

have, as hereinbefore indicated, the court decision and an Attorney General's opinion upon which said administrative practice is based.

In view of the foregoing, I am impelled to the conclusion that the county commissioners may not legally pay from the county funds the bill for furnishing light to the part of the jail utilized as the residence of the jailer.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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1733.

APPROVAL, BONDS OF VILLAGE OF BELLVILLE, RICHLAND COUNTY  
—\$13,212.26.

COLUMBUS, OHIO, April 4, 1930.

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

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1734.

APPROVAL, BONDS OF VILLAGE OF ST. CLAIRSVILLE, BELMONT  
COUNTY—\$122,000.00.

COLUMBUS, OHIO, April 4, 1930.

*Industrial Commission of Ohio, Columbus, Ohio.*

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1735.

DISAPPROVAL, BONDS OF MIDDLEPORT VILLAGE SCHOOL DISTRICT,  
VAN WERT COUNTY—\$35,000.00.

COLUMBUS, OHIO, April 4, 1930.

Re: Bonds of Middleport Village School Dist., Van Wert County, Ohio, \$35,000.00.

*Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—The transcript of proceedings relative to the above issue discloses that these bonds are being issued for the purpose of constructing a fireproof building, repairing and improving a non-fireproof building, and equipping and furnishing the same. The aggregate amount of the issue is \$50,000.00. It further appears that the resolution declaring the necessity of the issue was passed July 18, 1929, this resolution being required by Section 2293-19, General Code, which reads in part as follows:

"The taxing authority of any subdivision may submit to the electors of such subdivision the question of issuing any bonds which such subdivision has power to issue. When it desires or is required by law to submit any bond issue to the electors, it shall pass a resolution, declaring the necessity of such bond issue and fixing the amount, purpose and approximate date, interest rate and maturity, and also the necessity of the levy of a tax outside of the fifteen mill limitaiton to pay the interest on and to retire said bonds. It shall certify such resolution to the county auditor at least sixty days prior to the election at which it is desired to submit these questions. \* \* \* ."

The transcript further discloses that pursuant to a favorable vote of the electors bonds were authorized by resolution January 8 1930 and after having been refused by the trustees of the sinking fund, were advertised and sold without notes having been issued and apparently prior to the letting of the contract for the improvements in question.

Section 5654-1, General Code, 112 O. L. 483, effective the first Monday in January, 1928, was repealed by the 88th General Assembly in House Bill No. 425, which contained a number of amendments to the Uniform Bond Act. This act was filed in the office of the Secretary of State April 27, 1929, and became effective July 26, 1929. The effective date of the repeal of Section 5654-1 was accordingly July 26, 1929. This section provided that a board of education may not advertise for sale nor issue bonds for the purpose of the construction or improvement of schoolhouses until the contract is let, and that such bonds "shall be issued in an amount not exceeding the full amount of the accepted bid by more than the estimated amount of such other items of cost as may be legally included in the total cost of such construction or improvement."

Section 5625-33, General Code, provides that such contracts may not be entered into without there being attached thereto a certificate of the fiscal officer reciting that the amount required to meet the same 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 encumbrances. It follows, accordingly, that since Section 5654-1 prohibited the issuance of bonds or their advertisement prior to the letting of the contracts for which the bonds are issued, the authorization and issuance of notes was mandatory in case a school district issued bonds for the construction or improvement of a school building.

It remains to be determined whether or not the provisions of Section 5654-1, General Code, are applicable to the proceedings here under consideration. Section 26, General Code, provides insofar as is pertinent as follows :

"Whenever a statute is repealed or amended, such repeal or amendment shall in no manner affect pending \* \* \* proceedings \* \* \* , and when the repeal or amendment relates to the remedy, it shall not affect pending \* \* \* proceeding \* \* \* unless so expressed, nor shall any repeal or amendment affect \* \* \* proceeding, \* \* \* unless otherwise expressly provided in the amending or repealing act."

House Bill No. 425 referred to above, which repealed Section 5654-1, General Code, makes no reference whatever to pending proceedings. If the proceedings for the issuance of these bonds become pending within the meaning of Section 26, supra, upon the passage of the resolution of July 18, 1929, declaring the necessity of the issue as provided in Section 2293-19, General Code, then the provisions of Section 5654-1, General Code, are applicable thereto.

In the case of *Toledo vs. Marlowe*, 8 O. C. C. (N. S.) 121, affirmed without re-

port 75 O. S. 574, it was held that the various statutory steps required for the improvement of a street constitute a "proceeding" within the meaning of Section 79, Revised Statutes (now Section 26, General Code), and that the adoption of a preliminary resolution of necessity is the beginning of a "proceeding" which is thereafter "pending" within the meaning of the statute and is unaffected by an act not expressly retroactive. In the case of *State, ex rel. vs. Zangerle*, 101 O. S. 235, it was held that a resolution declaring for a county road improvement or fixing the assessment therefor, is a "proceeding" within the meaning of Section 26, supra.

In an opinion of this office, appearing in Opinions of the Attorney General for 1927, Vol. II, p. 1357, it was held that a proceeding was pending within the meaning of Section 26 when a board of county commissioners makes application for state aid under the then provisions of Section 1191, General Code. Similar opinions appear in Opinions of the Attorney General for 1928, Vol. II, pp. 971, 1382, 1451, and Vol. III, p. 1921.

In view of the foregoing, I am inclined to the view that the proceedings for the issuance of these bonds became pending within the meaning of Section 26, General Code, upon July 18, 1929, upon the passage of the resolution required by Section 2293-19, declaring the necessity of the issue, and that, therefore, since the effective date of the repeal of Section 5654-1, General Code, was July 26, 1929, the provisions of this section should have been complied with. The transcript failing to show such compliance, I advise you not to purchase these bonds.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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1736.

ACCOUNTANCY BOARD—MAY NOT REFUSE CERTIFIED PUBLIC ACCOUNTANT OF FOREIGN STATE THE C. P. A. DEGREE ON GROUND THAT HE IS NOT A RESIDENT OF OHIO.

*SYLLABUS:*

*Under Section 1376 of the General Code of Ohio, the State Board of Accountancy has no authority by administrative regulation or otherwise to refuse a Certified Public Accountant of another state applying therefor the certificate of this state as a Certified Public Accountant for no other reason than that he is not a resident of the State of Ohio.*

COLUMBUS, OHIO, April 5, 1930.

HON. MYERS Y. COOPER, *Governor of Ohio, Columbus, Ohio.*

MY DEAR GOVERNOR:—This will acknowledge receipt of your communication which reads as follows:

"Will you be good enough to give me an opinion with reference to Section 1376 (99 v. 333 No. 6) as to whether an applicant from Pennsylvania must be a resident of Ohio to receive the C. P. A. degree in Ohio under the above named section?"

It appears that a resident of Pennsylvania, who received the degree of C. P. A. from the State of Pennsylvania as the result of a written examination given by the State Board of Pennsylvania has made application to the State Board of Accountancy of Ohio for the C. P. A. degree in Ohio. This board