enforcement of section 729.49 to 729.52, inclusive, of the Revised Code."

Under Section 729.49, *supra,* a municipal corporation may certify unpaid "rates or charges of rents" to the county auditor to be collected "in

the same manner as other municipal corporation taxes." As stated in your request, the question is whether "rates or charges of rents" is the same as a "tap-in charge." If the answer to this question is affirmative, then such "tap-in charge," if unpaid, could be certified to the county auditor for collection. On the other hand, if the answer to the question is negative, then such a "tap-in charge," if unpaid, could not be certified to the county auditor for collection pursuant to Section 729.49, *supra,* even though the "tap-in charge" were a valid charge under ordinance No. 594, *supra.*

What is a "tap-in charge"? It is obviously a fee for connecting one's private sewer to a public sewer. In this regard, it was provided in former Section 2402, Revised Statutes (repealed in 1903, 96 Ohio Laws 96), as follows:

> "Parties owning property abutting upon a street or public highway, in or through which a public sewer or drain is constructed, shall have the privilege of tapping and using such sewer or drain for the purpose of draining their premises, under such rules and regulations as may be prescribed by the board; and the council may, by ordinance, require persons contracting to build such house connections to procure a license from the board, and may charge therefor such sum as may be deemed just. In cities of the first grade of the first class whenever in the opinion of the board of administration, it is necessary as a sanitary measure or for the cleanliness of the public streets or highway, the owner of property abutting upon any street or public highway in or through which a public sewer or drain has been constructed may be ordered by said board to tap and use such sewer or drain for the purpose of draining such premises, and if within sixty days after service of such notice upon the owner, or if he be absent from the county then upon his agent, or if such agent be not found then upon the occupant of the premises, such order is not complied with, upon application to a court of competent jurisdiction the owner and occupants shall be enjoined from using such premises in any manner until the order of the board of administration has been complied with."

Present Section 729.06, Revised Code, is somewhat similar to former Section 2402, *supra.* Said Section 729.06, reads, in part, as follows:

> "Whenever the legislative authority of a municipal corporation deems it necessary, in view of contemplated street paving or as a sanitary regulation, that sewer or water connections or both be installed, the legislative authority shall cause written notice therof to be given to the owner of each lot or parcel of land to which such connections are to be made, which notice shall state the number and the character of connections required.
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> "* * * * * * * * *

> "If said connections are not installed within thirty days from the date of service of such notice, the work may be done by the municipal corporation and the cost thereof together with a forfeiture of five per cent, assessed against the lots and lands for which such connections are made."

Although present Section 729.06, *supra,* does not specifically authorize a municipal corporation to charge a person for tapping into a public sewer, it has been held that an ordinance is not invalid which imposes a reasonable charge for the issuance of connection permits. *The State ex rel. Stoeckle* v. *Jones, supra.* It is significant, however, that the provisions regarding sewer connections are found in one statute (Section 729.06, *supra*) while the provisions regarding "rates or charges of rents" are found in another statute (Section 729.49, *supra*).

In *The State ex rel. Gordon* v. *Taylor,* 149 Ohio St., 427 (1948), paragraph three of the syllabus reads as follows:

> "3. A deed of easement by a state university to a municipal corporation, for the purpose of the construction and maintenance of a sewer to be used by both the university and the citizens of the municipality, in consideration for which the board of trustees of the university and the university were accorded the right and privilege 'to use the city sewers on the campus * * * without cost or expense,' *grants to the university the right to connect with the sewres on the campus without cost* and exempts the university from the payment of any cost or expense of the construction of the sewer, *but does not exempt the university from the payment of sewer rental charges* thereafter imposed by an ordinance of the city to provide a fund for the payment of the cost and expense of the treatment and purification of sewage." (Emphasis added)

There is a difference, therefore, between a charge to connect sewers and sewer rental charges. Perhaps this difference is best illustrated by Section 6117.02, Revised Code, reading in part, as follows:

> *"The board of county commissioners shall fix reasonable rates to be charged for the use of sewers* or sewerage treatment or disposal works referred to in section 6117.01 of the Revised Code by every person, firm or corporation whose premises are served by a connection to such sewers or sewerage treatment or disposal works when such sewers or sewerage treatment or disposal works are owned or operated by the county, and may change such rates as it deems advisable. Such rates shall be at least sufficient to pay all the cost of operation and maintenance of improvements for which the resolution declaring the necessity thereof shall be passed after the effective date of this act. When

the sewerage treatment or disposal works is owned by a municipal corporation or any person, firm, or private corporation the schedule of rates to be charged by such municipal corporation, person, firm, or private corporation for the use of such facilities shall be ratified by the board at the time any contract is entered into for such use. *The board shall also fix a reasonable tap in charge* and no person shall be permitted to tap in to the sewers or sewerage treatment or disposal works of the district until such charge has been paid in full. *When any rents or charges are not paid, the board shall certify the same together with any penalties to the county auditor,* who shall place them upon the real property tax list and duplicate against the property served by such connection. Such rents and charges shall be a lien on such property from the date the same are placed upon the real property tax list and duplicate by the auditor and shall be collected in the same manner as other taxes. * * *" (Emphasis added.)

Thus, in the case of county sewers, the board of county commissioners is given authority in one statute to fix reasonable rates (rents) and also to fix a reasonable tap-in charge and to certify both, if not paid, to the county auditor for collection. In the case of municipal sewers, however, the legislature did not see fit to specifically authorize municipal corporation to fix a tap-in charge and to certify same, if unpaid, to the county auditor for collection. I must answer your question, therefore, in the negative.

Accordingly, it is my opinion and you are advised that under Section 729.49, Revised Code, there is no authority for a municipal corporation to certify unpaid sewer tap-in charges to the county auditor for collection.

Respectfully,
MARK MCELROY
Attorney General