

July 2, 2018

Butler County Prosecutor's Office
Attn: Mr. Roger Gates
315 High Street - 11th Floor
Hamilton, OH 45011

Dear Mr. Gates,

As we have been discussing our long-range planning for the Butler County Engineer's office, specifically the Storm Water District, we have encountered some issues with which we would like some clarification. We have questions regarding the lawful and proper use of funds provided as a result of a Storm Water assessment and recorded in the Storm Water Fund (Fund 1575 [originally 1260]), which was established on 02-18-2004 by Commissioner's resolution number 04-02-0301, "for the purpose of receiving revenues and disbursing funds for appropriate expenditures relative to the costs of compliance with the National Pollutant Discharge Elimination System District (NPDES)...".

In a Prosecutor Opinion dated 4/25/02 provided by Betsy Davidson and given in response to a question about the processes involved in establishing a Storm Water District, funding of activities such as maintenance, repair and replacement of drainage systems pursuant to ORC 6117 under which the Storm Water District was formed, is discussed as activities that could potentially be funded through the Storm Water District. However, this opinion was really addressing the establishment of the district, and not what constitutes lawful expenditures under ORC 6117. It appears that the General Plan of Drainage upon which basis the Storm Water District was formed, and the resolution establishing the Fund for recording revenue and expenditures focus on the NPDES Phase II permitting which is designed to meet the minimum federal standards put forth by unfunded mandate as a part of the Clean Water Act (we refer to this as the Quality component), and do not address the maintenance and operation of systems and structures (we refer to as the Quantity component).

Resolution 02-3-267 was passed February 20, 2003, implementing the NPDES Phase II Storm Water Permit program, and thereby creating the Butler County Storm Water District (Butler County Storm Sewer District) under ORC 6117 and adopting the General Drainage Plan mentioned above and included as attachment C in that Resolution. The resolution also included, as attachment B, the Definition of Authority, which provided certain authority to the Butler County Engineer, who had been appointed the Sanitary Engineer by separate resolution (03-3-363). This authority included but was not limited to, the collection, control or abatement of waters originating or accumulating in, or flowing in, into or through the District, to conduct the waters to a proper outlet and to provide for their proper treatment, disposal or disposition. This language seems to indicate both a Quality and Quantity component under the

authority of the Butler County Engineer acting as the Sanitary Engineer for the Butler County Storm Water District.

Further, in an opinion given by the Butler County Prosecutor's office on May 11, 2017, it was determined that certain Easements that had been granted by the Declaration Statement on the Subdivision Plats and the subsequent acceptance of those plats by the Butler County Board of Commissioners, a responsibility for maintaining the Storm Sewer Systems within those easements was placed on Butler County, the designee of the easement. These subdivisions, referred to as "The Koopman Subdivisions", for the design engineer, are now under consideration as part of our long-term planning, and place us in this position where we need clarification to better understand our responsibility. The areas in question exist outside of the Roadway Right of Way, but inside an easement dedicated to Butler County for public use. We are clear as to your opinion that the maintenance of these systems is the responsibility of Butler County, but we are unclear as to whether or not that maintenance is the responsibility of the Butler County Storm Water District.

Therefore, our questions are: Is it a lawful expenditure of money collected by a Special Assessment arising out of funding of a drainage system formed under ORC 6117 (the Butler County Storm Water District) to maintain, operate, repair or replace systems that exist in an Easement dedicated to Butler County for public use, whose maintenance is not otherwise provided for under ORC 6137 (Ditch Petition Maintenance)? If so, do we need to amend the General Drainage Plan to include this maintenance and quantity component? If we need to do that, would we do so under the authority of the Sanitary Engineer, or would that need to be approved by the Board of Commissioners on a Resolution? Finally, would we also need to amend the language of Resolution 04-02-0301, establishing the Storm Water Management Fund, to allow such expenditures?