

employing these school bus drivers for a period of one year by a majority vote of the board.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

2266.

MUNICIPALITY—MAY NOT AUTHORIZE NOTES IN ANTICIPATION OF THE LEVY OF SPECIAL ASSESSMENTS UNTIL RESOLUTION OR ORDINANCE DETERMINING TO PROCEED WITH THE IMPROVEMENT HAS BEEN PASSED.

**SYLLABUS:**

*A municipality may not authorize notes in anticipation of the levy of special assessments for an improvement until the resolution determining to proceed with such improvement has been passed as provided in Section 3824, General Code. Section 5625-35, General Code, does not, therefore, dispense with the requirement contained in Section 5625-33, General Code, as to the fiscal officer's certificate until the resolution determining to proceed has been passed as required by Section 3824, General Code, and an ordinance authorizing notes has been adopted in accordance with Section 2293-24, General Code.*

COLUMBUS, OHIO, August 29, 1930.

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

GENTLEMEN:—Your letter of recent date is as follows:

“Section 5625-35 of the General Code reads:

‘In the case of an improvement, the cost of which is to be paid in whole or part by special assessments, a contract may be executed without an appropriation or certificate for that portion of the cost derived from special assessment; provided, a resolution or ordinance authorizing such assessment and the bonds or notes to be issued in anticipation thereof has been duly passed in the manner provided by law.’

When a municipal corporation decides to improve a street and levy special assessments for a part of the cost thereof, and such municipality has funds available with which to pay the city's portion, may a contract be let for such improvement immediately following the passage of the resolution of necessity, under the provisions of Sections 3814 and 3815 of the General Code, which determine the general nature of the improvement, the method of the assessment, and whether or not bonds shall be issued in anticipation of the collection of assessments?”

Section 5625-35, which you quote, contains an exception to the provisions of Section 5625-33, General Code, which provides in so far as pertinent as follows:

“No subdivision or taxing unit shall:

\* \* \* \* \*

(d) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same (or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal

year, the amount required to meet the same in the fiscal year in which the contract is made), has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrance. \* \* \* \* \*

Taxes and other revenue in process of collection, or the proceeds to be derived from lawfully authorized bonds, notes or certificates of indebtedness sold and in process of delivery, shall for the purpose of this section be deemed in the treasury or in process of collection and in the appropriate fund. This section shall not apply to the investment of sinking funds by the trustees of such funds, nor to investments made under the authority of Sections 4296-1, 4296-2, 4296-3, and 4296-4 of the General Code."

Under the provisions of Section 5625-35, the certificate provided in Section 5625-33, supra, is not required after two steps have been taken—first, assessments must have been authorized, and, second, bonds or notes issued in anticipation of such assessments, must have been duly authorized.

Section 3814, General Code, to which you refer, provides as follows:

"When it is deemed necessary by a municipality to make a public improvement to be paid for in whole or in part by special assessments, council shall declare the necessity thereof by resolution, three-fourths of the members elected thereto concurring, except as otherwise herein provided. Such resolution shall be published as other resolutions, but shall take effect upon its first publication."

Section 3815, also referred to in your communication, sets forth what the resolution declaring the necessity of an improvement shall contain. It is therein provided that in such resolution, council shall determine the method of the assessment, the mode of payment and whether or not bonds shall be issued in anticipation of the collection thereof. The question of whether or not this resolution of necessity authorizes assessments within the meaning of Section 5625-35, General Code, is not pertinent unless notes may be authorized upon the passage of such a resolution without any additional steps having to be first taken; this, for the reason that, as heretofore indicated, Section 5625-35 requires that assessments must have been authorized and notes to be issued in anticipation thereof must have also been authorized before the certificate required by Section 5625-33 may be dispensed with.

I shall confine my considerations to the question of when notes in anticipation of the levy of assessments may be authorized, for although Section 5625-35 relates to both bonds and notes being authorized, in so far as authorization of bonds is concerned, these may not be authorized under the Uniform Bond Act in anticipation of the levy of assessments. Section 2293-24 provides that bonds may be issued only in anticipation of the collection of special assessments, but that notes may be issued in anticipation of the levy of special assessments. Of course, if assessments have been actually levied, such assessments are clearly "revenue in process of collection" within the meaning of the last paragraph of Section 5625-33, supra, and under such circumstances the fiscal officer could issue his certificate irrespective of the provisions of Section 5625-35.

Section 3816, General Code, relating to the resolution of necessity, provides as follows:

"At the time of the passage of such resolution, council shall have on file in the office of the director of public service in cities, and the clerk in villages, plans, specifications, estimates and profiles of the proposed improvement, showing the proposed grade of the street and improvement after comple-

tion, with reference to the property abutting thereon, which plans, specifications, estimates and profiles shall be open to the inspection of all persons interested."

Section 3818, General Code, provides for the service of notice of the passage of the resolution of necessity upon the owner of each piece of property to be assessed. Section 3823, General Code, provides that any person to be assessed claiming that he will sustain damages by reason of the improvement shall file a claim for such damages within two weeks after the service of the notice thereof or the completion of the publication thereof.

Section 3824, General Code, provides as follows:

"At the expiration of the time limited for so filing claims for damages, the council shall determine whether it will proceed with the proposed improvement or not, and whether the claims for damages so filed shall be judicially inquired into, as hereinafter provided, before commencing, or after the completion of the proposed improvements."

It is well established that council cannot determine to proceed with such an improvement or pass an ordinance for that purpose until after the expiration of the time for filing claims for damages. *Joyce vs. Barron*, 67 O. S. 264. It is obvious that there is no authority whereby a municipality may issue notes in anticipation of the levy of assessments for an improvement until it is determined whether or not it will proceed with the improvement. After having determined to proceed as provided in Section 3824, supra, notes may be issued in anticipation of the levy of assessments under the provisions of Section 2293-24 of the Uniform Bond Act. I am clearly of the opinion that such notes may not be authorized until the resolution or ordinance determining to proceed has been passed.

In view of the foregoing and in specific answer to your question, it is my opinion that a municipality may not authorize notes in anticipation of the levy of special assessments for an improvement until the resolution determining to proceed with such improvement has been passed as provided in Section 3824, General Code. Section 5625-35, General Code, does not, therefore, dispense with the requirement contained in Section 5625-33, General Code, as to the fiscal officer's certificate until the resolution determining to proceed has been passed as required by Section 3824, General Code, and an ordinance authorizing notes has been adopted in accordance with Section 2293-24, General Code.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

2267.

POLICE RELIEF FUND—DUTY OF COUNCIL TO MAINTAIN FUND  
WHEN THERE ARE NO PENSIONS TO BE PAID—WHEN COUNCIL  
MAY LEGALLY REPEAL SUCH LEGISLATION.

**SYLLABUS:**

1. *Where a municipal council has passed an ordinance establishing a police relief fund and a board of trustees has been created and no other action has been taken, the council may legally repeal legislation establishing said fund if it chooses to do so.*