

532.

APPROVAL, BONDS OF SENECA TOWNSHIP, MONROE COUNTY—
\$6,300.00.

COLUMBUS, OHIO, May 24, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

533.

APPROVAL, BONDS OF VILLAGE OF CROOKSVILLE, PERRY COUNTY—
\$80,000.00.

COLUMBUS, OHIO, May 24, 1927.

Industrial Commission of Ohio, Columbus Ohio.

534.

COUNTY COMMISSIONERS—WHERE BONDS ARE ISSUED UNDER AUTHORITY OF SECTION 2434, GENERAL CODE, AND NOTES UNDER AUTHORITY OF SECTION 5654-1, GENERAL CODE, SUCH ISSUE IS SUBJECT TO RESTRICTIVE PROVISIONS OF LAST NAMED SECTION—WORK DONE WITH MONEY OF SUCH ISSUANCE CANNOT BE DONE BY FORCE ACCOUNT—ESTIMATES SHOULD BE AVAILABLE FOR PUBLIC INSPECTION.

SYLLABUS:

1. *Where bonds are to be issued by county commissioners under authority of Section 2434 of the General Code and notes have been issued in anticipation of such bond issue under authority of Section 5654-1, General Code, such issue is subject to the restrictive provisions of said last named section.*

2. *When notes are issued under Section 5654-1 of the General Code the work of restoring or repairing bridges must be accomplished by the letting of a contract after advertisement for bids and such work can not be done by force account.*

3. *While it is not perhaps the mandatory duty of the commissioners to make available for public inspection the estimates for a proposed improvement, it is the better and more desirable course to pursue.*

COLUMBUS, OHIO, May 24, 1927.

HON. CARL Z. GARLAND, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR:—I acknowledge receipt of your recent communication which reads as follows:

"1. The commissioners of Clermont County have issued notes or certificates of indebtedness under Section 5654-1 of the General Code to restore bridges. They now wish to let the work by force account and issue bonds under Section 2434 to pay the certificates of indebtedness aforementioned. Can this be legally done?"

2. Under Section 2352 of the General Code can the county commissioners and surveyor legally withhold from the bidders the estimated cost of repair work of bridges when they have advertised for bids for the repair work?"

Section 5654-1 of the General Code in so far as pertinent to your inquiry, reads as follows:

"Whenever the county commissioners of any county, the township trustees of any township, or the board of education of any school district, 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 centum 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 as 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; * * * "

It will be observed that before notes may be issued the board of county commissioners must first provide by proper legislation for the issuance of bonds in anticipation of which notes are issued. Not only must a resolution be passed for the issuance of bonds by the board of county commissioners, but the commissioners must prior to the issuance of notes send a certified copy of the resolution authorizing the issuance of the bonds to the county auditor in order that a tax for the retirement of such bonds may be included in the annual budget as required by law.

I am assuming from your statement that these preliminary steps have been taken and that bonds have already been authorized under Section 2434, General Code, since the notes can only be issued in anticipation of a specific bond issue.

Your statement would make it appear that, having gone so far as to get the money by sale of notes under Section 5654-1 of the General Code, the commissioners now desire to change their plans and proceed with the work by force account. Since the money was borrowed under authority of Section 5654-1, its use is clearly restricted by the language of that section which was enacted in 111 O. L., page 494, and became effective July 24, 1925, as a part of the budget law. As pointed out by this department in opinion No. 404, rendered on the 28th day of April, 1927, said section:

“ * * * expressly prohibits the advertisement for the sale and the issuance of bonds until the contract is let and the amount of bonds to be issued is expressly limited to the amount of the accepted bid as well as the estimated amount of such other items of costs as may be legally included in the cost of such construction and improvement.”

It was further pointed out in the same opinion that the purpose of the legislature in enacting Section 5654-1 was to confine the amount of the bond issue to the actual cost of the improvement.

Having taken definite steps looking toward an improvement which, as I have pointed out, necessarily involves the letting of a contract, the county commissioners can not now lawfully change the plan of the work and proceed in an entirely different method. I call your attention to the language contained in an opinion reported in Opinions, Attorney General, 1921, at page 829, as follows:

“In order, however, that the matter may not be left to implication alone, the statement is here made that in the opinion of this department the commissioners are not authorized to begin proceedings under one group of sections and then switch to the other group, as, for instance, they are not to make a purchase of materials under authority of Section 7214, for a given improvement, and then from that point onward attempt to proceed under Sections 2343 to 2361. Once they take a definite step in the expenditure of funds by force account, they have no alternative except to follow that method to the completion of the project. Similarly, if they resort to Section 2343, et seq., they are not at liberty to make partial application of the force account statute.”

The reasoning is clearly applicable to the question which you present. It would not be proper and legal for them to make an entire change in the method of completing the improvement. This conclusion renders it unnecessary for me to determine whether or not there is any authority to issue bonds for the construction or repair of bridges where the work is to be done by force account.

You are therefore advised that where money has been borrowed on notes issued in anticipation of the issue of bonds, the proceeds of such notes cannot be used for making the improvement by force account, but contracts are required to be let prior to the issuance of the bonds in anticipation of which the notes are issued.

I now come to a consideration of your question as to whether the county commissioners and surveyor may legally withhold from bidders the estimated cost of repair work of bridges when they have advertised for bids for such repair work. Section 2352 of the General Code provides:

“When plans, drawings, representations, bills of material, specifications and estimates are so made and approved, the county commissioners shall give public notice in two of the principal papers in the county having the largest circulation therein, of the time when and the place where sealed proposals will be received for performing the labor and furnishing the materials necessary to the erection of such building, bridge or bridges substructure, or addition to or alteration thereof, and a contract based on such proposals will be awarded. If there is only one paper published in the county, it shall be published in such paper. The notice shall be published weekly for four consecutive weeks next preceding the day named for making the contract, and state when and where such plan or plans, descriptions, bills and specifications can be seen. *They shall be open to*

public inspection at all reasonable hours, between the date of such notice and the making of such contract.” (Italics the writer’s.)

The above section provides in substance that when plans, drawings, representations, bills of material, specifications and estimates are made and approved, notice shall be given as therein provided stating the time when, and the place where sealed proposals will be received for the doing of certain work.

The above section further provides that the notice shall state when and where “such plan or plans, descriptions, bills and specifications can be seen.” The last sentence, which has been italicized, states that “they shall be open to public inspection * * * .” The word “they” obviously refers to those things described in the sentence immediately preceding. You have no doubt noted that in this sentence the word “estimate” is omitted, while it is included in the first portion of the section. Whether this omission was intentional on the part of the legislature or otherwise, it must be assumed that the language was used advisedly. It would therefore appear that the estimates need not be open to public inspection unless other provisions of law make it apparent that such was not the intent of the legislature.

I call your attention to Section 2358 of the General Code, which provides that no contract for an improvement shall be let at a cost in excess of the estimates. It seems to me to be a fair inference that the legislature did not intend that bidders should be put to the trouble and expense of the preparation and submission of bids when a comparison of those bids with the estimate would immediately demonstrate that no action thereon could legally be taken by the board of county commissioners.

I further call to your attention the fact that, in so far as most improvements are concerned, it is necessary that special financing, such as a note or bond issue, is necessary before the contract can be let. Wherever, therefore, such special financing is required, the bidder would have a fairly close approximation of the amount of the estimates for the proposed improvement, since the amount of financing is determined by the estimates of the cost of the improvement, plus some other comparatively negligible items.

I am also informed that it is now generally the practice to make available to the bidders the amount of the estimates and I therefore am of the opinion that while it is not perhaps the mandatory duty of the commissioners to make available for public inspection the estimates for a proposed improvement, it is the better and more desirable course to pursue.

Respectfully,
EDWARD C. TURNER,
Attorney General.

535.

MUNICIPAL CORPORATION—OFFICERS MAY NOT REQUIRE BIDS FOR PUBLIC CONTRACTS TO BE ACCOMPANIED BY A CERTIFIED CHECK UPON A BANK LOCATED IN SUCH MUNICIPALITY.

SYLLABUS:

Officers of a municipal corporation may not under the provisions of Section 4329, General Code, require bids for public contracts to be accompanied by a certified