

3003.

BOND ISSUE—FOR PARK IMPROVEMENT OR SWIMMING POOL—
PROCEEDS OF BONDS MAY BE USED TO REIMBURSE CITIZEN
CONTRIBUTORS TO SWIMMING POOL BUILT ON PARK LAND.

SYLLABUS:

Where the issuance of bonds is authorized for the purpose of constructing a park or installing or purchasing a swimming pool, the proceeds of the bonds may be devoted to the acquisition of the interests of a group of citizens who have contributed to the construction of a swimming pool upon the land proposed to be acquired for park purposes.

COLUMBUS, OHIO, December 10, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication, as follows:

“During the summer of 1928, a group of citizens of the city of Shelby obligated themselves to pay for the construction of a municipal swimming pool located on private property, which property is to be donated to the city for park purposes. It was understood at the time that the question of issuing bonds for the purpose of establishing a park and swimming pool would be submitted to the electors in November, 1928, and that if such bonds were approved the obligation of this group of citizens would be assumed by the city. It appears that a committee of this group of citizens entered into a contract with private parties for the construction of the pool, which is nearly completed at this date. The question of issuing bonds for the purpose of constructing a park and installing or purchasing a swimming pool was submitted to the electors and received a favorable vote. Title to the property on which the swimming pool is located will be transferred to the city at any time on request and the city wishes to reimburse the group of citizens for the cost of the swimming pool authorized by vote of the electors.

Question: May the proceeds of the sale of these bonds be legally used for the purpose of reimbursing the citizen group for the cost of constructing the swimming pool?

Data received in relation to this matter is enclosed herewith.”

The ballot used at the election was in the following language:

BALLOTS FOR SHELBY
PARK & SWIMMING POOL

Shall bonds be issued by the City of Shelby for the purpose of constructing a park and installing or purchasing a swimming pool therein in the sum of Twenty Thousand (\$20,000) Dollars, and a Levy of taxes to be made outside of the Fifteen (15) mills limitation, estimated by the County Auditor to average 22/100 mills for a maximum of ten (10) years, to pay the principal and interest on such bonds?

	For the Bond Issue
	Against the Bond Issue

A municipality has ample power to acquire property for park purposes. Pertinent to your question is the following portion of Section 3939 of the General Code:

“Each municipal corporation in addition to other powers conferred by law shall have power:

(1) To acquire by purchase or condemnation real estate with or without buildings thereon, and easements or interests therein, for any lawful purpose;

* * * * *

(11) To construct free public libraries and reading rooms, and free recreation centers;

(12) To establish free public baths and municipal lodging houses:

* * * * *

(14) To provide land for and improve parks, boulevards and public playgrounds;

* * * * *

Under the subdivisions of Section 3939, above quoted, it appears that authority exists to acquire by purchase real estate, with structures thereon, for park and recreation purposes.

Section 2293-2 of the General Code authorizes the municipality to issue bonds for the purpose of acquiring any permanent improvement which the municipality is authorized to acquire. Pursuant to the unquestioned authority of the municipality, the matter was submitted to the electors on the ballot above quoted. While this ballot might possibly have been more happily worded, yet I think beyond question it is sufficient to authorize the purchase of the property in question. It is an undoubted fact that the people at large had knowledge of the intention to acquire this particular property, but even had they not had this knowledge, I am of the opinion that the authority contained in the ballot is sufficient to authorize this purchase. Of course, the purchase must be at a fair price and no fraud or collusion must enter into the transaction.

The sole remaining question is whether the acquisition of this property may be effected by reimbursement of the contributions originally made by the citizens for the construction of the swimming pool. As I understand the facts, the land itself is being donated and is now in the name of an individual as trustee. All the parties are agreed that this land will be turned over to the city as soon as reimbursement is made to those who contributed to the construction of the pool. The authority to acquire by purchase property of this character would clearly carry with it the authority to make payment to those having any interest therein. The citizens originally contributing have an interest in the property which, in my opinion, clearly may be acquired by purchase.

Accordingly, I am of the opinion that where the issuance of bonds is authorized for the purpose of constructing a park or installing or purchasing a swimming pool, the proceeds of the bonds may be devoted to the acquisition of the interests of a group of citizens who have contributed to the construction of a swimming pool upon the land proposed to be acquired for park purposes.

Respectfully,

EDWARD C. TURNER,
Attorney General.

3004.

CERTIFICATE OF FUNDS IN TREASURY—NOT REQUIRED FOR EMPLOYMENT OF COUNTY ENGINEER.

SYLLABUS:

The provisions of Section 5625-33, General Code, requiring a certificate as to the existence of moneys available, etc., do not apply to contracts of employment of an engineer by the county commissioners under Section 2411 of the General Code, for the reason that Section 2413, General Code, especially provides that no certificate is required in such contracts.

COLUMBUS, OHIO, December 10, 1928.

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

GENTLEMEN:—I am in receipt of your recent communication which reads:

"You are respectfully requested to furnish this department your written opinion upon the following:

Section 2411, G. C., authorizes the employment of an engineer by the county commissioners. Section 2413, G. C., provides that the county commissioners shall fix the compensation of the employees under the provisions of the preceding section and that no provision of law requiring a certificate that money therefor is in the treasury shall apply to the appointment or employment of such persons.

Question: In view of the provisions of Section 5625-33, G. C., may an engineer be legally employed under this section without a certification by the county auditor that funds have been appropriated and are in the treasury or in process of collection to pay the compensation?

In connection with this question, we are submitting a statement of facts as to the employment of an engineer in any of the counties of this state."

Section 2411, General Code, to which you refer, reads:

"When the services of an engineer are required with respect to roads, turnpikes, ditches or bridges, or with respect to any other matter, and when, on account of the amount of work to be performed, the board deems it necessary, upon the written request of the county surveyor, the board may employ