

You request that I advise whether Section 1223 of the General Code was repealed by the last legislature. You further inquire whether Section 1223 of the General Code is now in force and effect.

Investigation of the various legislative enactments of the 87th General Assembly relative to the issuing of bonds and the levying of taxes discloses that Section 1223 of the General Code was not amended or repealed except in House Bill No. 67, passed by the 87th General Assembly, commonly known as the Edwards-Norton Bill. By the provisions of Section 92 of House Bill No. 67, Section 1223 is repealed.

Section 70 of House Bill No. 67 was enacted to take the place of Section 1223 repealed.

This department, in assigning section numbers to the various sections of House Bill No. 67 which were not given code or section numbers by the legislature, gave to Section 70, Section No. 1223, and Section 70 will therefore appear in the General Code as Section 1223.

As stated by you in your letter, House Bill No. 67, by the terms of the act, does not go into effect until the second day of January, 1928, Section 91 of said act providing:

“ * * * This act shall be effective the first Monday in January, 1928.”

It follows that inasmuch as House Bill No. 67 does not, by the terms of the act, become effective until the first Monday in January, 1928, and since the 87th General Assembly did not other than by virtue of Section 92 of House Bill No. 67 repeal or amend Section 1223, General Code, this section as it now reads will be in effect and in force until said House Bill No. 67 becomes effective. A board of county commissioners may, therefore, proceed under the provisions of Section 1223, General Code, up to the effective date of House Bill No. 67.

Respectfully,
EDWARD C. TURNER,
Attorney General.

986.

COUNTY COMMISSIONERS—MAY LAWFULLY COMBINE SEVERAL AMOUNTS NECESSARY TO CONSTRUCT SEVERAL ROADS IN A SINGLE ISSUE OF BONDS—SECTIONS 6906 AND 2293-24, GENERAL CODE, DISCUSSED.

SYLLABUS:

A board of county commissioners may not lawfully combine the several amounts necessary to construct several roads in a single issue of bonds, under the provisions of Sections 6906, et seq., of the General Code, unless some of the bonds so issued are special assessment bonds, in which case authority for a single issue is contained in Section 2293-24, General Code.

COLUMBUS, OHIO, September 12, 1927.

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

DEAR SIR:—Receipt is acknowledged of your recent communication as follows:

“I herewith submit for your opinion the following questions:

The commissioners of Meigs County and the trustees of Sutton Township are improving six (6) separate and distinct pieces of county roads, under the

provisions of Sections 6906 to 6956, inclusive, of the General Code, the county paying 50% and the township 50% of the costs of each road.

The county commissioners desire to issue bonds of the county for the share of both the county and township, under authority of Sec. 6929, General Code, and place a levy upon the township under authority of Sec. 6927 to pay the township's portion of the indebtedness.

May the county commissioners combine the indebtedness on all six improvements in one issue of bonds?"

In answering the question raised by your inquiry, it becomes necessary to consider the possible application of Section 2293-24, General Code, which was enacted as a part of House Bill No. 1 by the 87th General Assembly.

Subsequent to the receipt of your communication, inquiry was addressed to you as to whether any of the bonds proposed to be issued for the six improvements were to be special assessment bonds, and a copy of the letter sent to you by the Deputy County Auditor of your county was forwarded to this department. This letter reads:

"Replying to your letter of August 26 relating to the assessments on abutting property along the road improvements in Sutton Township, I will outline the plan of the county commissioners in making the improvements.

The township trustees have agreed to pay 50% of the compensation, damages, costs, and expenses of the improvements.

The county commissioners have agreed to pay the other 50% of such compensation, damages, costs, and expenses.

There will, therefore, be no assessments upon the abutting property.

The county commissioners will issue bonds for the total amount of the compensation, damages, costs, and expenses, under authority of Section 6929 G. C.

The county's portion will be paid from the levy authorized by Section 6926 G. C.

The township's portion will be paid from the proceeds of a levy placed upon the township by the county commissioners under authority of Section 6927 G. C. and with the consent of the township trustees.

The question submitted is, may the county commissioners combine the indebtedness of the six improvements, under the above plan, all in the one township, into one issue of bonds?"

Section 2293-24, General Code, above referred to, reads as follows:

"Subdivisions shall have power to issue bonds in anticipation of the collection of special assessments. Such bonds may be in sufficient amount to pay that portion of the estimated cost of the improvement or service for which the assessments are levied, and the assessments as paid shall be applied to the liquidation of such bonds. Subdivisions may borrow money and issue notes, due and payable not later than two years from the date of issue, in anticipation of the levy of special assessments or of the issuance of bonds as provided in this section. The notes shall not exceed in amount that portion of the estimated cost of the improvement or service for which the assessment is levied. When such notes are issued, the proceeds of bonds thereafter issued in anticipation of the collection of assessments and all of the assessments collected for the improvement shall be applied to the payment of the notes and interest thereon until both are fully paid; and thereafter said assessments shall be applied to the payment of said bonds and interest thereon. *Bonds issued under*

this section may be combined in a single issue with other assessment bonds, and with bonds to pay the subdivision's share of the cost of the permanent improvements for which such assessment bonds are issued. Bonds or notes issued in anticipation of the levy of special assessments or the collection thereof shall be full general obligations of the issuing subdivision, and for the payment of the principal and interest of same the full faith, credit and revenues of such subdivision shall be pledged."

Inasmuch as the communication from the Deputy County Auditor states specifically that none of the bonds sought to be issued in a single issue are to be issued in anticipation of the collection of special assessments against property abutting upon the proposed improvements, it would seem obvious that Section 2293-24, supra, has no application to the question of combining in a single issue of bonds the indebtedness for the six different road improvements.

It will be noted that Section 2293-24, supra, speaks of bonds that are issued in anticipation of the collection of special assessments and the only authority given for the combining of bonds issued to cover the cost of different improvements, under the provisions of said section, in a single issue, is that found in the following language:

" * * * Bonds issued under this section may be combined in a single issue *with other assessment bonds*, and with bonds to pay the subdivision's share of the cost of the permanent improvements for which such assessment bonds are issued. * * * "

From the language quoted above, it is quite apparent that authority to combine bonds issued under the authority of Section 2293-24, supra, is only given where some one or more of the issue are special assessment bonds.

Your question as to the authority of combining the indebtedness for several improvements in a single issue of bonds was before this department in 1919.

In an opinion of my predecessor reported in Opinions, Attorney General, 1916, Vol. I, page 273, it was held:

"Sections 6906 to 6953, General Code, providing for road improvements under the supervision of county commissioners, contemplate that one road, or part thereof, shall be the basis of the improvement proceedings, hence, where it is proposed to improve five different county roads at the expense of the county as provided in Section 6921, funds to be obtained by the issue of bonds as provided in Section 6929, the entire improvement proceedings, including the issue and sale of bonds, should be separate as to each road."

Inasmuch as the opinion above referred to discusses, in a very comprehensive manner, the statutes pertaining to road improvements conducted under the supervision of county commissioners, it is deemed advisable to quote at length from that opinion. On pages 273 et seq., appears the following discussion of said statutes:

"Said Sections 6921 and 6929 to which you make reference, form part of a series of statutes (Sections 6906 to 6953) which provide for improvements of county roads under the supervision of the county commissioners. The proceedings may be initiated either by petition of land owners or upon unanimous vote of the commissioners. Section 6907 relating to the matter of the petition, provides that when such petition is filed, asking for the improvement, etc., of *any public road or part thereof*, the commissioners shall go upon the line of *said proposed improvement* and after viewing the same, determine whether

the public convenience and welfare require that such improvement be made. Section 6910, relating to improvements without petition, provides that the commissioners may take the necessary steps to improve or repair a *public road* or *part thereof*, etc. Section 6911 begins 'When the board of commissioners has determined that *any road* shall be constructed, reconstructed, improved or repaired,' etc. Section 6912 relating to publication of notice of the proposed improvement, uses the expressions 'such improvement' and 'said improvement.' These expressions 'any road,' 'said improvement' and 'such improvement' are found constantly recurring through the entire series of statutes above mentioned. Nowhere do we find express authority for treating the improvement of more than one road as one improvement; nor do we ever find the plural of the word 'road.'

Quite plainly, therefore, the series of statutes in question contemplates one road as the basis for improvement proceedings. This being true, it follows that the resolution referred to in Section 6910 should be separate as to each road, and that all further proceedings, including those relating to the issuing, advertising the sale of, and selling, bonds should be separate as to each road.

This conclusion finds especial support in Section 6929 (107 O. L. 101) which reads 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, sell the bonds of said county in any amount not greater than the aggregate sum necessary to pay the estimated compensation, damages, costs and expenses of such improvement. * * * ."

Since bonds authorized by said Section 6929 are for the purpose of paying the cost of improvements resulting from proceedings initiated as provided in Section 6907 (upon petition), or Section 6910 (without petition) said three sections should be read together. In Sections 6907 and 6910, as above noted, the expressions 'any public road or part thereof' and 'a public road or part thereof' are respectively employed; hence the expressions in Section 6929 'to pay the estimated compensation, damages, costs and expenses of such improvement' and 'for the payment of the compensation, damages, costs and expenses of the improvement for which they are issued,' should be treated as referring to the improvement of 'any public road or part thereof' or 'a public road or part thereof'."

It is readily apparent that the conclusion reached in the opinion of 1919 turned upon the proposition that in all the various sections of the statutes pertaining to road improvements, under the provisions of Sections 6906, et seq., General Code, the legislature had spoken of each step in the procedure as applying to a *single road improvement*.

Your attention is directed to the fact that Section 6929 of the General Code, to which reference is made in your first communication, was amended in House Bill No. 1 as passed by the 87th General Assembly, and has now become a law; but the effect of the amendment of such section does not change the statutes as to the issuing of bonds for road improvements, since the word "improvement" in the singular sense is still used.

Answering your question specifically, it is my opinion that a board of county commissioners may not combine the several amounts necessary to construct several dif-

ferent roads, constructed under the provisions of Sections 6906 to 6956, both inclusive, General Code, in a single issue of bonds, unless some of the bonds so issued are special assessment bonds, in which case authority for a single issue is contained in Section 2293-24, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

987.

APPROVAL, ABSTRACT OF TITLE TO LAND IN THE CITY OF SPRINGFIELD, CLARK COUNTY, OHIO.

COLUMBUS, OHIO, September 12, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have again submitted for my opinion the abstract of title for Lots No. 97, 98 and 99 of Maplewood Addition, Subdivision 1, to the City of Springfield, Ohio, accompanied by the encumbrance estimate, certificate of auditor under date of August 29, 1927, certificate of Clark County treasurer, dated August 29, 1927.

After an examination of the abstract of title accompanied by the certificates of the treasurer and auditor of Clark County, it is my opinion that William L. Foster has a good and merchantable title in said premises, free and clear of all encumbrances and liens, except that recorded in the deed of Clarence J. Foster and Catherine M. Foster to William L. Foster, dated June 14, 1917, which I outlined in Opinion No. 867 under date of August 16, 1927, viz.:

“In the deed from Clarence J. Foster and Catherine M. Foster, his wife, to William L. Foster, dated June 14, 1917, the grant was subject to a condition or restriction that the property should not be used nor any building erected thereon for a saloon or immoral purposes, and in the event of use for such purposes or permit the same to be used, the grantee, his heirs and assigns shall forfeit all right, title and interest in the premises. The premises are also subject to the building restriction of the general improvement plan of said addition to the effect that no house shall be erected west of the D. T. & I. railroad to cost less than \$1,200.00; no house shall be erected east of the D. T. & I. railroad to cost less than \$1,000.00; and no house shall be erected on any lot in said addition nearer than 20 feet from the front lot line.”

The encumbrance estimate, numbered 1565, is dated July 26, 1927, in favor of William L. Foster and Mary Foster, his wife, and indicates that \$2,060.00 is appropriated from M. & R. account for the purchase of the land in question for a highway storage site. The encumbrance estimate has been certified by the Director of Finance and approved by yourself, the Secretary of the Controlling Board having already notified you that at a meeting of the Board on July 20, 1927, approval was granted for the purchase. The encumbrance estimate is in proper form and is approved.

The abstract, encumbrance estimate, certificate of the Clark County auditor and certificate of the Clark County treasurer are herewith returned.

Respectfully,
EDWARD C. TURNER,
Attorney General.