

This lease, which is one for a term of fifteen years and calling for the payment of an annual rental of six percent upon the appraised value of said tract of land, is apparently executed under authority of an act of the General Assembly passed in 1911, 102 O. L., 293, providing for the abandonment of that part of the Ohio Canal between Buckeye Lake and the junction of said canal with the Ohio River, near Portsmouth, Ohio. Section 3 of said act, which has been carried into the General Code, as Section 14203-14, provides for the lease or sale of said abandoned canal lands subject to the approval of the Governor and the Attorney General, in strict conformity with the various provisions of the statutes of this State relating to the leasing and selling of State canal lands, except that the grant of such leases shall be for a term of not less than fifteen years and not more than twenty-five years. These provisions of Section 14203-14, General Code, make applicable to the lease here in question earlier statutory provisions relating to the leasing of canal lands which have been carried into the General Code as Section 13965 et seq.

A careful examination of the provisions of this lease shows that the same is in conformity with the statutory provisions above referred to, with other relating statutory provisions applicable to leases of this kind. Said lease is accordingly approved by me as to legality and form, and my approval is endorsed upon said lease and upon the duplicate and triplicate copies of the same, all of which are herewith returned.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1246.

ANNEXATION OF TOWNSHIP TERRITORY TO MUNICIPALITY —
CHARGES AGAINST TOWNSHIP FOR ROAD IMPROVEMENT CON-
SIDERED IN DETERMINING NET INDEBTEDNESS FOR APPOR-
TIONMENT—WHEN SUCH ANNEXATION VALID.

SYLLABUS:

1. *When a portion of a township is annexed to a municipal corporation upon which tax levies for township debts did not apply, it is necessary that the net indebtedness of the township as it existed before such annexation, be apportioned by the county auditor between the municipal corporation receiving the territory and the portion of the township remaining unannexed to the said municipal corporation, and said annexation is not valid unless said apportionment is made and the same is accepted by ordinance or resolution of the council or other legislative authority of such municipal corporation.*

2. *When road improvements are made by county commissioners by authority of Sections 6906 et seq., General Code, and the cost thereof apportioned whereby it is determined that the township in which an improvement lies shall as a whole bear a portion of the cost of such improvement, the share so charged against the said township becomes a part of the indebtedness of the township, and should be so considered in determining the net indebtedness of the township, as the term "net indebtedness" is used in Section 3557-1, General Code, when apportionment is made between a municipal corporation upon which the tax levies for the township's share of said road improvement did not apply, to which a portion of the township is annexed, and the remaining portion of the township unannexed to the municipal corporation.*

COLUMBUS, OHIO, December 3, 1929.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request for my opinion as follows:

"Section 3557-1 G. C., 112 O. L. 215, provides that upon annexation of territory from a township to a municipal corporation there shall be a division of the existing net indebtedness of the township on the basis of tax duplicate valuation.

Under the provisions of the law relating to the construction and improvement of county roads the county commissioners are authorized to issue bonds covering the share of the township and of the interested land-owners and are authorized to levy a tax against the township for the purpose of paying the township's share of such bonds.

Question 1: Are these charges against the township a debt within the wording of Section 3557-1, General Code, which are to be apportioned between the township and the city on the basis of the tax duplicate of that part of the territory annexed to that part of the territory unannexed?

Question 2: In the event that it is held that such charges are to be apportioned and the annexation has been completed without such apportionment, is such annexation legal?"

Section 3557-1, General Code, reads as follows:

"When proceedings have been commenced to annex a portion of a township, or portions of more than one township, to a municipal corporation upon which the tax levies made by the trustees of such township or townships for the payment of the township debt do not apply, the auditor of the county in which said territory is located shall ascertain and apportion the amount of existing net indebtedness of the township which shall be assumed and paid by the municipal corporation. The apportionment shall be made in the proportion of the total duplicate for the annexed territory transferred to the municipal corporation to the total tax duplicate remaining in and for the unannexed portion of the township or townships. He shall ascertain, adjust and divide between the municipal corporation and the unannexed portion of the township or townships any unencumbered balance on hand to the credit of any fund of such township, in the same proportion as is herein provided for division and apportionment of indebtedness. * * * The apportionment provided in this section shall not be in effect until it is accepted by ordinance or resolution of the council or other legislative authority of such municipal corporation. The passage of such resolution or ordinance shall be necessary to the validity of the annexation."

By the terms of Sections 6906, et seq. General Code, boards of county commissioners are empowered, upon finding that the public convenience and welfare require the same, to improve any public road or part thereof within the county by grading, draining, paving, straightening or widening the same and constructing or reconstructing any bridges and culverts necessary for such improvement. The said commissioners are further authorized, upon determining to make such improvement, to apportion the compensation, damages, costs and expenses of the improvement, which apportionment may be made and paid in any one of the methods provided for by Section 6919, General Code.

Said Section 6919, General Code, authorizing the making of an apportionment of the cost of an improvement made by county commissioners by authority of Sections 6906, et seq., General Code, between the county or township wherein lies a portion of said improvement, and the property especially benefited by the improvement, directs that this apportionment may be made in any one of four methods, as may be determined by the commissioners and the trustees of the townships interested. Under three of these methods a portion of the cost of such an improvement must be paid by

the township in which the improvement lies. Section 6921-1, General Code, provides in part, as follows:

"Where the compensation, damages, costs and expenses of an improvement, other than the portion thereof, if any, to be specially assessed against benefited real estate, are to be paid in part by the county and in part by the township or townships in which such improvement is situated, under an agreement between the county commissioners and the trustees of such township or townships entered into under the provisions of Section 6919 or Section 6921 of the General Code, the part of such compensation, damages, costs and expenses to be paid by the interested township or townships may be paid from the proceeds of any levy or levies made by the county commissioners under Section 6927 of the General Code or from the proceeds of any levy or levies made by the township trustees under Section 3298-15d of the General Code. Where bonds are issued to provide funds for any such improvement, the shares of the county and of the township or townships and of the real estate specially assessed, if any, may be provided by a bond issue by the county commissioners under authority of Section 6929 of the General Code; or in lieu of such method of providing the necessary funds, the county commissioners may issue bonds under authority of Section 6929 of the General Code in an amount sufficient to provide the shares of the county and of the real estate specially assessed, if any, and the remainder of the necessary funds, being the share of the interested township or townships, may be provided by the township trustees by an issue of bonds under authority of Section 3295 or 3298-15e of the General Code. * * *

Apparently, your question is prompted from the fact that in many cases where county commissioners improve roads in townships and provision is made for paying therefor from the proceeds of bond issues, the bonds are issued by the county commissioners and of course the tax levy to provide for the interest on said bonds and to provide a sinking fund therefor is made by the commissioners rather than by the trustees themselves, and the question has arisen whether or not these bonds are a part of the net indebtedness of a township, as the term "net indebtedness" is used in Section 3557-1, supra.

The only statutory definition that we have for the term "net indebtedness" is that contained in Section 2293-13, General Code, which is contained in the Uniform Bond Act, which act was passed by the Legislature on the same day as was the Act of which amended Sections 6919 and 6921-1, General Code, are a part. Net indebtedness is there defined as follows:

"The net indebtedness of any subdivision shall be the difference between the par value of the outstanding and unpaid bonds and notes of the subdivision and the amount held in the sinking fund and other indebtedness retirement funds for their redemption."

Where bonds are issued by the county commissioners to cover the cost of a township's share of a road improvement, the bonds so issued are not, strictly speaking, township bonds, or the bonds of the township, yet the property lying within the township becomes obligated to pay its portion of said bond issue. The township's share of the cost of such improvement is definitely fixed, and that share becomes a part, in my opinion, of the existing indebtedness of the township just as much so as though the township itself issued the bonds and made the levy for interest and sinking fund purposes. While the language of the statute is not very clear, especially in the light of the definition of "net indebtedness" as contained in Section 2293-13, General Code,

yet it cannot be presumed that the Legislature intended that, after a township's share of a road improvement had been determined and a portion of the township which, in accordance with the determination, had received its proportionate share of the benefit of said improvement became detached from the township by annexation to a municipality, it thereby became released from any obligation to pay any share of the cost of the improvement and the remaining portion of the township which was not annexed to the municipality and which in many instances, as a matter of fact, received very little, if any, benefit of the improvement, would be required to pay the entire cost thereof. Obviously, the Legislature could not have intended such an unfair and unequitable result.

It will be observed from the provisions of said Section 3557-1, *supra*, that when the apportionment between the municipality and a township, from which certain territory has been detached and annexed to the municipality, has been made, it shall not take effect until it is accepted by ordinance or resolution of the council or other legislative authority or the municipal corporation and that the passage of such resolution or ordinance is necessary to validate the annexation. This statute was passed April 20, 1927, and became effective July 19, 1927. Prior to this enactment, when territory was detached from a township and annexed to a municipal corporation, the law made no provision either for a division of the funds belonging to the two subdivisions or for an apportionment of the indebtedness of the subdivisions affected by the transfer. Any annexations that were made prior to July 19, 1927, would be valid without any division of the funds and indebtedness between the municipal corporation to which territory had been attached and the township from which the territory had been detached, but any annexation made since July 19, 1927, must have had the apportionment made and the same accepted by ordinance or resolution of the municipality. Otherwise, the annexation is not valid.

In specific answer to your question, I am of the opinion:

First, when road improvements are made by county commissioners, by authority of Sections 6906, *et seq.*, General Code, and the cost thereof apportioned whereby it is determined that the township in which an improvement lies shall as a whole, bear a portion of the cost of such improvement, the share so charged against the said township becomes a part of the indebtedness of the township, and should be so considered in determining the net indebtedness of the township, as the term "net indebtedness" is used in Section 3557-1, General Code, when apportionment is made between a municipal corporation, to which a portion of the township is annexed, and the remaining portion of the township unannexed to the municipal corporation.

Second, when a portion of a township is annexed to a municipal corporation, it is necessary that the net indebtedness of the township, as it existed before such annexation, be apportioned by the county auditor between the municipal corporation receiving the territory and the portion of the township remaining unannexed to the said municipal corporation, and said annexation is not valid unless said apportionment is made and the same is accepted by ordinance or resolution of the council or other legislative authority of such municipal corporation.

Respectfully,
GILBERT BETTMAN,
Attorney General.