

Section 11222 of the General Code has no application to an action for the collection of special assessments by a municipality. Actions brought by a municipality to collect such special assessments are limited to two years by section 3906 of the General Code.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3861.

BOND—CONTRACTOR WHO FILES BOND, COMPLYING WITH SECTION 1208, GENERAL CODE, NOT REQUIRED TO FILE SUBSTITUTE BOND—NO MECHANICS LIEN AGAINST THE STATE.

*SYLLABUS:*

1. *The state has no authority to require a contractor to substitute a new bond filed pursuant to the terms of Section 1208 of the General Code, where the surety becomes insolvent. (Opinions of the Attorney General for 1918, Volume II, page 1449, approved and followed.)*

2. *The State Highway Department owes no debt to labor or material lien claimants under Sections 8324 et seq. General Code.*

COLUMBUS, OHIO, December 16, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—Your request for an opinion reads as follows:

“On May 27, 1930, the Director of Highways awarded a contract to L. J. K., of Jackson, Ohio, for the construction of an improvement in Jackson county. The contractor gave a bond, which was approved by the Insurance Department, with the Equitable Casualty & Surety Company of New York as surety.

Early in 1931 it was learned that this bonding company was being dissolved by the Insurance Department of the State of New York and that they were probably insolvent. Notice was received that all claims against them would be unrecognized.

Under the above set of facts, I respectfully request your opinion upon the following questions:

Should the state require a new bond of the contractor or should we allow him to proceed under the old bond?

What action should be taken in regard to labor and material claims should any come up which neither the contractor or the surety company are able to meet?”

Your first inquiry has been ruled upon by my predecessor in title, in an opinion rendered under date of November 29, 1918, found in Opinions of the Attorney General for 1918, Volume II, page 1449, the syllabus of which reads as follows:

“1. There is no provision in law whereby the state highway com-

missioner can compel a contractor for a road improvement to give a new or additional bond even though the surety on the original bond should become insolvent or the company giving the bond should cease to do business in this state.

2. The state highway commissioner owes material men and laborers no duty in the way of requiring a bond of the contractor, other than to comply with the provisions of section 1208 G. C. to the effect that he shall require a bond with sufficient sureties before entering into a contract for a road improvement."

In specific answer to your second question, it was held in an opinion found in Opinions of the Attorney General for 1929, Volume II, page 1417, the syllabus of which opinion is quoted in Opinion No. 3822 directed to you under date of December 8, 1931, that the labor and material claimants have no lien on the funds in your hands under a state contract.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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3862.

JOINT HIGH SCHOOL FUNDS—MUST BE WITHDRAWN BY ORDER OF PRESIDENT, VICE PRESIDENT, OR DIRECTOR OF SCHOOLS AND COUNTERSIGNED BY CLERK OF BOARD OF EDUCATION.

*SYLLABUS:*

*Funds appropriated for the maintenance of a joint high school, as established by authority of section 7669, et seq., General Code of Ohio, are to be placed in a separate fund in the treasury of the school district in which the high school building is located and cannot be withdrawn from the said treasury except on the order of the president, vice president, or director of schools in school districts having a director of schools, and countersigned by the clerk of the board of education of said district.*

COLUMBUS, OHIO, December 16, 1931.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion with reference to the following:

"Section 7671 of the General Code provides that the funds for the maintenance of a joint high school should be paid into the treasury of the Board of Education of the District in which the school house is located, and paid out by act of the High School Committee for the maintenance of the school.

Section 4768 of the General Code provides that money shall be disbursed by an order signed by the president or vice-president and countersigned by the Clerk of the Board of Education.

Question. Are the funds appropriated for the maintenance of the