

It may also be pointed out that a non-Ohio institution or agency which obtains the certificate mentioned in section 1352-1 G. C. would also be "an institution or agency certified by the board of state charities * * * ", within the meaning of section 8024 G. C., 109 O. L. 177. And if the further fact in any given case is that the child whose adoption in Ohio is desired has been legally surrendered to the guardianship of such non-Ohio institution or agency, the person petitioning for the adoption would have the right under section 8024 G. C. to omit from the petition the names of the natural parents of said child.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3229.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS,
 SANDUSKY, MUSKINGUM, DARKE, TRUMBULL, HAMILTON AND
 HANCOCK COUNTIES.

COLUMBUS, OHIO, June 16, 1922.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

3230.

TAXES AND TAXATION—TOWNSHIP TRUSTEES MAY NOT BIND
 TOWNSHIP BY LEVY UNDER SECTION 1222 G. C. FOR ANY
 LONGER PERIOD THAN ONE TAXING YEAR—EXCEPTION—HOW
 FUNDS ACCRUING FROM LEVY UNDER SECTION 1222 G. C. MAY
 BE USED.

1. *A board of township trustees may not, except when bonds are issued under section 1223 G. C. bind the township by a levy under section 1222 G. C. for any longer period than one taxing year.*
2. *Funds accruing from a levy made by township trustees under section 1222 G. C. may not be used when the township trustees themselves propose to do a part of the work of improving an inter-county highway or main market road by original construction, leaving the remainder of the improvement to be done by the state, or by the state and county in co-operation.*

COLUMBUS, OHIO, June 17, 1922.

HON. JESSE C. HANLEY, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR:—You have recently addressed this department as follows:

"I would appreciate your opinion upon the following questions under section 1222 General Code of Ohio:

1. The section provides that for the purpose of providing a 'fund' the tax may be put on, and the following section 1223 General Code seems to indicate that the trustees are authorized to issue bonds to mature in

not more than ten years. May the township trustees put this levy on for a period of ten years or are they limited to a levy for one year to provide the 'fund'?

2. May the township trustees after agreeing with county commissioners and the state highway department that the township's share will be the amount of the grading and the county and state to surface the road, use the money raised by this levy and let the contract for the grading of the state road in accordance with plans and specifications approved by the state highway department and the county commissioners or must the levy be used in a contract let by the state highway department?"

Sections 1222 and 1223 G. C. are both somewhat lengthy; and it is believed unnecessary to quote them in full.

The first two paragraphs of section 1222 provide for a levy by county commissioners upon all the taxable property of the county "for the purpose of providing a fund for the payment of the county's proportion of the expense of state aid highway improvements". The final paragraph of said section reads as follows:

"For the purpose of providing a fund for the payment of the proportion of the cost and expense to be paid by the interested township or townships for the construction, improvement, maintenance or repair of highways under the provisions of this chapter, the county commissioners or township trustees are authorized to levy a tax not exceeding two mills upon all taxable property of the township in which such road improvement or some part thereof is situated. Such levy shall be in addition to all other levies made for any purpose or purposes and the same shall not be construed as limited, restricted or decreased in amount or otherwise by any existing law or laws. Where the improvement is made upon the application of the county commissioners said county commissioners shall levy the tax and where the improvement is made upon the application of the township trustees said township trustees shall levy the tax. A county or township may use any moneys lawfully transferred from any fund in place of the taxes provided for under the provisions of this section."

Section 1223, among other things, authorizes the issuing of bonds by the county commissioners in anticipation of the collection of the tax named in section 1222 when application for state aid is made by the county commissioners, and when the levy of the taxes is made by the county commissioners. Said section 1223 also contains the following provision:

"* * * Where such construction, improvement or repair is made upon the application of the township trustees, such township trustees are hereby authorized to sell the bonds of the interested township in any amount not greater than the estimated compensation, damages, cost and expense of such construction, improvement or repair, and under like conditions hereinbefore prescribed for county commissioners. * * *"

The outstanding feature of the provisions above quoted from section 1222 is that the tax levy is authorized on account of improvements, etc., "under the provisions of this chapter". The chapter thus referred to is composed of sections 1178 to 1231-7 G. C. relating to the state highway department (now a part of the department of highways and public works).

Coming now to your first question:

As a purely theoretical proposition, the township trustees might from year to year make a levy for the purpose of *accumulating* a fund to be expended as contemplated by said section 1222. In other words, the township trustees might start out to accumulate a fund through a period of years with the intention that when the fund reached a certain size it would be used for the purposes indicated by section 1222. In practice, however, the procedure is not to await the passing of a number of years, but to issue bonds under section 1223 and thus make available at the *beginning* of a period of time the required amount of funds instead of waiting until *the end* of the period. This procedure results largely from practical necessity, since the whole policy of our statutes is to require money to be actually or constructively in the treasury before obligations may be incurred against it. Adherence to this policy prevents in practice the certification by the township clerk of the proceeds of a tax levy as being available for expenditure until such time as the levy is actually collected or entered on the tax duplicate and in process of collection (see sections 5660 and 5661). So that the township clerk could not during the tax collection year of 1922 certify as available for expenditure the proceeds of a tax levy which the township trustees might have in mind to make in the tax year of 1923 or subsequent thereto. Moreover, if a given board of township trustees would lay down the general policy of accumulating a fund throughout a given period of years, the successors to that board of trustees would be in no wise bound by that policy, and might conclude instead to issue bonds so as to make the whole contemplated fund immediately available for a proposed improvement. In short, from a practical standpoint, the only way in which a really mandatory levy from year to year for a period of from two to ten years can be brought about under the provisions of section 1222 is by the issuance of bonds under section 1223, for when bonds are issued, then of course the levy will have to be made throughout the period of years covered by the bonds for the purpose of procuring moneys with which to discharge the installments of the bonds as they fall due.

With these matters in mind, your first question is answered by the statement that a board of township trustees may not, except when bonds are issued under section 1223 G. C., bind the township by a levy under section 1222 G. C. for any longer period than one taxing year.

Taking up now your second question :

It has already been pointed out that by the express provisions of section 1222 the levy authorized by that section is for construction, etc., "under the provisions of this chapter". The following out of the provisions of the chapter indicated involves an application by either the county commissioners or township trustees (sections 1191 and 1192 G. C.) for state aid. When such application is made, the improvement work is carried out by the department of highways and public works and not by county or township (sections 1195 et seq.). Moreover, it is noted that section 1222 G. C. in referring to a levy made by the county commissioners provides that "the funds produced by such levy shall not be subject to transfer to any other fund, either by order of court or otherwise". While this provision is not carried into the paragraph above quoted relating specifically to a levy made by township trustees under section 1222, clearly the latter levy is within the scope and purpose of the provision against transfer to any other fund. Certainly, neither the spirit nor letter of the last paragraph of section 1222 would be complied with by the deliberate making of a levy under that paragraph with the intention of ultimately seeking the transfer of the proceeds to another fund which might be used in a manner different from a fund raised under section 1222. This point becomes the clearer when it is borne in mind that the levy made

by township trustees under favor of the last paragraph of section 1222 is free from all tax limitations; whereas, certain other funds may only be raised within certain tax limitations. It is therefore the view of this department that the accruals of the levy mentioned in the last paragraph of said section 1222 may be used by township trustees only where proceedings are carried out in accord with the chapter of which that section is a part.

By amendment in 109 O. L. 299, the provisions of section 1231 G. C. relating to main market roads were broadened in their conferring of authority on the state highway commissioner as to the manner in which he might co-operate with local subdivisions in work upon main market roads. However, the provisions of said section cannot be taken as authorizing the use of funds obtained under section 1222 in the doing of work by or under the direction of the township trustees.

Section 1203 G. C. reads:

“Nothing in this chapter shall be construed as prohibiting the county commissioners or township trustees from constructing, improving, maintaining or repairing any part of the inter-county highways within such county or township; provided, however, that the plans and specifications for the proposed improvement shall first be submitted to the state highway commissioner and shall receive his approval.”

The township trustees are therefore at liberty upon securing approval of plans and specifications by the department of highways and public works to proceed with the improvement of an inter-county highway or main market road. If the township trustees desire thus to proceed they may do so under the provisions of section 3298-1 G. C. In so proceeding, they may arrange for the payment of part of the cost by assessment on benefited lands (section 3298-13); or, on the other hand, they may order that the entire cost be paid by the township as a whole (section 3298-15). In either case, the source of revenue for the township's share is as provided by section 3298-15b and not as provided in section 1222. Doubtless under favor of sections 3298-1, et seq., the township trustees might in the case of a main market road, do only the grading, leaving the remainder of the work to be done as authorized by section 1231 G. C. either by the state alone or by the state and county in co-operation. Such a course would involve a prior agreement by all subdivisions concerned, as outlined in section 1231 G. C. But as already indicated, if such a procedure is to be carried out, the township trustees could not make use of funds arising from levy under section 1222 G. C., since those funds are to be used only in case the work is carried out by the department of highways and public works, and not by or under the direction of the township trustees.

It is possible that in maintenance projects, by virtue of section 1224 G. C. township trustees might, through arrangement with the state, use funds arising under section 1222 in doing part of the work themselves, leaving the remainder to be done by the state. That question, however, is not here passed upon, since the project which you describe is evidently not being undertaken as a maintenance project within the purview of section 1224, but rather as an original construction with the view of bringing the road up to the state standard.

Respectfully,

JOHN G. PRICE,
Attorney-General.
