

2893.

REFUND—LEGISLATIVE AUTHORITY OF MUNICIPALITY—COUNCIL
MAY NOT REFUND MONEY TO PROPERTY OWNERS WHO HAVE PAID
ASSESSMENTS FOR STREET IMPROVEMENTS.

SYLLABUS:

The legislative authority of a municipality may not, out of any funds available for street improvement, make payments of money to property owners who have paid assessments for street improvements, regardless of whether or not such payments are made out of the particular assessment fund to which such property owners have made payments or out of some other street improvement fund.

COLUMBUS, OHIO, January 31, 1931.

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

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

“You are respectfully requested to render this department your written opinion on the following:

In Opinion No. 1134, at page 2000 of his 1927 Report, Attorney General E. C. Turner, held as follows:

‘The legislative body of a municipality may not lawfully reduce the assessments made against abutting property for a street improvement, after bonds have been sold for such improvement in anticipation of the collection of such assessments and supply the deficit created in the sinking fund caused by such a reduction in the amount of the assessments by transferring thereto funds received under the provisions of Section 6309-2, and section 5537 of the General Code.’

The question now arises whether or not the legislative body of a municipality after assessments made against the abutting property for the opening of a street have been paid, may authorize the payment to such abutting property owners out of funds available for street improvement, other than the fund created by the assessments, of an amount equal to a certain percentage of the assessments paid? This would in no way impair the fund created by the collection of the assessments and the same would be applied to the payment of the bonds issued in anticipation thereof.”

The reasoning, upon which the conclusions in the opinion to which you refer were predicated, is contained in the body of the opinion. It is in part as follows:

“The bonds referred to in your letter were issued in anticipation of the collection of assessments against the abutting property. They were purchased by the holders thereof with that understanding. These purchasers at the time of the sale, as do the holders of the bonds now, had the right to look to the collection of the assessments on the abutting property as made in the ordinance making such assessments, as the source of sufficient funds to pay the principal and interest when due. Any action attempting to reduce these assessments would impair the obligation of the contract and legal duty of the property owners to pay for said improvement.”

Opinion No. 1476, rendered under date of February 1, 1930, held as set forth in the syllabus:

“After a board of county commissioners has levied assessments against

abutting property to pay a part of the cost of a State highway and has issued bonds in anticipation of the collection of such assessments, such board of county commissioners has no authority to cancel and set aside such assessments."

This last cited opinion was discussed in Opinion No. 2118 rendered July 21, 1930, wherein it is said, after quoting the foregoing syllabus:

"Although in that particular case bonds had been issued in anticipation of the collection of assessments sought to be cancelled, the following language is used in the opinion:

'An answer to your inquiry must, in my view, be primarily predicated upon the fact that there are no provisions in the General Code whereby a board of county commissioners are authorized to cancel and set aside special assessments which have been previously levied.'

I am of the view that since the law contains no authority for the cancellation by the commissioners of assessments previously levied and for the return to the parties assessed of a part of such assessments already collected, such authority does not exist."

There is, in the case of municipalities, a similar lack of authority for the cancellation of assessments.

The question which you present amounts to one of whether or not a municipality may do indirectly what it may not do directly, thus invoking the maximi *quando aliquid prohibetur ex directo, prohibetur et per obliquum*. Although the fund from which the bonds are paid may not be impaired or tampered with and although assessments may not be waived or refunded, you inquire as to whether or not the same ends may be accomplished by presenting the parties to be assessed with money with which to pay their assessments, if not in whole, at least in part. In addition to the equitable principle raised by such a proposal, there is clearly no statutory authority for such distribution of public funds, not to mention the constitutional question involved of applying money received by taxation for a purpose other than that for which it was levied, and therefore your inquiry must necessarily be answered in the negative.

Specifically answering your question, it is my opinion that the legislative authority of a municipality may not, out of any funds available for street improvement, make payments of money to property owners who have paid assessments for street improvements, regardless of whether or not such payments are made out of the particular assessment fund to which such property owners have made payments or out of some other street improvement fund.

Respectfully,

GILBERT BETTMAN,

Attorney General.

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SPECIAL ASSESSMENTS—COLLECTION THEREOF—MUNICIPALITY MAY NOT EXTEND COLLECTION TO A PERIOD GREATER THAN SET FORTH IN ORIGINAL LEGISLATION.