

3697.

APPROVAL, BONDS OF VILLAGE OF ST. CLAIRSVILLE, BELMONT COUNTY, \$7,709.67.

COLUMBUS, OHIO, October 8, 1926.

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

---

3698.

APPROVAL, BONDS OF ADENA VILLAGE SCHOOL DISTRICT, JEFFERSON COUNTY, \$4,000.00.

COLUMBUS, OHIO, October 9, 1926.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

---

3699.

APPROVAL, BONDS OF VILLAGE OF MT. STERLING, MADISON COUNTY, \$10,000.00.

COLUMBUS, OHIO, October 11, 1926.

*Retirement Board, State Teachers' Retirement System, Columbus, Ohio.*

---

3700.

MUNICIPAL CORPORATIONS—CHIEF FISCAL OFFICER NEED NOT CERTIFY THAT FUNDS ARE IN TREASURY OR PROCESS OF COLLECTION AT TIME CONTRACT FOR IMPROVEMENT IS AWARDED.

**SYLLABUS:**

*The chief fiscal officer of a municipal corporation need not certify that the funds are in the treasury or in process of collection to meet the property owners' part of the cost of an improvement at the time a contract for such improvement is awarded.*

COLUMBUS, OHIO, October 13, 1926.

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

GENTLEMEN:—I am in receipt of your communication as follows:

“In the case of Comstock et al. vs. Village of Nelsonville, 61 O. S. 288, and other decisions of Ohio courts it was held that the provisions of Section 2702 R. S. were not applicable to so much of the cost and expense of a street improvement as is to be paid by an assessment on the property bounding and abutting on such improvement or adjacent thereto.

Provisions similar to those of Section 2702 R. S. are contained in the present Section 5660 G. C. and the following question has been presented to the Bureau. Must the chief fiscal officer of a municipal corporation certify that funds are in the treasury or in process of collection to meet the property owners' part of the cost of an improvement at the time a contract for such improvement is awarded?"

Section 5660 found in 111 Ohio Laws, page 371, in part provides as follows:

"No expenditure, excepting from the proceeds of bonds, shall be made unless authorized by appropriation both as regards purpose and amount, nor shall any expenditure be made from the proceeds of bonds unless duly authorized or directed. No contract, agreement or other obligation calling for or requiring for its performance the expenditure of public funds from whatsoever source derived, shall be made or assumed by any authority, officer, or employee of any county or political subdivision or taxing district, nor shall any order for the payment or expenditure of money be approved by the county commissioners, council or by any body, board, officer or employee of any such subdivision or taxing district, unless the auditor or chief fiscal officer thereof first certifies that the money required to meet such contract, agreement or other obligation or to make such payment or expenditure has been lawfully appropriated or authorized or directed for such purpose and is in the treasury or in process of collection to the credit of the appropriate fund free from any previous and then outstanding obligation or certification which certificate shall be filed with such authority, officer, employee, commissioners, council, body or board, or the chief clerk thereof. The sum so certified shall not thereafter be considered unencumbered until the county, subdivision or district is discharged from the contract, agreement, or obligation or so long as the order is in force. Taxes and other revenues in process of collection or the proceeds to be derived from lawfully authorized bonds, notes, or certificates of indebtedness sold and in process of delivery shall, for the purpose of this section be deemed in the treasury or in process of collection and in the appropriate fund."

It will be noted that this section provides:

"No contract, agreement or other obligation calling for or requiring for its performance the expenditure of *public funds* from whatsoever source derived, \* \* \*."

Section 5660 of the General Code, quoted above, is almost identical with former Section 2702, Revised Statutes.

In the case of *Comstock et al. vs. Village of Nelsonville*, 61 Ohio St. page 288, the court say:

"Said section is not applicable to so much of the cost and expense of a street improvement as is to be paid by an assessment on the property bounding and abutting on such improvement, or adjacent thereto."

Burket, Judge, in the opinion referring to the applicability of Section 2702 R. S., on page 296, says:

"It does not apply for the further reason, that by necessary implication said section has reference to money of the municipality, that is, money raised,

or ultimately to be raised, by a levy on the general tax list, and does not cover or refer to money of individuals, that is, money to be raised by an assessment upon the property along the improvement. The municipality is limited and restrained by this section as to the expenditure of its own money, but not as to the money of others. As to such assessments, it is competent for the contractor to agree to take the assessments in payment for his labor and materials, and collect the same as provided by law; and if he does so, the money never goes into the treasury, and no certificate can be filed as to the same.

It would therefore appear, that as to the expenditure of money to be raised by such assessments, Section 2702 is not applicable.

This holding protects the treasury and the general taxpayer, and at the same time enables needed local improvements to be made without detriment to the municipality and is in accordance with the intention of the general assembly in passing the Burns Law."

While Section 3914 of the General Code provides that the municipal corporation may issue notes in anticipation of the levy of special assessments or of the issuance of bonds as provided therein, it is not believed that this section would materially change the rule as laid down in the case of *Comstock vs. Nelsonville*, supra.

Section 3914 of the General Code was enacted with the power of preventing the issuing of bonds for more than the amount of the assessment. If special assessments were not considered by the court in the *Comstock* case as funds of the municipality, it is not believed that they can be considered as public funds under Section 5660 of the General Code.

It is therefore my opinion that the chief fiscal officer of a municipal corporation need not certify that the funds are in the treasury or in process of collection to meet the property owners' part of the cost of an improvement at the time a contract for such improvement is awarded.

Respectfully,

C. C. CRABBE,

*Attorney-General.*

---

3701.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN TUSCARAWAS AND CUYAHOGA COUNTIES.

COLUMBUS, OHIO, October 13, 1926.

*Department of Highways and Public Works, Division of Highways, Columbus, Ohio.*

---

3702.

APPROVAL, BONDS OF BUCYRUS CITY SCHOOL DISTRICT, CRAWFORD COUNTY, \$10,000.00.

COLUMBUS, OHIO, October 14, 1926.

*Retirement Board, State Teachers' Retirement System, Columbus, Ohio.*