

2400.

## DISAPPROVAL, BONDS OF CITY OF LORAIN, OHIO, IN AMOUNT OF \$15,500 FOR STREET IMPROVEMENTS.

COLUMBUS, OHIO, September 8, 1921.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

In re: Bonds of the city of Lorain, Ohio, in the sum of \$15,500 in anticipation of the collection of assessments for the improvement of Seventh street from Broadway to the west line of Chamberlain, Edison and Mussey addition.

GENTLEMEN:—I have examined the transcript of the proceedings of the council and other officers of the city of Lorain, Ohio, and find that I am required to disapprove this issue of bonds for the reason that the ordinance of the council determining to proceed with said improvement was passed before the property owners to be assessed were notified of the passage of the resolution of necessity as required by section 3818 G. C. The transcript shows that on February 7, 1921, the resolution of necessity with respect to said improvement was passed by council and that thereafter on the 6th day of April, 1921, service of notice of the passage of said resolution was served on the property owners to be assessed for said improvement.

It appears, further, however, that on February 21, 1921, more than a month prior to the time that said notices were served, the council of the city passed an ordinance determining to proceed with said improvement. Under the provisions of section 3818 G. C. a notice of the passage of the resolution of necessity is required to be served by the clerk of council, or an assistant, upon the owner of each piece of property to be assessed for the improvement. Section 3823 G. C. provides that within two weeks after the service of said notice the owner of any lot or land bounding or abutting upon the improvement may file with the clerk of council his claim for damages accruing to him by reason of said improvement. Section 3824 G. C. provides that at the expiration of the time limited for filing claims for damages the council shall determine whether it will proceed with the proposed improvement or not, and under the provisions of section 3825 G. C. such determination of council is required to be made by the enactment of an ordinance for this purpose.

In the case of *Joyce vs. Barron*, 67 O. S. 264, it was held that the service of notice on the property owners to be assessed in the manner now provided by section 3818 G. C. is a condition precedent to the exercise by council of authority to pass a valid ordinance ordering the improvement to be made, and that failure to comply with such precedent condition is not a mere irregularity or defect covered by the curative provisions of the municipal code.

The authority of council to provide for the above noted issue of bonds for this improvement obviously depends upon the passage of a valid ordinance to proceed with said improvement, and inasmuch as said ordinance to proceed was not valid for the reason that at the time of its passage the council had no authority to pass the same by reason of the situation above

noted, it follows that the council was without authority to provide for said issue of bonds and the same should be rejected.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

2401.

DISAPPROVAL, BONDS OF CITY OF LORAIN, OHIO, IN AMOUNT OF \$18,000 FOR STREET IMPROVEMENTS.

COLUMBUS, OHIO, September 8, 1921.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

Re: Bonds of the city of Lorain, Ohio, in the sum of \$18,000 for the improvement of Lexington avenue from 12th street to 17th street.

GENTLEMEN:—An examination of the transcript of the proceedings of council relating to this issue of bonds shows that said issue of bonds must be disapproved for the reason noted and discussed in Opinion No. 2400, copy herewith enclosed.

In this case it appears that the resolution of necessity for this improvement was passed February 7, 1921; that notice of the passage of said resolution was served upon the owners of abutting property on March 2, 1921, and that theretofore, on February 21, 1921, council passed its ordinance determining to proceed with said improvement. This situation of fact in connection with the other opinion referred to sufficiently discloses my reason for disapproving this issue. I am therefore of the opinion that this issue of bonds should be rejected.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

2402.

DISAPPROVAL, BONDS OF CITY OF LORAIN, OHIO, IN AMOUNT OF \$43,500 FOR STREET IMPROVEMENTS.

COLUMBUS, OHIO, September 8, 1921.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

Re: Bonds of the city of Lorain, Ohio, in the sum of \$43,500 in anticipation of the collection of assessments for the improvement of 17th street from Oakdale to Oberlin avenue.

GENTLEMEN:—An examination of the transcript of the proceedings of council relating to this issue of bonds shows that said issue of bonds must