

may be set down and tried at any time, subject to the rules governing said court in the assignment and trial of cases.

It is obvious that if any judgment is rendered against said William M. Wikoff in the case above referred to, before the transaction relating to the purchase of this property is closed by the execution and delivery of the deed of said William M. Wikoff and wife to the state of Ohio, such judgment will be a lien upon the above described property. In this situation a check should be made of the proceedings in said case before the warrant is issued for the purchase of the property.

With said abstract of title there is submitted to me a deed form of the warranty deed to be executed and acknowledged by said William M. Wikoff and by Catherine A. Wikoff. The form of said deed is such as when the same is properly executed and acknowledged by said grantors, it will convey to the state of Ohio a fee simple title to the property above described, free and clear of the dower interest of said Catherine A. Wikoff and free and clear of all incumbrances whatsoever, except taxes due and payable on and after June 30, 1931. Care should be taken to see that said deed is properly executed and acknowledged by William M. Wikoff and by Catherine A. Wikoff, his wife, before the warrant is issued for the purchase of the property, and said deed, when executed, should be submitted to this office for examination and approval.

Upon examination of encumbrance estimate No. 2075, covering the purchase price of the property here under investigation, I find that the same has been properly executed and approved and that there is shown thereby a sufficient balance in the appropriation account to pay the purchase price of said property, which purchase price is the sum of six hundred dollars.

It likewise appears from a recital in said encumbrance estimate that the money necessary to pay the purchase price of said property has been released by the proper action of the board of control.

I am herewith returning to you, with my approval, said abstract of title, warranty deed form and encumbrance estimate No. 2075.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2824.

MUNICIPAL ORDINANCE—WARRANT IN PAYMENT OF AN OBLIGATION
AUTHORIZED—PUBLICATION NOT REQUIRED AND ORDINANCE
NOT SUBJECT TO REFERENDUM—WHEN EFFECTIVE.

SYLLABUS:

1. *An ordinance or resolution of a municipality authorizing the issuance of a warrant in payment of an obligation as provided in paragraph (d) of Section 5625-33, General Code, is not required to be published and is not subject to referendum under the general laws in the absence of a charter provision applicable thereto.*
2. *Such ordinance or resolution is effective upon being passed by council and acted upon by the mayor.*

COLUMBUS, OHIO, January 15, 1931.

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

GENTLEMEN:—Your letter of recent date is as follows:

“The pertinent part of Section 5625–33, G. C., reads:

‘In case no certificate is furnished as hereinbefore required, upon receipt by the taxing authority of the subdivision or taxing unit, of a certificate of the fiscal officer that there was at the time of the making of such contract or order, and at the time of the execution of such certificate a sufficient sum appropriated for the purpose of such contract and in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances, such taxing authority may authorize the issuance of a warrant in payment of amounts due upon such contract; but such resolution or ordinance shall be passed within thirty days from the receipt of such certificate; provided, however, that if the amount involved is less than fifty dollars, the fiscal officer may authorize it to be paid without the affirmation of the taxing authority of the subdivision or taxing unit, if such expenditure is otherwise valid.’

Section 4227 G. C., provides in part that ordinances of a general nature shall be published. Section 4227–2 G. C., provides that any ordinance or other measure, passed by the council of any municipal corporation, shall be subject to the referendum, with the exceptions provided for in Section 4227–3 G. C.

Question 1. Must an ordinance or resolution authorizing the issuance of a warrant in payment of an obligation as provided in Section 5625–33 G. C., paragraph “d”, be published?

Question 2. Is an ordinance or resolution of this character subject to referendum and of no effect for thirty days following its passage in a village, or presentation to the mayor of a city?”

Section 5625–33, General Code, provides in part as follows:

“No subdivision or taxing unit shall:

* * * * *

(d) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same (or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made), has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. Every such contract made without such a certificate shall be void and no warrant shall be issued in payment of any amount due thereon. In case no certificate is furnished as hereinbefore required, upon receipt by the taxing authority of the subdivision or taxing unit, of a certificate of the fiscal officer that there was at the time of the making of such contract or order, and at the time of the execution of such certificate a sufficient sum appropriated for the purpose of such contract and in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances, such taxing authority may authorize the issuance of a warrant in payment of amounts due upon such contract; but such resolution or ordinance shall be passed within thirty days from the receipt of such certificate; provided, however, that if the amount involved is less than fifty dollars, the fiscal officer may authorize it to be paid without the affirmation

of the taxing authority of the subdivision or taxing unit, if such expenditure is otherwise valid.

* * * * *

The latter portion of the foregoing paragraph, which portion you quote in your letter, was obviously enacted to enable the fiscal officer of a subdivision in the event the certificate required had not been furnished for any given contract or order as therein provided, to issue what might be termed a nunc pro tunc certificate, whereupon a warrant may be issued after having been authorized by resolution or ordinance of the taxing authority. Such resolution or ordinance is remedial in its nature and would not be required except in instances where the fiscal officer has neglected to comply with the provisions of the first part of this paragraph of Section 5625-33, supra.

Sections 4227 and 4227-1, et seq. of the General Code are pertinent to your inquiry. I assume for the purpose of this opinion that your questions do not relate to the law applicable to cities having charters containing special provisions for the publication of ordinances and resolutions or containing initiative and referendum provisions for their own ordinances and other legislative measures. The provisions of Sections 4227-1, et seq. are not controlling as to such cities. *Dillon v. City of Cleveland, et al.*, 117 O. S. 258.

Section 4227, General Code, provides as follows:

“Ordinances, resolutions and by-laws shall be authenticated by the signature of the presiding officer and clerk of the council. Ordinances of a general nature, or providing for improvements shall be published as hereinafter provided before going into operation. No ordinance shall take effect until the expiration of ten days after the first publication of such notice. As soon as a by-law, resolution or ordinance is passed and signed, it shall be recorded by the clerk in a book to be furnished by the council for the purpose.”

An answer to your first question only requires a consideration of whether or not the ordinance or resolution authorizing the issuance of the warrant referred to in the latter portion of paragraph (d) of Section 5625-33, supra, is an ordinance of a general nature. In my view such an ordinance is clearly special in its operation and effect. It relates to a specific payment of funds for a specific transaction. General laws are defined by Bouvier as follows:

“Laws which apply to and operate uniformly upon all members of any class of persons, places, or things, requiring legislation peculiar to themselves in the matters covered by the laws. Binney, Restrictions upon Local and Special Legislation. Quoted in *Com. v. State Treasurer*, 29 Pa. Co. Ct. R. 578.”

Touching this subject, the case of *City of Cincinnati v. Bickett, and Purcell*, 26 O. S. 49, held as disclosed by the first branch of the syllabus:

“A resolution of the city council awarding a contract for the improvement of a street, and directing the city auditor to enter into a contract with the bidder, is not a resolution of a ‘permanent or general nature’ within the meaning of Section 98 of the municipal code.”

It is accordingly my opinion that an ordinance or resolution passed by council of a municipality authorizing the issuance of a warrant in payment of an obligation

as provided in paragraph (d) of Section 5625-33, General Code, is not required to be published under the provisions of Section 4227, General Code.

Section 4227-3, General Code, provides that certain ordinances shall not be subject to referendum, the pertinent portion of this section being as follows:

"Whenever the council of any municipal corporation is by law required to pass more than one ordinance or other measure to complete the legislation necessary to make and pay for any public improvement, the provisions of this act shall apply only to the first ordinance or other measure required to be passed and not to any subsequent ordinances and other measures relating thereto. Ordinances or other measures providing for appropriations for the current expenses of any municipal corporation, or for street improvements petitioned for by the owners of a majority of the feet front of the property benefited and to be especially assessed for the cost thereof as provided by statute, and emergency ordinances or measures necessary for the immediate preservation of the public peace, health or safety in such municipal corporation, shall go into immediate effect. * * * *"

In the event the original contract or order involving a given expenditure to which the fiscal officer's certificate had not been attached was a measure providing for a current expense, under the express language of Section 4227-3, supra, such original measure is not subject to referendum, and it would follow that the supplemental resolution or ordinance authorizing the issuance of a warrant would likewise be not subject to referendum. If a resolution is passed authorizing the issuance of a warrant in payment of an obligation as provided in paragraph (d) of Section 5625-33, supra, which obligation is not a current expense, possibly the original measure adopted by council authorizing the expenditure would be subject to referendum. But even if this should be the case, I have little difficulty in concluding that this supplemental ordinance or resolution which need not be passed except in the event the fiscal officer has failed to comply with the requirements of paragraph (d) of Section 5625-33, is not an ordinance or a measure which is subject to referendum. If the original ordinance authorizing the expenditure is subject to referendum under the provisions of Section 4227-3, supra, it is only this first ordinance which is subject thereto and, of course, if the original ordinance authorizing any given expenditure is not subject to referendum then certainly the supplemental ordinance or resolution here under consideration occasioned by the neglect of a fiscal officer cannot be said to be subject to referendum.

Since the ordinance or resolution here under consideration is not required to be published as provided in Section 4227, supra, and is not subject to referendum, it follows that such ordinance or resolution goes into effect upon being passed by council and acted upon by the mayor.

In view of the foregoing and in specific answer to your questions, it is my opinion that:

1. An ordinance or resolution of a municipality authorizing the issuance of a warrant in payment of an obligation as provided in paragraph (d) of Section 5625-33, General Code, is not required to be published and is not subject to referendum under the general laws in the absence of a charter provision applicable thereto.
2. Such ordinance or resolution is effective upon being passed by council and acted upon by the mayor.

Respectfully,
GILBERT BETTMAN,
Attorney General.