

1535.

ROADS AND HIGHWAYS—TOWNSHIP ROAD DISTRICT NOT AUTHORIZED TO USE BALANCES REMAINING FROM BOND ISSUES AFTER COMPLETION OF ROAD IMPROVEMENT—HOW BALANCES MAY BE USED.

*A township road district (sections 3298-25 et seq., G. C.) is not authorized to use balances remaining from bond issues after the completion of road improvement projects upon improvements other than those for which such bonds were issued, nor is it authorized to invest such balances in other bonds of the district. It may, however, use the balances in redeeming before maturity, the bonds out of the proceeds of which such balances remain, providing the holders of the bonds consent to such redemption.*

COLUMBUS, OHIO, August 30, 1920.

HON. CALVIN D. SPITLER, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—You have submitted for opinion a statement of facts and inquiry which may be summarized as follows:

In 1918, the trustees of a certain township, proceeding as authorized by sections 3298-25 et seq., G. C. erected a township road district, and thereafter under authority of said series of sections adopted ten separate resolutions for the improvement of ten certain roads in said district, total expense of improvements to be paid out of levy on grand duplicate of the road district or out of any improvement fund of the district available. Bonds were authorized and sold in amounts not greater than the aggregate sums estimated for such total expense, the proceeds of each bond issue being kept in a separate fund applicable to the improvement of the road in respect to which the particular issue was authorized. All of the improvements were completed by contract at a less cost than had been estimated, leaving now an aggregate balance of eleven thousand dollars in the several funds produced by the sale of bonds, which balance is deposited "in the depository of said township and road district and bears interest at the rate of three per cent. per annum."

Query: May said balance be used for any of the three following purposes:

1. Improvement of other roads in the district.
2. Investment in other bonds of the road district.
3. The purchase (or retirement before maturity) of a portion of the several issues of bonds from which the balances were derived.

In connection with your statement and inquiry, you suggest in substance that inasmuch as the district as a whole is bearing the cost of the improvements and has bound itself to make a levy upon the taxable property of the district for the redemption of the bonds, without any assessment of affected lands and without charge to any other political subdivision than the road district itself, the situation is the same as if the district had issued general road improvement bonds, and that consequently it would seem that the balances in question might be treated as "any road improvement fund of the district available therefor" as that expression is used in section 3298-40, providing that the district may assume the whole cost of a district road improvement. You add that while section 3298-45 (authorizing issue of bonds) provides that

"The proceeds of such bonds shall be used exclusively for the payment of the compensation, damages, costs and expense of the improvement for which they are issued,"

yet on the other hand no specific provision is made as to what shall be done with that part of the proceeds which have been found to be unnecessary for the doing of the improvement work.

In reply to your suggestions, your attention is called to an opinion of this department (No. 887) of date December 24, 1919, now appearing in print, Opinions of Attorney-General, 1919, Vol. II, page 1573, wherein it was pointed out in connection with road improvement by county commissioners, that there was no such thing as a general road improvement bond issue, and that while authority for the levy (section 6926) was couched in general terms, yet a bond issue in anticipation of such levy (section 6929) must have reference to and grow out of a specific improvement project. By comparing sections 6926 and 6929 G. C. with sections 3298-44 and 3298-45, you will find that the general structure is the same; so that what was said in the opinion mentioned is applicable to the latter two sections. The principle stated seems to have been fully recognized and adhered to in the issue of the ten sets of bonds in question.

We are thus brought to the provisions of section 5654 G. C. (103 O. L. 521) which reads:

"The proceeds of a special tax, loan or bond issue shall not be used for any other purpose than that for which the same was levied, issued or made, except as herein provided. When there is in the treasury of any city, village, county, township or school district a surplus of the proceeds of a special tax or of the proceeds of a loan or bond issue which cannot be used, or which is not needed for the purpose for which the tax was levied, or the loan made, or the bonds issued, all of such surplus shall be transferred immediately by the officer, board or council having charge of such surplus, to the sinking fund of such city, village, county, township or school district, and thereafter shall be subject to the uses of such sinking fund."

While this section does not in terms mention township road districts, it is plain that the legislative policy as shown in the first sentence is applicable to such districts. In any event, the fact remains that the provision above quoted from section 3298-45 to the effect that the proceeds of the bonds shall be used *exclusively* in payment for the improvement on account of which the bonds are issued, operates to prohibit the application of the whole or any part of such proceeds to other improvements.

As we thus have the general provisions of section 5654 prohibiting the use of the proceeds of a bond issue for a purpose other than that for which the issue was authorized, as well as the special provision noted from section 3298-45 relating particularly to the character of bonds now in question, we are not free to conclude that balances remaining from such proceeds may be used on other work merely because the district as a whole will be the exclusive source of funds for such other work and will consequently be at no financial loss if it makes such use of the balances.

The foregoing observations furnish negative answer to the first part of your question.

The second part of your question is also answered in the negative, for the reason that no machinery for investment of balances of bond funds has been provided for township road districts.

As to the third part of your question, whether the balances may be applied in

redemption of a portion of the particular issue of bonds out of which such balances have arisen: The prohibition above noted against the use of the proceeds of bonds for any other purpose than that for which the bonds were issued, leaves no course open except use for sinking fund purposes. Since redemption of the bonds in question constitutes a sinking fund purpose, no reason is perceived why such use may not be made, provided of course that the holders of the bonds agree to their redemption before maturity,—for it is to be presumed that the option was not reserved to the district by the terms of the bonds for redemption before maturity. It may be added that the township district might accomplish practically the same thing as such redemption before maturity, by decreasing its sinking fund levy for the time being, to the extent of the eleven thousand dollars on hand for sinking fund purposes.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

1536.

COUNTY SURVEYOR — SALARY—HOW REIMBURSED BY STATE  
WHERE SURVEYOR HAS CHARGE OF HIGHWAYS, BRIDGES AND  
CULVERTS OF HIS COUNTY UNDER CONTROL OF STATE.

*In reimbursing the county in an amount equal to one-fifth of county surveyor's salary, when the county surveyor has charge of the highways, bridges and culverts of his county under control of the state, as provided by section 7182 G. C., the State Highway Commissioner is not required to make reimbursement monthly, but may fix such periods for reimbursement as he in the exercise of sound discretion with regard to the public interest may find reasonable. Periods of six months not as a matter of law unreasonable.*

COLUMBUS, OHIO, August 30, 1920.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter of recent date reading:

“Section 7182 of the General Code provides that when a county surveyor has charge of the highways, bridges and culverts of his county under the control of the state, an amount equal to one-fifth of his salary shall be paid by the state to the county upon warrants issued therefor by the auditor of state against the State Highway Improvement fund upon the requisition of the state highway commission.

I desire to know whether or not it is necessary to issue vouchers monthly, or it would be sufficient to issue vouchers semi-annually or annually. Issuing vouchers monthly makes it necessary to write 88 vouchers per month. By issuing them semi-annually, 88 vouchers would suffice for the six months.

Inasmuch as the surveyor draws his salary from the county in full and the state recompenses the county for one-fifth of the county surveyor's salary, it occurs to me that owing to the amount of labor saved in drawing vouchers, that payments at least once each six months would be sufficient.”

Said section 7182 reads in full: