

1458.

APPROVAL, BONDS OF VILLAGE OF GENEVA, OHIO, IN AMOUNT OF \$30,000 TO ENLARGE AND IMPROVE PUMPING STATION.

COLUMBUS, OHIO, July 24, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

1459.

MUNICIPAL CORPORATIONS—CONTRACT ENTERED INTO FOR STREET IMPROVEMENT CALLING FOR MONTHLY ESTIMATES—WHERE LATER CONTRACTOR ENTERS INTO ARRANGEMENT TO RECEIVE AGGREGATE PAYMENT WITH INTEREST—WHEN CITY LIABLE FOR INTEREST—WHEN SAME CANNOT BE RECOVERED BACK.

A municipality having legally entered into a street improvement contract calling for payment of monthly estimates, is not bound by an arrangement afterwards entered into whereby the contractor in lieu of monthly payment of estimates, was to receive an aggregate payment with interest calculated from the dates of the coming due of the estimates; and the contractor cannot recover such interest against the municipality. But if the municipality voluntarily makes payment of the interest, the rule in State ex rel. Hunt vs. Fronizer, 77 O. S. becomes applicable, and the payment cannot be recovered back.

COLUMBUS, OHIO, July 24, 1920.

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

GENTLEMEN—You have recently submitted a statement of facts and inquiry as follows:

"The J. C. D. Co., was given a contract for paving T. Street in May, 1919, for \$39,534.42. It was provided that payment should be made monthly on engineer's estimate, less 10 per cent. They were paid as follows:

July 1, 1919.....	\$15,000 00
February 17, 1920.....	23,310 50

Total.....	\$38,310 50
Interest on past due estimates.....	752 80

	\$37,557 70
5 per cent. to be held one year.....	1,976 72

Total.....	\$39,534 42
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Bonds were sold for the village portion of this improvement before the contract was let and a portion of the assessments were paid in cash. The bonds for the special assessment portion were not sold until February, 1920, neither was money borrowed on notes under section 3915 G. C. The local officials claim that they had a gentleman's agreement with the D. Company to pay them interest upon past due estimates instead of borrowing money on notes.

Question: On above village contract, are such interest payments legal?"

It is to be assumed from the tenor of your statement that the original construction contract was in all respects legal; and your inquiry will be considered upon that assumption. It should perhaps be mentioned in this connection that it was not a prerequisite to a valid contract that prior to the signing thereof funds be in the treasury representing the entire share of cost that was to be borne by property owners; for the so-called Burns law (Sections 3806 G. C. et seq.) has been held by the supreme court to be inapplicable to the assessment share. (*Comstock vs. Nelsonville*, 61 O. S. 288.)

Section 3915 G. C. authorizing municipal corporations to borrow money and issue interest bearing notes in anticipation of collection of special assessments, marks the limit of authority in municipalities to bind themselves for interest in connection with assessments, other than by issue of bonds. Hence, the substitute arrangement whereby the contractor was to receive interest on past due estimates was without legal warrant and void, affording the contractor no ground of recovery against the municipality, even though there may have been a consideration on the contractor's part in that he waived prompt payment of his estimates (*Bridge Co. vs. Campbell*, 60 O. S. 406).

But since the municipality did receive a consideration in that it was not held to contract terms in payment of estimates and therefore was relieved of paying interest on certificates of indebtedness, and since the interest has actually been paid to the contractor, the situation comes within the rule in *State ex rel. Hunt vs. Fronizer*, 77 O. S. 7, with the result that the municipality may not recover back the interest.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1460.

MOTOR VEHICLES—LICENSE TAX FUNDS MAY NOT BE USED BY POLITICAL SUB-DIVISIONS FOR PURCHASE OF ROAD REPAIR EQUIPMENT SUCH AS TRUCKS, ROLLERS, ETC.

Political subdivisions constituting districts of registration may not use funds coming into their hands by reason of the motor vehicle license tax for the purpose of purchasing road repair equipment, such as trucks, rollers, etc.

COLUMBUS, OHIO, July 24, 1920.

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

GENTLEMEN:—In your communication of recent date you request a written opinion upon the following question:

"Can political subdivisions use moneys received under motor vehicle license laws for the purpose of purchasing road repair equipment, such as trucks, rollers, etc.?"

Section 6309-2, 108 O. L. (Pt. 2), page 1083, which is material in connection with the consideration of your inquiry, provides: