

3878.

MUNICIPAL CORPORATIONS—AUTHORIZED TO ASSESS ENTIRE COST OF EXTENSION OF ITS WATER MAINS AGAINST ABUTTING AND BENEFITED PROPERTY—SEE SECTIONS 3819, 3980 AND 3812 G. C.

Subject to the limitations provided by section 3819 G. C., and in conformity to the provisions of sections 3980 and 3812 of the General Code, a municipality is authorized to assess the entire cost of the extension of its water mains against the abutting and benefited property.

COLUMBUS, OHIO, January 6, 1923.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your letter of recent date, which reads as follows:

“We are in receipt of a letter from Mr. Walter J. Mougey, City Solicitor, Wooster, Ohio, in which he states that the council of the City of Wooster is desirous of extending the water mains of the water works system to quite a number of streets on which new building is going on at the present time and requesting an opinion upon the following matter:

Question: Can the city under the law, especially section 3980 G. C., assess the entire cost of such extension on the abutting property?”

Pertinent to your question, section 3980 G. C., provides as follows:

“The council may prescribe by ordinance for the laying down of water pipes in all highways about to be paved, macadamized or otherwise permanently improved, and for the assessment of the cost and expense thereof upon the lots or parcels of land adjoining or abutting upon the highways in which they are laid. In no case, except as a sanitary measure, shall the council require any house connections to be built further from the main pipe than the outer line of the curbstone.”

It is to be noted that the section quoted authorizes council to prescribe by ordinance for the laying of water pipes in all highways about to be paved, macadamized or otherwise permanently improved, and for the assessment of the cost and expense thereof upon the adjoining and abutting property. While the section apparently limits the application of its provisions to such highways as are “about to be paved, macadamized or otherwise permanently improved,” it is not altogether clear that this factor may or should be deemed a prerequisite wholly limiting the effect of the section. It is believed, however, that the laying of water pipes in a highway may in itself be considered a permanent improvement of the same, for it is thought reasonable to assume that in the paving or improvement of any street or highway the first and principal step or procedure should be that of laying the necessary pipes or conduits beneath the surface in order that the surface of the same when paved or otherwise improved, may not be required to be subsequently disturbed for such purpose. Whether or not the city of Wooster is “about to pave or macadamize or

otherwise improve" the streets in question, is a fact which your inquiry does not disclose. However, it is believed that the laying of water pipes in a public highway evidences an intention upon the part of the corporation to proceed at some time at least in that direction.

It would seem then that council in the instance considered, had in contemplation the future improvement of the highway from the fact of the authorization of the laying of said water pipes, and it would only seem reasonable to conclude that such an indicated intention may be said to fairly come within the meaning and spirit of the word "about" as it is used in this section.

In connection with your question generally, attention is directed to section 3812 G. C. which provides in substance pertinent thereto, that the council of any municipal corporation may assess upon the abutting, adjacent and contiguous or other specially benefited lots or lands in the corporation, any part of the entire cost and expense of the improvement of any street by the laying of water pipes, etc. While it may be concluded that authority for the assessment of the entire cost of such an improvement against abutting property owners is contained within the provisions of the two sections considered, yet it is to be noted that even such an assessment would be subject to the limitations of section 3819 of the General Code, which provides in brief that assessments of this nature within the period of five years shall in no case exceed one-third of the actual value of such property after improvement is made.

Bearing in mind then the limitations prescribed by this section, it is the opinion of this department that if the streets mentioned by your communication are "about to be paved or otherwise permanently improved," the entire cost of the extension may be assessed against the abutting property under section 3980 G. C., not to exceed, however, in any case, special benefits conferred upon the property assessed, nor other assessments levied within a period of five years in excess of 33 1/3 per cent of the actual value after the improvement is made.

Respectfully,
JOHN G. PRICE,
Attorney-General.

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APPROVAL, BONDS OF GUERNSEY COUNTY, \$20,000, FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, January 6, 1923.

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