

board of township trustees. Accordingly, if the sole representative of the municipal council on the board should go out of office as a councilman, I believe his office as a member of the board would also be vacant, and the same rule would apply to the member chosen from the board of township trustees."

In view of what has been said, I am of the opinion that trustees of a police relief fund chosen as representatives of a city council, cease to be trustees of such fund in the event that their terms as councilmen expire during their terms as trustees and their offices are accordingly vacated.

Since a vacancy exists under such circumstances, the provisions of Section 4619 of the Code, *supra*, become applicable. By the last sentence of that section, the authority is given to the trustees to adopt rules and regulations governing the filling of vacancies occurring in the membership of the board including the vacancies which would be occasioned in the manner hereinbefore indicated. In my view the board may adopt any reasonable rules and regulations with respect thereto providing that the vacancies among the councilmanic representatives must be filled from the membership of council at the time such vacancies are filled.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1400.

ROAD IMPROVEMENT—BEGUN BEFORE BUT COMPLETED AFTER EFFECTIVE DATE OF UNIFORM BOND ACT—COUNTY'S SHARE PAID FROM LEVIES UNDER SECTIONS 1222 AND 6926, GENERAL CODE—BOND ISSUE FOR REIMBURSING FUNDS NOW AUTHORIZED.

SYLLABUS:

When proceedings became pending in October, 1924, for the construction of an inter-county highway, upon a co-operative basis between the state and the county, and the improvement was completed and paid for in December, 1927, the county's portion of the cost having been paid by appropriations from the proceeds of levies under Sections 1222 and 6926, General Code, bonds may not now be issued for the purpose of reimbursing the fund or funds from which appropriations were heretofore made.

COLUMBUS, OHIO, January 13, 1930.

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

GENTLEMEN:—Your letter of recent date is as follows:

"We are enclosing herewith a letter from one of our examiners, in which he outlines the procedure in connection with the construction of a state road improvement and makes inquiry whether under the conditions stated, the county commissioners may legally issue and sell bonds for the county's share of such improvement and also for the shares of the township and property owners. Will you please render your opinion to this department upon the questions submitted in this letter?"

Enclosed with your letter is the following letter from your examiner:

"Under date of October 13, 1924, the commissioners of Belmont County petitioned the State Highway Director to cooperate in the construction of Sec. A-1 of I. C. H. No. 7.

On March 30, 1925, plans, specifications, etc., prepared by the State were approved by the commissioners and the auditor certified that the money was available for the county's share in this improvement.

On May 18, 1925, a cost apportionment was adopted as follows: State 36 $\frac{1}{8}$ %; county, 38 $\frac{7}{8}$ %; township 15%; and property owners, 10%; and the county auditor was directed to levy a tax to pay the respective shares of county, township and property owners.

The cost of this improvement other than that paid by the state was paid by appropriations from the proceeds of levies under Sections 1222 and 6926, G. C. The improvement was completed and paid for in December, 1927.

On July 15, 1929, assessments were fixed and certified for collection, the first installment going on the 1929 duplicate.

On November 12, 1929, a resolution to issue bonds in amount of \$60,795.30 under authority of Section 6929, G. C., to pay the shares of county, township and property owners was passed and such bonds are now being advertised for sale.

There is no mention in any of the proceedings prior to November 12, 1929, of an intention to issue bonds but resolution of May 18, 1925, directs the auditor to levy a tax.

Q—1. Under the conditions stated above, can the commissioners legally issue and sell these bonds?

Q—2. Can the commissioners legally issue and sell bonds for the township and property owners share?"

Section 20 of the Uniform Bond Act, 112 O. L. 385, is as follows:

"Bonds issued prior to the effective date of this act and bonds issued after said date, which have been approved by vote of the people, or by resolution of the taxing authority prior to the day this act is filed with the Secretary of State, shall be valid obligations of the taxing district issuing the same if they would be valid under the provisions of law in effect prior to the passage of this act. Bonds which have been approved by vote of the people, prior to the effective date of this act, may be issued thereafter under the provisions of Section 2293-25 to 2293-29 inclusive. Tax levies, in anticipation of which any such bonds have been issued, shall be levied notwithstanding the repeal of the law authorizing such levies."

From the statement of facts submitted, it is evident that the bonds under consideration were not approved by a vote of the people or by resolution of the taxing authority prior to the day the Uniform Bond Act was filed with the Secretary of State. In fact, proceedings to issue bonds were not instituted until 1929, and therefore, if bonds may now be legally issued, the procedure to be followed is that provided in the Uniform Bond Act. In an opinion of my predecessor appearing in Opinions of the Attorney General for 1927, Vol. IV, p. 2587, in speaking of the provisions of Section 20 of the Uniform Bond Act, the following language was used at p. 2590:

"In view of the fact that the proceedings to which you refer were not started until July 6, 1927, and the bonds were not voted on until the November, 1927, election, it is clear that the bonds are not among those mentioned in Section 20, supra, and that the procedure to be followed in issuing said bonds must be prescribed in House Bill No. 1 above referred to. The bond issue is not necessarily illegal because the proceedings were begun on July 6, 1927, if the transcript shows that the procedure set (out) in House Bill No. 1 has been followed. In other words, the bonds not having been issued prior to

August 10, 1927, the effective date of House Bill No. 1, nor having been approved by a vote of the people or by a resolution of the taxing authority prior to May 12, 1927, the date of the filing of House Bill No. 1 in the office of the Secretary of State, the issuing of said bonds is controlled by the provisions of House Bill No. 1, and if the procedure therein set out is followed, the bonds will be valid obligations of the school district."

Section 2293-2, General Code, provides that :

"The taxing authority of any subdivision shall have power to issue the bonds of such subdivision for the purpose of acquiring or constructing any permanent improvement which such subdivision is authorized to acquire or construct."

It is obvious that under the circumstances set forth, bonds would not be issued for the purpose of either acquiring or constructing a permanent improvement but for the purpose of paying part of the cost of a permanent improvement which was constructed and paid for over two years ago. While frequently bonds are issued to pay the cost of a permanent improvement which is at the time of issuance in the process of construction or even completed, it is not generally contemplated that bonds may be issued under authority of the Uniform Bond Act for the purpose of an improvement which has long since been constructed and paid for. There is no question but that under the provisions of Section 26 of the General Code the proceedings for the construction of the highway in question became pending October 13, 1924, when the county commissioners petitioned the State Highway Director to cooperate in the construction thereof. However, it appears that the proceedings which became pending have terminated, the road having been constructed and paid for, and I seriously doubt the validity of a construction placed upon Section 26 such as to authorize the institution at this time of proceedings to issue bonds for the purpose set forth, and thereby re-open the proceedings which became pending October 13, 1924, and which have apparently terminated.

Section 1222, General Code, as in force and effect at the time these proceedings became pending authorized a one and one-half mills county tax to be used in part at least for the purpose of paying the county's portion of the cost of cooperative inter-county highway improvements. Section 1223, General Code, as then in force and effect, authorized the issuance of bonds in anticipation of the collection of such taxes. Section 6926, General Code, which is still in force and effect, provides for a county levy to provide a road improvement fund, and Section 6929 authorized the issuance of bonds in anticipation of the collection of such taxes and assessments for road improvements. Since the road in question is paid for, I assume that sufficient funds were on hand in the county road fund to pay the county's portion of the cost of the improvement. The letter of your examiner sets forth the fact that assessments to pay the property owners' portion of the cost were not fixed and certified for collection until 1929. Bonds may now be issued by a county under the Uniform Bond Act in anticipation of the collection of assessments for a permanent improvement, but there is serious doubt as to the authority of a board of county commissioners to issue bonds in anticipation of the collection of assessments which are obviously being collected for the purpose of reimbursing some fund or funds, other than a specific improvement fund, out of which the cost of an improvement has been heretofore paid. You do not, however, inquire as to authority to now issue bonds in anticipation of the collection of only such portion of the cost of the improvement as was to be borne by benefited property.

Considering the entire statement of facts presented in the letter of your examiner,

it appears that the county commissioners are now seeking to issue bonds to reimburse some fund or funds from which moneys have been withdrawn to pay a part of the cost of a road improvement. As above pointed out, the Uniform Bond Act authorizes the issuance of bonds for the purpose of acquiring or constructing a permanent improvement. There is no authority therein to issue bonds to pay part of the cost of a permanent improvement constructed at some remote time in the past.

Specifically answering your question, I am of the opinion that when proceedings became pending in October, 1924, for the construction of an inter-county highway, upon a cooperative basis between the state and the county, and the improvement was completed and paid for in December, 1927, the county's portion of the cost having been paid by appropriations from the proceeds of levies under Sections 1222 and 6926, General Code, bonds may not now be issued for the purpose of reimbursing the fund or funds from which appropriations were heretofore made.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1401.

CORPORATION TAXES—NOTICE OF LIEN FOR 1929 UNPAID PUBLIC UTILITY TAX TO BE FILED WITH COUNTY RECORDER BY TAX COMMISSION—WHAT NOTICE SHOULD STATE—STATE TREASURER TO INFORM COMMISSION OF UNPAID TAXES—WHAT LIENS ALREADY ATTACHED.

SYLLABUS:

1. *The Tax Commission is required to file with the county recorder notice of lien for the 1929 unpaid public utility excise tax as provided in Amended Section 5506 of the General Code.*
2. *The notice of lien as required by Amended Section 5506 of the General Code should state the amount of the delinquent franchise tax or excise tax together with any penalties which have accrued.*
3. *The Treasurer of State is required to notify the Tax Commission of any unpaid excise taxes on December 15 of each year or immediately thereafter.*
4. *A statutory lien has attached for the 1929 delinquent franchise fees and for all the years prior thereto. A similar lien has attached for the delinquent excise taxes for the year 1928 and for all the years prior thereto. It is unnecessary to file notice of lien for franchise fees and excise taxes, the lien for which attached prior to the effective date of the amendment of Section 5506 of the General Code by the 88th General Assembly.*

COLUMBUS, OHIO, January 13, 1930.

The Tax Commission of Ohio, Columbus, Ohio.

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

“Your advice is asked upon the following questions:

Under the provisions of Section 5506 of the General Code as amended at the last session of the Legislature, the franchise fee or excise fee becomes a lien against any property of a corporation or public utility in this state on the day fixed by law for the payment thereof and notice of such lien shall be filed by the Tax Commission in the office of the recorder of the county in