

of Ohio, acting by Frank D. Henderson, Adjutant General of Ohio, and Director of State Armories, and the Lima Construction Company of Lima, Ohio. This contract covers the construction and completion of a Stable to be erected at the State Armory, Lima, Ohio, and calls for an expenditure of twelve thousand, three hundred and fifteen dollars (\$12,315.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted a certificate from the Controlling Board, signed by the secretary thereof, that in accordance with Section 12 of House Bill No. 502, 87th General Assembly, said board has properly consented to and approved the expenditure of the moneys appropriated by the 87th General Assembly for the purpose covered by this contract. In addition, you have submitted a contract bond upon which E. F. Thomas and Walter C. Bradley appear as surety, in an amount sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1861.

APPROVAL, BONDS OF NEW MADISON VILLAGE SCHOOL DISTRICT,
DARKE COUNTY, OHIO—\$150,000.00.

COLUMBUS, OHIO, March 17, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

1862.

TOWNSHIP TRUSTEES—AUTHORITY TO ISSUE BONDS IN ANTICIPATION OF COLLECTION OF SPECIAL ASSESSMENT—MAY ISSUE BONDS TO PAY TOWNSHIP'S PORTION OF CONSTRUCTING ROADS.

SYLLABUS:

1. *A board of township trustees may issue bonds in anticipation of the collection of special assessments for the purpose of constructing roads within the township.*

2. *A board of township trustees may issue bonds to pay the township's portion of the cost of constructing such roads provided the same do not increase the net indebtedness of the township to an amount in excess of the two per cent indebtedness limitation, and provided the issuance of such bonds is authorized by a vote of the people as provided in Section 2293-17, General Code.*

COLUMBUS, OHIO, March 19, 1928.

HON. JOHN E. PRIDDY, *Prosecuting Attorney, Findlay, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of March 12, 1928, as follows:

“There has been raised in this county considerable controversy about the question of building roads by township trustees.

Under the present law can township trustees issue bonds in anticipation of the collection of assessments for the purpose of constructing roads within the township?”

The authority for the construction of roads in townships by boards of township trustees is found in Sections 3298-1, et seq. of the General Code. Section 3298-1, General Code, provides:

“The board of trustees of any township shall have power, as hereinafter provided, to construct, reconstruct, resurface or improve any public road or roads, or part thereof, under their jurisdiction. Such trustees shall also have the power to construct, reconstruct, resurface or improve any county road or inter-county highways or main market road within their township; provided, however, that in the case of a county road the plans and specifications for the proposed improvement shall first be submitted to the county commissioners of the county and shall receive their approval and in the case of an inter-county highway or main market road such plans and specifications shall first be submitted to the state highway commissioner and shall receive his approval. The township trustees shall have power to widen, straighten or change the direction of any part of a road in connection with the proceedings for its improvement.”

Section 3298-13, General Code, provides the method of raising the funds to pay the compensation, damages, costs and expenses of such improvements, and specifically authorizes the assessment of all or any part of such cost against the abutting real estate or that situated within one-half mile or one mile thereof, according to benefits. Section 3298-13, General Code, provides:

“The compensation, damages, costs and expenses of the improvements shall be apportioned and paid in any one of the following methods, as set forth in the petition: All or any part thereof shall be assessed against the real estate abutting upon said improvement, or against the real estate situated within one-half mile of either side thereof, or against the real estate situated within one mile of either side thereof, according to the benefits accruing to such real estate; and the balance thereof, if any, shall be paid out of the proceeds of any levy or levies for road purposes upon the grand duplicate of all the taxable property in the township, or from any funds in the township treasury available therefor; when the board of township

trustees acts by unanimous vote and without the filing of a petition, the trustees shall set forth in their resolution declaring the necessity for the improvement, the method of apportioning and paying the compensation, damages, costs and expenses of the improvement, which may be any one of the methods above provided."

The authority for issuing bonds in anticipation of the collection of assessments referred to in Section 3298-13, *supra*, is found in Section 3298-15e, General Code, which provides in part:

"The township trustees, in anticipation of the collection of such taxes and assessments, or any part thereof, may, whenever in their judgment it is deemed necessary, sell the bonds of said township in any amount not greater than the aggregate sum necessary to pay the estimated compensation, damages, costs and expenses of such improvement. * * * "

The sections of the Code above referred to specifically authorize boards of township trustees to construct, reconstruct, resurface or improve any public road or roads under their jurisdiction and also county roads and inter-county or main market roads and to assess all or any part of the cost of such improvement against the abutting or neighboring real estate and to issue bonds in anticipation of the collection of such assessments.

It remains to be determined whether or not the authority to issue such special assessment bonds has been taken away or curtailed in the Uniform Bond Act passed by the 87th General Assembly (112 O. L. 364).

Section 2293-24, General Code, enacted as a part of the Uniform Bond Act, provides in part:

"Subdivisions shall have power to issue bonds in anticipation of the collection of special assessments. * * * "

Section 2293-17, General Code, (112 O. L. 372), places a limitation upon the amount of bonded indebtedness created or incurred by townships, and provides:

"The net indebtedness created or incurred by a township, *exclusive of the bonds excepted in Section 2293-13 of the General Code*, and exclusive of county bonds issued in anticipation of township tax levies shall never exceed two per cent of the total value of all property in such township as listed and assessed for taxation; and no such indebtedness with said exceptions shall be incurred unless authorized by vote of the electors." (Italics the writer's.)

It will be observed that under the provisions of the statute just quoted the net indebtedness created or incurred by a township, exclusive of the bonds excepted in Section 2293-13 of the General Code, and exclusive of county bonds issued in anticipation of township tax levies, shall never exceed two per cent of the total value of all property in such township as listed and assessed for taxation.

Section 2293-13, General Code (112 O. L. 369), to which reference is made in Section 2293-17, *supra*, defines the words "net indebtedness" and provides what bonds or notes shall not be considered in calculating such net indebtedness. Section 2293.13, General Code, provides:

"The net indebtedness of any subdivision shall be the difference between the par value of the outstanding and unpaid bonds and notes of the subdivision and the amount held in the sinking fund and other indebtedness retirement funds for their redemption. An indebtedness shall not be deemed to have been created or incurred until the delivery of the bonds under contract of sale.

Bonds or notes issued in anticipation of the levy or collection of special assessments, either in original or refunded form, county bonds issued in anticipation of the levy or collection of township taxes, notes issued in anticipation of the collection of current revenues, notes issued for emergency purposes under Section 2293-7 of the General Code or heretofore issued under Sections 4450, 5629, or 7630-1 of the General Code, and bonds issued to pay final judgments shall not be considered in calculating the net indebtedness." (Italics the writer's)

The provisions of the statutes above referred to render obvious the conclusion that not only may township trustees issue bonds in anticipation of the collection of special assessments for the purpose of paying all or a portion of the cost of constructing roads within the township but that such bonds are not subject to the two per cent net indebtedness limitation set out in Section 2293-17, General Code; and further, that such bonds may be issued without submitting the question of their issuance to a vote of the electors.

In this connection, however, your attention is directed to the fact that bonds may not be issued by boards of township trustees to pay the township's share of a road improvement without submitting the question of issuing such bonds to a vote of the electors and that such bonds are subject to the two per cent. net indebtedness limitation set out in Section 2293-17, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1863.

MEMBER OF COUNCIL—MAY RESIGN AND BE APPOINTED VILLAGE STREET COMMISSIONER.

SYLLABUS:

A member of a village council, who resigns from such body, may immediately be lawfully appointed street commissioner for the village.

COLUMBUS, OHIO, March 19, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your communication requesting my opinion in answer to the following question:

"May a member of the village council resign and immediately thereafter be appointed street commissioner?"