

4098.

ASSESSMENTS—COUNTY ROAD IMPROVEMENT—DEFERRED INSTALLMENTS MAY NOT BEAR INTEREST WHERE NO BONDS SOLD TO PAY FOR IMPROVEMENT.

SYLLABUS:

Where assessments have been levied to pay all or any portion of the cost of a county road improvement, the deferred installments may not bear interest where no bonds have been issued in anticipation of the collection of such assessments.

COLUMBUS, OHIO, February 26, 1932.

HON. V. F. ROWLAND, *Prosecuting Attorney, Cadiz, Ohio.*

DEAR SIR:—I am in receipt of your letter which reads as follows:

“Enclosed is an abstract of the proceedings had by the Commissioners of Harrison County in regard to improvement of a road in the County System.

We would like your opinion on the question of whether interest can be charged on the unpaid installment balances, when no bonds have been sold to pay off this debt.”

The resolution of the county commissioners of Harrison County, with reference to the manner in which the assessments in question are to be paid, reads as follows:

“It is ordered that all assessments be certified to the County Auditor, to be by him placed upon a special duplicate and collected as other taxes; the principal to be payable in ten semi-annual installments extending over a period of five years. The first installment to be payable at the June installment of 1930, taxes due June 20th, 1931. Interest at 6 per cent per annum on all installments after June 1931.”

Section 6923, General Code, reads as follows:

“All assessments, with interest accrued thereon, made under the provisions of this chapter, shall be placed by the auditor upon a special duplicate to be collected as other taxes, and the principal shall be payable in not more than twenty semi-annual installments extending over a period of not more than ten years, as determined by the county commissioners. In the event that bonds are issued to pay the compensation, damages, costs and expenses incident to such improvements, the principal sum of such assessments shall be payable in such number of equal semi-annual installments as will provide a fund for the redemption of the bonds so issued, and such assessments shall bear interest from the date of and at the same rate as the bonds, and the interest shall be collected in like manner as the principal of such assessments.”

This section expressly provides that interest be charged on assessments where bonds are issued in anticipation of the collection of such assessments, but does not expressly authorize interest charges where no bonds are issued, and under the strict rule that governs the construction of statutes of this nature, I think no such authority can be implied.

Statutes authorizing the levy of assessments will be strictly construed and all doubts resolved in favor of the property owner. Sutherland Statutory Construction, Vol. II, page 1012.

Unless the statutes allow interest to be charged in assessments, none can be charged. McQuillin Municipal Corporations, Vol. V, page 762.

In the instant case, the cost of the improvement was paid out of the general road fund of the county and the assessments were levied to reimburse this fund. If these assessments could bear interest at the rate of six per cent, then the general road fund would be benefited to this extent at the expense of only a portion of the taxpayers of the county. I am of the view that this cannot be done, at least without express statutory authority. These statutes authorize the levy of assessments for the purpose of paying only the cost of improvement, except that where bonds are issued, they may bear interest at the same rate as the bonds. This, of course, is necessary to provide enough money to pay the principal and interest of the bonds as they mature, and may be regarded as a part of the cost of the improvement.

I am of the opinion, therefore, that where assessments have been levied to pay all or any portion of the cost of a county road improvement, the deferred installments may not bear interest where no bonds have been issued in anticipation of the collection of such assessments.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4099.

MUNICIPALITY—MAY NOT ACQUIRE LAND OUTSIDE CORPORATE LIMITS FOR PURPOSE OF REGULATING COURSE OF STREAM AND ISSUE BONDS FOR GENERAL FLOOD CONTROL.

SYLLABUS:

1. *Municipal corporations have no power to acquire land outside of their corporate limits in order to straighten or change the course of a stream for the general purpose of flood protection to the entire municipality and its inhabitants.*

2. *A municipality may not issue bonds for the general purpose of flood control.*

COLUMBUS, OHIO, February 26, 1932.

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

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

“You are respectfully requested to furnish this Department with a written opinion on the following question: