of the total authorized issue of $50,000, as I do not at this time wish to pass upon the question of the authority of the district to levy taxes sufficient to pay the interest and sinking fund charges of a further issue of $30,000. I am satisfied, however, that the district will be able to meet the interest and sinking fund charges for the $20,000 issue under consideration.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2230.

APPROVAL, REFUNDING BONDS, WASHINGTON TOWNSHIP RURAL SCHOOL DISTRICT, WOOD COUNTY, IN THE AMOUNT OF $20,000.

COLUMBUS, OHIO, July 2, 1921.

Industrial Commission of Ohio, Columbus, Ohio.

2231.

APPROVAL, BONDS OF BEDFORD VILLAGE SCHOOL DISTRICT IN THE AMOUNT OF $180,000.

COLUMBUS, OHIO, July 2, 1921.

Industrial Commission of Ohio, Columbus, Ohio.

2232.

APPROVAL, BONDS OF THE VILLAGE OF CANAL WINCHESTER, OHIO, IN THE AMOUNT OF $31,000.

COLUMBUS, OHIO, July 2, 1921.

Industrial Commission of Ohio, Columbus, Ohio.

Re: Bonds of the village of Canal Winchester, Ohio, in the amount of $31,000, in anticipation of the collection of special assessments for the improvement of High street in said village, being 9 bonds of $3,000 each and 1 bond of $4,000—6 per cent.

GENTLEMEN:—An examination of the transcript of the proceedings of the council and other officers of the village of Canal Winchester relating to the above issue of bonds discloses that the only question touching the validity of said issue is one raised by reason of a certain defect in the ordinance determining to proceed with said improvement, passed February 23, 1920. This ordinance by appropriate language provides that it is determined by council to proceed with the improvement of High street in said village, between the termini therein mentioned, by grading, draining and paving the roadway thereof with brick, concrete, asphalt, or other similar substance, and construct curbs along each side thereof at all places where proper and suitable curbs

are not now installed and existing. Said ordinance, however, does not state the intention of council to proceed with said improvement in accordance with the resolution of necessity and in accordance with the plans, specifications, estimates and profiles providing for such improvement, and in said ordinance to proceed no mention is made of said plans and specifications nor of said resolution of necessity and the date of its passage, as required by section 3825 G. C.

In this situation there can be no question but what said ordinance is substantially defective, giving rise to the further question of whether or not said defect is one within the curative provisions of sections 3901 and 3911, General Code.

Speaking with reference to the purpose and intent of the statutory provisions contained in the sections just noted, the court in the case of *Wewell* vs. *City of Cincinnati,* 45 O. S., 407, 420, says:

> "The evident intent of these two sections is, that where the contract has been complied with, and the work accepted by the council; where there is no defect in the construction of the improvement; where the work has been completed at reasonable cost; where strict regard has been paid to the limitation on assessments on private property, any technical irregularity or defect in the plans or estimates, shall not avail to prevent the speedy collection of the assessment when due. Not only are merely formal objections to be disregarded, but the proceedings with respect to public improvements are to be liberally construed by the courts, and when the property owner has received no injury from the improvement, but has been specially benefited thereby, he shall not be permitted, because of an unsubstantial defect, to evade payment of his proportion of the assessment."

In the case of *Joyce* vs. *Barron, Treasurer,* 67 O. S., 264, it is held, following the case of *Welker* vs. *Potter,* 18 O. S., 85, that the irregularities and defects referred to in the sections above noted "are such as occur in the exercise of lawful authority by the council."

If the defect here in question, instead of being found in the ordinance determining to proceed, were a like one in the resolution of necessity no difficulty would be had in reaching the conclusion that such defect would be jurisdictional in its nature and not within the curative provisions of the sections above noted.

In the case of *Welker* vs. *Potter,* supra, it is held that

> "The adoption of the resolution declaring the improvement necessary, and the publication of the same, as required in the act, are conditions precedent to the exercise of the authority to pass a valid ordinance for the improvements, or make an assessment on the adjoining property to pay for them."

See also:

> Stephan vs. Daniels, 27 O. S. 527;
> Cash vs. City of Akron, 100 O. S. 229;
> Village of Crooksville vs. Kasler, et al.,
> (Supreme court No. 16520.)

In the last named case it was held by the supreme court, overruling a

motion for an order directing the court of appeals of Perry county to certify its record in said cause, that the provisions of section 3815 General Code requiring council in the resolution of necessity to determine the method of assessment and the grade of the street, are mandatory and jurisdictional, and that a failure on the part of council in said resolution of necessity to determine said method of assessment and to provide for the grade of the street to be improved were not defects within the curative provisions of the sections of the General Code above noted.

However, there must be some point in the proceedings relating to street improvements when the jurisdiction of council attaches and as to which defects and irregularities in the proceedings of council can be said to be irregularities or defects occurring in the exercise of lawful authority by the council and therefore within the curative provisions of sections 3901 and 3911 G. C. I am inclined to the view that said jurisdiction attaches and said lawful authority begins for said purpose when the resolution of necessity has been properly passed and published and when the notices to the owners of property to be assessed have been served in the manner provided in section 3818 G. C.

From the cases of *Uppington* vs. *Oviatt,* 24 O. S., 232, and *Osborne* vs. *Frank T. Huffman,* 14 C. C. (N. S.) 239 (58 O. S. 697), it appears that the curative provisions of sections 3901 and 3911 reach further than merely formal defects in the proceedings and on the authority of these cases and that of *Wewell* vs. *Cincinnati,* supra, I am inclined to the view that the defects above noted in the proceedings relating to this improvement are such as to fall within the curative provisions of said sections. In this case the resolution of necessity was properly passed and published and the notices to the owners of property assessed were properly served before the council of said village attempted to pass said ordinance. Moreover, it appears that the contract for said improvement has been let and said improvement practically finished. Under these circumstances I think the village should be and will be protected against any effort made by property owners to escape assessment for their just share of the cost and expense of this improvement.

Uppington vs. Oviatt, supra;
Cincinnati vs. Bickett, 26 O. S. 49;
Cash vs. City of Akron, 100 O. S. 240.

Moreover, it will be noted that section 3902 G. C. provides as follows:

> "When it appears to the council that a special assessment is invalid, by reason of informality or irregularity in the proceedings, or when an assessment is adjudged to be illegal, by a court of competent jurisdiction, the council may order a re-assessment, whether the improvement has been made or not."

In view of the provisions of this section and of those of section 3914-1 G. C., and of the curative provisions of sections 3901 and 3911 G. C., section 3902 is valid and enforcible.

I am therefore of the opinion that properly prepared bonds covering the above issue will, when the same are executed and delivered, constitute valid and binding obligations of said village.

Respectfully,
JOHN G. PRICE,
Attorney-General.