

624.

DISAPPROVAL, BONDS VILLAGE OF BEXLEY, FRANKLIN COUNTY—  
\$41,300.00.

COLUMBUS, OHIO, July 17, 1929.

*The Industrial Commission of Ohio, Columbus, Ohio.*

In re: Bonds village of Bexley, Franklin County, Ohio, \$41,300.00.

GENTLEMEN:—I have examined the transcript relative to the above issue of bonds which are issued in anticipation of the levy and collection of special assessments for the installation of a system of lighting for fifteen streets in the village of Bexley.

It appears that proceedings for these improvements purport to have been had pursuant to the provisions of Sections 3842-1 et seq., General Code, providing for the levy of assessments and the issuance of bonds for the installation of a boulevard or white way lighting system. The resolution of necessity was published in accordance with the provisions of Section 4228, General Code, but this resolution, or notice of its passage, was not served upon the property owners to be assessed, as provided in Section 3818, General Code. Presumably the failure to so serve the property owners with the notice aforesaid is occasioned by virtue of the provisions of Section 3842-2, General Code, which reads as follows:

“Notice of the passage of any such ordinance providing for such system of lighting shall be given the owners of lots and lands to be assessed for the payment of the cost and expenses of such system of lighting, by publishing the ordinance in the manner provided for the publication of ordinances by Section 4228 of the General Code, and no other or further notice shall be required.”

Proceedings may be had under Section 3842-1, General Code, however, only in the event petitions for such improvements have been filed, signed by three-fourths in interest of the owners of property abutting upon such streets. The transcript discloses that no petition was filed as provided by Section 3842-1, and, therefore, Sections 3842-1, et seq., are not applicable in this case.

In the case of *Village of Leipsic et al. vs. Wagner*, 105 O. S. 466, the syllabus reads:

“Sections 3812 and 3842-1, et seq., General Code, so far as they relate to the subject of street-lighting improvement, are *in pari materia* and are not irreconcilable; they furnish concurrent methods for initiating such improvement, and, since there was no express repeal of the former statute in that respect, there was no repeal thereof by implication.”

In view of this foregoing decision of the Supreme Court, no petition having been filed for the improvements in question, as provided in Section 3842-1, General Code, the provisions of Sections 3812, et seq., General Code, become applicable. Section 3835, General Code, provides that three-fourths of the members elected to council may proceed with an improvement in the manner provided, without petition for such improvement being filed.

In view of the foregoing, it appearing that the provisions of Section 3812, General

Code, are applicable, there has been no service of the resolution of necessity upon the property owners to be assessed, as provided in Section 3818, General Code. This department has held that service of such notice is mandatory. See Opinions of Attorney General for 1927, Vol. I, at page 660, wherein it is said:

"It has been decided by the Supreme Court of Ohio in the case of *Joyce vs. Barron, Treasurer*, 67 O. S. 264, that the service of the notice provided for in Section 3818, supra, is jurisdictional, and is a condition precedent to the exercise of authority to pass a valid ordinance authorizing the improvement so far as the owner who did not receive the notice or upon whom notice was not served in accordance with the statute is concerned, and that no assessment could be made on his property unless he had been served with notice in accordance with the terms of the statute.

This statute requires that actual service must be made on the owner of each piece of property to be assessed, as summons are served in civil actions, unless such owner is a non-resident of the county or unless it appears that such owner cannot be found. If the owner is a non-resident of the county or cannot be found notice by publication may be given."

There appears to have been a failure to comply with the provisions of Section 4226, General Code, prescribing that only one improvement shall be included in the improvement proceedings, that is, separate proceedings should be had for each improvement through the ordinance determining to proceed. *Heffner vs. The City of Toledo*, 75 O. S. 413. The ordinance of necessity heretofore referred to, and the entire proceeding subsequent thereto, include all fifteen improvements instead of separate improvement proceedings having been had for each street. It is true that Section 3842-1 provides in part:

"For the purpose of carrying out the provisions of this section and of the two next succeeding sections, one ordinance providing for such system of lighting and one ordinance providing for the assessments may be made to include one or more streets, avenues or public places or parts thereof."

However, as above pointed out, Sections 3842-1, et seq., are not applicable to the proceedings in question on account of no petition having been filed.

The resolution of necessity describes two of the fifteen street improvements as follows:

- (j) Cassingham Road from Main Street to Charles Street.
- (k) Montrose Avenue from Main Street to Charles Street."

This resolution was adopted April 10, 1928, and published April 17, April 21 and May 1, 1928. On May 22, 1928, Items (j) and (k) of the aforesaid resolution were amended to read as follows:

- (j) Cassingham Road from Main Street to Livingston Avenue.
- (k) Montrose Avenue from Main Street to Livingston Avenue."

This amendment extends these two street improvements one block each. The amendment so extending these improvements was not published and on the same day, May 22, 1928, an ordinance determining to proceed in pursuance of the original resolution of necessity, as amended on that day, was passed. It is evident that the property owners on Cassingham Road and Montrose Avenue from Charles Street to Livingston

Avenue, who are to be assessed, have had no notice of the resolution declaring the necessity of the improvement.

In view of the foregoing, I advise you not to purchase the above bonds.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

625.

MUNICIPALITY—SERVED BY VOLUNTEER FIRE DEPARTMENT—  
RIGHT TO ESTABLISH PENSION FUND.

**SYLLABUS:**

*Under the provisions of amended Senate Bill No. 79, enacted by the 88th General Assembly, a municipality having a volunteer fire department which is supported in whole or in part at public expense, may establish a firemen's pension fund, for the benefit of volunteer firemen properly employed by such municipality.*

COLUMBUS, OHIO, July 17, 1929.

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

GENTLEMEN:—Acknowledgment is made of your communication which reads:

“May a city having a volunteer fire department supported in part at public expense and having no full time members thereof, legally provide for a pension fund and the distribution thereof in accordance with the provisions of Amended Senate Bill No. 79, effective July 10, 1929?”

Section 4600 of the General Code, as amended in Amended Senate Bill No. 79, as enacted by the 88th General Assembly, provides:

“In any municipal corporation having a fire department supported in whole or in part at public expense, the council by ordinance may declare the necessity for the establishment and maintenance of a firemen's pension fund. Thereupon a board of trustees, who shall be known as ‘trustees of the firemen's pension fund’ shall be created, which shall consist of six members who shall be chosen in the following manner: Two members shall be chosen by the city or village council, or other legislative body from among its own members; two members shall be elected by the fire department from members of its own department; two other members shall be residents of the municipality and not members of the council or other legislative body or of the city or village fire department, one of whom shall be chosen by the two members chosen by the municipal council or other legislative body, and one shall be chosen by the two members elected by the members of the fire department. In the event of a tie vote on any matter whatsoever, the six members so chosen shall choose a seventh member, whose vote shall decide the question.”

Section 4600-1, General Code, as enacted in the same act, provides: