

STATE OF OHIO )  
 ) SS.  
COUNTY OF CUYAHOGA )

Judge George J. McMonagle

IN THE COURT OF COMMON PLEAS  
CASE NO. 886,594  
(Consolidated)

OHIO WATER POLLUTION CONTROL BOARD )  
 )  
Plaintiff, )

-vs- )

CITY OF CLEVELAND )  
 )  
Defendant, )

-vs- )

BEDFORD HEIGHTS, et al )  
 )  
Third Party Defendants, )

-vs- )

CITY OF BEACHWOOD, et al )  
 )  
Plaintiffs, )

-vs- )

CITY OF CLEVELAND, et al )  
 )  
Defendants. )

MEMORANDUM OF OPINION

CASE NO. 892,711

On June 20, 1972, the Court conducted a hearing pursuant to a motion filed by the City of Cleveland, a defendant and third party plaintiff herein, which motion was joined in by suburban communities which are not members of the Cleveland Regional Sewer District.

The hearing was conducted for the purpose of the Court's determining whether the injunctive orders herein which bar the issuing of any new sewer permits, connections or extensions, should be vacated or modified.

The testimony and contentions of those in favor of, as well as those opposed to the granting of the requested relief is contained in the record herein. It is voluminous. Due consideration has been given by the Court to the contentions of both sides.

The perils that exist because of the polluted state of our natural resources, particularly our waters, require the cooperative vigorous carrying forward of such proceedings that hopefully will forestall the catastrophes threatened by such pollution and which will be of such a nature they will engender the cooperation and assistance of all segments of the community.

Ecology and the Law. Professor James W. Jeans, University of Missouri Law School, Ohio Judicial Conference, September 9, 1971:

"When we talk about environmental degradation, the magnitude of the harm is the perpetuation of humane kind. When you look at the charts of the population growth, the accumulation of hard pesticides, and the loss of arable land, and all these other things, you ultimately realize that it has got to end some place. Another thing we must learn to live with is that we have limited resources. Things can't go on this way. All of us should know that. So we know that the magnitude of the harm is, perhaps, loss of our life as we know it. When? Scientists vary. Some say 20 to 25 years, others say 30 to 35 years, but they all say we are headed to catastrophe.

"What is the likelihood of its occurring? It's going to occur, unless there is some dramatic change."

Many months ago in these proceedings, the Court stated that the type of sanctions which were being imposed were subject to scrutiny; that the desirable proceedings should be those that would have the ultimate result of providing for the making of long overdue expansions, corrections and improvements to the sewage treatment and disposal system which, in the final analysis should forestall the threatened catastrophes.

It is elementary that there will be at all times a set quantity of basic sewage that is produced in this community. The total produced will never be lessened so long as the population remains constant. It may originate at different localities in the community but it ultimately ends up at the same places for treatment and disposal. The production of sewage cannot be stopped. So long as existing facilities are unable to properly treat and dispose of all that is produced

pollution will be caused by that which it has not been possible to treat.

There was responsible testimony to the effect that a lifting of the ban will make it possible to divert the sewage from 120 manufacturing plants in the area, that is now being deposited in open waterways, into the treatment plants; that each year hundreds of sewer connections, whose flow had been entering the sewer systems are being bulkheaded; that there has been a substantial decrease in the population of the area and that these factors should diminish the polluted state of the waters regardless of the effect thereon of a connection ban.

Having in mind the action which the Court is taking as a result of the hearing of June 20, 1972, it will not make any determinations with reference to the degree or amount of pollution of the state waters that are affected by a sewer connection ban. The orders issued herein, were, however, necessary for the protection of the public health and safety.

Because of the lack of a single governmental agency with authority to control, plan, finance, establish rates, maintain, operate, adopt and enforce rules and regulations governing sewage collection and disposal, it was not possible to properly provide the required expansions, connections and improvements that were necessary for the proper treatment and disposal of sewage in this area.

The Court is confident that with the establishment of the Cleveland Regional Sewer District which has the authority, means, finances and power to do so that it will bring about the required expansions and treatment facilities so that with the cooperation by the Federal and State Governments the pollution nuisance will be abated.

The testimony presented at the hearing by both the proponents and opponents of the motion emphasized the importance and necessity of the Cleveland Regional Sewer District and the tremendous responsibilities with which it is charged.

The substance of the contentions of the opponents to the motion seemed to be an expression of a feeling that although the Cleveland

Regional Sewer District could and should be the vehicle to bring about the desired and necessary results that the judicial restraints that were the subject of the hearing should not be released since the District may not be expeditiously organized and speedily commence its functions.

Any such feelings should be immediately dispelled. The Cleveland Regional Sewer District has been duly created by the Court. Appeals from pertinent court orders have been withdrawn. The District Board of Trustees will be duly organized on July 18, 1972.

It will expeditiously commence to perform all the duties and functions charged to it. It will do so without favoritism to any municipality or governmental agency; the area which must ultimately be considered in connection with the waste water problems of this area is that territory described as the Three Rivers Watershed area.

Each Trustee will be vested with like authority and responsibility for the protection of the health, safety and welfare of each of the millions of residents of the area.

The appointing authorities, the Mayor of the City of Cleveland, The Board of County Commissioners of Cuyahoga County, Ohio and the Council of Governments of Subdistrict No. 2 of the District, will, we are certain, appoint Trustees who will be able and independent men, dedicated and devoted to serving the entire community and to expeditiously carrying out all functions and duties required of them for the protection of the health, safety and welfare of the public.

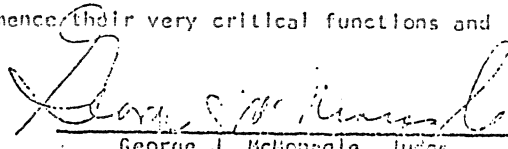
With the authority and means vested in the District and its Board of Trustees this area should never again be faced with the hazards that resulted from past failures to anticipate and provide for the future needs of the area.

While the Court has decided that it should not vacate the injunctive orders that are the subject of these immediate proceedings, it feels that the Trustees of the District should not, at the commencement of their duties, be burdened with the yoke of a judicial ban that might tend to hamper them in plans and decisions that they will be called upon to make

particularly since the evidence has indicated that other previously stated, factors will minimize or offset any adverse effect that the lifting of the ban will have on the State waters.

The injunctive orders banning sewer connections, extensions, etc. and the orders of the Ohio Water Pollution Control Board upon which the injunctive orders, as to Cleveland, were predicated will be forthwith suspended, subject to further order of the Court.

The Court feels that the procedure decided on will best engender the cooperation and assistance of all segments of the community in support of the Cleveland Regional Sewer District, together with its Board of Trustees, when they commence their very critical functions and duties.

  
George J. McDonaghe, Judge

June 23, 1972

A copy of the within Memorandum of Opinion has been served on Counsel by depositing it in the United States mails.