

1033.

MUNICIPALITY—FIRE HYDRANT CONNECTIONS—INSTALLING COST INCLUDED AS PART OF COST ASSESSED AGAINST BENEFITED PROPERTY.

SYLLABUS:

When a street is about to be paved and the city council by ordinance provides for the laying of water pipes and connections to properties, and for the assessment of the cost thereof, the cost of installing fire hydrant connections may be included as part of the cost to be assessed against the benefited property.

COLUMBUS, OHIO, October 15, 1929.

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

GENTLEMEN:—Acknowledgement is made of your communication which reads:

“The syllabus of Opinion No. 3878, to be found at page 1116, Opinions of the Attorney General for the year 1922, reads:—

‘Subject to the limitations provided by Section 3819 G. C., and in conformity to the provisions of Sections 3980 and 3812 of the General Code, a municipality is authorized to assess the entire cost of the extension of its water mains against the abutting and benefited property.’

Section 3963 G. C., provides in part that no charge shall be made for furnishing or supplying connections with a fire hydrant.

Question: When a street is about to be paved, and city council prescribes by ordinance for the laying of water pipes and connections to properties, and for the assessment of the cost thereof, may the cost of installing fire hydrant connections be included as part of the cost to be assessed against the abutting or benefited property?”

Section 3980 of the General Code, pertinent to consider in connection with your inquiry, provides:

“The council may prescribe by ordinance for the laying down of water pipes in all highways about to be paved, macadamized or otherwise permanently improved, and for the assessment of the cost and expense thereof upon the lots or parcels of land adjoining or abutting upon the highways in in which they are laid. In no case, except as a sanitary measure, shall the council require any house connections to be built further from the main pipe than the outer line of the curbstone.”

Section 3812, General Code, which was referred to in the former opinion which you mention, refers to the power of municipalities to levy and collect special assessments generally. Said section authorizes the assessment of the cost of laying water mains or of water pipes as a part of the cost and expense of the improvement of a street. Section 3819, referred to in the opinion of the Attorney General which you mention, contains the limitations of such assessments as to amount. Section 3963, General Code, to which you refer, provides in part:

“No charge shall be made by a city or village, or by the waterworks department thereof, for supplying water for extinguishing fire, cleaning fire apparatus, or for furnishing or supplying connections with fire hydrants,

and keeping them in repair for fire department purposes, * * * or for the use of the public school buildings in such city or village.
* * * ”

If it were not for the provision of Section 3963, supra, and recent decisions of the courts in reference thereto, your question would not arise, for the reason that the other sections above mentioned clearly authorize the assessment of the cost of laying water mains and water pipes. In my opinion No. 697, rendered to you under date of July 31, 1929, there was considered a number of recent decisions upon said section. Without undertaking to extensively review the said opinion or the cases therein considered, it may be stated that said section has been held to be inoperative insofar as it requires the waterworks department to furnish fire hydrants.

In the case of *Alcorn vs. Deckeback, Auditor*, 31 O. App. 142, referred to in my opinion above mentioned, it was held in substance that Section 3963 of the General Code was unconstitutional, insofar as it required a waterworks department to furnish free water for supplying fire hydrants and for installing such hydrants. It was further held in said opinion that a fire hydrant is not an appurtenance of the waterworks department. It was indicated in said opinion that the cost of fire hydrants should be borne by the fire department. The following is stated in the opinion of said court:

“The line of cleavage between the waterworks department and the fire department, which departments must necessarily co-operate for the benefit of the city at large, must be drawn somewhere, and it is our opinion that this line should not extend in favor of the fire department beyond the main connection or unions, and that such line does not include the fire hydrants upon the side of and for the purposes of the waterworks department, but, on the contrary, excludes the fire hydrant, it being a contrivance for the benefit of, and the purposes of, the fire department.”

In my said opinion above referred to, reference was made to an opinion of the Attorney General for 1913, wherein it was held that revenues resulting from the operation of a water works plant could not be legally used to purchase fire hydrants and such expenses must be borne by funds raised from taxation and appropriated from the safety fund. Also an opinion of the Attorney General for the year 1914 was therein referred to, in which it was held in substance that under Section 3963, it is the duty of the Director of Public Works, by the use of waterworks funds, to lay pipes and other incidental connections for the purpose of furnishing water to fire hydrants. The opinion further stated:

“The connections to be furnished are such connections as will carry the water to the fire hydrant, as furnished by the Department of Public Safety.”

While the question is not so free from doubt, without further discussion, it may be stated that it is generally considered that under existing law, a waterworks department is required to furnish the connection leading to the fire hydrant unless the hydrant is located on private property for some reason or other, and ordinarily such connections extend from the main to the curb.

The conclusions of prior opinions are not, however, dispositive of the specific question which you present. Whether the connection leading to the fire hydrant should be paid for by the waterworks department or from funds of the safety department is only material where the expenditure is to be made of municipal funds and has no necessary connection with the right to assess such costs against property owners.

In order that the cost of an improvement may be assessed, it is necessary that property be specially benefited thereby and that the right of assessment be given by statute. It would appear to be clear that provision for the connection of water mains with fire hydrants is of benefit to the abutting property owners as furnishing the means by which fire protection will ultimately be secured for the neighborhood. It is clearly of as much benefit as the water mains proper. It only remains to be determined whether Section 3812 of the Code, heretofore referred to, is broad enough in its language to authorize such assessment.

By the terms of Section 3812, any part of the cost and expense connected with the improvement of a street by constructing "water mains or laying of water pipe" may be assessed. The connections with fire hydrants are water pipe placed in the street as a part of its improvement, and, although there exists some doubt on the question, I feel that the authority to assess for the laying of water pipe includes the authority to assess for these connections. The alternative would be, as heretofore indicated, to pay for these connections out of waterworks funds, but there is no reason why the cost of connections should not be assessed so long as such right exists as to the water mains proper. The purpose of requiring the mains to be laid in anticipation of the pavement is to prevent the injury of the street by tearing it up for the purpose of later installations, and accordingly, such installation constitutes an integral part of the whole street improvement.

It is, therefore, my opinion that when a street is about to be paved and the city council prescribes by ordinance for the laying of water pipes and connections to properties, and for the assessment of the cost thereof, the cost of installing fire hydrant connections may be included as part of the cost to be assessed against the benefited property.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

1034.

APPROVAL, ABSTRACT OF TITLE TO LAND OF HAROLD HERNDON
 DEWITT, SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, October 15, 1929.

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

DEAR SIR:—This is to acknowledge receipt of your communication of even date herewith again enclosing for my examination and approval abstract of title, warranty deed, encumbrance estimate No. 4471, and controlling board certificate relating to the proposed purchase of three certain tracts of land in Brush Creek and Morgan Townships, Scioto County, Ohio, owned of record by one Harold Herndon DeWitt, subject to the outstanding consummated dower interest of one Alice DeWitt Munday. The abstract of title and other files relating to the purchase of this property were under consideration by this department in Opinions No. 167 and No. 735, directed to you under dates of March 7, 1929, and August 13, 1929, respectively.

In Opinion No. 735 of this department above referred to, I found that Harold Herndon DeWitt had a good and indefeasible title to said tracts of land, subject only to certain taxes due and payable on said tracts amounting to the sums of \$23.83, \$203.18 and \$198.53, respectively.