

quired to meet the same is in the treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrances. The section further provides that the proceeds to be derived from lawfully authorized bonds or notes sold and in process of delivery shall, for the purpose of this section, be deemed in the treasury or in the process of collection and in the appropriate fund.

Section 5625-35 is as follows:

"In the case of an improvement, the cost of which is to be paid in whole or part by special assessments, a contract may be executed without an appropriation or certificate for that portion of the cost derived from special assessments; provided, a resolution or ordinance authorizing such assessment and the bonds or notes to be issued in anticipation thereof has been duly passed in the manner provided by law."

In view of the foregoing provisions of the law, it would appear that the only circumstances under which the issuance and the sale of notes for a county road improvement could be dispensed with would be, first, when all of the cost of the improvement is to be paid by special assessments or, second, in case a part of the cost of the improvement is to be paid by special assessments and there are sufficient available funds on hand to pay such other part of the cost of the improvement, and bonds are being issued only in anticipation of the collection of special assessments. In the first case, contracts may be entered into without an appropriation certificate as required by Section 5625-33, General Code, and bonds may be issued subsequent to the execution of such contract. In the second case, this certificate as to the portion to be paid by special assessment is not required and the certificate as to the part to be paid by available funds on hand may be forthwith furnished, whereupon the contract may be entered into and bonds issued.

Section 5654-1 has been repealed by House Bill No. 425, enacted by the 88th General Assembly. This bill was filed in the office of the Secretary of State on April 27, 1929, and becomes effective July 26, 1929. On and after that date, therefore, the issuance of notes in such cases as you present will not be necessary.

In specific answer to your question, I am of the opinion that under the provisions of Section 5654-1, General Code, as now in force and effect, when bonds are to be issued for a county road improvement, the issuance of notes for such improvement may not be dispensed with, except in case the cost of such improvement is to be paid in whole by special assessments, or in case such cost is to be paid in part by special assessments and sufficient funds are available for the balance of the cost of such improvement and bonds are to be issued only in anticipation of the collection of special assessments.

Respectfully,
GILBERT BETTMAN,
Attorney General.

514.

MUNICIPALITY—ISSUANCE OF BONDS FOR PURCHASING AND IMPROVING LAND FOR PUBLIC PARK—PROCEEDS MUST BE APPLIED ON PROPERTY AUTHORIZED BY ELECTORS.

SYLLABUS:

When bonds are issued by a municipal corporation pursuant to a vote of the electors for the express "purpose of purchasing and condemning land for park and

public playground purposes and for improving same," a part of the proceeds of the sale of such bonds may not be used to improve parks and playgrounds other than those acquired by purchase or condemnation proceedings from the proceeds of such bond sale.

COLUMBUS, OHIO, June 13, 1929.

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

GENTLEMEN:—Your letter of recent date is as follows:

"When bonds are issued by a municipal corporation pursuant to a vote of the electors which vote was upon a ballot which read in part as follows: 'Shall bonds be issued * * * * for the purpose of purchasing and condemning land for park and public playground purposes and for improving same?', may part of the proceeds of the sale of such bonds be used to improve parks and playgrounds other than those purchased from the proceeds of the bond sale?"

Authority for the submission of the question of issuing bonds to the electors for the purpose of acquiring or constructing any permanent improvement, as defined in the Uniform Bond Act, is contained in Section 2293-19, General Code, wherein it is provided that:

"The taxing authority of any subdivision may submit to the electors of such subdivision the question of issuing any bonds which the said subdivision has power to issue. When it desires or is required by law to submit any bond issue to the electors, it *shall pass a resolution*, declaring the necessity of such bond issue and fixing the amount, *purpose* and approximate date, interest rate and maturity, * * * * ." (Italics the writer's.)

Section 2293-21, General Code, with reference to the publication of notice of such elections, expressly provides that the notice shall state "the purpose for which such bonds are to be issued." Section 2293-23, General Code, prescribing the form of ballot to be used at such election especially provides that the ballot shall state the purpose of the bond issue. This section further provides that "if fifty-five per cent of those voting upon the proposition vote in favor thereof, the taxing authority of such subdivision shall have authority to proceed * * * with the issue of *such* bonds, * * * ." Authority is clearly here given to issue such bonds as are authorized by the vote, the vote having authorized bonds for a specific purpose.

Your letter states that bonds have been authorized by the electors of a municipal corporation for the purpose of purchasing and condemning land for park and public playground purposes and for improving *same*. Apparently the only question voted upon by the electors in so far as improvement of parks and playgrounds is concerned, was the matter of improving the parks and public playgrounds acquired by purchase or condemnation proceedings. To say that upon the facts submitted in your letter, the proceeds of bonds so authorized, either in whole or in part, may be used for the improvement of playgrounds other than those purchased from the proceeds of the bond sale, would be to hold that bonds may be authorized by the electors under the provisions of the Uniform Bond Act for a stipulated purpose and the proceeds of such bonds used for other purposes. It would follow, under such a holding, that council could submit to the electors the question of issuing bonds for the purpose of purchasing and improving parks and playgrounds, and after a favorable vote, use part of the fund derived from the sale of such bonds for the improvement of a street or some other purpose unauthorized by the electors. There is clearly no authority

for such procedure in the Uniform Bond Act. The Legislature has been very clear in providing that when the question of issuing bonds is submitted to a vote, the electors shall not only vote upon the issuance of bonds but vote upon the purpose for which such bonds are to be issued, and pursuant to favorable vote only *such* bonds for such specific purposes may be issued.

In an opinion of my predecessor, directed to Hon. Ralph E. Hoskot, Prosecuting Attorney, Dayton, Ohio, being Opinion No. 3064, under date of December 27, 1928, the first branch of the syllabus is as follows:

"Where the electors of a school district have authorized a board of education to issue bonds for the purpose of erecting and constructing school buildings and furnishing the same, such board may not use a portion of the proceeds of such bond issue for the purpose of acquiring sites for such buildings."

In view of the foregoing and in specific answer to your question, I am of the opinion that when bonds are issued by a municipal corporation pursuant to a vote of the electors for the express purpose of "purchasing and condemning land for park and public playground purposes and for improving same," a part of the proceeds of the sale of such bonds may not be used to improve parks and playgrounds other than those acquired by purchase or condemnation proceedings from the proceeds of such bond sale.

Respectfully,
GILBERT BETTMAN,
Attorney General.

515.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND SKENE-McALPIN CONSTRUCTION COMPANY, POINT PLEASANT, W. VA., FOR CONSTRUCTION OF SCHOOL FOR BOYS, OHIO HOSPITAL FOR EPILEPTICS, GALLIPOLIS, OHIO, AT AN EXPENDITURE OF \$14,623.00—SURETY BOND EXECUTED BY THE AETNA CASUALTY AND SURETY COMPANY.

COLUMBUS, OHIO, June 13, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Superintendent of Public Works, for and on behalf of the Department of Public Welfare, and Skene-McAlpin Construction Company, of Point Pleasant, W. Va. This contract covers the construction and completion of general contract for School for Boys, Ohio Hospital for Epileptics, Gallipolis, Ohio, and calls for an expenditure of fourteen thousand six hundred and twenty-three dollars (\$14,623.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has also been submitted a contract bond upon which the Aetna Casualty and Surety Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared