

deeds, or some of them were executed in other states where witnesses are not necessary to give validity to a deed as an instrument of conveyance. Full information with respect to this objection should be made a part of the abstract.

3. A deed noted at Section 25 of the abstract is defective according to Ohio forms in not containing a habendum clause. Full information with respect to this deed should be given. A deed noted at Section 26 of the abstract which is one by Elmer E. Marsh and wife to Jacob Y. Dyke and E. B. Hatfield is further defective for the reason that as noted in the abstract the same does not contain either a granting clause or a habendum clause. In this situation it is difficult to understand how said Jacob Y. Dyke and E. B. Hatfield obtained any title to this land through said deed. A full abstract of this deed should be made so that it may be determined whether the same was effective to convey any title to said named grantees.

With respect to the 35 acre tract of land above described, it appears that said Jacob Y. Dyke and E. B. Hatfield are the owners of record of the same but that as abstracted their title thereto is defective for the following reasons:

1. As abstracted it does not appear that any of the deeds in the chain of title contain words of inheritance either in the granting or the habendum clause of said deeds.

2. From the abstract it appears that certain of the deeds in the chain of title to this tract of land, to wit, those noted at sections 3, 5 and 6 of said abstract were not witnessed. If these deeds were executed in the state of Ohio, they are defective. If they were executed in states other than Ohio, that fact should be noted.

For the reasons above noted, the abstracts of title to said above described tracts of land are disapproved, and the same are herewith returned to you, to the end that the same may be forwarded to the owners for further correction with respect to the matters above indicated.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

2174.

ROAD IMPROVEMENT—FORCE ACCOUNT—COUNTY TAXES—NOTES IN  
ANTICIPATION OF BONDS NOT NECESSARY—SECTION 6948-1, GEN-  
ERAL CODE, DISCUSSED.

SYLLABUS:

*Where the county commissioners improve a county road by force account under authority of Section 6948-1, General Code, bonds may be issued for such improvement in anticipation of the receipt of county levies and special assessments upon the estimated cost of such improvement, and without the necessity of issuing notes in anticipation of such bond issue.*

COLUMBUS, OHIO, May 29, 1928.

HON. D. H. PEOPLES, *Prosecuting Attorney, Pomeroy, Ohio.*

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

“I hereby request your written opinion upon the following question:

In view of the fact that the Attorney General has held in opinion No. 2800 for 1925, that under Section 5654-1 G. C., a mandatory condition exists re-

quiring the issuance of notes in anticipation of the issuance of bonds, as the means of raising money for the purpose of furnishing the certificate required by Senate Bill No. 94 for the letting of the contract, is it now mandatory under Section 5654-1 that notes be issued in anticipation of the issuance of bonds for the improvement of a county road when the improvement is to be done by force account, estimated to cost less than Three Thousand Dollars (-3,000.00) per mile, and no certificate for a contract price is required?"

The provision of Senate Bill No. 94 of the Eighty-sixth General Assembly, to which reference is made, requiring the furnishing of certificates upon public contracts, was codified as Section 5660 of the General Code. That section was repealed by the Eighty-seventh General Assembly and Section 5625-33 of the General Code was enacted in its place. In so far as the question herein involved is concerned, however, the requirements of a certificate were not changed and it is therefore unnecessary to quote the section.

While the prior opinion to which you refer, found in Opinions of the Attorney General for 1925, at page 616, dealt with Section 5654-1 of the General Code, as then in force, and that section has since been amended, its provisions have not been changed in so far as your question is concerned. The section now reads as follows:

"Whenever the county commissioners of any county, the township trustees of any township, the board of education of any school district, or the council of any municipality which is cooperating with the board of county commissioners or the state highway director in the improvement of a county or state road extending into, within or through the municipality, have duly authorized the issuance of bonds for the construction or improvement of roads, bridges, school houses, or other public buildings, such bond issuing authority may borrow money in anticipation of the issuance of such bonds in an amount not exceeding the estimated cost of such construction or improvement, and not exceeding the amount of bonds so authorized, and issue the notes of such political subdivision as evidencing such indebtedness. The notes shall be made payable at a time not more than one year from their date and bear interest at not more than six per cent per annum. Such notes shall be the full general obligations of the political subdivision authorizing the same and for the payment of the same, the full faith, credit and revenues of such political subdivision shall be pledged. Prior to the issuance of such notes the resolution authorizing the issuance of the bonds anticipated by such notes, shall be certified to the county auditor and a tax for such bonds included in the annual budget required by law. The bonds shall not be advertised for sale nor issued until the contract is let and shall be issued in an amount not exceeding the full amount of the accepted bid by more than the estimated amount of such other items of cost as may be legally included in the total cost of such construction or improvement; provided, however, that where such issue of bonds is for the furnishing of a building, as well as the construction or improvement of the same, and a contract for such furnishings cannot be let in time to make the bonds available for the payment of the notes issued for the construction of such building, the estimated cost of such furnishings may be used in lieu of the contract cost of the same. If the cost as thus determined is less than the amount of the bonds as previously authorized, the resolution authorizing such bonds shall be amended so as to reduce the issue and a copy thereof certified to the county auditor. Taxes levied for the retirement of said bonds and assessments levied to defray, in whole or in part, the cost of such construction or improvement and anticipated by said bonds, shall thereafter be reduced to the extent

required by the reduction of such bonds. The par value received from the sale of said bonds and any excess funds resulting from the issuance of said notes shall be used to retire said notes."

You will observe that the first sentence of this section is, in terms, a mere authorization of the issuance of notes and, standing alone, it would not render the issuance of notes mandatory in the case of the construction or improvement of roads by a county. It is to be noted, however, that the section prohibits the advertisement of the bonds for sale until the contract for the improvement is let and then requires that the bonds shall not be issued in an amount exceeding the full amount of the accepted bid plus certain other items of cost which may be estimated. Substantially the same language was in the section prior to its amendment in 112 O. L., and my predecessor reached the obvious conclusion that notes must of necessity be issued since otherwise there would be no funds in the treasury or in process of collection at the time the contract was let, so as to permit the execution of a proper certificate for the contract. This condition still exists under the sections now in force and it is mandatory to borrow money in order that funds may be provided for an improvement by contract, where such improvement comes within the provisions of Section 5654-1, *supra*. Your question deals with the improvement of a county road by county commissioners by force account. This is specifically authorized by Section 6948-1 of the General Code, where the total estimated cost of the improvement is less than three thousand dollars per mile and is further authorized where the cost is more than that sum if the commissioners first receive competitive bids for the work before ordering the same done by force account. Of course, where work is done by force account there is no contract. At the same time funds must be provided for the cost of construction as the work proceeds.

In the enactment of the Uniform Bond Act (House Bill No. 1), the Eighty-seventh General Assembly amended Section 6929, General Code, relating to the issuance of bonds by county commissioners in connection with the improvement of county roads. That section is now as follows:

"The county commissioners in anticipation of the collection of such taxes and assessments, or any part thereof may, whenever in their judgment it is deemed necessary, and subject to the limitation of this act, issue the bonds of the county in any amount not greater than the aggregate sum necessary to pay the estimated compensation, damages, costs and expenses of such improvement. Such bonds shall be issued and sold in the manner provided by law. The making of the special assessments hereinbefore referred to shall not be a condition precedent to the issuance of bonds under the provisions of this section, and such special assessments may be made either before bonds are issued under the provisions of this section or after the issuance of such bonds."

It is to be observed that this section specifically authorizes the issuance of bonds in an amount not greater than the aggregate sum necessary to pay the *estimated* compensation damages, costs and expenses of such improvement. The word "*estimated*" carries through all the succeeding terms and consequently it follows that unless other provisions of law forbid, bonds may be issued upon the estimate of all expenses incident to the improvement of county roads. It is further to be noted that the making of special assessments is not a condition precedent to the issuance of bonds.

I have examined the provisions of House Bill No. 1 in an effort to ascertain whether or not there is any provision of law other than Section 5654-1 of the Code, *supra*, making mandatory the issuance of notes. While in various sections of the Code,

enacted as a part of House Bill No. 1, reference is had to the issuance of notes, in no place do I find that such issuance is made mandatory upon the subdivision. I am accordingly of the opinion that the only instance in which the issuance of notes in anticipation of a bond issue is mandatory is where such issuance is required by the provisions of Section 5654-1, *supra*.

Since the only theory on which the issuance of notes is made mandatory by the provisions of this section is that contracts are required to be let before the bonds are issued, the conclusion is obvious that, where an improvement is authorized to be made from the proceeds of a bond issue and no contract in connection with such improvement is required, the issuance of notes is correspondingly not required.

I am accordingly of the opinion that, where county commissioners improve a county road by force account under authority of Section 6948-1, General Code, bonds may be issued for such improvement in anticipation of the receipt of county levies and special assessments upon the estimated cost of such improvement, and without the necessity of issuing notes in anticipation of such bond issue.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

2175.

TAX AND TAXATION—AUTHORITY OF COUNTY AUDITOR TO CHANGE  
VALUE OF AN ANNUITY AS LISTED BY TAX PAYER.

*SYLLABUS:*

*The return of the person listing the value of an annuity at what he believes it to be worth is not conclusive on the county auditor, and said county auditor may correct such return and assess said annuity at its true value in money.*

COLUMBUS, OHIO, May 29, 1928.

HON. EDWARD C. STANTON, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

“Section 5388, General Code, provides that annuities or money received at stated periods shall be valued at such sum which the person listing them believes them to be worth in money at the time of such listing.

1. Inquiry is made as to whether the return of the person listing the present value of such annuity at what he believes it to be worth is conclusive on the county auditor or whether he has discretion to correct such return as to the value of the annuity.

2. If the answer to this inquiry is that the assessing officer has no such authority your opinion is asked as to whether the provisions of Section 5388 with respect to valuing annuities is not in conflict with Section 2 of Article XII of the Constitution.

Section 5388, General Code, to which you refer, reads as follows:

“In listing personal property, it shall be valued at the usual selling price thereof, at the time of listing, and at the place where it may then be. If