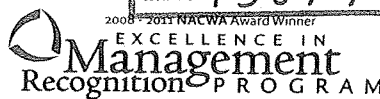


MSD Fact Sheet



COM'RS MIN.  
VOL. 323  
SEP 19 2011  
IMAGE/5879

James A. Parrott  
Executive Director

9/19/2011

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INTERACTION BETWEEN POLICY AND COST  
FOR THE CONNECTION OF SINGLE-FAMILY PROPERTIES TO THE HAMILTON COUNTY SEWER SYSTEM

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**BACKGROUND:**

- Statute, policy, and cost are central components that drive how MSD and the County Commissioners manage sewers infrastructure connections to Hamilton County sewer system.
- Statute and policy mandate that the cost of sewers infrastructure is to be reimbursed by property owners when so determined by the County Commissioners. These cost-reimbursed sewers infrastructure projects are termed as assessment (or "local") sewers.
- Costs of installing these sewers are classified as part of the public improvement and define the responsibility of ownership and maintenance. Typically these costs include design and construction of the sewer mainline, sewer laterals to each property line, sewer appurtenances, (e.g., manholes), and any overhead such as easements and planning/design.
- Per statute, final assessed cost is derived from a calculation of benefit: material, area, and labor; and benefit is determined by access to the sewer under statute and by policy.
- Cost and benefit has not to date included other portions of work to make the physical connection from the property to the public sewer infrastructure. This "private-side" cost typically includes the building lateral installation and tap-in fee (among others), and this "private-side" infrastructure was neither designed, installed, or intended to be maintained by MSD as part of the public improvement. White paper details Commission authority as well as important considerations
- Since 2005, several benefited property owners in sewer assessment projects have raised the issue of "private-side" costs. The MSD white paper on this topic concludes that "private-side" cost is a both a policy and statutory issue, at the County Commissioners policy discretion, but one that has far-reaching implications and consequences as to how the County and MSD define public improvements and public infrastructure.

**POLICY & STATUTE:**

- Sections 1216, 1805, 2502 MSD Rules and Regulations govern assessment credits (two-tiered and can be adjusted annually) and public improvement cost
- Section 1215 MSD Rules and Regulations governs tap-in fee structure by water meter size, by property type, and by building date. For single-family properties with a ¾ water size and existing prior to July 2, 1996, the tap-in fee is \$480; after that date it is \$3,450 (2011).
- Chapter 6117 R.C. governs assessment of costs requirements and assessment project financing

**DECISION POINTS & IMPLICATIONS FOR PUBLIC INFRASTRUCTURE:**

- Including private-side improvements in project expands traditional "public improvement" usage
- Including private-side improvements expands O&M responsibilities
- Including private-side improvements expands easement takes
- Including private-side improvements increases total project cost
- Including private-side improvements may affect debt service
- Including private-side improvements may present ancillary costs, e.g. replacement of on-site structures like sidewalks, landscaping, or decks
- Including private-side improvements creates "turn-key" approach to construction
- Including private-side improvements may affect non-assessed capital projects' costs
- Modify assessment policy for additional credits if less than full-gravity service

Active Local Sewer Projects - Sorted by Progress Status

9/19/2011

Sewer No.	Project ID	PROJECT TITLE	Priority Area Status	No. Benefits	Jurisdiction
<b>2007 Final Assessment</b>					
5183		Jandaracres Drive Local Sewer		53	Miami Twp.
5224		Ridgewood-Hader		101	Green Twp.
5429		2057 W. Loveland		1	
5453		11640 Pippin Road		1	
5543		11670 Pippin Road		1	
5539		11656 Pippin Road		1	
5573		5812 West Fork Road		1	
				<b>159</b>	
<b>2008 Final Assessment</b>					
5204		1628 Eight Mile		1	Anderson Twp.
5343	10370000	Towerview Lane Local Sewer		24	Anderson Twp.
5405		7931 Clough Pike		1	Anderson Twp.
5426	10430005	6480 Visitation Drive Sewer Lateral		1	Green Twp.
5450		1037 Markley		1	Anderson Twp.
5451		1047 Markley		1	Anderson Twp.
5546		6644 Schweitzerhoff		1	Colerain
5569		6666 Schweitzerhoff		1	Colerain
5720	10330000	5310-5314 Robert Avenue Local Sewer		2	Green Twp.
5815	10440000	804 Finney Trail Lateral Assessment.		1	Springfield Twp.
5873	10430010	6506 Visitation Drive Sewer Lateral		1	Green Twp.
				<b>35</b>	
<b>2009 Final Assessment</b>					
5495	10470005	8139 Woodruff Road Sewer Lateral		1	Anderson Twp.
5386	10470000	841 Asbury Road Sewer Lateral Assessment		1	Anderson Twp.
5905	10440005	810 Woodlawn Avenue Sewer Lateral		1	City of Cincinnati
5908	10450000	Snider Road (HN 12035) Local Sewer Lateral Assessment		1	Sycamore and Symmes
5773	10370005	5901 - 6001 Wind Road Local Sewer		6	Columbia Twp.
5457	10350010	Gideon Lane Local Sewer		14	Sycamore Twp.
5712	10320005	4922-5150 Hubble Road Local Assessment Sewer	Priority	5	Colerain Twp.
5709	10330005	1612-1615 Devils Backbone Road Local Sewer		2	Green Twp.
5291	10350005	Patrilla Lane & Plumhill Drive Local Sewer	Priority	54	Symmes Twp.
4653	10350000	9783-9858 Union Cemetery Road Local Assessment Sewer		8	Symmes Twp.
5762	10320000	6251-6292 Rocknoll Lane Local Assessment Sewer	Priority	12	Colerain Twp.

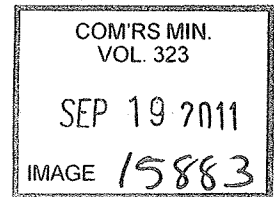
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IMAGE 15880

Sewer No.	Project ID	PROJECT TITLE	Priority Area Status	No. Benefits	Jurisdiction	
5710	10330020	562-618 Neeb Road Local Assessment Sewer		7	Delhi Twp.	
				<b>112</b>		
		<b>2010 Final Assessment</b>				
4612	10320010	Northgate - Springdale Local Sewer		23	Colerain Twp.	
5816	10310000	400-426 Three Rivers Parkway Local Assessment Sewer		5	North Bend, Village of	
5711	10370010	6887-6932 Kenwood Road Local Assessment Sewer	<div style="border: 1px solid black; padding: 5px; width: fit-content;">           COM'RS MIN. VOL. 323             SEP 19 2011             IMAGE 15881         </div>	8	Madeira	
5824	10330010	Sidney Road Local Sewer (HNs 5584 & 5588)		2	Green Twp	
5906	10440010	Pippin Road Sewer Lateral (HN 11535)		1	Colerain Twp.	
5371	10440015	Paul Road Sewer Lateral (HN 4216)		1	Delhi Twp.	
				<b>40</b>		
		<b>2011 Final Assessment</b>				
5893	10350015	McKinney Road Local Sewer (HNs 9455 - 9473)		4	Symmes Twp	
6071	10340022	Dexter Place Local Sewer		5	Cincinnati, City of	
5763	10330025	Rapid Run Road Local Sewer (House Nos. 6044-6064)		4	Delhi Twp.	
5861	10340005	Springdale Road Local Sewer (HNs 2385-2648)		8	Colerain Twp.	
6161	10440021	Kleeman Road Sewer Lateral (HN 3298)		1	Green Twp.	
5988	10430015	Foley Road Sewer Lateral (HN 5630)		1	Delhi Twp.	
5988	10430016	Foley Road Sewer Lateral (HN 5636)		1	Delhi Twp.	
6079	10450010	Rich Road Sewer Lateral (HN 12007)		1	Symmes Twp.	
6006	10470024	Markley Road Sewer Lateral (HN 1029)		1	Anderson Twp.	
5991	10450009	Rich Road Sewer Lateral (HN 11630)		1	Symmes Twp.	
5238	10450005	East Kemper Road Local Sewer (HNs 8161, 8173 & 8183)		3	Sycamore Twp.	
5537	10440017	West Galbraith Road Sewer Lateral (HN 824)		1	Springfield Twp.	
5990	10440018	West Galbraith Road Sewer Lateral (HN 798)		1	Springfield Twp.	
				<b>32</b>		
		<b>Work Completed Per Court Agreement</b>				
6007	10470023	Shawnee Run Road Sewer Lateral (HN 6747) (Rollymeade-Kaywood Local Sewer, SS# 3848)		1	City of Madeira	
				<b>1</b>		
		<b>Assessed During 2007-2011</b>			<b>379</b>	

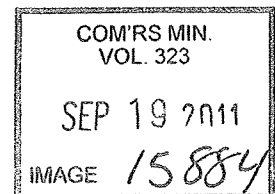
Sewer No.	Project ID	PROJECT TITLE	Priority Area Status	No. Benefits	Jurisdiction
<b>Construction Phase</b>					
5722	10320015	4171-4391 Race Road Local Assessment Sewer		23	Green Twp.
5895	10320025	Race Road Local Sewer (HNs 5218-5245)		5	Green Twp.
5346	10320020	6180-6384 Harrison Avenue Local Sewer		17	Green Twp.
5938	10320030	Sagebrush Lane, Susanna Drive & Yellowstone Drive Local Sewer	Priority	114	Colerain Twp.
6101	10340025	Houston Road Local Sewer (HN 2457 - 2555)		6	Colerain Twp.
				<b>165</b>	
<b>Design In Progress</b>					
5859	10370020	Batavia Road Local Sewer (HNs 5060-5130)		3	Anderson Twp.
5937	10340015	Bauerwoods Drive & Greenbush Avenue Local Sewer	Priority	37	Colerain Twp.
5713	10350020	Deerfield Road Local Sewer (HNs 11551-11662)		6	Sycamore Twp.
5958	10330030	South Road Local Sewer (HNs 2431-2549)	Priority	17	Green Twp.
6100	10340021	Carpol Avenue, Honeywell Avenue & E. Kemper Road Local Sewer		62	Sharonville, City of
5998	10320056	Ramblingridge Drive & Twinwillow Lane Local Sewer	Priority	73	Green Twp. & Colerain Twp.
5977	10310005	Bridgetown Road Local Sewer (HNs 8477-8653)	Priority	33	Miami Twp.
6156	10310006	Bridgetown Road Local Sewer (HNs 8768-8783)	Priority	5	Miami Twp.
6094	10320011	West Fork Road Local Sewer (HNs 5311-5472)		9	Green Twp.
5862	10370011	Turnkey Court Local Sewer (HNs 2708-2736)	Priority	7	Anderson Twp.
5894	10330015	Werk Road Local Sewer (HNs 5544-5686)		16	Green Twp.
6095	10340023	Country Park Drive Local Sewer (HNs 2717-2845)		11	Colerain Twp.
6096	10340024	North Bend Road Local Sewer (HNs 504-565)		6	Springfield Twp.
6097	10330026	Rapid Run Road Local Sewer (HNs 6161-6201)		7	Delhi Twp.
6099	10320057	Taylor Road Local Sewer (HNs 6802-6940)	Priority	26	Green Twp.
5965	10370032	Coldstream Drive & Asbury Road Local Sewer		35	Anderson Twp.
6145	10320058	Kern Drive & Springdale Road Local Sewer		24	Colerain Twp.
6154	10320012	Parrakeet Drive Local Sewer (HNs 6002-6068)		10	Green Twp.
				<b>387</b>	
<b>Successful Polling, Pending Design Legislation</b>					
6176	10320060	Mapleknoll Drive Local Sewer (HNs 9420-9562)		10	Colerain Twp.
5956	10370035	State Road Local Sewer (HNs 7737-7849)	Priority	18	Anderson Twp.
6177	10320065	Reemelin Road Local Sewer (HNs 3489-3860)		30	Green Twp.
6194	10370045	Mt. Carmel Road, Vicbarb Lane, & Apple Blossom Lane Local Sewer	Priority, not	49	Anderson Twp.
				<b>107</b>	

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IMAGE 15882

Sewer No.	Project ID	PROJECT TITLE	Priority Area Status	No. Benefits	Jurisdiction
<b>Active Projects</b>				<b>659</b>	



Sewer No.	Project ID	PROJECT TITLE	Priority Area Status	No. Benefits	Jurisdiction
<b>Waiting for Property Owner to Return Petition.</b>					
		Algus Lane & Hammersmith Lane Local Sewer		85	Green Twp.
		Three Rivers Parkway (HNs 462-464)		3	Village of North Bend
		Wilmer Road, Hubble Road & Jessup Road Local Sewer	Priority	76	Green Twp.
		Wellesley Avenue & Beech Tree Drive Local Sewer	Priority	145	Springfield Twp.
		Beech Street & Muchmore Road Local Sewer		29	Columbia Twp.
		Broadmore Road & Springdale Road (HNs 6364-6675) Local Sewer		79	Colerain Twp.
		Belclare Road and Davis Court Local Sewer		49	Green Twp.
		View Place Drive Local Sewer (HNs 7609-7835)		20	Springfield Twp.
		Hearne Road Local Sewer (HNs 6838-7201)	Priority	43	Green Twp.
5973	10330031	Menz Lane & South Road Local Sewer		16	Green Twp.
		Eagle Creek Road Local Sewer (HNs 7120-8835)		61	Colerain Twp.
		Miamiview Road & Lower River Road Local Sewer		17	Miami Twp. & The Village of Cleves
		Buffalo Ridge Road Local Sewer (HNs 7366-7392)		6	Miami Township
		Marcrest Drive & School Section Road Local Sewer	Priority	82	Green Twp.
				<b>711</b>	
<b>Preliminary Planning</b>					
		Mullen Road Local Sewer		164	Colerain Twp.
		North Bend Road & Hader Avenue Local Sewer	Priority	35	Cheviot/ Green Twp.
		North Bend Road Local Sewer (HNs 4739-)	Priority		Green Twp.
		Boomer Road Local Sewer 5596	Priority		Green Twp.
		Upper Road Local Sewer (HNs 6344-6398)		6	Delhi Twp.
		North Bend Local Sewer (HNs 5075-5165)	Priority	13	Green Twp.
		Old Blue Rock Road Local Sewer (HNs 5240-5327)		7	Colerain Twp.
				<b>225</b>	
<b>Outstanding Petitions</b>				<b>936</b>	



Active Local Sewer Projects - Sorted by Progress Status

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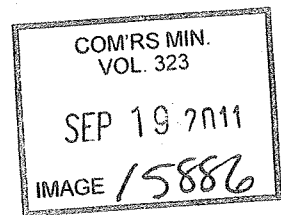
Sewer No.	Project ID	PROJECT TITLE	Priority Area Status	No. Benefits	Jurisdiction
<b>Closed, Insufficient Level of Support</b>					
		Boomer Road Local Sewer (HNs 5049-5765)	Priority, not ranked	65	Green Twp.
		Pottinger Road and Zocalo Drive Local Sewer	Priority, ranked	66	Colerain Twp.
5975	10320050	Struble Road Local Sewer (HNs 3463-3633)		20	Colerain Twp.
		North Bend Road Local Sewer			Green Twp.
		Camp Denison Local Sewer	Priority	255	Symmes Twp.
		North Bend Road Local Sewer (HNs 470-496)		6	Springfield Twp.
		Ebenezer Road & Springmyer Drive Local Sewer	Priority	86	Green Twp.
		Mitchell Park Drive & Zion Road Local Sewer		129	Miami Twp.
5976	10370040	Susanview Lane (HNs 8600-8685)		24	Anderson Twp.
		Wilmer Road Local Sewer (HN 5841-6001)	Priority	18	Green Twp.
		Ridgeway Avenue		0	Cincinnati, City of
		Ebenezer Road Local sewer (HN 3938)			
		West Fork Road Local Sewer (HNs 5607-5801)		32	Green Twp.
5935	10370030	Salem Road Local Sewer (HNs 6018 - 6083)		4	Anderson Twp.
		Forfeit Run Road & Thompson Road Local Sewer		33	Colerain Twp.
5892	10340010	Boomer Road Local Sewer (HNs 3329-3419)		24	Green Twp.
5892		Boomer Road, HN 3421 and 3427		1	Green Twp.
5933	10370025	Kenwood Hills Local Sewer	Priority	162	City of Madeira
		Country Park Drive & Clearmeadow Court Local Sewer		17	Colerain Twp.
		Mayview Forest Drive & Grove Road Local Sewer		50	Woodlawn, Village Of
	10320006	Hanley Road & Blue Rock Road Local Sewer		31	Colerain Twp.
		Springdale Road Local Sewer (HNs 5917-5958)		11	Colerain Twp.
5955	10320040	Harrison Avenue Local Sewer (HNs 5923-5976)		14	Green Twp.
5974	10320045	Windridge Circle Local Sewer	Priority	76	Green Twp.
5936	10340020	Cheviot Road Local Sewer (HNs 8721-8837)		7	Colerain Twp.
5934	10320035	Silverpoint Drive & Epley Lane	Priority	33	Green Twp.
5979	10330035	Kildare Drive Local Sewer (HNs 6760-6897)	Priority	26	Green Twp.
5888	10370015	Kimbee Drive Local Sewer (HNs 8020-8047)		10	Anderson Twp.
		West Fork Road Local Sewer (HNs 5169-5588)		28	
		Farlook-Pictureview	Priority	38	Green Twp.
5860		Jimjon Court	Priority	34	Green Twp.
		South Road, 2118-2151		10	Green Twp.
		Springdale Road HN 1980-2137		21	Springfield Twp.

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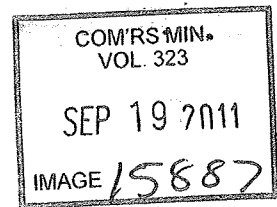
Active Local Sewer Projects - Sorted by Progress Status

9/19/2011

Sewer No.	Project ID	PROJECT TITLE	Priority Area Status	No. Benefits	Jurisdiction
		Whispering Way and West Fork Road HN 4328 – 4734	Priority	46	Green Twp.
5999	10330036	Charity Drive Local Sewer (HNs 6277-6338)		12	Green Twp.
5956	10370035	State Road Local Sewer (HNs 7737-7849)		19	Anderson Twp.
		Acreview Drive		7	Springfield Twp.
		Manover Lane, HN 4501		NA	Colerain Twp.
<b>Closed, Insufficient Level of Support</b>				<b>1415</b>	



**PUBLIC PURPOSES IN PRIVATE PROPERTY:**  
**"PRIVATE-SIDE" CONSTRUCTION AND POLICY CONSIDERATIONS**  
**FOR HAMILTON COUNTY SEWERS**



## I. INTRODUCTION

This white paper is prepared as a response to questions raised at the March 2005 MSD Public Advisory Committee (PAC) meeting discussing the changes to sewer assessment policy and remaining issues.

On February 2, 2005, the Hamilton County Prosecutor issued an opinion regarding the legal ability of the Board of County Commissioners of Hamilton County, Ohio to include the construction of building laterals and associated activities, and the construction of clean water separation work, as part of either local sewer assessment projects or as a part of combined sewer separation projects performed to accomplish the goals of the Global Consent Decree. These building laterals, which connect individual assessed parcels to the public sewer, and sewer separation construction, which removes on-site downspouts, driveway, area and stairwell drains, or reconfigures internal plumbing, are presently not included in MSD public construction projects. This work, termed "private-side construction" by MSD, is located on the private property of each property owner. For assessment projects, the scope of work could typically include abandoning or removal of the existing private household sewage treatment system; installation of various lengths of 6" lateral piping, either to the structure's foundation wall or inside the structure; and restoration of any surfaces excavated or altered in performing the work (e.g., landscaping, sidewalks, driveways, parking lots, swimming pools, decks, etc.). For combined sewer separation projects, the scope of work could typically include removal and redirection of existing downspouts, driveway drains, yard/area drains, stairwell drains, foundation drains, etc. or all of the above. These types of mixed-flow connections were permitted to the combined sewer. Properties involved would be both residential and commercial in nature.

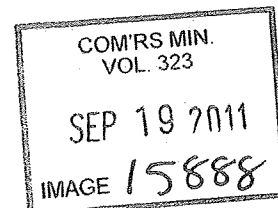
The Prosecutor's opinion held that the Board may choose to include such construction in the total cost of the public improvement.<sup>1</sup> Private-side work could be performed in conjunction with construction of a main-line public sanitary sewer, which sewer could be located in either an existing public right-of-way (street) or in a public sewer easement. *The purpose of this paper is to outline the issues raised by this opinion and probable costs associated with such construction.*

## II BACKGROUND:

### A. Sewer Assessments

In the fifth year of the 21<sup>st</sup> Century, not all of Hamilton County has access to or is served by public sewers. Within both incorporated and unincorporated parts of the MSD Service Area in Hamilton County, Ohio, using data from the Hamilton County General Health District and City of Cincinnati Health Department, the District estimates that there exist 16,231 private properties that are not served by public sewerage.<sup>2</sup> Sixty-two percent of these parcels, 10,142, are one acre or less in size. This 62% lies in 26 different township, villages, and cities.<sup>3</sup> The majority of this 62% lies in three Hamilton County townships: Colerain (1,932 parcels), Green (3,606 parcels) and Miami (1,118 parcels). Historically, public sewers exist where they are located due to one of 3 factors: local government(s), private developers, or private property owners. At times, local governments built sewers as a means of attracting—or annexing—populations lying outside of their political jurisdictions. Similarly, private property developers would include sanitary sewers in their subdivision developments as a means of attracting buyers. These development sewers would be incorporated into the larger network of public sewers owned and operated by a political jurisdiction. Through these methods, existing sewer systems were expanded, whether it was by political design or *de facto* market economics.

**PUBLIC PURPOSES IN PRIVATE PROPERTY:**  
**"PRIVATE-SIDE" CONSTRUCTION AND POLICY CONSIDERATIONS**  
**FOR HAMILTON COUNTY SEWERS**



The third leg of this sewerage triad, private property owners, petitioned local political jurisdictions for provision of sewerage service, incrementally expanding the sewer network to fill-in "pockets" that private development or government chose not to serve. These pockets typically had access to a sewer network outfall; there existed a connection point that could be reached through construction of a "local sewer."

Private property owners make petition requests for a variety of reasons: old/older household sewage treatment systems (HSTS) that are maintenance-intensive; they live in a subdivision that was built without public sewerage, but are now surrounded by new/newer subdivision developments that were built with public sewerage; or, due to failing HSTS. According to the Hamilton County General Health District, such failing HSTS are increasing in number: the HCGHD has identified 40 "priority areas" within unincorporated Hamilton County that have some level of health nuisance from problematic HSTS, whether due to age, maintenance problems or changing OEPA regulations.<sup>4</sup>

Presently, the Board of County Commissioners of Hamilton County, Ohio receives petitions from Hamilton County property owners for the construction of local public sanitary sewers to serve their properties and eliminate their usage of HSTS. The Commissioners may also receive similar types of requests from local Boards of Health or orders from the Ohio EPA to install local sanitary sewers to eliminate public health nuisances or hazards from failed HSTS. When the Board receives these requests, MSD acts upon them per Section 1805 of the MSD Rules and Regulations.

The local sewer assessment projects built via petition (or Heath Board requests or OEPA orders) are designed to serve – benefit – private properties through construction of a local sewer access point. This access point is built up to the private property line with the provision of a 6" diameter sewer building lateral ("tap"), but has not gone beyond it. Typically, MSD has little experience in constructing works that provide a tangible benefit solely to a private property owner. The rare exceptions usually are performed under the guise of "special right-of-way conditions" wherein a degree of work is performed in exchange for or as part of a grant of easement.<sup>5</sup> This has been the process and limitation that MSD and the County Commissioners have used since 1968. "Private-side" construction, i.e., work performed on private property to connect the parcel's residential or commercial structure to the local sewer's tap, remained largely, if not exclusively, within the province of the property owner and was financed solely by them.

#### *B. Sewer Separation Projects*

A companion piece to sewer assessment "private-side" construction stems from some of MSD's consent decree projects. As stated above, *some* of the work required under the "Global Consent Decree" (Consent Decree on Combined Sewer Overflows, Wastewater Treatment Plants, and Implementation of Capacity Assurance Program Plan for Sanitary Sewer Overflows) as entered by the U.S. District Court for Southern District of Ohio Western Division on June 9, 2004, may best be accomplished via "combined sewer separation." This separation effort will result in producing two distinct flows—sanitary and stormwater—from what was once a combined flow. Separation of flows will permit eliminations of or reductions in CSOs frequencies of discharge and volume of flow.

SEP 19 2011

IMAGE/5889

**PUBLIC PURPOSES IN PRIVATE PROPERTY:**  
**"PRIVATE-SIDE" CONSTRUCTION AND POLICY CONSIDERATIONS**  
**FOR HAMILTON COUNTY SEWERS**

In Hamilton County's 400 square miles of acreage, MSD has over 3,000 miles of sanitary and combined sewers. The combined sewer portion of the system comprises 900 of these 3,000 miles or 30%. The first sewers in the County were in the City of Cincinnati and were initially made for conveying storm water to the local streams and rivers. In time, sanitary connections were made to these storm sewers resulting in the birth of combined sewers. These sewers continued to deposit their contents, now including human and industrial sewage, into the area's streams and rivers.

In the 20<sup>th</sup> Century, these sewers were connected to wastewater treatment facilities with primary and later, secondary, treatment of the effluent before discharging to the environment. However, degradation of the existing sewers over 150+ years, coupled with increased connections and stormwater runoff from development, have resulted in combined sewers that do not have the ability to efficiently transport today's flows, thereby resulting in today's combined sewer overflow (CSO) problems.

Wet weather flows affect both MSD's transport (sewers) and treatment systems (plants). The problems these flows create for sewers are CSOs. The problems these flows create for treatment system are the plants' limited ability to treat large combined flows, the bulk of which is stormwater during wet weather conditions. Consequently, construction of separate sanitary and storm water sewers are today's norm rather than constructing new combined sewers.

Given this standard, sewer separation projects are one method that may be used to help remedy our CSO/treatment plant problems. This separation involves constructing separate sanitary sewers to handle the sanitary flows and returning the existing combined sewer to its original 19<sup>th</sup> Century mission of conveying only storm water.

Construction of the sanitary sewer component of a sewer separation project would follow MSD's established Capital Improvement Program processes. However, the District has heretofore been unable to adequately address the re-direction of storm water entering the existing combined sewer system. Construction of public storm sewerage can be part of the answer and can be accommodated under the 1968 MSD Management Agreement. The other—and more problematic—part of the answer lies in the re-direction of the private property sources of that storm flow. MSD's System Wide computer model (for a 6-month storm using a typical residential structure) found that approximately 34% of the combined systems' storm flows originate from private sources. If a sewer separation project does not remove this private structure based storm flow and this flow enters the newly constructed sanitary sewer, the end result is not a sanitary, but a combined sewer.

In the combined sewer system, private property generated storm flows were designed to be captured. But, once in the combined system, they were not easily removed. Heretofore the 2005 Prosecutor's opinion, it was not considered an allowable public purpose or public expenditure to redirect storm flows coming from downspouts and driveway drains in private property, and discharging to a combined sewer, to a new storm-only sewer. This was an expense the property owners needed to bear themselves. Even Ohio statute, revised in 1991 to permit removal of illegal private-property storm flows from sanitary sewers, excluded the combined sewer systems by proscription.<sup>6</sup>

For sewer separation to be a viable solution for the consent decree, re-directing the storm flows originating in these private sources must be accomplished.

**PUBLIC PURPOSES IN PRIVATE PROPERTY:**  
**"PRIVATE-SIDE" CONSTRUCTION AND POLICY CONSIDERATIONS**  
**FOR HAMILTON COUNTY SEWERS**

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VOL. 323  
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IMAGE 15890

C. *Summary – What is At Stake?*

The foregoing background illustrates the issues confronting the County Commissioners in deciding MSD policy for "private-side" construction: **cost, liability, ownership, operation, maintenance, access and policy**. As the Prosecutor's opinion has not expounded on these issues, MSD will outline them in this paper for the Commissioner's review and consideration. Any decisions made by this Board of County Commissioners for this topic will set a standard, as have decisions made by past Boards.

**III. ISSUES**

A. *Cost.*

1. Assessment Projects. The cost of all work required to install various lengths of 6" building lateral and connect individual private properties to the sanitary public sewer is difficult to accurately gauge. Several factors predicate this statement: private market pricing, risk, site variability, and construction restrictions, among others. The most significant factor is estimating experience. As stated above, MSD has little experience with the construction of public improvements on private property and the costs specific to the tasks associated with that type of work. Although MSD's public improvements may, at times, traverse private property in easement, the conditions, cost and range of work tasks associated with this construction is not the same as that associated with the installation of building lateral connections of assessment projects.

Despite this lack of experience, MSD has generically estimated private-side construction costing.<sup>7</sup> In order for this estimate to reflect construction scenarios, MSD separated its costing based on installation of 50 ft. of 6" building connection lateral in the front of the property versus 130 ft. to the rear of the property. These locations are based upon the most common siting of the HSTS. For the former installation, MSD estimates the base cost of lateral pipe installation at \$85 per lineal foot; for the latter installation, this estimate increases to \$135 per lineal foot. This amount assumes that construction will be entirely performed outside the home, with no internal plumbing modifications such as grinder pumps, re-plumbing for only first floor service, or re-plumbing to direct flow to the front of the house. This amount does not include such costs as easements and associated appraisal tasks and abandonment of the existing HSTS.

However, *from a public construction perspective*, MSD finds that the total cost for *front-sited* HSTS private-side construction could amount to approximately **\$21,900** (including an easement cost of \$12,300) per parcel; the total cost for *rear-sited* HSTS private-side construction could amount to approximately **\$51,000** (including an easement cost of \$22,000) per parcel. *Again, this is the estimated cost if the work is done as a public improvement, combined with the public sewer main-line construction.*

The above costs are *in addition* to the main-line construction costs for an assessment project. The cost is per benefited property. As the ability to maintain the sewer is critical to its use, easements are a necessary component of this construction costing. The easement costs cited above are based on historical costs for similar types of work.

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IMAGE 15891

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For assessment projects containing 100 benefited properties with rear-sited HSTS, like S.S. No. 5224, Ridgewood-Hader Local Sewers, private-side construction cost could total an estimated \$5,100,000, in addition to its estimated \$1,261,500 main-line construction cost.

In contrast, a survey of available private construction cost data collected from the recent Cranbrook Drive Local Sewer project shows a cost of only approximately 9.8-11.4% (\$2500 - \$5000) of the public improvement estimated costs. Of course, the elements of public construction are not included in that private construction cost data.

2. Sewer Separation. As with assessment private-side construction, MSD has little experience in doing construction of this type in our CIP projects. Therefore, cost is vague. The closest comparable data comes from MSD's Stormwater Removal Program (SRP). This program funds the removal of unauthorized clean-water connections to MSD's sanitary sewer system. In SRP, the property owner obtains bids for disconnecting the unauthorized connection(s) and MSD reimburses the construction cost (up to \$3,000); the work stands as "private improvements." MSD's SRP database during the past year shows an average cost was \$2,528 per property. MSD uses this SRP average cost as a base for estimating the cost of "private-side" construction in sewer separation projects.

Given the fact that public improvements require prevailing wages, MSD estimates that this factor would double these SRP average costs. Therefore, for re-direction of private property stormwater flows as a part of a combined sewer separation project, MSD anticipates an average cost would be **\$5,100**, plus easement costs (\$12,300), for a total of **\$17,400** per parcel for residential-type properties.

There are more than approximately 140,000 properties connected to MSD's combined sewer system. Of these, over 80,000 are residential and just under 60,000 are non-residential (business) properties. It is difficult to estimate the stormwater re-direction costs associated with business-type parcels, as many of them are very large. But, one should expect that costs will range from \$17,400 for smaller projects to multi-million dollars for very large industrial sites in the District's combined sewer portion of its service area.

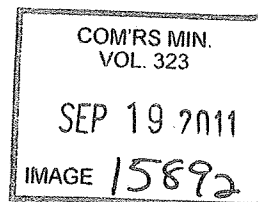
*B. Liability.*

Hamilton County's Bond Counsel, Peck Shaffer & Williams, LLP, has reviewed the issue of liability and responsibility for the "private-side" work installed as a part of the sewer public improvement. They find that MSD would be liable and responsible for the work and installations made as public improvements. This liability and responsibility would begin the moment the public improvement was completed and accepted and extend in perpetuity. They found that the only exception would be Water-In-Basement construction projects following the provisions of §6117.012 R.C. as revised February 2005 and effective May 2005.

*C. Policy.*

Until 1992, MSD practice typically excluded the direct or indirect expenditure of funds for the improvement of private property. This practice was either *de-facto* legislatively approved by the County Commissioners or was incorporated in various legal findings of the Cincinnati City Solicitor. This exclusion applied to many differing situations, conditions and public requests: water-in-

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basement, routine rodding of house laterals, basement back-up clean-ups, repair of private sewers, or replacement of landscaping in easement areas beyond warranty periods, to name a few examples.

Exclusions to this practice were based on a decision of "moral obligation" and stood as the exception and not the rule.

In 1992, changes in Ohio Revised Code (§6117.012) and the County Commissioner's local implementation of this change through the creation of the Stormwater Removal Program precipitated a shift in this practice. The SRP was designed to remove stormwater inflows illegally/improperly connected to the County's sanitary sewer system. As such, the SRP permitted the expenditure of public funds to improve private property as consistent with the public purpose clause of the Ohio Constitution and as defined under this new section of Statute. Such expenditures could come from public revenues of the County and be part of a *public improvement*, or, could come from public revenues but made as reimbursements to private property owners under the guise of a *private improvement*. In the latter case, MSD would not own, operate, or maintain the private improvements made under contracts between a private contractor and a private property owner.

This policy change altered the approach to public expenditures taken by MSD between 1968-1992. For the first time in MSD history, public expenditures were being made to fund private property improvements, albeit these were all private improvements.

MSD Policy shift again occurred in January 2004 with the implementation of the Water-in-Basement Prevention Program (WIPBB). Mandated under the Global Consent Decree and authorized by the County Commissioners (December 2003 [funding] and March 2004 [policy], and as revised in August 2004 [policy]), MSD would spend public funds to eliminate basement back-ups in private property. MSD built these WIBPP projects as public improvements.

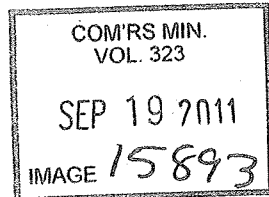
*D. Ownership/Operation/Maintenance/Access.*

Given the assumption of ownership liability for public improvement work, all MSD construction in private property, whether as part of an assessment or a consent decree CIP project, will be owned by Hamilton County and operated by the District. Within the context of where this work is to be performed (in private property) and where it will exist to be maintained (in private property), the assumption of ownership, operation, maintenance and securing access is a monumental shift in public policy. Issues of cost, risk, liability and historical practice pale beside the O&M issue presented by the construction of public improvements in private property. This issue affects the District—and the County Commissioners—now and in the future.

MSD has little experience in the construction of public improvements in private property. Outside of public sewer works constructed in property easements, the SRP and the WIBPP, historically, MSD has not "touched" private property in its construction projects. It has not consistently repaired building laterals beyond the right-of-way line; it has not been consistently responsible for landscaping, driveways, decks, pools or internal plumbing of private structures; and it has not owned, operated or maintained improvements that were constructed as part of an easement agreement.

Coupled to this lack of experience is a records database that consistently identified public improvements existing as outside of private property, except for those in easements.

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The following is some anecdotal information on Construction and O&M that the County Commissioners may find useful in their policy review:

- *You Touch It, You Own It (or, The Treads on Your Backhoe Irreparably Damaged My Spauled Concrete Driveway—Which I Wanted to Replace Anyway, But Didn't Have The Money To Do So Right Now).*

Public construction insurance and liability has heretofore *usually* dealt with construction in private property under the cover of "easements." Under this coverage, the work within the easement area was defined. Also, the work within the easement area was more often than not isolated from any permanent structure sited on the property. If MSD contractors are now responsible for work in private property that is within a "damage zone" proximity to permanent structures, insurance and liability coverages—as well as design specifications—will need to adapt for this change, in anticipation of the axiom, "if something can go wrong, it will."

- *The Money Pit (or, Hamilton County Sandy Soils and the Case of the Sinking Manhole).*

Some of MSD's public improvement projects have turned disastrously frustrating when soils conditions abruptly changed during the course of construction. There is nothing to suggest that this potential would not hold true for "private-side" construction as well.

- *The Dog Ate My Homework (or, Who Will Replace My Separated/Collapsed Building Sewer Lateral 40 Years After It's Installed?).*

MSD records span 150+ years of public construction, are in many different formats and conditions of preservation. The maintenance of accurate records is one key element to the permanent identification of MSD's infrastructure assets. The use of these records, now and in the future, is another key to the maintenance of these assets so they can be used to their full life expectancy. As MSD's history and corporate culture has practiced that records and maintenance stops at the right-of-way line, "private-side" installations must be accommodated in this mind-set.

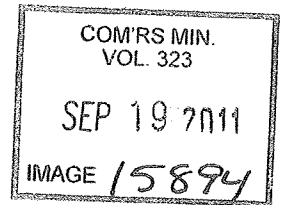
#### **IV. OTHER JURISDICTIONS**

A survey of surrounding Ohio counties (Butler, Clermont, Warren) finds that none incorporate the construction of "private-side" work into their public improvement contracts.

A survey of other jurisdictions outside of Ohio similarly revealed a lack of information of this practice or policy as it related to public construction improvements. While the issue of defining "public purpose expenditures" has been the subject of much political and legal debate over the past 15-20 years, most of this discussion centered around the issues of education, economic development, tax increment financing, tax incentive initiatives, and energy development incentives versus public construction.

However, the Wyoming [State] Legislative Service Office authored a policy study research memo in September 2004, investigating the potential of converting all unsewered and un-watered properties inside incorporated political jurisdictions of that state. The study was conducted to ascertain the fiscal impact of a state-wide conversion from HSTS and cisterns to municipal sewer and water systems. The study included "private-side" work in its analysis. Their estimated cost, per parcel, was \$35,800, which included main-line and private-side construction<sup>8</sup>. The WLSO reported to MSD that this study did not receive political support from the Wyoming State Legislature.

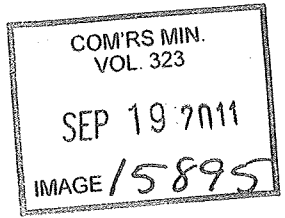
**PUBLIC PURPOSES IN PRIVATE PROPERTY:**  
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**FOR HAMILTON COUNTY SEWERS**



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ENDNOTES

- <sup>1</sup> This legal opinion has been distributed to the County Commissioners.
- <sup>2</sup> Based upon CAGIS data supplied by the Hamilton County General Health District. MSD obtained this information through an extraction of the parcels in CAGIS that contain household treatment systems and reside in MSD's service area. The CAGIS data representing household treatment systems originates from the HCGHD and the Cincinnati Health Department.
- <sup>3</sup> See Attachment A for this breakdown
- <sup>4</sup> See Attachment B, "HCGHD PRIORITY AREAS."
- <sup>5</sup> The most notable and recent exception is the Rollymeade-Kaywood Local Sewer, S.S. Project No. 3848, assessed in 1999. MSD installed injector pumps as a public construction component of the project. MSD maintains these pumps. This was a decision of the MSD Director at that time.
- <sup>6</sup> §6117.012 (A)(1)-(2) R.C. include the phrase "and not operated as a combined sewer..." in its description of what sewers the Board is permitted to use this section of Code to remove stormwater from.
- <sup>7</sup> See Attachment C, "ESTIMATED Private Property Building Lateral Construction Costs For Assessment Projects," May 23, 2005.
- <sup>8</sup> See Attachment D, Wyoming Legislative Service Office Research Memo 04 RM 036, "Fiscal Estimate: Sewer and Water Hook-ups within Municipalities," September 30, 2004.

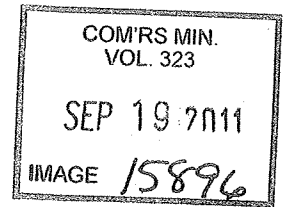


# HAMILTON COUNTY UNSEWERED PARCELS

<u>Acreage</u>	<u># parcels*</u>
<.5	4,839
.5-1	5,303
1-1.5	2,324
1.5-2	898
2-2.5	584
2.5-3	333
3-4	383
4-5	385
5-6	510
6-7	184
7-8	89
8-9	51
9-10	59
10-11	47
11-12	28
12-13	21
13-14	21
14-15	14
15-20	67
20-30	52
30-50	39
Total	16,231

\* parcels within MSD service area and designated by HCGHD and CHD as having on-site sewage disposal system.

# HAMILTON COUNTY UNSEWERED PARCELS



<u>Policial Jurisdiction*</u>	<u># parcels</u>
GREEN TOWNSHIP	3,606
COLERAIN TOWNSHIP	1,932
MIAMI TOWNSHIP	1,118
ANDERSON TOWNSHIP	924
SPRINGFIELD TOWNSHIP	597
SYMMES TOWNSHIP	424
CINCINNATI	375
CROSBY TOWNSHIP	337
DELHI TOWNSHIP	219
MADEIRA	199
COLUMBIA TOWNSHIP	95
WHITEWATER TOWNSHIP	95
SYCAMORE TOWNSHIP	61
WOODLAWN	25
BLUE ASH	19
MONTGOMERY	19
EVENDALE	18
NEWTOWN	18
MOUNT HEALTHY	17
NORTH BEND	13
LOVELAND	12
WYOMING	9
AMBERLEY VILLAGE	7
CLEVES	6
ADDYSTON	4
GREENHILLS	1

\* Hamilton County has 49 separate political jurisdictions; 44 of these 49 are located within the MSD service area.

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IMAGE 15897

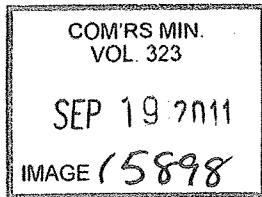
HCGHD "Priority Areas"

ATTACHMENT B

<u>ID</u>	<u>AREA NAME</u>	<u>JURISDICTION</u>	<u>No. of HSTS</u>
1	Rybolt Road (Harrison to Wesselman)	Green Twp.	83
2	Reemelin Road & Crestnoll Lane	Green Twp.	74
3	Flattop Dr., Sagebrush Ln., Susanna Dr.	Colerain Twp.	117
4	Woodthrush Drive, Blue Heron Lane	Colerain Twp.	62
5	Robinhill Drive & Harvest Ridge Drive	Green Twp.	50
6	Heatherdale Dr., Meadowcrest Rd., Beech Dr.	Springfield Twp.	49
7	Oakcreek Drive	Colerain Twp.	45
8	Indianwoods Drive	Colerain Twp.	34
9	Bauerwoods Drive, Greenbush Avenue	Colerain Twp.	36
10	Kenwood Hills Drive	Madeira	168
11	Rackview Road	Green Twp.	94
12	Springmeyer Drive	Green Twp.	94
13	Carlos & Zocalo Drives	Colerain Twp.	67
14	Windridge Circle	Green Twp.	62
15	Beechnut Drive	Anderson Twp.	34
16	Huntcrest Dr., Cedarville Ct., Spicewood Ln.	Anderson Twp.	28
17	Wellesley Avenue & Beechtree Drive	Springfield Twp.	148
18	Clearidge & Eastridge Lanes	Green Twp.	45
19	Silverpoint Road & Epley Lane	Green Twp.	32
20	Greenwald Court & Greenoak Drive	Green Twp.	33
21	Rocknoll Lane	Colerain Twp.	12
22	Chatterton Dr., Winlake Dr., Jackpine Ct.	Springfield Twp.	47
23	Woodcrest Drive	Green Twp.	35
24	Rambling Hills Drive (HNs 1220-1289 not served)	Anderson Twp.	10
25	Overton Avenue, Schinkal Road	Miami Twp.	84
26	Timberview Drive	Green Twp.	68
27	Philloret Drive	Green Twp.	36
28	Overhill Lane & Foley Road	Delhi Twp.	47
29	Jimray Court & Kirkridge Drive	Green Twp.	42
30	Danville Drive	Green Twp.	35
31	Jimjon Court	Green Twp.	34
32	Werkridge Drive (south of Werk Road)	Green Twp.	32
33	Pastoral Lane	Anderson Twp.	21
34	Pictureview Lane	Green Twp.	21
35	Patrilla Ln. Plumhill Dr., & Reltas Ct.	Symmes Twp.	54
36	Snyder Road	Green Twp.	49
37	Deeridge Lane	Green Twp.	23
38	Turnkey Court	Anderson Twp.	19
39	Jupiter Drive	Delhi Twp.	14
40	Nabida Drive	Colerain Twp.	19
			2,057

<u>JURISDICTION</u>	<u>No. of Area Names in Jurisdiction</u>	<u>No. of HSTS in Jurisdiction</u>	<u>% of Total</u>
Anderson Twp.	5	112	5%
Colerain Twp.	8	392	19%
Delhi Twp.	2	61	3%
Green Twp.	19	942	46%
City of Madeira	1	168	8%
Miami Twp.	1	84	4%
Springfield Twp.	3	244	12%
Symmes Twp.	1	54	3%
		2,057	

# ESTIMATED Private Property Building Lateral Construction Costs For Assessment Projects



## Assumptions:

This estimate is based on the assumption that the Patrilla Plumhill Sewer Assessment project is a typical assessment project. The foregoing project is located in Symmes Township with lots averaging one-half an acre.

Construction estimating is based on historical costs. MSD's Wastewater Engineering Division does not maintain historical costs for work on private property, since private property costs are not included with the sewer assessment project, so estimates will be more variable from actual costs.

The septic tanks located at the rear of the home can have new 6" lateral piping to the public sewer laid outside and around the home. All work is assumed to be performed outside the home with no internal plumbing modifications such as grinder pumps, re-plumbing for only first floor service, or re-plumbing to direct flow to the front of the house. The construction cost assumes yards to be replaced with sod and the value of replacing landscaping, decks, etc. are included in the easement costs. The property owner is to pay the tap in fee, per MSD Rules and Regulations and any other existing trunk sewer assessments, etc. that may exist.

Easement costs will vary greatly per each home. An average price of \$7.50/s.f. multiplied by a factor for permanent and temporary easements, was determined to try to capture the variance. Easements are assumed to be a total of 25 feet wide.

Length of 6" lateral from rear of home equals 130 lineal feet on private property. Length of 6" lateral from front of home equals 50 lineal feet on private property. The average depth of excavation is assumed to be 12'.

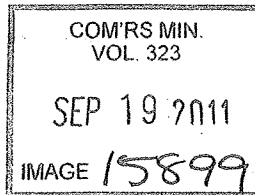
The construction estimate only includes open cut installation with reasonable access to the construction area. Tight working conditions and rough terrain will increase construction costs. If no dig technologies are required, the estimated construction costs could double. All of the costs estimated are subject to increase, due to inflation.

## Project Costs for construction of 6" lateral on private property:

### **Easement Costs:**

#### Easement cost from front of home:

$[(50 \text{ l.f.} \times 20 \text{ l.f.} \times 0.75 + 50 \text{ l.f.} \times 5 \text{ l.f.} \times 0.25 \text{ (construction of new lateral)} + 25 \text{ l.f.} \times 25 \text{ l.f.} \times 0.25 \text{ (abandonment of tank area)}] \times \$7.50/\text{s.f.} + \$5,000 \text{ (appraisals, title search, etc)} = \$12,266.$  Approximate cost \$12,300.



## ATTACHMENT C

### Easement cost from rear of home:

$[(130 \text{ l.f.} \times 20 \text{ l.f.} \times 0.75 + 130 \text{ l.f.} \times 5 \text{ l.f.} \times 0.25) \text{ (construction of new lateral)} + 25 \text{ l.f.} \times 25 \text{ l.f.} \times 0.25 \text{ (abandonment of tank area)}] \times \$7.50/\text{s.f.} + \$5,000 \text{ (appraisals, title search, etc)} = \$22,016.$  Approximate cost \$22,000.

### **Construction Costs:**

- 6" conduit (laterals) from front of home =  $\$85/\text{l.f.} \times 50 \text{ l.f.} = \$4,250$
- 6" conduit (laterals) from rear of home =  $\$135/\text{l.f.} \times 130 \text{ l.f.} = \$17,550$
- Abandon Tank: \$1,500
- Cleanouts = 3 ea.  $\times \$218 = \$654$
- Clearing and Grubbing from front of home: \$145
- Clearing and Grubbing from rear of home: \$295

Construction cost from front of home:  $\$4,250 + \$1,500 + \$654 + \$145 = \$6,549$

Total Construction Cost: \$6,600 plus easement cost. Other direct costs would include construction inspection, design, and contingency costs; estimated to be \$3,000.

Construction cost from rear of home:  $\$17,550 + \$1,500 + \$654 + \$295 = \$19,999$

Total Construction Cost: \$20,000 plus easement cost. Other direct costs would include construction inspection, design, and contingency costs; estimated to be \$9,000.

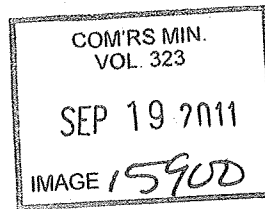
- Note: For comparison, a private plumbers construction estimate for the Patrilla and Plumhill Sewer Assessment is \$15,000 to \$20,000 per home for rear of home and \$10,000 from front of home. (See Attachment C-1 illustrating a May 2004 bid).

### **Maintenance Costs (MSD ownership of lateral):**

Yearly maintenance costs from front of home if MSD owns laterals is  $\$1.15/\text{l.f.} \times 50 \text{ l.f.} = \$58 / \text{year}$

Maintenance costs from rear of home if MSD owns laterals is  $\$1.15/\text{l.f.} \times 130 \text{ l.f.} = \$150 / \text{year}$

Assuming an average life of 50 years, total maintenance costs = \$2,900 and \$7,500.



**ATTACHMENT C**

**Total Costs:**

Tank in front of home

Total assessment project lateral cost; \$6,600 construction + \$3,000 design, constr. mgt., contingency + \$12,300 easement = \$21,900.

Tank in rear of home

Total assessment project lateral cost; \$20,000 construction + \$9,000 design, constr. mgt., contingency + \$22,000 easement cost = \$51,000.

**Risks:**

It will be difficult to try to include the private-side costs in the contract with the public sewer. The private side construction costs will vary for each home, which will make bidding very difficult. The contractor will not know what he is bidding on unless each home is entered and a design plan meeting the homeowners' needs is included for each home. The logistics of trying to provide a design while meeting homeowner's needs would be very difficult not including the effect of change of ownership. A simpler approach would be to construct the lateral to a predetermined point outside the home and the property owner would hire a plumber to perform work beyond the predetermined stopping point, possibly including abandoning the existing tank.

The laterals could be constructed on a time and material basis, but this approach would leave the cost risk with MSD, since actual costs would not be known until after the lateral is constructed. Additional construction inspection would be necessary to monitor the contractor during the time and material construction.

# PROPOSAL

J. T. LOHRER CONSTRUCTION CO., INC.  
4200 Roudebush Lane  
BATAVIA, OHIO 45103

(513) 732-9192

COM'RS MIN.  
VOL. 323  
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IMAGE 15901

## ATTACHMENT C-1

TO: MSD  
1600 GEST STREET  
CINCINNATI, OHIO 45204  
  
ATT: MARK BELCIK

PHONE	DATE 5/24/04
JOB NAME / LOCATION SANITARY SEWER NO. 5291 PATRILLA LANE AND PLUMHILL	
JOB NUMBER	JOB PHONE

ESTIMATES FOR INSTALLATION OF 6" LATERAL ON PRIVATE PROPERTY ON THE ABOVE MENTION PROJECT.

PRICE: \$15,000.00 TO \$20,000.00 PER LOCATION DEPENDING ON PLUMBING PERFORMED INSIDE HOUSE.

*± \$10,000 if system in front of home. ☎ phone call to Mike Lohrer, 5-25-04.*

We Propose hereby to furnish material and labor — complete in accordance with the above specifications, for the sum of: 0.00 dollars (\$ )

Payment to be made as follows:

All material is guaranteed to be as specified. All work to be completed in a professional manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance. Our workers are fully covered by Workers Compensation Insurance.

Authorized Signature \_\_\_\_\_

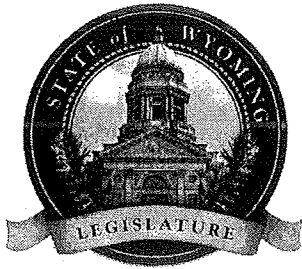
Note: This proposal may be withdrawn by us if not accepted within \_\_\_\_\_ days

Acceptance of Proposal — The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Date of Acceptance: \_\_\_\_\_



COM'RS MIN.  
VOL. 323  
SEP 19 2011  
IMAGE 15902

ATTACHMENT D

WYOMING LEGISLATIVE SERVICE OFFICE

Research Memo

04 RM 036

Date: September 30, 2004

Author: Don Richards, Senior Research Analyst  
Nicole Novotny, Associate Research Analyst

Re: Fiscal Estimate: Sewer and Water Hook-ups within Municipalities

PURPOSE

Prepare a statewide fiscal estimate to convert all properties with structures currently within the limits of an incorporated municipality from well/septic systems to city water and sewer services.

RESULTS IN BRIEF

Given many assumptions outlined throughout this memorandum, the total cost of converting all facilities currently within the limits of an incorporated municipality to city sewer and water is approximately \$24 million. This estimate is based upon data provided by several communities directly to LSO and through a request for information prepared by the Wyoming Association of Municipalities (WAM). The "known" outstanding costs represent approximately fifty percent of the state's incorporated population. This figure was doubled to account for many communities for which no information has been identified.

*The fiscal estimates contained within this memo are preliminary. The anticipated costs will be revised as additional information becomes available that either modifies the explicit assumptions outlined herein or the Joint Corporations, Elections, and Political Subdivisions Committee elects to modify the parameters of the proposal.*

DATA COLLECTED / ASSUMPTIONS

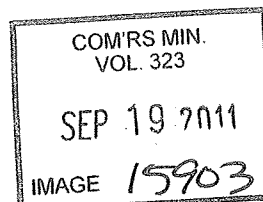
**Properties.** For purposes of this analysis, two groups of properties are considered: (a) county pockets and (b) residential, commercial, or industrial structures located on property previously annexed by a municipality but served by a private well and septic system, not by a municipalities' sewer or water system.

Based upon a visual review of 2003 Department of Revenue geographic information system (GIS) files, LSO identified twenty municipalities that have at least one parcel of unannexed county land within the boundaries of the municipality. The number of identified county "pockets" within these communities ranges from one to several dozen and vary significantly in size. Examples of these parcels include private residences, vacant lots (or acreage), county-owned property, and portions of what appear to be roadways or rights of way. Table 1 provides the list of municipalities identified by LSO. Properties existing beyond the boundaries of each municipality are not included.

**Table 1. Identified Communities with County "Pockets".**

Basin	Evanston	Lovell	Pinedale
Buffalo	Gillette	Lusk	Powell
Casper	Glenrock	Marbleton	Riverton
Cheyenne	Kaycee	Meeteetse	Torrington
Douglas	Lander	Newcastle	Wheatland

Source: LSO GIS staff.



## ATTACHMENT D

**Cost Estimation Per Property.** In order to estimate the costs of well and septic conversion per municipality, the LSO used two approaches:

- (a) Multiplying the "typical" cost of conversion in Cheyenne by the number of statewide identified properties; or
- (b) Applying the total estimated costs provided directly by the municipality, where available.

The LSO made no attempt to verify the estimates provided by the individual communities. Considering information gathered from across the state, costs derived from Cheyenne appear relatively consistent, though specific component costs differ in each municipality. Component costs for well and septic conversion can be broken down into four categories:

- 1) Water/sewer mains, water valves, manholes, fire hydrants, and connections to system, (\$19,900) -LSO assumes that most parcels will have relatively immediate access to a water main since they are "pockets" within the existing municipality.
- 2) Tap fees (\$3,830) - This is the current residential tap fee charged by the City of Cheyenne.
- 3) Lateral service lines (\$2,500) - This amount is also taken from Cheyenne data and will vary depending upon the location of the structure and the location of the current well and septic system.
- 4) Engineering, surveying, construction management, contingency, insurance, traffic, etc. - (\$9,950) This figure is computed as 50 percent of all charges outlined in item #1.

➤ **Approximate cost per property (1)-(4):**  
**\$35,800**

Any costs not included in the above components are not considered part of the fiscal estimates. Since the estimate is limited to well and septic systems conversion to municipal water and sewer, other costs associated with annexation such as streets, curb and gutter, engineering fees, etc. are not included. Furthermore, the costs associated

with removal of the septic system, capping of a private well, or private plumbing are not considered or included.

### ANALYSIS

Again, LSO identified community-specific costs using two methods:

- (a) Multiplying the approximate cost per property as computed through a recent Cheyenne grant proposal to the State Land and Investment Board by the number of identified commercial, residential, and industrial structures currently served by well/septic system; or
- (b) Using total cost estimates reported by a municipality.

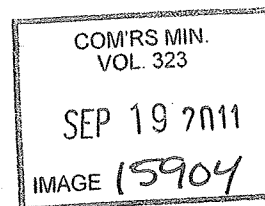
LSO prepared estimates for eight of the state's largest communities. LSO then extrapolated a per capita incorporated population cost in order to estimate the costs for the entire state. Effectively, this doubled the estimate to account for all remaining communities and assumes that the nearly 50 percent of the incorporated population is representative of the remainder of the state. Table 2 summarizes the basis for the statewide calculations.

**Table 2. Municipal Properties Currently Using Private Well or Sewer Systems and Conversion Costs.**

City/ Town	Parcels	Est. Cost	Total Population	% of Inc. Pop.
Casper	< 35	\$1,200,000	49,644	14.7%
<i>Cheyenne</i>	106	<i>\$3,800,000</i>	53,011	<i>15.7%</i>
Cody	~1,000	\$3,500,000	8,835	2.6%
<i>Gillette</i>	404	<i>\$2,900,000</i>	20,238	<i>6%</i>
<i>Lander</i>	8	<i>\$287,000</i>	6,867	<i>2%</i>
<i>Powell</i>	1	<i>\$36,000</i>	5,373	<i>1.6%</i>
<i>Rawlins</i>	0	<i>\$0</i>	9,006	<i>2.7%</i>
<i>Worland</i>	<i>negligible</i>	<i>\$0</i>	5,250	<i>1.6%</i>
<b>TOTAL</b>	<b>1,496</b>	<b>\$11,700,000</b>	<b>158,224</b>	<b>47%</b>

**Source:** LSO contacts with individual communities and results of WAM request for information.

**Note:** Community estimates reporting specific costs are in regular type. Communities for which LSO has calculated the estimate are in italics.



By far, most county "pockets," (106) are located in Cheyenne, although both Casper (less than 25) and Gillette (less than 50) reported a few structures within county pockets.

Cody appears to be another outlier. City officials report that 1,494 structures are not billed for city water and 1,643 structures are not billed for sewer. However, some of these structures would have no need to be connected to city services because they are warehouses, out buildings, etc. Nonetheless, this community provides a unique example of a municipality that has historically annexed several residences (and commercial/industrial properties) that do not receive city water and sewer services. Since data was not collected from all communities, it is possible that other communities such as Rock Springs, Sheridan, or Douglas could be similarly situated. Nonetheless, such outliers have been accounted for in the estimation methodology.

Finally, the city of Gillette reports approximately 404 structures within the city that are not connected to the main water, sewer system, or both. The vast majority of these properties (about 323) are connected to the city sewer system but are located in three separate subdivisions, each of which use private wells. Existing agreements would require the property owners to connect to city water should the private wells fail, and several landowners have already prepaid their city tap fees. The issue of sewer installation in areas not currently served is also commonly covered in the pre-existing annexation agreements, which require financing of the sewer installation by a Local Improvement District. For purposes of the above estimate these 323 properties were not included. The estimated costs for the balance of the properties assume the standard \$35,800 per unit cost.

### CONSIDERATIONS

The estimates included in this memorandum are very rough, broad brush attempts to determine the likely order of magnitude for municipal water/sewer conversion expenses. Statewide precision would require extensive time, energy, engineering and accounting analysis beyond the

abilities of LSO research staff. The estimate is further complicated by the draft proposal for public payment for services to specific private customers that is foreign to historical practice. In the words of a city official from Gillette, "If the state now wants to pay to extend these missing services, it would seem that they would be providing a direct benefit to landowners/developers because once the missing infrastructure is installed the land use will change...If infrastructure is missing there is a reason why it is missing and that reason usually is due to high cost."

### GLOSSARY OF TERMS

*county pocket* – Parcels of county land that exist within the boundaries of a city or town, and, are *completely* surrounded by annexed city or town properties/parcels.

*Later service lines* – Pipelines that bring city water and sewer services from the "tap" to a property structure.

*Septic system* – Private waste management system consisting of a sewer line, connecting pipes, septic tank, and leach field.

*Tap* – Additions to water and sewer mains that allow individual properties access to the pipeline.

*Water/Sewer Main* – Large pipelines that transport water and wastewater administered by a municipality.

*Well* – Private, uncontaminated underground water source.

1985 Ohio AG LEXIS 69

OPINION NO. 85-016

May 14, 1985

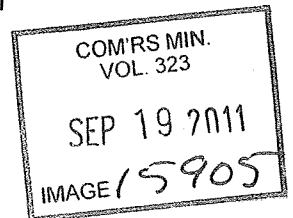
OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF OHIO

Request By:

ANTHONY J. CELEBREZZE, JR., Attorney General

Opinion

The Honorable Fred W. Crow, III  
Meigs County Prosecuting Attorney  
P.O. Box 329  
Pomeroy, Ohio 45769



I have before me your opinion request, which reads, in relevant part, as follows:

Meigs County has received a grant from U.S. EPA to pay for a portion of the costs associated with the design and construction of improvements to approximately 90 individual sewage disposal systems in an unincorporated area of the County known as Tupper Plains. The project does not consist of conventional sanitary sewers but, rather, involves upgrading or replacement of malfunctioning septic tanks, home aerators, leach fields and discharge pipes. It is the first project of this type to be funded in Ohio under EPA's Construction Grants Program.

The Board of Commissioners currently is considering options with respect to constructing, financing, operating, and maintaining the improvements. One of the options under consideration is establishment of a Tupper Plains Sewer District pursuant to Chapter 6117 of the Ohio Revised Code, levying special assessments against benefited properties, issuing notes in anticipation of the sale of special assessment bonds, and selling special assessment bonds.

We are hereby respectfully requesting a legal opinion from your office with respect to the following question:

"May boards of county commissioners lay out, establish, and maintain county sewer districts pursuant to the provisions contained in Chapter 6117 of the Revised Code for the purpose of planning, designing, constructing, financing, operating, and maintaining improvements to individual sewage disposal systems?"

Your question has arisen from the fact that the functions of sewer districts established under R.C. Chapter 6117 have traditionally been directed toward conventional sewer systems, consisting of sewer lines and centralized sewage treatment facilities. See, e.g., 1955 Op. Att'y Gen. No. 6059, p. 677. I do not, however, find that the language of R.C. Chapter 6117 requires that the functions of sewer districts be so restricted.

R.C. 6117.01 states, in part:

For the purpose of preserving and promoting the public health and welfare, boards of county commissioners may by resolution lay out, establish, and maintain one or more sewer districts within their respective counties, outside of municipal corporations. . . . *Any board may acquire, construct, maintain, and operate* such main, branch, intercepting, or local sewer, or ditch, channel, or interceptor for the temporary retention of storm water, within any such district, and *such outlet sewer and sewage treatment or disposal works within or without such district, as are necessary to care for and conduct the sewage or surface water from any part of such district to a proper outlet, so as to properly treat or*

*dispose of same.* . . . The board may adopt, publish, administer, and enforce rules for the construction, maintenance, protection, and use of sewers and sewer improvements in its county outside of municipal corporations, and of sewers and sewer improvements within municipal corporations in its county wherever such sewers are constructed or operated by such board or discharge into sewers or sewage treatment plants constructed or operated by such board, including the establishment and use of connections. Such rules shall not be inconsistent with the laws of this state or the rules of the director of environmental protection. No sewers or sewage treatment works shall be constructed in any county outside of municipal corporations by any person, firm, or corporation until the plans and specifications for the same have been approved by the board, and any such construction shall be done under the supervision of the county sanitary engineer. Any person, firm, or corporation proposing or constructing such improvements shall pay to the county all expenses incurred by the board in connection therewith. The county sanitary engineer may enter upon any public or private property for the purpose of making surveys or examinations necessary for the laying out of sewer districts or designing sewers or treatment works, and may make such surveys and examinations.

Thus, a board of county commissioners which has established a sewer district may "acquire, construct, maintain, and operate. . . such outlet sewer and sewage treatment or disposal works within or without such district, as are necessary to care for and conduct the sewage . . . from any part of such district to a proper outlet, so as to properly treat or dispose of same." While this language has commonly been applied to conventional sewer systems, it is not, by its terms, so limited. Rather, it encompasses all sewage treatment or disposal works which are necessary to care for and conduct sewage to a proper outlet, so as to properly treat or dispose of such sewage. The terms "outlet sewer and sewage treatment or disposal works" and "proper outlet" are not defined by statute for purposes of R.C. Chapter 6117. Definitions appearing elsewhere in the Revised Code indicate, however, that these are general and inclusive terms. See, e.g., R.C. 6111.01 n1; R.C. 6112.01; R.C. 6119.011; R.C. 6121.01. See also R.C. 6117.51 (indicating that a cesspool, ditch, private sewer, privy, or septic tank is considered to be an "outlet"). Thus, if it is determined that, in a particular instance, facilities of the sort which you have described -- i.e., septic tanks, home aerators, leach fields, or discharge pipes -- constitute facilities which are necessary to provide for the proper treatment or disposal of sewage, such facilities may be acquired, constructed, maintained, and operated pursuant to R.C. 6117.01 and related provisions. The fact that certain of the facilities may be contained entirely upon the property of an individual landowner does not, in my judgment, remove them from the scope of R.C. Chapter 6117, if they are facilities which carry out the purposes of that chapter. See generally *Limpert v. Day*, 7 Ohio Misc. 231, 218 N.E.2d 209 (P. Ct. Cuyahoga County 1966) (recognizing that proper sewage disposal may benefit the health and welfare of numerous persons far away from the immediate site of a sewage problem), modified sub nom. *Graham v. Day*, 12 Ohio App. 2d 9, 230 N.E.2d 453 (Cuyahoga County 1967). I conclude, therefore, that a board of county commissioners which has established a sewer district under R.C. Chapter 6117 may acquire, construct, maintain, and operate facilities which are contained entirely upon the property of an individual landowner if such facilities are necessary to care for and conduct sewage from any part of such district to a proper outlet, so as to properly treat or dispose of the sewage.<sup>2</sup>

It is, however, my understanding that the arrangement with which you are concerned would not provide for the county commissioners to construct the facilities in question as public improvements, to be owned and maintained by the county pursuant to R.C. Chapter 6117, but, rather, that it would provide for the facilities, although constructed by the county pursuant to R.C. Chapter 6117, to be owned and maintained by the individual owners of the land upon which the various facilities are located. See 1955 Op. Att'y Gen. No. 5419, p. 285 at 289 ("both the right and obligation of maintenance goes with the ownership of the sewer lines"). I do not believe that R.C. Chapter 6117 authorizes this sort of an arrangement.

R.C. 6117.06 sets forth the procedure which is to be followed, after a sewer district is established, to

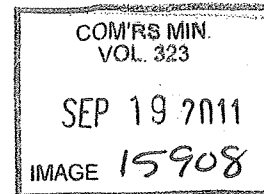
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IMAGE 15907

have a general plan of sewerage and sewage disposal prepared, and then to have detailed plans, specifications, and estimates of cost prepared for particular improvements. Pursuant to R.C. 6117.06, the board of county commissioners may not proceed to construct an improvement for a sewer district unless it has determined that such improvement "is necessary for the preservation and promotion of public health and welfare." See R.C. 6117.19 The resolution which declares the necessity of the improvement must state "what part of the cost will be paid by the county at large and what part will be specially assessed against the benefited property within the district."

The statutory scheme seems to contemplate that any improvement constructed by the board of county commissioners for a sewer district under R.C. Chapter 6117 is to belong to the county, rather than to any landowners whom it might benefit, and that the responsibility for maintenance is to rest with the county, rather than with any other persons or entity. See R.C. 6117.01 ("board [of county commissioners] may acquire, construct, maintain, and operate" facilities which serve a sewer district); R.C. 6117.02 (moneys collected as rents or connection charges shall, except as otherwise provided, "be used first for the payment of the cost of the management, maintenance, and operation of the sewers of the district and sewerage treatment or disposal works used by the district and second for the payment of interest or principal of any outstanding debt . . . or for the creation of a sinking fund"); R.C. 6117.05; R.C. 6117.25; R.C. 6117.251 ("[a]fter the establishment of any sewer district the board of county commissioners may determine by resolution that it is necessary to provide sewer and sewage disposal improvements and to maintain and operate the same"); R.C. 6117.29; R.C. 6117.34; R.C. 6117.39 (authorizing the county commissioners to purchase or appropriate real estate, a right of way, or an easement for the construction, maintenance, or operation of any improvement authorized by R.C. Chapter 6117, or to purchase or appropriate the right to construct, maintain, and operate any such improvement on property inside or outside of the district). See generally 1955 Op. No. 5419, at 289 ("it would appear that if the owners of the premises located within the sewer district desire to have the service of disposal of their sewage they must accomplish it by a contract whereby they convey their installation to the county on terms agreed upon"). R.C. 6117.02 expressly recognizes the power of the board of county commissioners "to levy special assessments upon benefited properties for operation and maintenance whenever the rents and other funds available are not sufficient to pay all the cost thereof." See R.C. 6117.32 authorizing the board "at such intervals as it deems expedient," to make assessments and levy taxes "to pay the cost of the maintenance and operation of any such improvement, including disposal of sewage, after completion thereof, and for the purpose of keeping clean and in repair ditches, drains and watercourses serving such improvements") But see R.C. 929.03 (limiting the authority of a county to levy special assessments on real property which is within an agricultural district established pursuant to R.C. 929.02). See generally *Schiff v. City of Columbus*, 9 Ohio St. 2d 31, 38, 223 N.E.2d 54, 59 (1967) ("[t]he enhancement in the value of property that results from a public improvement is the special benefit that will support an assessment against that property to pay for the improvement").

It is true that certain provisions of R.C. Chapter 6117 recognize that some sewage facilities which are used within a sewer district may be owned by an entity other than the county. See, e.g., R.C. 6117.01 ("[t]he board [of county commissioners] may adopt, publish, administer, and enforce rules for the construction, maintenance, protection, and use of sewers and sewer improvements in its county outside of municipal corporations, and . . . within municipal corporations . . . wherever such sewers are constructed or operated by such board"); R.C. 6117.02 (discussing ratification of rates to be charged "[w]hen the sewerage treatment or disposal works is owned by a municipal corporation or any person, firm, or private corporation"). It is, however, my judgment that these provisions merely reflect the fact that it is possible for an individual or a private or public entity other than a county to construct sewage facilities. See, e.g., R.C. 307.73; R.C. 6111.44; R.C. 6117.38 (authorizing the board of county commissioners to acquire sewers which "have been constructed by a corporation, individual, or public institution at its own cost for the purpose of providing sewerage for any allotment, development, subdivision, or similar enterprise, or for any institution"); R.C. Chapter 6112 (private sewer systems); 3



Ohio Admin. Code Chapter 3701-29 (household sewage disposal systems); 4 Ohio Admin. Code Chapter 3745-31 (permits to install new sources of pollution); 1955 Op. No. 5419. *See generally Security Sewage Equipment Co. v. Beebe*, 5 Ohio Misc. 178, 183, 214 N.E.2d 853, 858 (C.P. Lake County 1965) ("the authority of the county to make and enforce regulations and to supervise construction of . . . plants [within the county outside of municipal corporations] is limited to those instances when the plant is to be operated by the county as a part of the sewer complex within the sewer district"). I find nothing in R.C. Chapter 6117 which suggests that a board of county commissioners may, pursuant to that chapter, construct facilities for ownership by an entity other than the county.<sup>3</sup> *See generally* 1984 Op. Att'y Gen. No. 84-085 (a sewer district established under R.C. Chapter 6117 is not an entity or district independent of a county). *Cf.* Ohio Const. art. VIII, §§ 6, 13.4 This conclusion is bolstered by the fact that, even when consenting landowners petition to have improvements constructed under R.C. Chapter 6117, the statutory scheme indicates that the county will have responsibility for maintaining and operating such improvements, as well as constructing them. *See* R.C. 6117.28.

It is, therefore, my opinion, and you are hereby advised, that a board of county commissioners may lay out, establish, and maintain county sewer districts pursuant to R.C. Chapter 6117 for the purpose of planning, designing, constructing, financing, operating, and maintaining improvements to sewage disposal facilities which are contained entirely upon the property of individual landowners, provided that such facilities are necessary to care for and conduct sewage from any part of such a district to a proper outlet, so as to properly treat or dispose of the sewage, and provided that the ownership of the facilities and the responsibility for maintenance of the facilities rests with the county.

#### Footnotes

##### Footnotes for Opinion

1 R.C. 6111.01 states, in part:

As used in Chapter 6111. of the Revised Code:

(B) "Sewage means any liquid waste containing animal or vegetable matter in suspension or solution, and may include household wastes as commonly discharged from residences and from commercial, institutional, or similar facilities.

(E) "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and *all other constructions, devices, appurtenances, and facilities used for collecting or conducting water-borne sewage, industrial waste, or other wastes to a point of disposal or treatment*, but does not include plumbing fixtures, building drains and subdrains, building sewers, and building storm sewers.

(F) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, building sewer connected directly to treatment works, incinerator, or other *works used for the purpose of treating, stabilizing, or holding sewage, industrial waste, or other wastes*, except as otherwise defined.

(G) "Disposal system" means a system for disposing of sewage, industrial waste, or other wastes, and includes sewerage systems and treatment works. (Emphasis added.)

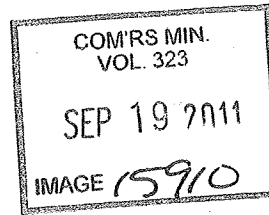
2 You have not asked about any state or local approval requirements that might apply to the proposed project, and I am not considering such requirements.

3 Certain provisions of R.C. Chapter 6117 provide for cooperation between a county and a municipality with respect to the construction of sewage facilities. *See* R.C. 6117.03, 6117.04, 6117.40, 6117.41. It is, however, my understanding that these provisions are not relevant to the situation with which you are presented, and I am not considering them herein.

It is a general rule that the power to hold property includes the power to dispose of such property, as appropriate. See *Reynolds' Heirs v. Stark County Commissioners*, 5 Ohio 204 (1831). It is, therefore, not impossible that the county may, at some time, convey to individuals sewage facilities which it has constructed under R.C. Chapter 6117. It is, however, clear that a county may not do indirectly that which it may not do directly. See generally *State ex rel. Kitchen v. Christman*, 31 Ohio St. 2d 64, 285 N.E.2d 362 (1972). Thus, a county may not use the mechanism of R.C. Chapter 6117 to construct facilities as public improvements for the purpose and with the intent of conveying such facilities to individual landowners. See generally *Markley v. Village of Mineral City*, 58 Ohio St. 430, 51 N.E. 28 (1898); *Eighth & Walnut Corp. v. Public Library*, 57 Ohio App. 2d 137, 385 N.E.2d 1324 (Hamilton County 1977). Rather, it appears that, absent specific statutory authority to the contrary, the county may not convey to others sewage facilities which it constructs under R.C. Chapter 6117 until such time as the facilities are no longer needed for public use. See, e.g., R.C. 307.09, 307.10, 307.12. Cf. Ohio Const. art. VIII, §§ 6, 13; R.C. 307.85.

4 To read R.C. Chapter 6117 as permitting a county to construct sewage facilities for ownership by an individual might, in fact, raise questions concerning the constitutionality of the chapter under Ohio Const. art. VIII, § 6, which prohibits a county from raising money for, or loaning its credit to, or in aid of, a joint stock company, corporation, or association. You have indicated that costs of the facilities will be paid by federal funds and by assessments for benefits conferred; thus, it might be argued that art. VIII, § 6 does not come into play because the county contributes none of its funds toward the project. See generally 1982 Op. Att'y Gen. No. 82-005. Nonetheless, the fact that the county plans to issue notes in anticipation of the sale of special assessment bonds and to sell special assessment bonds indicates that, if ownership of the facilities were vested in individuals, the credit of the county would be loaned to, or in aid of, such individuals. See, e.g., R.C. 6117.061 (deferment of collection of assessments); R.C. 6117.062; R.C. 6117.07; R.C. 6117.25; R.C. 6117.251; R.C. 6117.28-.33. See generally *State ex rel. Saxbe v. Brand*, 176 Ohio St. 44, 197 N.E.2d 328 (1964). Whether Ohio Const. art. VIII, § 6 prohibits the lending of credit to an individual where a public purpose is served has not been firmly established. See 1977 Op. Att'y Gen. No. 77-049 (recognizing an exception to the prohibitions of Ohio Const. art. VIII § 6, where the funds in question are at all times exclusively federal funds). See generally *Auditor of Lucas County v. State ex rel. Boyles*, 75 Ohio St. 114 (1906). An activity which is prohibited under Ohio Const. art. VIII § 6 may, however, be carried out under art. VIII, § 13, if it is for industry, commerce, distribution, and research, and if it meets the other criteria set forth therein. See *State ex rel. Ryan v. City Council of Gahanna*, 9 Ohio St. 3d 126, 459 N.E.2d 208 (1984); *State ex rel. Brown v. Beard*, 48 Ohio St. 2d 290, 358 N.E.2d 569 (1976); *Stark County v. Ferguson*, 2 Ohio App 3d 72, 440 N.E.2d 816 (Stark County 1981); *State ex rel. Eichenberger v. Neff*, 42 Ohio App. 2d 69, 330 N.E.2d 454 (Franklin County 1974); 1984 Op. Att'y Gen. No. 84-032; 1981 Op. Att'y Gen. No. 81-095. I am not in this opinion considering whether there may be procedures other than those set forth in R.C. Chapter 6117 by which the board of county commissioners may accomplish its goals. See generally R.C. 307.85(A) (authorizing a board of county commissioners in connection with the establishment of any federal program, to take any action and adopt any procedures which are not in conflict with the statutory or constitutional law of Ohio).

# Ideas and Consequences Wanted: A Line Between Public and Private



*Lawrence W. Reed*

Most people think that government should have limits, that government should do some things but not every thing. Accordingly, most people would argue that even if government could produce better hamburgers than anyone else, it shouldn't get into the restaurant business because that would compete against - and draw valuable resources and attention away from - its more important missions of protecting life and property. Government, most people believe, should spend public money for public purposes and should rarely spend public money for private purposes.

Those assumptions, as reasonable and universal as they seem when stated so generally, sometimes break down when the discussion turns to specific projects near and dear to the hearts of special interests. And if the implications of a recent court ruling in a North Carolina case should spread across the country, just about any special, private interest could become a public purpose at everyone else's expense.

The origin of the case rests in subsidies by state and local governments to private businesses. Public officials are increasingly granting them as part of their economic development strategies to keep companies from leaving or to lure companies away from other locations. Angered by this dubious use of tax money, North Carolina lawyer William Maready decided to do something about it. In 1995, he filed suit against the city of Winston-Salem and the county of Forsyth.

Maready argued that subsidies violated the provision of the state's constitution which provides that "[t]he power of taxation shall be exercised in a just and equitable manner, for public purposes only." Subsidies, he reasoned, amount to the taxing of existing, local firms to pay for the relocation or expansion of other, often competing businesses. That, Maready claimed, was use of public resources for an overwhelmingly private, not public, purpose. A lower court validated Maready's argument, but the defendants appealed.

On March 8, 1996, the Supreme Court of North Carolina overturned the lower court and handed down a 5-2 decision of sweeping significance. It said, in effect, that government can hand out money to anyone so long as the intent of the recipient is to create new jobs with it. By the Court's reasoning, it doesn't matter if no evidence is presented that the subsidy is really needed or even that it would result in a net benefit to the community. Just the intent of doing good with it is justification enough.

Just how sweeping the majority opinion in the Maready case was becomes clear from this analysis by Andrew Cline of the John Locke Foundation in Raleigh, North Carolina: The Court "ruled that if a policy is aimed at helping the community, that policy will be considered constitutional whether it actually benefits or harms the community!"

In a stinging dissent, Justice Robert Orr lamented the fact that "little remains of the public purpose constitutional restraint on governmental power to spend tax revenues collected from the public.... If a potential corporate entity is considering a move to Winston-Salem but will only come if country club memberships are provided for its executives, do we sanction the use of tax revenue to facilitate the move?" According to the Court, that would be perfectly acceptable. In Justice Orr's more thoughtful view, "An activity cannot be for a public purpose unless it is properly the 'business of government,' and it is not a function of government either to engage in private business itself or to aid particular business ventures. "

From the history of my state of Michigan comes a lesson that puts a useful perspective on the North Carolina story. Upon achieving statehood in 1837, Michigan jumped into the subsidy business in a big way - offering enticements to private firms to stay or locate here and even "assisting" economic development by starting up stateowned railroads and canals. The legislature approved public handouts for sugar beet producers, silk manufacturers, and sheep raisers, among others, "to increase the home market."

In barely a decade, the state's interventions were widely regarded as colossal, expensive failures-so much so that the state's constitution was rewritten in 1850 to excise state government from virtually all economic development. The relevant passage from the Michigan Constitution of 1850 read, "The State shall not subscribe to or be interested in (emphasis mine) the stock of any company, association, or corporation ... [t]he State shall not be a party to or interested in any work of internal improvement, nor engaged in carrying on such work. . . ." In the absence of subsidies, Michigan-surrounded by lakes and once thought of geographically as "the state on the road to nowhere "-went on to develop world-class industries in lumber, furniture, carriages and, ultimately, automobiles.

The clear line between "public" and "private" that Michigan established in 1850 is not so clear any more. Subsequent changes in the Constitution, the passage of new laws, and the creation of programs for "economic development" have blurred it considerably. While today's Michigan Constitution expressly forbids the State from directly subsidizing private schools, the State seems increasingly interested in distributing millions of public dollars to private businesses. Those dollars-whether for privately owned sports stadiums or for private firms to move here from other states-are always wrapped in the alluring guise of an ostensibly public purpose. Strangely, and with few exceptions, the people who cry the loudest against any subsidies to private schools are silent on the matter of subsidies to private businesses.

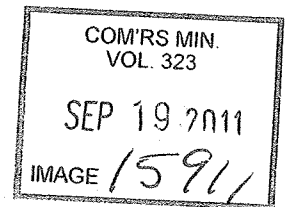
The Maredy decision tells us where the country as a whole might end up if limits aren't placed on the expenditure of public funds for things like "job creation." We should be asking ourselves and our elected officials this question: Do we really want to obliterate the line between public and private, so that any seemingly worthwhile purpose can become a rightful claim on the public treasury?

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*At the time of the original publication, Lawrence W. Reed, economist and author, was president of the Mackinac Center for Public Policy, a free-market research and educational organization headquartered in Midland, Michigan.*

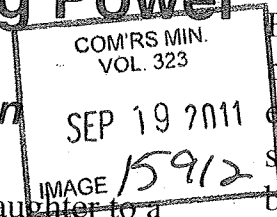
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# Real Purchasing Power

*Bill Anderson*



One recent afternoon I took my daughter to a movie. The tickets cost a total of \$5 and to pay for them, I pulled a \$10 bill from my wallet. As any economics professor could have told me, I held \$10 of purchasing power. Since I could not resell the tickets once I had bought them, my purchasing power was reduced to \$5.

A trip to the concessions stand further reduced my purchasing power to slightly above \$2, which might be used for buying more snacks. When that money is spent, providing my coffers are not replenished, my purchasing power will be zero.

And so the cycle continues. I receive a paycheck, save some of it, and spend the rest. The size of that paycheck determines what I may purchase and what quantities I can buy. It would seem, then, that my purchasing power is derived from the amount of money printed on my paycheck. So it seems, but like so many other popular notions of economics, this idea is based on fallacy.

Henry Hazlitt writes in his classic *Economics in One Lesson* that "economics is haunted by more fallacies than any other study known to man." This is not due simply to a lack of education, but is caused primarily by the presence of many conflicting special interest groups.

Consider a common fallacy - the blessings of destruction." We encounter this, in one form or another, following every war or natural disaster. For example, after Hurricane Alicia struck Galveston, Texas, in 1983, one news reporter declared that the cloud of destruction had a silver lining: the cleanup after the storm would create many jobs. Furthermore, the newly hired workers would then spend their paychecks, bringing untold benefits to the community.

If this sounds familiar to students of liberty, it is: Frederic Bastiat exposed this fallacy in his brilliant satire of the broken window. In Bastiat's example, a hoodlum who threw a brick through a shop window was hailed as an economic benefactor because he created work for the local glazier. In the case of Hurricane Alicia, many glaziers, tree surgeons, electricians, carpenters, and others were hired to clean and restore businesses and homes. In each case, workers received purchasing power, a large part of which was then spent.

But in each situation, we must remember that the principal spenders (property owners and insurance companies) before the incidents had not intended to spend their money on glaziers and electricians. They had other plans for their money - plans which would have involved their own spending, saving, and investment decisions. The money, which was spent on repairs, would have been used elsewhere. Spending money on repairs creates no net gain in wealth or employment.

Both the news reporter and the crowd gathered outside the shop's window saw only a part of the economic picture. More importantly, they failed to understand the source of purchasing power. And while the reporter's economic illiteracy may border on the humorous, we must bear in mind that many government economic policies are based on such false assumptions.

Government spends money which goes into someone's hands. The money is then spent, and jobs are supposedly created. Few people pay attention to where the money comes from, or what the money would have done if it hadn't been taxed and spent by government.

Of course, government, in its attempt to create "purchasing power," doesn't blow a hurricane onto our shores or heave bricks through our windows. But it brings economic destruction all the same.

## Wealth -The Government Way

Ever since the Great Depression of the 1930s and the New Deal, it has been assumed that government is a net creator of wealth and employment. From the Civilian Conservation Corps to the Works Progress Administration to the Tennessee Valley Authority, Federal officials set up "Alphabet Soup" agencies to hire unemployed workers and, supposedly, "prime the pump" of the national economy through increased spending.

It was commonly assumed by economists of the day that the Great Depression was caused by "underconsumption" or "over-saving."

According to John Maynard Keynes and others, the U.S. economy in the 1920s grew faster than workers' wages. Thus, the Keynesians believed, workers were unable to "buy back the products" they had manufactured.

The solution to this problem seemed simple: place more money in the hands of ordinary workers, who would then buy the products they had originally created. In other words, the answer was to give the workers more "purchasing power." The means to pay for such largess was to come in one or more of three ways. The first was to tax those with "excessive" incomes and transfer that money to those with lower incomes. The theory was that those in upper-income brackets would save too much; by transferring that "excessive" amount of money that would have been saved to poorer persons who would spend those funds, they would be given a shot in the arm.

The second way to boost spending was by simply creating new money through the Federal Reserve System and funneling it to individuals deemed most in need. Their increased spending would then force up prices, decreasing the value of

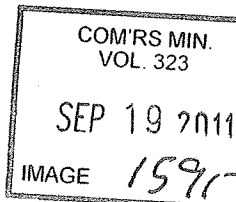
existing money and discouraging savings. Thus the rich would be kept from "oversaving" either by direct confiscation of their wealth or by eroding it through inflation. In this way, it was alleged, the overall economy would receive a net benefit.

The third way involved unionization of the American work force. It was believed during the 1930s that increasing wage rates through unionization of American workers would increase their purchasing power. Thus, Congress passed a series of laws in the 1930s that encouraged the formation of labor unions, and by 1953, more than a third of the U.S. work force was organized. On top of this, Congress enacted minimum wage legislation as well as laws that shortened the work week.

## Results of the Experiment

For four decades after the New Deal, transferring wealth was the soul of national economic policy. Income tax rates rose as high as 94 per cent, while inflation came on in waves, climaxing in 1980 at nearly 14 per cent. It would seem that the Keynesian experiment, given these statistics, would have proven successful.

But real increases in personal income (adjusting for inflation), which were at significant levels before the start of the Great Depression, were tailing off badly by the end of the 1960s, as the United States began a decade of economic chaos. And even counting the latest economic recovery, which began at the end of 1982, the average American has barely been able to keep pace with inflation, while many of those in low-income brackets have lost ground.



In the past, a seven per cent unemployment rate would have been cause for alarm; today, seven per cent unemployment is considered to be close to "full employment." In economics, as in American social mores, what was once considered scandalous has now become acceptable. At the same time, the once-vaunted industrial base in this country has deteriorated, and production facilities that once employed thousands of people and supported whole communities now are idle.

At present, there seem almost to be two Americas, one in which people are happily employed and looking forward to the future, the other where there reside large numbers of the poor and unemployed. What makes this situation even more tragic is that so much of the damage was done in the name of giving the poor more "purchasing power." The ironic truth is that real purchasing power-the ability to produce and be productive-has been torn from the hands of those who most need it; the ones who have deprived the poor of that power have been a combination of intellectuals, politicians, and union leaders, all of whom claim that their actions were done to benefit the needy.

## The True Source of Purchasing Power

To reverse this disturbing trend, we must expose the flawed economic policy that is based on a false conception of "purchasing power."

So far in this article, I have used the term "purchasing power" in conflicting ways, from simple cash to economic production. Lest this seem confusing, it should be remembered that many people mistakenly assume that money really is the same as production.

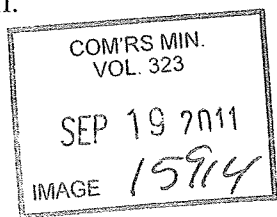
To clear up this confusion, we must first show why simple cash does not necessarily equal "purchasing power." This belief is part of the larger fallacy that "money equals wealth," which Adam Smith criticized in *The Wealth of Nations*.

The first rule of money is that it is a medium of exchange. It is not the object of exchange, as many people seem to assume. The role of money is to facilitate the indirect exchange of goods and services, as opposed to barter where exchanges are direct. Within any economy, real exchanges always involve the trading of goods and services.

We gain support for this analysis when we examine economies in which public confidence in the currency has broken down. An excellent example is Chile in 1973 during the hyperinflation brought about by the policies of the Allende government. When the Chilean escudo began to depreciate catastrophically, the Marxist regime began to impose currency restrictions upon its citizens to keep them from buying dollars on the black market.

Faced with prohibitions and price controls, the Chilean people simply resorted to barter (tobacco, the old standby, became a favorite with traders). While barter brought about certain inconveniences such as problems with storage and handling, it was the only sane alternative to holding the near-worthless Chilean money.

The Chilean government's economic strategy was centered around inflation. First, the Marxist government nationalized numerous businesses. Second, it gave workers in those nationalized enterprises large pay increases and financed the largess with the printing press. Suddenly the Chilean workers whose pay had been far less than that earned by middle-class employees, found themselves at parity with the middle class. The buying spree that followed soon stripped the store shelves; at the same time, production in the nationalized businesses fell drastically. The result was long lines and shortages.



To be sure, the Allende regime had its defenders who claimed that the government's policies had successfully increased the "purchasing power" of Chileans. But what really happened was a temporary transfer of wealth from wealthier Chileans to the poorer ones. The advantages gained by the poorer workers at the beginning, however, were short-lived. With production falling, the quantity and quality of goods Chileans could purchase fell, and continued to fall as the money supply rose. In the end, the poor were as bad off (or worse) than they had been before, while the middle-class workers were devastated. True, the incomes of the poor had reached parity with those above them, but any

advantage gained was merely academic; the economy had stopped producing in any meaningful way, leaving Chileans with money in their hands but no place to spend it. Thus, the Chileans resorted to barter.

What does this have to do with purchasing power? The object of economic exchange is to obtain goods and services; if the object were simply to obtain money, then Chileans in 1973 would have been among the richest people on earth. Instead, they found that their Marxist government's policies had impoverished them.

As Adam Smith pointed out in *The Wealth of Nations*, the true source of wealth in any economy is the production of goods and services, not the paper money government can crank off the printing presses nor the income it can transfer from one group to another. Wealth is a function of production, period.

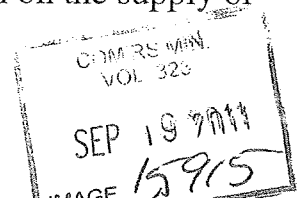
Wealth is what people want, be it houses, cars, food, clothing, televisions, computers, or books. Wealth may be a concert, a play, or a walk by the shore. It is whatever one values as wealth.

An individual's so-called purchasing power is measured in the kinds and quantities of wealth he or she can obtain. Yet, one can only accumulate wealth on the basis of production, be it by that person or by someone else. For example, a child may buy candy at a store with allowance money provided by her dad; while the child did not actually produce to earn that money, her father probably did, and his productivity is the source of her purchasing power.

The point is that our ability to purchase goods and services is the direct result of either our own productivity or the productivity of someone else who contributes -either voluntarily or involuntarily -to us. And what is true for individuals is also true for a nation. Our nation enjoys a high standard of living only because we -not to mention our parents and grandparents -are a productive people. Take away our ability to produce, and you take away our "purchasing power."

There is no substitute for production. Printing money only brings inflation, as Chileans found to their sorrow. Taxing one group of persons to give cash to another may transfer abilities to purchase, but fails to produce new goods and services. Raising wages through union activity is just another transfer scheme that takes abilities to purchase from non-unionized workers and gives them to union members.

Yet, our government has transferred wealth for the past 50 years in the name of creating "purchasing power." At the same time, government regulators, operating on Federal, state, and local levels, have imposed millions of rules and regulations on wealth-creating enterprises, not allowing them to produce to their full capacities, thus cutting down on the supply of wealth.



For all the talk of government bringing "fairness" into the economy through its policies of taxation and regulation, it is important to note that such activities do not create wealth. At best, they only transfer wealth; at worst, they destroy it. Such policies create "purchasing power" for some only at the expense of others and, in the long term, diminish the capacity of the economy to produce.

Because the real source of exchange is barter, it follows that increased exchanges (or purchases) can come about only when there are more goods and services with which to trade. And that can occur only when production increases. Anything that cuts overall production of goods and services cuts real purchasing power.

## Conclusion

In the personal example at the beginning of this article, I gave the impression that my "purchasing power" came from the semimonthly check given by my employer. The truth is, my "purchasing power" comes from my ability to render a service to my employer, who must, in turn, convince his consumers that he is giving them the best value for their money. Thus, my economic future depends on the productive efforts of others as well as my own.

It is the same with all of us. As long as our society produces acceptable goods and services in large quantities, all of us can consume in large quantities. Take away our abilities to produce, and we are denied opportunities to consume.

At its best, government can protect our rights to produce and consume, thus enhancing the prospects for future growth. At its worst, government can work to deny us the fruits of our labors. It is up to us to make sure that government protects our rights.

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*At the time of the original publication, Mr. Anderson was executive director of the Chattanooga Manufacturers Association.*

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