

3841.

APPROVAL, FINAL RESOLUTIONS, ROAD IMPROVEMENTS IN CUYA-HOGA AND FULTON COUNTIES.

COLUMBUS, OHIO, December 29, 1922.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

3842.

BOARD OF EDUCATION—CANNOT BE ASSESSED FOR BOULEVARD LIGHTING BY SPECIAL ASSESSMENT.

A board of education cannot be assessed for boulevard lighting by special assessment on abutting school property.

COLUMBUS, OHIO, December 30, 1922.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your request for the opinion of this department on the following question:

“Can a board of education be assessed for Boulevard lighting by special assessment on school properties?”

Replying to your question you are advised that what is commonly known as “boulevard or white way lighting” has been made the subject of special enactment by the General Assembly in supplementing Section 3842 of the General Code by the enactment of sections 3842-1, 3842-2 and 3842-3 G. C., as appearing in Amended Senate Bill No. 230 passed by the General Assembly on February 11th, 1920 and appearing at Page 1224, 108 O. L. Part 2. Thus Section 3842-1 G. C., reads in part:

“When a petition signed by three-fourths in interest of the owners of property abutting upon any street, avenue or other public place or any part thereof, is presented to the council or other legislative body of any municipality for the improvement thereof by an improved system of lighting commonly known as boulevard or white way lighting, to be paid for in whole or in part by special assessments upon the adjacent, abutting or specially benefited property, the legislative authority of such municipality may provide by ordinance for such system of lighting, and in a separate ordinance for the levy and collection of special assessments therefor. * * * * *”

Section 3842-2 G. C. provides for the method of notice of passage of the ordinance while Section 3842-3 G. C., bears upon the percentage of cost fixed by ordi-

nance, matters of contract, installments and collections, the issue of bonds or certificates of indebtedness, the filing of objections, the appointment of an equalizing board and their duties, and the provision that the assessment shall be a lien on the lands charged.

Before leaving consideration of Section 3842-3 G. C., it is well to consider the language of the closing paragraph of that section and which is the closing paragraph of what may be called "the boulevard lighting act." Upon the matter of assessing school property for this improvement this language is significant, providing as it does, that the assessment when made by the municipal legislative body (whose jurisdiction is not coterminous geographically with that of the board of education in the school district), shall be paid "as other taxes are paid." Thus Section 3842-3 G. C., reads as follows:

* * * * *

"Every assessment shall be a lien on the lands charged from the time the legislative body determines the amounts assessed against each parcel of land; and the clerk shall certify such assessments, to the county auditor to be placed upon the duplicate for collection by the treasurer as and *in addition to other taxes.*"

The above language has reference to the payment of "other taxes" by those who are tax payers and the board of education of the school district is in no sense a tax payer. Thus it is held in the case of the Board of Education vs. Gay 64 O. S. 434 that:

"A board of education is not a tax payer; taxes may be levied for its benefit, but it pays none."

When one reads the closing language of Section 3842-3 supra, the inference is plain that the General Assembly did not have in mind or intend that assessments for boulevard lighting (one of the improvements mentioned in Title XII of the General Code), should be charged against abutting school property. Rather did the legislative body have in mind the clear provisions of Sections 3837 G. C. and 4759 G. C., that school property should be exempt from assessments of this kind. Thus, just a few sections prior to 3842-1 we find the law exempting school buildings from any assessment for any of the improvements authorized in Title XII of the General Code, the subject of which is "Municipal Corporations," and is generally referred to as the Municipal Code of Ohio.

Section 3837 G. C. (not appearing in the Ohio School Laws, edition of 1922) provides:

"When the whole or any portion of an *improvement authorized by this title passes by or through* a public wharf, market space, park, cemetery, structure for the fire department, water-works, *school building*, infirmary market building, workhouse, hospital, house of refuge, gas works, public prison, or any other public structure or public grounds within and belonging to the corporation, the council may authorize the proper proportion of the estimated cost and expenses of the improvement to be certified by the auditor or clerk of the corporation to the county auditor, and entered upon the tax list of all taxable real and personal property in the corporation, and they shall be collected as other taxes."

It will be noted that Section 3837 *supra*, is very sweeping in that it refers to any improvement authorized in Title XII, that is the Municipal Code of Ohio and the language is plain that the council of the municipality shall establish the proper proportion of the estimated costs and expenses of the improvement and then this amount shall be entered upon the tax list of *all* taxable real and personal property in the corporation and the cost of that municipal improvement "passing by a school building" shall be paid by the tax payers being "collected as other taxes" are collected.

The view herein taken on the question of the assessment of school property, unless the legislature should by statute clearly provide that it was the intent that said school property was to be assessed is in harmony with prior holdings of this department on matters of a somewhat similar nature, to wit:

"No part of the cost of the improvement of the street on which school property, used exclusively for public school purposes, abuts can be assessed against said property, and the board of education of the school district in which such property is located is neither required nor authorized to pay any part of the cost of said improvement out of its contingent fund or to levy the tax for said purpose." Excerpted from Opinion 1473, Page 663, Vol 1, Opinions of the Attorney General, 1916.

"Under existing statutes, lands owned by boards of education are not subject to assessment for road improvement." Opinion 441, Page 730, Vol. 1, Opinions of the Attorney General, 1919.

Brief reference has been made heretofore to Section 4759 G. C. one of the older laws of the State and which reads as follows:

"Real or personal property vested in any board of education shall be exempt from taxation and from sale on execution or other writ or order in the nature of an execution."

This section was construed by the Supreme Court in the case of *City of Toledo vs. Board of Education* 48 O. S. 83, (following the decision of the same court in the case of *Lima vs. Cemetery Association* 42 O. S. 128), and the court held that a judgment could not be rendered against the board of education for the payment of an assessment for a street improvement and that the amount of said assessment should be paid out of the general fund of the city. The authority of the municipal corporation to levy a tax for this purpose is found in Section 3837 G. C., *supra*.

Attention is also invited to the language of 7586 G. C., which reads:

"Each board of education, annually, at a regular or special meeting held between the third Monday in April and the first Monday in June, shall fix the rate of taxation necessary to be levied for all school purposes, after the state funds are exhausted."

There is a grave doubt as to whether a tax levied to pay an assessment for a street improvement or a boulevard lighting system would fall within the language of "all school purposes," a former attorney general of this department (1916) holding that a street assessment would not be a school purpose.

Bearing further upon the question of assessment for a street assessment at-

tention is invited to the decision of the Court in the case of Board of Education vs. Bowland 3 O. N. P. (N. S.) 122, wherein the Court says:

“School property is not rendered liable to assessment for a street improvement by reason of the fact that with knowledge that the property was not liable to assessment the board petitioned for the improvement.

But where the lien of an assessment for a street improvement has already attached, it will not be defeated by the subsequent purchase of the property by a school board.”

See also Board of Education vs. Volk 72 O.S. 469.

The Section of the Code, which exempts public school houses from general taxation is Section 5349 G. C., which reads in part as follows:

“Public school houses and houses used exclusively for public worship, the books and furniture therein and the ground attached to such buildings necessary for the proper occupancy, use and enjoyment thereof and not leased or otherwise used with a view to profit, public colleges and academies and all buildings connected therewith, and all lands connected with public institutions of learning, not used with a view to profit, shall be exempt from taxation. * * * * .”

Having before us then the language cited in Section 3842-1 of the boulevard lighting act and Section 3837 G. C. (in the Municipal Code) and Section 4759 G. C., and the decisions of the courts and prior opinions of this department on matters of a largely similar nature, you are advised that it is the opinion of this department that a board of education cannot be assessed for boulevard lighting by special assessment on abutting school property.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3843.

SCHOOLS—WHERE DIRECTOR OF SCHOOLS CHOSEN—BIDDING REQUIRED FOR THINGS MENTIONED IN SECTION 7623 G. C.—NOT SUPPLIES AND EQUIPMENT.

In any school district where a director of schools has been chosen public bidding is required for those things set forth in section 7629 G. C. but not for the supplies and equipment referred to in section 7695 G. C.

COLUMBUS, OHIO, December 30, 1922.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following: