

512.

APPROVAL, BONDS OF NEW HOLLAND VILLAGE SCHOOL DISTRICT,
PICKAWAY COUNTY, OHIO—\$60,000.00.

COLUMBUS, OHIO, June 12, 1929.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

513.

ROAD IMPROVEMENT—BONDS TO BE ISSUED—ISSUANCE OF NOTES
FOR SUCH IMPROVEMENT INDISPENSABLE—SECTION 5654-1, GEN-
ERAL CODE, CONSTRUED.

SYLLABUS:

Under the provisions of Section 5654-1, General Code, as now in force and effect, when bonds are to be issued for a county road improvement, the issuance of notes for such improvement may not be dispensed with, except in case the cost of such improvement is to be paid in whole by special assessments, or in case such cost is to be paid in part by special assessments and sufficient funds are available for the balance of the cost of such improvement and bonds are to be issued only in anticipation of the collection of special assessments.

COLUMBUS, OHIO, June 12, 1929.

HON. R. H. BOSTWICK, *Prosecuting Attorney, Chardon, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“We find it impossible to sell Geauga County road improvement notes at an interest rate of 6%, for par. Thus we are unable to let any contracts unless the money market changes.

If we know the exact amount that will be spent on a road improvement regardless of the amount the contractor cuts under the estimate and that amount will be actually used on the road, is there any way that we can legally sell bonds direct before letting the contract, without selling notes.

We can readily sell bonds, but not the short time financing, and I thought perhaps this situation had arisen in other localities and a way worked out to overcome the apparent handicaps.”

Section 5654-1, General Code, specifically provides that county commissioners may not advertise for sale or issue road improvement bonds until the contract is let for such improvement and that such bonds shall not be issued in an amount exceeding the full amount of the accepted bid by more than the estimated amount of such other items of cost as may be legally included in the total cost of such construction or improvement. Section 5625-33, General Code, provides that no contract involving the expenditure of money shall be entered into until there is attached thereto a certificate of the fiscal officer of the subdivision setting forth that the amount re-

quired to meet the same is in the treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrances. The section further provides that the proceeds to be derived from lawfully authorized bonds or notes sold and in process of delivery shall, for the purpose of this section, be deemed in the treasury or in the process of collection and in the appropriate fund.

Section 5625-35 is as follows:

"In the case of an improvement, the cost of which is to be paid in whole or part by special assessments, a contract may be executed without an appropriation or certificate for that portion of the cost derived from special assessments; provided, a resolution or ordinance authorizing such assessment and the bonds or notes to be issued in anticipation thereof has been duly passed in the manner provided by law."

In view of the foregoing provisions of the law, it would appear that the only circumstances under which the issuance and the sale of notes for a county road improvement could be dispensed with would be, first, when all of the cost of the improvement is to be paid by special assessments or, second, in case a part of the cost of the improvement is to be paid by special assessments and there are sufficient available funds on hand to pay such other part of the cost of the improvement, and bonds are being issued only in anticipation of the collection of special assessments. In the first case, contracts may be entered into without an appropriation certificate as required by Section 5625-33, General Code, and bonds may be issued subsequent to the execution of such contract. In the second case, this certificate as to the portion to be paid by special assessment is not required and the certificate as to the part to be paid by available funds on hand may be forthwith furnished, whereupon the contract may be entered into and bonds issued.

Section 5654-1 has been repealed by House Bill No. 425, enacted by the 88th General Assembly. This bill was filed in the office of the Secretary of State on April 27, 1929, and becomes effective July 26, 1929. On and after that date, therefore, the issuance of notes in such cases as you present will not be necessary.

In specific answer to your question, I am of the opinion that under the provisions of Section 5654-1, General Code, as now in force and effect, when bonds are to be issued for a county road improvement, the issuance of notes for such improvement may not be dispensed with, except in case the cost of such improvement is to be paid in whole by special assessments, or in case such cost is to be paid in part by special assessments and sufficient funds are available for the balance of the cost of such improvement and bonds are to be issued only in anticipation of the collection of special assessments.

Respectfully,
GILBERT BETTMAN,
Attorney General.

514.

MUNICIPALITY—ISSUANCE OF BONDS FOR PURCHASING AND IMPROVING LAND FOR PUBLIC PARK—PROCEEDS MUST BE APPLIED ON PROPERTY AUTHORIZED BY ELECTORS.

SYLLABUS:

When bonds are issued by a municipal corporation pursuant to a vote of the electors for the express "purpose of purchasing and condemning land for park and