

icipal contractor. However, if the injured employe or the dependents of the employe killed in the course of his employment elect, after the injury or death, to hold the sub-contractor as his employer, the award made is charged against the sub-contractor.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4802.

COMPENSATION—CONSULTANT ENGINEER TO COUNTY SANITARY
ENGINEER—SPECIFIC CASE.

SYLLABUS:

Discussion of measure of compensation in contract between county commissioners and assistant to county sanitary engineer in connection with the county sewer district.

COLUMBUS, OHIO, December 10, 1932.

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

GENTLEMEN:—This acknowledges receipt of your letter of recent date enclosing copy of a letter from Mr. F. A. Kilmer, Clerk of the Board of County Commissioners of Montgomery County, submitting certain questions relative to a contract between the Commissioners of that county and a Consultant Engineer to the County Sanitary Engineer. You ask my opinion upon the question so submitted.

It is unnecessary, for the purposes of this opinion, to set forth in full either the letter of the Secretary of the Board of County Commissioners, or the terms of the contract, copy of which is attached to that letter. The inquiries relate to the manner of determining the compensation due to the Consultant Engineer under the terms of the contract which, on this point, provides as follows:

“One and one-half (1½%) percent (based upon the general estimates of cost of said improvements) shall be payable when the general plans, specifications and estimates for each or any improvements are presented to and approved by said first party, an additional one and one-half (1½%) percent (based upon the detailed estimates of cost of said improvements) shall be payable when the detailed plans, specifications, estimates and tentative assessments for each or any improvement are presented to and approved by said first party and an additional three (3%) percent (based upon the construction estimates due the contractor) shall be payable during the progress of the actual construction and installation of the work. The foregoing schedule to apply only to newly formed districts where a general plan of the entire district is required for the approval of the State Department of Health. Where later installations are made in an already formed district and no general plans are necessary for the approval of the State Department of Health the following schedule shall apply: Three (3%) percent (based upon the

estimated cost of said improvements) shall be payable when the plans, specifications, estimates and tentative assessments are presented to and approved by the said first party and an additional three (3%) percent (based upon the construction estimates due the contractor) shall be payable during the progress of the actual construction and installation of the work."

Specifically, it is desired to know what is contemplated within the phrases "one and one-half (1½%) percent (based upon the general estimates of cost of said improvements)" and "one and one-half (1½%) percent (based upon the detailed estimates of cost of said improvements)", as said phrases appear in the forepart of the above quoted portion of the contract. I gather from the letter of the Secretary that the Commissioners are in doubt as to whether the phrase set forth above justify the inclusion in the computation of the costs of interest upon bonds and certificates of indebtedness, which, of course, has reference to that portion of the interest on these securities which may be capitalized.

The determination of this specific question necessitates an examination of certain provisions of the sewer district law, for the contract relates to services rendered in connection with improvements of this character. Manifestly, the terms utilized in the contract should be construed as having the same meaning and contemplating the inclusion of the same items as the same or similar terms utilized in the law governing such improvements, unless a contrary intent were otherwise clearly manifested, which is not the case in the contract in question. The provisions of law governing the establishment and maintenance of sewer districts within a county, including the construction of such improvements therein as may be found necessary, are comprehended within sections 6602-1 to 6602-9, inclusive, of the General Code. Section 6602-2 of the Code is particularly pertinent to the present inquiry and provides in part as follows:

"After the establishment of any sewer district the county commissioners shall have prepared by the county sanitary engineer a general plan of sewerage and sewage disposal for such district, as complete as can be made at that time. After such general plan has been approved by them they shall have prepared, by the county sanitary engineer, detailed plans, specifications and estimates of cost of such part or parts of the improvement as it is necessary to then construct, together with a tentative assessment of the cost based on such estimate. Such tentative assessment shall be for the information of property owners, and shall not be certified to the auditor for collection. Such detailed plans, specifications, estimates of cost and tentative assessment, as so prepared by the engineer and approved by the board, shall be carefully preserved in the office of the board of county commissioners or the county sanitary engineer and shall be open to inspection of all persons interested in such improvements."

It appears obvious that the phrase "based upon the general estimates of cost of said improvements" appearing in the contract has reference to the general plan described in the first sentence of the section above quoted, while the phrase "based upon the detailed estimates of cost of said improvements" refers to the work of the county sanitary engineer described in the second sentence of the section quoted above. This latter work is more in detail than the general plan

and is only undertaken at such times as the county commissioners determine that specific parts of the general plan shall be actually constructed.

It is to be noted that the detailed plans and estimates of the costs include a determination of a tentative assessment of the cost based on such estimate, which tentative assessment is for the information of property owners. It is therefore apparent that, in order to be fair to the property owners, the estimate of the cost should comprehend each item which, under the law, may be included in the assessment ultimately made against him. It is, accordingly, necessary to look elsewhere to determine just what items may be assessed. The specific provision of the statute covering this point is found in section 6602-7 of the Code, which section reads as follows:

“The cost of any improvement herein provided for and the cost of the maintenance and operation thereof, shall include, in addition to the cost of construction, the cost of engineering, necessary publications, inspection, interest on certificates of indebtedness or on bonds, and all other items of cost incident to such improvement. The county may pay any part of the cost of the improvement in this act provided for and of the maintenance and operation thereof if the board of county commissioners may deem such payment just.”

It is to be noted that this section specifically authorizes the inclusion of “interest on certificates of indebtedness or on bonds” as a part of the cost of any improvement. It follows necessarily that any detailed estimate of the cost of an improvement made under authority of the second sentence of section 6602-2, supra, would include the item of interest, since otherwise the estimate would be objectionable as not fully informing the property owners of the estimated ultimate total cost of the improvement.

From the foregoing, it clearly appears that the item of interest must be included so far as any detailed estimates of cost are concerned. This effectively disposes of the question relating to the second phrase hereinbefore first set out and, in specific answer to that portion of the inquiry, I am of the opinion that the cost of the improvements upon which the additional one and one-half percent due to the Consultant Engineer is based includes such estimates as were actually made for interest charges.

There remains, however, a question concerning the first one and one-half percent which is stated in the contract to be based upon “the general estimates of cost of said improvement”. As before stated, this is manifestly a reference to the general plan of sewerage and sewage disposal for the entire district which the County Commissioners are required to have prepared by the language of the first sentence of section 6602-2, supra. This general plan is not, by the terms of the statute, required to include any estimate of cost and, hence, it might possibly be urged that no such estimate is authorized. If this conclusion were sound, then there would remain no basis whatever for the determination of the first one and one-half percent contemplated by the contract. I do not feel, however, that such conclusion is justified. While the statute does not require such an estimate, it can scarcely be denied that work of this character would be of value to the county commissioners in performing their functions in connection with the sewer district. Moreover, the common acceptance of the term “general plan” might very well be said to include an estimate of cost. At all events, such an estimate was apparently made covering the entire cost of the sewer district project, and the terms of the contract hereinabove quoted would seem to indicate that such

work was within the contemplation of the parties thereto. I believe that it is well within the authority of the Commissioners, if they so desire, to have prepared as a part of the general plan an estimate of the total cost of the project. Such being the case, it would seem entirely proper, in the preparation of that estimate, to include all of the factors of cost which must be included in connection with any estimates made as a part of the detailed plans for such parts of the improvement as are immediately contemplated. Accordingly, assuming that the general estimate in fact included the item of interest as a part of the cost, it is my opinion that such action was proper and that the Consultant Engineer is entitled to the agreed percentage upon that as well as other items making up the aggregate estimated cost.

The inquiry submitted does not raise any question concerning the legality of the contract in any other respect, and I understand the question hereinbefore discussed is the only one now raised by the County Commissioners. Accordingly, I have confined my discussion to the specific question raised.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

4803.

BUILDING AND LOAN ASSOCIATION—NOTICE TO STOCKHOLDERS' MEETINGS—GIVEN IN ACCORDANCE WITH CORPORATION ACT.

SYLLABUS:

The provisions of the General Corporation Act with respect to notice of stockholders' meetings are applicable to building and loan associations.

COLUMBUS, OHIO, December 10, 1932.

HON. FRANK F. MCGUIRE, *Superintendent of Building and Loan Associations, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"I wish to refer you to Section 8623-44 of the General Corporation Act of Ohio, and inquire as to whether or not it is obligatory on the part of an Ohio Building association to notify its shareholders in writing of its annual meeting, regardless of the fact that the constitution and by-laws of said building association provide when and where said meeting is to be held."

Section 9643, General Code, provides that building and loan associations "may be organized and conducted under the general laws of Ohio relating to corporations, except as otherwise provided in this chapter". The chapter of the General Code with respect to building and loan associations contains no provisions with respect to the matter of notice of stockholders meetings.

Section 8623-132, General Code, being one of the sections of the General Corporation Act, provides in so far as pertinent as follows: