

contractors a key to the recorder's office and to the filing cases, whether the county recorder consents to the same or not.

Second, a deputy recorder whose time is not all consumed in performing the duties of his position, may employ the remaining portion of his time in making abstracts or doing such other things as he desires, so long as he in no wise neglects the performance of his duties as deputy recorder, or permits his other activities to conflict with such duties.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2384.

BONDS—CITY MAY NOT ISSUE FOR UNDETERMINED STREET IMPROVEMENT.

*SYLLABUS:*

*A municipal corporation may not legally issue bonds for the purpose of creating a fund from which to pay the city's portion of the cost of paving and improving streets, the streets and the amount of the municipality's portion for each to be determined thereafter.*

COLUMBUS, OHIO, July 23, 1928.

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

GENTLEMEN:—This will acknowledge the receipt of your recent communication, which reads:

"The syllabus of Opinion No. 1401, to be found at page No. 1082, Opinions of the Attorney General for 1918, reads:

'Under Section 3939 of the General Code a municipal corporation is authorized to issue bonds for the purpose of improving or repairing specifically determined streets or parts thereof, but said section does not authorize a municipality to issue bonds for the purpose of providing a fund out of which to pay the cost and expense of such street improvements and repairs as may thereafter be determined from time to time.'

Sections No. 3939 and No. 3821, G. C., were repealed, 112 O. L. 364, and authority to issue bonds is now found in Section No. 2293-2, G. C., 112 O. L. 365.

QUESTION: May a municipal corporation legally issue bonds for the purpose of creating a fund from which to pay the city's portion of the cost of paving and improving streets, the streets, and the amount of such city's portion for each, to be determined thereafter?"

In the above communication you state that Section 3939, General Code, has been repealed. This is not quite correct, as Section 3939 was not repealed but was amended in The Uniform Bond Act (112 O. L. 364). Prior to its amendment, Section 3939, General Code, contained the general authority for the issuance of bonds by municipalities and, in so far as pertinent to the question you submit, provided:

"When it deems it necessary, the council of a municipal corporation, by an affirmative vote of not less than two-thirds of the members elected or appointed

thereto, by ordinance, may issue and sell bonds in such amounts and denominations, for such periods of time and at such rate of interest, not exceeding six per cent per annum, as said council may determine and in the manner provided by law, for any of the following specific purposes:

\* \* \*

23. For resurfacing, repairing or improving any existing street or streets as well as other public highways.

24. For opening, widening and extending any street or public highway.

25. For purchasing or condemning any land necessary for street or highway purposes, and for improving it or paying any portion of the cost of such improvement.

\* \* \*

As stated above, Section 3939, General Code, was amended in The Uniform Bond Act, and, as so amended, and, in so far as pertinent to your question, provides:

“Each municipal corporation in addition to other powers conferred by law shall have power:

\* \* \*

(16) To open, construct, widen, extend, improve, resurface or change the line of any street or public highway.

\* \* \*

Section 3821, General Code, also referred to in your communication, was repealed in The Uniform Bond Act. Prior to such repeal that section authorized a municipality to issue bonds to pay its portion of the cost of improvements paid for in part by special assessments. The Uniform Bond Act also repealed Section 3914, General Code, which authorized municipalities to issue bonds in anticipation of the collection of special assessments.

It will be observed that in amending Section 3939, General Code, the Legislature has taken out of that section the authority to issue bonds. The general authority for the issuance of bonds and the procedure for issuing the same by all subdivisions is now found in The Uniform Bond Act, and particularly Section 2293-2, General Code, as enacted in that act. Section 2293-2 provides:

“The taxing authority of any subdivision shall have power to issue the bonds of such subdivision for the purpose of acquiring or constructing, any permanent improvement which such subdivision is authorized to acquire or construct. But no subdivision or other political taxing unit shall create or incur any indebtedness for current operating expenses, except as provided in Sections 2293-3, 2293-4, 2293-7 and 2293-24 of the General Code. The estimate of the life of permanent improvements proposed to be acquired, constructed, improved, extended or enlarged from the proceeds of any bonds shall be made in any case by the fiscal officer of the subdivision and certified by him to the bond-issuing authority and shall be binding upon such authority.”

It will be observed that Section 2293-2, supra, authorizes the issuance of bonds for the purpose of acquiring or constructing any permanent improvement which the subdivision is authorized to acquire or construct. The term “permanent improvement” is defined in Section 2293-1, General Code, as follows:

“(e) ‘Permanent improvement’ or ‘improvement’ shall mean any property, asset or improvement with an estimated life or usefulness of five (5) years or more, including land and interests therein, and including recon-

structions, enlargements and extensions thereof having an estimated life or usefulness of five years or more. Reconstruction for highway purposes shall be held to include the resurfacing but not the ordinary repair of highways."

At the time the opinion referred to in your communication, Opinions of the Attorney General, 1918, page 1082, was rendered, Sections 3939, 3914 and 3821, General Code, were all in effect. The question presented in that opinion was whether or not a municipality might issue bonds to provide a fund out of which to pay the cost or expense of resurfacing, repairing and improving existing streets of a city, the streets or portions thereof to be so resurfaced, repaired or improved to be thereafter determined from time to time. In the course of the opinion, after quoting from Section 3939 of the General Code, it was said:

"Other than Section 3914, G. C., authorizing municipal corporations to issue bonds in anticipation of the collection of special assessments for street improvements, and other than Section 3821, G. C., authorizing a municipal corporation to issue bonds for the purpose of paying its share of the cost and expense of a street improvement to be paid for in part by assessments, Section 3939 G. C. contains the only statutory provision authorizing a municipal corporation to issue bonds for the purpose of street improvement or repairs. This section confers like authority upon a municipal corporation to issue bonds to pay its share of the cost and expense of a street improvement to be paid for in part by assessments on benefited property, as well as authority to issue bonds to pay the cost and expense of a street improvement where the whole of such cost and expense is to be borne by the municipality.

I do not see that the authority of the municipal corporation is broader in one case than in the other, and whether such issue of bonds be for the purpose of paying a share only of the cost and expense of the improvement or for the purpose of paying the whole of such cost and expense, the authority of the provisions of Section 3939 above quoted is limited to the issue of bonds to pay the cost and expense, whether in whole or in part of specific street improvements to be determined by the legislative authority of the city at the time the issue of such bonds is provided for and in neither case is the municipality authorized to issue bonds to provide a fund from which to pay the cost of improvements that may from time to time be made as thereafter determined by the municipality. See *Heffner vs. City of Toledo*, 75 O. S., 413.

It is evident from the stated purpose of this bond issue that the same is not for the improvement or repair of any specific streets and that the purpose of said issue is to provide funds out of which to resurface, repair and improve such of the existing streets of the City of Middletown as may in the judgment of the city authorities require improvement or repair."

In the case of *Heffner vs. The City of Toledo*, 75 O. S. 413, referred to in the 1918 opinion, supra, the Supreme Court of Ohio held that an ordinance to provide for the issuing of bonds to pay the city's portion of the cost of thirty-two street and sewer improvements was not in conflict with the statutory requirement that no by-law or ordinance shall contain more than one subject, which shall be clearly expressed in its title. However, the fourth and fifth branches of the syllabus in that case read as follows:

4. "A city is not authorized to issue bonds to provide a fund from which to pay its part of the cost of improvements that may from time to time be made, but it may, under Section 53 of the Municipal Code of 1902,

Section 1536-213, Revised Statutes (now Section 3821, General Code), or under Section 2835, Revised Statutes, (now Section 3939, General Code), issue bonds to pay its part of the cost of specific improvements. (Matter in parentheses the writer's.)

5. The bonds authorized by Section 53 of the Municipal Code of 1902 can not be provided for by resolutions or ordinance until after the passage of an ordinance providing for the improvement."

Although Section 3939, General Code, which authorized the issuance of bonds by municipalities for specific improvements, was amended so as to eliminate from that section the authority to issue bonds, and although Sections 3914 and 3821, General Code, authorizing the issuance of bonds by municipalities in anticipation of the collection of special assessments and to pay the municipalities' portion of the cost of improvements paid for in part by special assessments, were repealed, and municipalities are now authorized under Section 2293-2, General Code, to issue bonds for the purpose of acquiring or constructing any permanent improvement which a municipality is authorized to acquire or construct, I am unable to reach the conclusion that this change in the statutes has in any way affected the conclusions reached in the 1918 opinion, *supra*, and announced in the case of *Heffner vs. The City of Toledo*, *supra*. In other words, I am of the opinion that when a municipality desires to issue bonds for the purpose of acquiring or constructing a permanent improvement, the legislation providing for such bonds must designate a specific improvement or improvements for which such bonds are to be issued, and such municipality may not issue bonds to pay its share of the cost of a class of improvements, the specific improvements to be selected later.

In view of the foregoing, and answering your question specifically, it is my opinion that a municipal corporation may not legally issue bonds for the purpose of creating a fund from which to pay the city's portion of the cost of paving and improving streets, the streets and the amount of the municipality's portion for each to be determined thereafter.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

2385.

SINKING FUND TRUSTEES—SALE OF SECURITIES—FUNDS PROHIBITED  
FOR BOND REINVESTMENT PURPOSES.

*SYLLABUS:*

*Sinking fund trustees of a municipality are without power to sell securities in their hands for the purpose of raising funds to purchase municipal bonds offered for sale by the municipality.*

COLUMBUS, OHIO, July 23, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication, as follows:

"May a board of sinking fund trustees of a municipal corporation legally sell investments for the purpose of providing funds with which to purchase bonds for investment which bear a higher rate of interest?"