

be a public record. The record of proceedings at each meeting of the board shall be read at its next succeeding meeting, corrected, if necessary, and approved, which approval shall be noted in the proceedings. After such approval, the president shall sign the record and the clerk attest it."

In addition to the duties required of the clerk, as set forth in Section 4754, *supra*, the clerk signs as clerk, all warrants for the payment of wages of employes and other disbursements made by the board. This duty, however, is merely ministerial, as the accounts and disbursements must all be passed upon by the board and the clerk draws only such warrants as he is authorized to draw by the board of education.

If the same person, who is elected clerk were to be employed in any other capacity by the board such as the driver of one of the school busses, he as clerk, would necessarily draw the warrants for the payment of the compensation of himself as bus driver. This, however, he would do in a purely ministerial capacity and his duty in that regard would not in my opinion, conflict with the performances of his duties in the driving of the school vans.

I am further of the opinion that none of the duties incident to the two positions conflict with each other, and I therefore conclude, in specific answer to your question, that a board of education may lawfully employ the duly elected and acting clerk of the board to drive one of the school vans in the district, provided, of course, that such clerk is not a member of the board.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2423.

ASSESSMENTS—DELINQUENT—STATE ROAD IMPROVEMENT—NO PEN-
ALTY COLLECTIBLE AGAINST PROPERTY OWNER.

SYLLABUS:

A penalty may not be collected upon delinquent road assessments made for the purpose of paying the property owners' share of a road improvement being constructed by the state.

COLUMBUS, OHIO, August 6, 1928.

HON. F. E. CHERRINGTON, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR—Permit me to acknowledge receipt of your request for my opinion, as follows:

"Are delinquent road assessments subject to the added penalty of 10%?"

Your letter does not state the exact kind of road assessments concerning which you inquire, but I assume you are interested in knowing whether or not assessments made for the purpose of paying the property owner's share of a road improvement constructed by the Department of Highways, for which assessment bonds had been issued in anticipation of the payment thereof, are subject to the ten per cent penalty. I also assume that those assessments were made previous to the enactment of the Norton-Edwards Act in 1927 (112 v. 430).

The law in force at that time relative to the collection of such assessments was contained in Section 1216 of the General Code, which read as follows:

"All assessments, with interest accrued thereon, as hereinbefore provided, shall be certified to and placed by the county 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 or township trustees and certified to such auditor. In the event that bonds are issued to pay the costs and expenses of such improvement 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."

It will be noted that this section provides that assessments of the kind here involved shall be certified to and placed by the county auditor upon a special duplicate "to be collected as other taxes." The same provision is made for the collection of the interest due upon the said assessments. The question then arises whether or not this language is such as to make the assessments subject to the penalty, in the event they are not paid as provided by law.

I find many sections of the General Code relative to special assessments, most of them, however, being applicable to municipal corporations.

In an opinion of this office reported in the Opinions of the Attorney General for 1915, Volume II, page 1291, the following language is used in the syllabus:

"Where bonds, notes or certificates of indebtedness have been issued in anticipation of the collection of such assessments no penalty may be added or collected for default in payment of such assessments."

The section which the then Attorney General was construing was Section 3892, which contained the language:

"The county auditor shall place the assessment upon the tax list in accordance therewith and the county treasurer shall collect it in the same manner as other taxes are collected."

It will be noted that the language therein contained is quite similar to the language found in Section 1216, supra.

In the Opinions of the Attorney General for 1917, Volume III, page 2380, the following appears as the syllabus of the opinion there reported:

"When special assessments are made for municipal street improvements, etc., and bonds, notes or certificates of indebtedness are issued in anticipation of the collection thereof, the several installments of such assessments, if not paid when due, bear interest until the payment thereof at the same rate as the bonds, and when such assessments are certified to the county auditor for collection by the county treasurer on the tax duplicate, such installments, if not paid when due, are subject to a penalty of ten per cent thereof."

This opinion seems to be somewhat in conflict with the opinion of the Attorney General 1915, supra, but in the later opinion my predecessor in office was construing Section 3817, General Code, which at that time read in part as follows:

"If such assessment or any installment thereof is not paid when due, it shall bear interest until the payment thereof at the same rate as the bonds

issued in anticipation of the collection thereof, and the county auditor shall annually place upon the tax duplicate the *penalty* and interest as therein provided."

You will note that that section refers specifically to the collection of a penalty, which provision is not found in Section 1216, *supra*, or any of the related sections in connection therewith.

In the case of *State, ex rel. Acklin vs. Charles Sanzenbacher, Auditor*, 13 O. C. C. (N. S.), 356, the headnote reads:

"There is no statutory provision for imposing a penalty upon unpaid assessments against real property for public improvements, and mandamus will lie to compel a county treasurer to accept such assessments without the penalty added."

The opinion in that case is very short and is as follows:

"This is an action in mandamus brought in this court to require the county treasurer to accept the assessments that are due without collecting the penalty on the assessment. There is no occasion to review all the statutes that were mentioned by counsel here in argument. We have gone over the situation very thoroughly, and we are satisfied there is no authority in the statutes of Ohio for affixing the fifteen per cent on the assessments the same as it is fixed upon taxes. The statute, General Code, 2608 (Revised Statutes, 1053), provides that such penalty must be placed upon delinquent taxes; must be audited, I should say, on delinquent taxes. We find no statute so directing as to assessments, and for that reason we think the placing of it there is not warranted, and the relief prayed for here must be granted. We do not find any authority, I should have said, for the placing of any penalties on assessments such as are placed for taxes."

I am of the opinion that as a general proposition the opinion of the Circuit Court is a little too broad, as it does seem that some of the statutes relative to collecting special assessments do provide for imposing a penalty for the non-payment of the same. It is, however, direct authority for the proposition that no penalty can be assessed unless the statute relative to the assessment specifically provides therefor. This seems to be in accord with the opinion of the Attorney General, 1915, *supra*.

As stated above, I find no authority in Section 1216 of the General Code or the associated sections for the collection of a penalty for nonpayment thereof.

It is therefore my opinion that a penalty may not be collected upon delinquent road assessments made for the purpose of paying the property owners' share of a road improvement being constructed by the state.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2424.

BANKS—HYPOTHECATION OF FIRST MORTGAGES FOR DEPOSITS OF COUNTY, MUNICIPAL AND SCHOOL DISTRICT FUNDS—PUBLIC AUTHORITIES CANNOT REJECT.

SYLLABUS:

Banks are authorized to pledge as security for the deposit of county, municipal and school district funds first mortgages of the character described in Section 2288-1 of the Code and, if such securities be offered, the public authorities cannot reject the sale.