

Section 26 of the General Code, and also have reached the point where obligations have been incurred within the meaning of Section 1230 of the Norton-Edwards Act.

The next matter for consideration in connection with the foregoing as set forth in your letter, has to do with the interval of time that has expired since proceedings for the improvement of Inter-county Highway No. 217 have been pending. On account of the fact that there have been no statutes enacted in this interval amending Section 26 of the General Code, and for the further reason that Section 1230, General Code, enacted in 1927, in no way nullifies the provisions of Section 26, but is, in a way, merely supplemental thereto, the interval of time can have no bearing upon the situation.

In view of the foregoing and specifically answering your question, I am of the opinion that when the county commissioners of a county filed application for state aid in 1922 under the provisions of Section 1191, General Code, as then in force and effect, and the Director of Highways approved such application in 1922 under the provisions of Section 1195, General Code, as then in force, proceedings are pending within the meaning of Section 26 of the General Code, and obligations are incurred within the meaning of Section 1230, General Code, and therefore the Director of Highways and the county commissioners are authorized to proceed with the improvement in question upon the original application.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

322.

CITY PARK DEPARTMENT—EMPLOYES CONSTRUCTING BOULEVARD  
PARKWAY FINANCED BY BONDS—PAID FROM GENERAL PARK  
APPROPRIATIONS—HOW REIMBURSEMENT MADE.

*SYLLABUS:*

*When regular employes of a city park department are engaged in constructing a boulevard parkway which is financed from the sale of bonds, and those employes are inadvertently paid from appropriations made for general park purposes, instead of from the special boulevard parkway fund, the service so rendered should be paid for at its full value from the boulevard parkway improvement fund, and the payment credited to the appropriation for general park purposes, in accordance with Section 280, General Code.*

COLUMBUS, OHIO, April 18, 1929.

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

GENTLEMEN:—This will acknowledge your letter requesting my opinion which reads as follows:

“The pertinent part of Section 5625-13, G. C., 112 O. L., page 397, reads:  
‘Section 13. No transfers shall be made from one fund of a subdivision to any other fund, by order of court or otherwise, except that transfers may be made from the general to special funds established for purposes within the general purposes of the general fund, and from such special funds to the general fund; but no transfers shall be made from any such special fund to the general fund, except of moneys theretofore transferred from the general fund.’

Section 280, G. C., reads:

'All service rendered and property transferred from one institution, department, improvement, or public service industry, to another, shall be paid for at its full value. No institution, department, improvement, or public service industry, shall receive financial benefit from an appropriation made or fund created for the support of another. When an appropriation account is closed, an unexpended balance shall revert to the fund from which the appropriation was made.'

*QUESTION:* When regular employes of a city park department, whose compensation is paid from the city's general fund, are engaged in constructing a boulevard parkway which is financed through the sale of bonds and is under the control of the Board of Commissioners, may the city's general fund be reimbursed from the Boulevard Parkway Bond Fund for the amount of compensation paid to such employes out of the general fund for time employed in constructing the boulevard parkway."

Authority is given to a municipality, whose administration is controlled by general laws, to provide for a board of park commissioners, to be appointed by the mayor, and to be vested with such powers and charged with such duties as are by general law vested in and imposed upon the Director of Public Service (Sections 4053 et seq., General Code). By the terms of Section 4057, General Code, the duties and powers of the board of municipal park commissioners are more specifically set forth as follows:

"The board of park commissioners shall have the control and management of parks, park entrances, parkways, boulevards and connecting viaducts and subways, children's playgrounds, public baths and stations of public comfort located in such parks, of all improvements thereon and the acquisition, construction, repair and maintenance thereof. The board shall exercise exclusively all the powers and perform all the duties, in regard to such property, vested in and imposed upon the director of public service."

By the terms of Section 4058, General Code, it is provided that the said board of park commissioners shall have the expenditure of all moneys appropriated by city council or received from any other source whatever for the purchase, acquisition, improvement, maintenance, equipment or enjoyment of parks or park property.

Ordinarily, the cost of the upkeep and maintenance of parks in a municipality is met from appropriations made by council from the general revenues of the municipality. However, this is not necessarily so, and in many instances the acquisition, improvement and equipment of parks and park property is met from bond issues and special tax levies.

A municipality has authority to issue bonds for the acquisition, improvement or equipment of a park when such acquisition, improvement or equipment is a "permanent improvement" as the term is used in Section 2293-2, General Code.

Special authority is given to municipalities to levy and collect special assessments upon abutting, adjacent and contiguous or other specially benefited property, not to exceed 50% of the entire cost of, and expenses connected with, the construction of any boulevard parkway or park entrance. (Section 3852-1, General Code.) Bonds may be issued in anticipation of the collection of such assessments. (Sections 3852-5, and 2293-24, General Code.) The proceeds of the sale of such bonds would of course be expended for the specific purpose for which the bonds had been issued, and such expenditure would be under the supervision of the board of park commissioners, in a municipality where such board existed.

There may also be levied, by vote of the people, a special tax levy, not only for

the general maintenance and improvement of parks but for the acquisition of a specific park or the making of a specific improvement or the acquiring of specific equipment, or any other special purpose in connection with a park or a park system. The proceeds of such a special levy would be subject to the use of the park commissioners and would necessarily be expended for the specific purpose for which it was levied.

Section 5625-9, General Code, provides in part, as follows:

"Each subdivision shall establish the following funds:

(a) General fund.

(b) \* \* \*

(c) \* \* \*

(d) A special fund for each special levy.

(e) A special fund for each bond issue.

(f) A special fund for each class of revenue derived from a source other than the general property tax, which the law requires to be used for a particular purpose.

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When any work is conducted or any improvement made by a park commission the cost thereof should be paid from the appropriate fund. If an appropriation had been made from the general fund of the municipality for general park purposes or for any specific purpose under the control of the park commission, the payrolls for employes engaged in carrying out the purposes of the appropriation should be met from the said appropriation. If, however, a bond issue had been made for any specific purpose under the jurisdiction of the park commission, or a specific tax levy made for any such purpose, and special funds established for the proceeds of such bond issue or tax levy, payrolls incident to carrying out the purpose of the bond issue or tax levy should be met from the special fund established for the purpose.

The mere fact that workmen regularly employed by a park commission are ordinarily employed on projects within the purposes of an appropriation from the general fund of a municipality does not prevent the taking of said workmen off those projects and employing them on some other project or improvement, the cost of which is to be paid from a special fund.

It appears, in the case set up in your inquiry, that regular employes of a park department, ordinarily employed in performing services within the purpose of appropriations made from the general fund of the municipality, were taken from such work and put to work on the construction of a boulevard parkway for which bonds had been issued and a special fund established. These workmen should have been paid for work performed on the boulevard parkway project from the special fund established for the purpose in the first place, but apparently were not.

They continued to meet the payrolls for these workmen from the appropriations from the general fund, although the work performed by them was not within the purpose for which that appropriation had been made. It is now sought to reimburse the appropriation from the general fund, from the boulevard parkway fund which should have borne the burden in the first instance.

The law does not permit the transfer of funds, except as stated in Section 5625-13, General Code, quoted in your letter. Obviously, such a transfer as is here proposed, is not permitted by said statute. Even if such transfer were permitted, it would not be the proper procedure in the instant case. The apparent intention of the Legislature in the enactment of Section 280, General Code, quoted in your letter, is that each institution, department, improvement or public service industry should be so conducted as to keep within the limits of the appropriation or fund created for its

particular purpose, and should have the full benefit of such appropriation or fund. It is provided that no institution, department, improvement or public service industry shall receive any financial benefit from appropriations made or funds established for the support of another, and that any service rendered for one such improvement or activity should be paid for at its full value to the other institution or activity rendering the service. In the instant case, the boulevard parkway project should pay to the park department of the municipality for the work performed, and when payment is made it of course should be credited to the appropriation which had been made from the general fund for park purposes.

This, in effect, is probably the same as transferring funds from one fund to another, but the principle is entirely different, and is done by authority of the statute specifically authorizing and directing it.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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323.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS  
DUTIES AS RESIDENT DISTRICT DEPUTY DIRECTOR—D. H. DAVIS.

COLUMBUS, OHIO, April 18, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my consideration a bond in the sum of five thousand dollars, and conditioned for the faithful performance of the duties of the principal as resident district deputy director, as follows:

D. H. Davis, principal, (Fayette County) upon which the American Surety Company of New York appears as surety.

The above bond is given in pursuance to the provisions of Section 1182 of the General Code, which section specifically requires that resident district deputy directors shall give bond in the amount above indicated with sureties to your approval. The bond has been properly executed and bears your approval thereon.

It is further noted that in the official roster of the Division of Insurance the surety heretofore mentioned has been duly authorized to transact business in Ohio.

In view of the foregoing, I have approved said bond as to form and return the same herewith.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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324.

TAX AND TAXATION—INTEREST ON NOTES FOR TOWNSHIP ROAD  
IMPROVEMENT MATURING PREVIOUS TO RECEIPT OF TAXES—  
ASSESSED AS PART OF COST OF CONSTRUCTION.

SYLLABUS:

*Interest on notes issued during the construction of a township road improvement.*