

4695.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN BEXLEY,
FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, October 20, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

4696.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN CUYAHOGA
COUNTY, OHIO.

COLUMBUS, OHIO, October 21, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

4697.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN MUSKINGUM
COUNTY, OHIO.

COLUMBUS, OHIO, October 21, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

4698.

APPROPRIATION—MANDATORY FOR CONTRACTS INCIDENT TO
COUNTY SEWER OR WATERWORKS SYSTEM—EXCEPTION AS
TO PAYROLL OF REGULAR EMPLOYES.

SYLLABUS:

Contracts incident to the operation of a county sewer or waterworks system may not be entered into without the appropriation and auditor's certificate spoken of in Section 5625-33, General Code, excepting contracts with regular employes whose compensation is provided for by payroll. With respect to the current payrolls of regular employes in a county sanitary engineering department engaged in the service of a county in connection with the operation of a county sewer system or systems and a county water supply or waterworks system, appropriations must be made from which those payrolls are to be met, but the fiscal officer's certificate spoken of in Section 5625-33, General Code, is not necessary.

COLUMBUS, OHIO, October 22, 1932.

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

GENTLEMEN:—This will acknowledge your recent request for my opinion which reads as follows:

“Section 5625-29 of the General Code provides for an annual appropriation measure by the taxing authority of each subdivision. Section 5625-33 of the General Code provides that no subdivision or taxing unit shall make any expenditure of money unless it has been appropriated as provided in Section 5625-29. Section 5625-35 of the General Code provides that in the case of an improvement, the cost of which is to be paid in whole or in part by special assessment, a contract may be executed without an appropriation or certificate for that portion of the cost derived from special assessments.

Question: In case a sanitary sewer district or water district is established in accordance with the provisions of Section 6602-1 of the General Code, and a sanitary department is organized in a county having a population exceeding one hundred thousand (100,000) may the cost of operating this department, including salaries and other operating expenses, be paid without an appropriation, if such salaries and expenses are paid from funds arising from special assessments?”

By the terms of Section 5625-29, General Code, the taxing authority of each subdivision or taxing unit, which includes boards of county commissioners, is directed to pass appropriation measures based on the revised tax budget of the subdivision or taxing unit and the official certificate of estimated resources or amendments thereof.

Section 5625-33, General Code, provides that no expenditure of money shall be made by a subdivision or taxing unit unless it has been appropriated as provided for in Section 5625-29, General Code. Said section further provides, however, that, “the authorization of a bond issue shall be deemed an appropriation of the same for the purposes for which said bonds were issued.”

Section 5625-33, General Code, also provides in clause (d) thereof, that no subdivision or taxing unit shall,

“Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same (or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made), has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrance. Every such contract made without such a certificate shall be void and no warrant shall be issued in payment of any amount due thereon.

* * * *

The term ‘contract’ as used in this section, shall be construed as exclusive of current payrolls of regular employes and officers.”

Section 5625-35, General Code, reads as follows:

“In the case of an improvement, the cost of which is to be paid in

whole or in part by special assessments, a contract may be executed without an appropriation or certificate for that portion of the cost derived from special assessments; provided, a resolution or ordinance authorizing such assessment and the bonds or notes to be issued in anticipation thereof has been duly passed in the manner provided by law."

From the provisions of the statute referred to above, it clearly follows that an expenditure of money may be made by a subdivision or taxing unit without a specific appropriation other than the authorization of a bond issue and without the fiscal officer's certificate provided for in Section 5625-33, clause (d) supra, providing that expenditure is made from a duly authorized bond issue made in anticipation of the collection of special assessments.

Because of the proviso contained in the latter part of Section 5625-35, supra, it seems evident that it was the intention of the legislature in enacting the statute, to limit the exemption of contracts made in pursuance of the making of improvements the cost of which is to be paid in whole or in part from special assessments, from the requirements of Section 5625-33, General Code, as to appropriations and fiscal officers' certificates, to those cases only where bonds are issued in anticipation of the collection of those special assessments. In other words, the statute does not go so far as to excuse appropriations for expenditures, and fiscal officers' certificates for contracts, to be met from the proceeds of special assessments where bonds or notes are not issued in pursuance of those special assessments.

Whether or not Section 5625-35, General Code, has any pertinency to the question which you present depends on whether or not special assessments may be levied and bonds and notes issued in anticipation of their collection, for the purpose of paying the cost of operating county sewer districts and county water supply systems and, if so, whether or not the expenses, incident to the establishment and maintenance of a sanitary engineering department in counties having a population exceeding one hundred thousand, including salaries and other expenses, may be paid from the proceeds of the sale of those bonds or notes.

Boards of county commissioners are authorized by Section 6602-1, General Code, to establish and maintain within their respective counties, one or more sewer districts for the purpose of preserving and promoting the public health and welfare, and to employ a competent sanitary engineer who may be authorized to employ necessary assistants upon such terms as may be fixed by said board. In any county having a population exceeding one hundred thousand the board of county commissioners may create and maintain a sanitary engineering department, which department shall be in charge of a competent sanitary engineer to be appointed by the board of county commissioners, for the purpose of aiding them in the performance of their duties in connection with the establishment and maintenance of sewer districts. Authorization is extended to boards of county commissioners by such section to provide suitable rooms for the use of said engineering department and to provide for, and pay the compensation of such engineer and his assistants and all necessary expenses of the said engineer and the said engineering department.

By force of Section 6602-1b to 6602-14, inclusive, of the General Code, boards of county commissioners are authorized to provide sewer improvements and to maintain and operate the same within sewer districts and to assess the cost thereof against the property specially benefited. Section 6602-4, General Code, authorizes the county commissioners to pay the whole or any part of the

cost of constructing, maintaining, repairing or operating any sewer improvement provided for in Sections 6602-1 to 6602-13, inclusive, of the General Code, including the payment of a sanitary engineer and his assistants and further necessary expenses, and in so far as such expenses relate to the construction of a permanent improvement, they may be considered as part of the cost of such improvement and bonds may be issued therefor.

Section 6602-7, General Code, provides that the cost of any improvement provided for by Sections 6602-1 to 6602-14, General Code, and the cost of the maintenance and operation thereof, shall include, in addition to the cost of construction, the cost of engineering, necessary publications, inspection, interest on certificates of indebtedness or on bonds, and all other items of cost incident to such improvement.

Similar provisions are made in Sections 6602-17 to 6602-33c, inclusive, of the General Code, with reference to the establishment and maintenance of county water supply systems, and with reference to the levying of special assessments upon property specially benefited by said water systems, and for the issuance of bonds from the proceeds of which the cost of such improvements may be paid in so far as that cost is the cost of a permanent improvement.

Similar provisions are made in Section 6602-23, General Code, with reference to the inclusion as a part of the cost of a county water supply system of the cost of engineering and other expenses, as are made in Section 6602-7, General Code, with reference to sewer improvements.

Summarizing the pertinent provisions of the statutes relating to the construction and operation of county sewer systems and county water supplies or waterworks systems it appears that:

1. The cost of maintaining a sanitary engineering department in a county having a population exceeding one hundred thousand is considered a part of the cost of both constructing and operating county sewer districts or a system of county sewers within the county (Section 6602-7, General Code) and also a proportionate part of the cost of a county water supply or waterworks system within the county (Section 6602-23, General Code.)

2. The cost of both constructing and operating county sewer districts within a county may be assessed against property specially benefited thereby (Section 6602-8b, General Code.) The same is true with reference to both constructing and operating a county water supply or county waterworks system (Section 6602-26, General Code.)

3. To meet the expenses incident to the construction of sewers in county sewer districts and of county water supplies or waterworks systems, including the cost of engineering and similar costs, bonds may be issued in anticipation of the collection of special assessments for those purposes, and money may be borrowed on certificates of indebtedness in anticipation of the sale of the bonds (Sections 6602-4 and 6602-20, General Code.)

No provision, however, is made for the sale of bonds or notes or certificates of indebtedness in anticipation of the collection of special assessments levied for the purpose of operating either county sewers or county water supply systems. It follows therefore, in my opinion, that the terms of Section 5625-35, General Code, have no pertinency whatever to the question of whether or not appropriations must be made and fiscal officers' certificates secured as a prerequisite to the legality of contracts made in pursuance of the operation of county sewer districts or county water supply systems. So far as contracts entered into incident to the *construction* of these improvements are concerned,

Section 5625-35, General Code, is applicable, but not so as to contracts incident to the *operation* of these improvements.

I am therefore of the opinion that contracts incident to the operation of a county sewer or waterworks system may not be entered into without the appropriation and auditor's certificate spoken of in Section 5625-33, General Code, excepting contracts with regular employes whose compensation is provided for by payroll. With respect to the current payrolls of regular employes in a county sanitary engineering department engaged in the service of a county in connection with the operation of a county sewer system or systems and a county water supply or waterworks system, appropriations must be made from which those payrolls are to be met, but the fiscal officer's certificate spoken of in Section 5625-33, General Code, is not necessary.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4699.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE SAMUEL A. ESSWEIN HEATING AND PLUMBING COMPANY, COLUMBUS, OHIO, FOR CONSTRUCTION AND COMPLETION OF CONTRACT FOR COMBINED HEATING AND PROCESS STEAM SYSTEMS AND PLUMBING WORK FOR FOOD SERVICE BUILDING AT MIAMI UNIVERSITY, OXFORD, OHIO, AT AN EXPENDITURE OF \$16,821.00—SURETY BOND EXECUTED BY THE INDEMNITY INSURANCE COMPANY OF NORTH AMERICA.

COLUMBUS, OHIO, October 22, 1932.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Board of Trustees of Miami University, Oxford, Ohio, and the Samuel A. Esswein Heating and Plumbing Company of Columbus, Ohio. This contract covers the construction and completion of contract for Combined Heating and Process Steam Systems and Plumbing Work for a building known as Food Service Building, Miami University, Oxford, Ohio, in accordance with Item M-10, Item M-13 (Alt. M-B), Item M-15 (Alt. M-D), Item M-16 (Alt. M-E), Item M-17 (Alt. M-F), Item M-18 (Alt. M-G), and Item M-21 (Alt. M-J) of the form of proposal dated July 18, 1932. Said contract calls for an expenditure of sixteen thousand eight hundred and twenty-one dollars (\$16,821.00).

You have submitted the certificates of the secretary of the board of trustees of Miami University to the effect that there is available moneys from receipts of the boarding department of Miami University sufficient to cover the cost of erection of a food service building. You have also shown that the executive committee of the board of trustees of Miami University has authorized the construction of said building. In addition, you have submitted a contract bond upon which the Indemnity Insurance Company of North America appears as surety, sufficient to cover the amount of the contract.