

1305.

DISAPPROVAL, BONDS OF BRIMFIELD TOWNSHIP RURAL SCHOOL DISTRICT, PORTAGE COUNTY, OHIO, IN AMOUNT OF \$75,000.

COLUMBUS, OHIO, June 3, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

Re Bonds of Brimfield township rural school district, Portage county, in the amount of \$75,000, for improvement purposes.

GENTLEMEN:—I have examined the transcript of the above bond issue and decline to approve the validity of said bonds for the following reasons:

(1) The resolution of August 7, 1919, calling an election upon the question of issuing bonds under section 7625 G. C. fails to contain a finding of the board of education making an estimate of the cost of the proposed improvement, as required by said section 7625. I am of the opinion that the findings, including the making of an estimate, are essential steps in the procedure preliminary to the calling of the election.

(2) The resolution of January 22, 1920, calling an election under section 7625 fails to make the findings and the estimate required by said section.

(3) The resolution of January 22, 1920, fixes the date of the election as February 2, 1920. The clerk's certificate recites that notice of such election was posted on January 19, 1920—three days before the resolution authorizing such posting was passed.

(4) No provision has been made by the board of education for a tax levy to pay the interest upon said bonds as it falls due and to create a sinking fund for the redemption of the bonds at maturity. Under Article XII, Section 11 of the Constitution provision for such tax levy must be made before bonds can be issued.

I am therefore of the opinion that said bonds are not valid and binding obligations of Brimfield township rural school district, and advise the commission not to purchase the same.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1306.

DISAPPROVAL, BONDS OF WILLIAMS COUNTY, OHIO, IN AMOUNT OF \$13,500, ROAD IMPROVEMENTS.

COLUMBUS, OHIO, June 3, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

Re—Bonds of Williams county, in the amount of \$13,500, for the improvement of the Melbern North and South road, No. 177, in Center township.

GENTLEMEN:—I have examined the transcript of the proceedings of the county commissioners relative to the above bond issue, and decline to approve the validity of said bonds for the following reasons:

(1) The transcript discloses that the county commissioners failed to publish for the required length of time before the date set for hearing objections to said improvement the notice required by section 6912 G. C. The language of this section is that such notice shall be published "once a week for two consecutive weeks." The hearing was held March 22, 1920, and the notice, as shown by the proof of publication attached to the transcript, was published March 11 and March 18 of the same year. Two full weeks, or fourteen days, should have intervened between the first publication and the date of the hearing.

In the case of *Fenner vs. City of Cincinnati*, 8 O. N. P., 340, Judge Smith, of the superior court of Cincinnati, in special term, held (quoting from the syllabus):

"Where a statute provides that municipal bonds can only be issued 'after advertising the same for sale once per week for four consecutive weeks of the same day of the week, in some newspaper of general circulation in such city,' no sale of such bonds can be had until notice of four weeks or twenty-eight days shall have been given; and the statute is not complied with where an advertisement is inserted on the 8th, 15th, 22d and 29th of the month, calling for sealed bids to be submitted on or before twelve o'clock on the 31st."

This decision was reversed by the same court in general term (see same Report, p. 342). The supreme court of Ohio, on October 15, 1901, in case No. 7473, without reported opinion, reversed the judgment of the superior court and affirmed the judgment of Judge Smith rendered in special term. The rule laid down by Judge Smith must therefore be taken as the holding of the supreme court of Ohio.

It is believed that the interpretation laid down by Judge Smith in the case referred to is applicable to the language used in section 6912 G. C., and that the notice there required must be published once a week for two full weeks, or fourteen days, prior to the hearing.

(2) The transcript shows that the notice of the hearing of April 5, 1920, upon the schedule of estimated assessments as prepared by the engineer was published March 25 and April 1, 1920. Section 6922 G. C. requires this notice to be published "once a week for two consecutive weeks." Upon the reasoning set forth in the preceding paragraph I do not believe the notice given meets the requirement of section 6922.

(3) The bond resolution provides for the issuance of bonds bearing interest at the rate of six per cent. I assume that the bonds are issued at this rate of interest by the county commissioners under authority of section 6929 G. C., as amended by House Bill No. 699, passed February 4, 1920, approved February 16, 1920, and filed in the office of the secretary of state February 17, 1920. Prior to the amendment of section 6929 just referred to the rate of interest upon bonds issued thereunder was limited to five per cent.

In the case of *State of Ohio ex rel. Frank P. Andrews vs. Zangerle, as Auditor of Cuyahoga County*, No. 16578, (recently decided), the supreme court held the amendment to section 6929 authorizing the issuance of bonds at the increased rate of interest did not apply to proceedings for road improvements which were commenced prior to the taking effect of the law. The transcript shows that the proceedings for the improvement of the road under consideration were commenced February 9. Therefore the county commissioners were without authority to issue bonds for said improvement at a rate of interest in excess of five per cent.

For the several reasons above stated, I am of the opinion that said bonds are

not valid and binding obligations of Williams county, and advise the commission not to purchase the same.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1307.

APPROVAL, DEFICIENCY BONDS, SOMERSET VILLAGE SCHOOL DISTRICT, PERRY COUNTY, OHIO, IN AMOUNT OF \$7,000.

COLUMBUS, OHIO, June 3, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

1308.

APPROVAL, DRAFT OF PROPOSED DEED OF CORRECTION, CONVEYANCE OF ABANDONED OHIO CANAL PROPERTY IN MADISON TOWNSHIP, LICKING COUNTY, OHIO.

COLUMBUS, OHIO, June 4, 1920.

HON. JOHN I. MILLER, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—Your letter of May 18, 1920, has been received enclosing for my attention draft of proposed deed of correction covering conveyance to Mary C. Bolin, of Newark, Ohio, of two and one-half acres of the abandoned Ohio canal property in Madison township, Licking county, Ohio.

I note that in the original deed for this property of date December 21, 1916, there was an error in that the conveyance read to the grantee "her successors and assigns," when it should have read to "her heirs and assigns." Under these circumstances, it is, of course, plain that the deed of correction should be executed; and I am therefore in conformity with section 8528 G. C. endorsing my approval on the draft of deed of correction and am returning the same herewith.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1309.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN GUERNSEY COUNTY, OHIO.

COLUMBUS, OHIO, June 4, 1920.

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