4151.

APPROVAL, ABSTRACT OF TITLE TO LAND OF THE SCIOTO LAND COMPANY IN HARDIN COUNTY, OHIO.

COLUMBUS, OHIO, March 15, 1932.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is hereby made of your letter submitting for my analysis an abstract of title, deed, encumbrance estimate No. 1790 and copy of authority of state controlling board, relating to the proposed purchase of ten acres of land in Hardin County from The Scioto Land Company.

The abstract reveals that The Scioto Land Company has a good and merchantable fee simple title to said land, subject to the following encumbrances:

1. The taxes for the year of 1931.
2. The special assessments indicated by the abstracter's certificate.

The proposed deed to the state of Ohio is executed in the proper form for the conveyance of a fee simple title. Said deed expressly excepts the "taxes and assessments for the year 1932 and thereafter which the grantee assumes and agrees to pay."

Encumbrance estimate No. 1790 shows that there remains in the proper appropriation account sufficient money to pay for said land. The state controlling board has given its approval.

Enclosed please find all of the documents and papers mentioned above as having been received.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4152.

PAYMENT OF TAXES—COUNTY TREASURER MAY NOT RECEIVE GENERAL TAXES UNLESS SPECIAL ASSESSMENTS ARE PAID—EXCEPTION WHERE PAYMENT OF ASSESSMENTS LEGALLY ENJOINED.

SYLLABUS:

Where special assessments levied by a municipality are certified to the county auditor and placed upon the tax duplicate, the payment of which assessments is objected to by owners of the property assessed on the ground that they claim said assessments are illegal, the county treasurer has no authority to receive from such persons payment of general taxes without at the same time receiving payment of such installments of said assessments as are due, unless the payment of said assessments has been legally enjoined.

COLUMBUS, OHIO, March 16, 1932.

HON. C. G. L. YEARICK, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

"The benefit of your opinion is respectfully requested with regard to the following state of facts:

U. S. and State Route 40, also known as the National Road, runs east and west through the Village of Hebron, in Licking County, and, within the boundaries of the municipality, is known as Main Street. Several years ago, after said Main Street had been paved to the standard width of the National Highway, the Council passed legislation, and the question of further improving said street or highway, by paving either side of the theretofore surfaced portion, through and within the village, was submitted to the voters, who approved a levy outside the fifteen mill limit and authorized a bond issue for said improvement.

The legislation passed, or attempted to be passed, by the Council of Hebron especially provided that said improvement of said Main Street by said village should extend from the east corporation line to the west corporation line of said village. It did not attempt to provide for such work beyond the corporation limits of the municipality, which describe an 'L' at the east boundary. There is a break in the west corporation line of the village as indicated on the enclosed drawing, which is given you the better to illustrate the situation. During the course of the construction of the improvement, three or four abutting property owners, whose situation will be explained, orally objected to the work and the contractor passed their property by without excavating. After said objection, at the request of the abutting owners, the contractor returned and laid the pavement in front of all of said abutting property. These abutting property owners hold the title to parcels of land in Hebron but, while their lands lie in said village, said lands do not bound or abut upon any street *lying wholly within the municipality,* but do abut upon the north side of said Route 40. The south line of their lands is the north line of said highway and said same south line of their said lands and the north line of said highway are also a south corporate line of said village. The east corporation line of the village crosses the highway at a location west of any of the abutting property owners who interposed the objection.

At the time of the improvement a concrete curb and paving was laid upon that portion of the state highway which lay between the north line of the concrete paving constructed by the State of Ohio and the south corporation line of the municipality. The village did not attempt to improve any part of the corresponding portion of the highway which lay south of the concrete construction of the state, and this is still not so improved.

After completing said improvement, the village council passed an ordinance assessing the costs of such work against the lands of said abutting property owners who had raised objections previously. These abutting property owners are desirous of paying their taxes, which the county treasurer refuses to accept until the assessments which had mean-

time been certified to the county auditor, and are now on the tax duplicate, shall be paid. The landholders maintain that the assessments are invalid and decline to pay. The county treasurer has inquired of me whether, under the peculiar circumstances existing, he would be warranted in accepting the taxes without the payment of the assessments.

The question which is bothering this office is whether when the Hebron Village Council passed its legislation and did not attempt to provide for such work *beyond the corporation limits* of said village, it went far enough to justify assessments against the objecting land holders. The protestants assert that the village had no jurisdiction or control over the highway on which their lands abutted, and that the work done by the village officials, as far as they were concerned, was outside the corporate limits of the municipality.

Inquiry is respectfully made as to whether, in the circumstances, the county treasurer will be justified in insisting upon the payment of said assessment?"

In answer to your inquiry, it is unnecessary to determine whether or not the assessments in question are valid.

Section 3892, General Code, provides for certification to the county auditor of special assessments, levied by a municipality, and then says:

"The county auditor shall place the assessment upon the tax list in accordance therewith and the county treasurer shall collect it in the same manner and at the same time as other taxes are collected," etc.

Section 2655, General Code, reads as follows:

"No person shall be permitted to pay less than the full amount of taxes charged and payable for all purposes on real estate, except only when the collection of a particular tax is legally enjoined."

Construing these sections, the Supreme Court, in the case of *State, ex rel. Brown, Treasurer,* vs. *Cooper, Treasurer,* 123 O. S. 23, held:

"1. The duty enjoined upon county treasurers by Section 3892, General Code, to collect installments of special assessments upon real estate in the same manner and at the same time as other taxes are collected, is mandatory.

2. Special assessments upon real estate for public improvements are taxes within the meaning of Sections 2655 and 3892, General Code.

3. By virtue of Section 2655, General Code, county treasurers are not permitted to receive payments of general taxes without at the same time receiving payment of installments of special assessments for public improvements certified to the county treasurer for collection."

With reference to the words "legally enjoined" appearing in section 2655, the court in this case says on page 27:

"This evidently refers to injunctions brought under favor of Section 12075, General Code, and it is the evident intent of the Legislature in the use of that language in connection with the former language in the same

section, that if a taxpayer desires to avoid payment of assessments at the same time he pays his general taxes, he shall take the precaution of initiating the proceedings in court which will eventually result in escaping the payment of that particular portion of his tax. Manifestly, there is no hardship in this provision, because there is no escape from special assessments after they have been placed on the tax duplicate, except by an appeal to the courts under favor of Section 12075."

While section 2655 has been amended since the decision of this case, there has been no change which would affect the rule of law laid down therein. As stated in the case of *Spitzer, et al.,* vs. *Stillings, Exr., et al.,* 109 O. S. 297:

"Where a statute is construed by a court of last resort having jurisdiction, and such statute is thereafter amended in certain particulars, but remains unchanged so far as the same has been construed and defined by the court, it will be presumed that the Legislature was familiar with such interpretation at the time of such amendment, and that such interpretation was intended to be adopted by such amendment as a part of the law, unless express provision is made for a different construction."

I am of the opinion, therefore, that where special assessments levied by a municipality are certified to the county auditor and placed upon the tax duplicate, the payment of which assessments is objected to by owners of the property assessed on the ground that they claim said assessments are illegal, the county treasurer has no authority to receive from such persons payment of general taxes without at the same time receiving payment of such installments of said assessments as are due, unless the payment of said assessments has been legally enjoined.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4153.

APPROVAL, NOTES OF ATHENS TOWNSHIP RURAL SCHOOL DISTRICT, ATHENS COUNTY, OHIO—$3,000.00.

COLUMBUS, OHIO, March 16, 1932.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.