Charles E. Coe and by Mabel E. Coe, his wife, and that said deed is in form sufficient to convey the above described property to the State of Ohio in fee simple, free and clear of the inchoate dower interest of said Mabel E. Coe and free and clear of all encumbrances whatsoever except taxes and assessments due in December, 1930, and thereafter.

Upon examination of encumbrance estimate No. 566 I find that the same has been properly executed and approved and that, as shown by the terms thereof, there is a sufficient balance in the proper appropriation account to pay the purchase price of this property, which is the sum of sixty-four thousand six hundred and eighty-eight dollars ($64,688.00).

I am herewith returning with my approval said abstract of title, warranty deed, encumbrance estimate No. 566 and the other files submitted to me relating to the purchase of the above described property.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2118.

ROAD IMPROVEMENT—PETITION OF PROPERTY OWNERS NOT ACTED UPON WITHIN STATUTORY TIME BY COUNTY COMMISSIONERS—PASSAGE OF RESOLUTION OF NECESSITY EVINCES INTENTION NOT TO PROCEED UNDER SAID PETITION—SPECIAL ASSESSMENT NOT CANCELLABLE.

SYLLABUS:

1. *When a petition is presented to a board of county commissioners for a road improvement requesting that a portion of the road be constructed each year until completed, and no action is taken by the commissioners upon such petition until the following year, at which time the commissioners view the line of the proposed improvement, it will be presumed that the commissioners have resolved not to proceed under the petition when they again view the proposed improvement the next year and unanimously pass a resolution declaring the necessity of improving a part of such road without including in such resolution any reference to the petition filed two years previous to the passage of such resolution.*

2. *There is no provision of law authorizing a board of county commissioners to cancel and set aside special assessments which have been previously levied to pay a part of the cost of a road improvement.*

COLUMBUS, OHIO, July 21, 1930.

HON. C. G. L. YEARICK, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"In 1928, the board of county commissioners of Licking County received a petition from property owners seeking the improvement of a certain county road. The commissioners, by unanimous vote, adopted a resolution for the carrying out of such improvement. Four miles of such road were to be built, a mile or so at a time until completed, the county and township each participating to the extent of thirty-five per cent of the cost of the proposed improvement, and the property owners to the extent of thirty per cent of such cost. One mile of this road was built in 1928.

In 1929, some dissatisfaction having been expressed to the commissioners over the then existing arrangement, the board determined to complete the

remainder of the improvement without a petition and a resolution was passed whereby the county was to pay the entire cost of the next three and a half miles necessary to be built to complete the road.

Meantime, the assessments on the first mile of said road had been placed on the tax duplicate and were in process of collection December, 1929. In point of fact, some of the abutting property owners have paid two or three assessments by this time.

It will be seen that the commissioners started out on the assessment plan, contemplating the improvement of the road as a whole. Then, after completing one leg of the road, they decided not to assess the property owners further, but to handle it as a county job. This had the effect of stirring up the property owners on the first mile or leg of the road, who now complain that they were assessed on the basis of an improvement, thirty per cent of which was to be paid for by abutting property owners the full length of the road. They point out that it was only by taking the property owners the entire length of the improvement, approximately four and a half miles, that the necessary fifty-one per cent required for the petition could be obtained.

The protesting property owners complain that they signed the petition only on the strength of the entire road improvement being completed on the basis represented and assessments being paid by land holders the full length of the road. That by such representations, they were induced to change their position; that the property holders on the remaining four and a half miles are being unjustly enriched at their expense.

The county commissioners have inquired of this office whether they may legally assume the assessments already levied on the mile of road constructed in 1928 and reimburse the farmers who have paid such assessments. I am unable to find, from a preliminary examination of the statutes, any warrant in law for such procedure on the part of the commissioners. I shall, therefore, greatly appreciate the benefit of your opinion as to the legality of such proposed procedure on the part of the county commissioners.

In view of the fact that the first resolution for the improvement was adopted by unanimous vote as provided by Section 6911, G. C., were the county commissioners legally justified in adopting a different method of financing for the part of the road still to be improved and for which no assessments had been levied?"

You have submitted copies of part of the records of the board of county commissioners relative to the subject of your inquiry. It appears that on May 17, 1926, a petition was filed asking for the improvement of a road, being parts of roads Nos. 305, 306 and 304. This petition contained the following clause: "It is the desire of petitioners that there shall be improved one mile or more each year until said roads are completed." Pursuant to the filing of this petition, the county commissioners on May 4, 1927, ordered that they go upon the line of the improvement as described in the petition and view the same on May 28, 1927. This order fixed the 4th day of June, 1927, as the time, and the office of the board as the place to determine whether the prayer of said petition be granted. I find in the papers which you have submitted no evidence of the board of county commissioners having either granted or rejected the petition on June 4, 1927, the time fixed by the board for such action.

It appears that the following year on August 4, 1928, the board of county commissioners by unanimous action passed a resolution declaring the necessity of improving road No. 305, which is a part of the road improvement peitioned for in 1926. In this resolution of necessity, it is recited that the commissioners went upon the line

of the proposed improvement of road No. 305 and viewed the same in the year 1928. There is no reference therein to a petition having been filed for the improvement of Road No. 305 and the resolution of necessity was passed by all three members of the board of county commissioners. There is some doubt as to the effect of the clause in the petition as to improving the road one mile each year. I do not, however, deem it necessary to pass upon this point for the reason that it appears that the commissioners did not proceed under this petition. Section 6907, General Code, provides that "within thirty days after such petition is presented, the commissioners shall go upon the line of the proposed improvement and, after viewing the same, determine whether the public convenience and welfare require that such improvement be made." Obviously the commissioners did not comply with this section, since they did not go upon the line of the improvement until a year after the petition was filed. Although the commissioners did go upon the line of the proposed improvement the year after the petition was presented, they apparently did not see fit to pass favorably upon it. The next year, 1928, they again went upon the proposed line of the improvement and then apparently took jurisdiction under Section 6911 by unanimous vote.

In view of the foregoing, it is my opinion that the proceedings already taken for the improvement of the part of the road which was improved in 1928 were separate and distinct from the proceedings taken in 1929 to improve another portion of the road and the board of county commissioners in determining how the cost shall be apportioned in the case of the 1929 improvement are not bound to apportion such cost in the same manner as was done with respect to the 1928 improvement.

With respect to the authority of the commissioners to cancel assessments heretofore levied, this question was considered in Opinion No. 1476, rendered under date of February 1, 1930, to Hon. Emerson C. Wagner, prosecuting attorney of Perry County, the syllabus of which is as follows:

> "After a board of county commissioners has levied assessments against abutting property to pay a part of the cost of a State highway and has issued bonds in anticipation of the collection of such assessments, such board of county commissioners has no authority to cancel and set aside such assessments."

Although in that particular case bonds had been issued in anticipation of the collection of assessments sought to be cancelled, the following language is used in the opinion:

> "An answer to your inquiry must, in my view, be primarily predicated upon the fact that there are no provisions in the General Code whereby a board of county commissioners are authorized to cancel and set aside special assessments which have been previously levied."

I am of the view that since the law contains no authority for the cancellation by the commissioners of assessments previously levied and for the return to the parties assessed of a part of such assessments already collected, such authority does not exist.

Summarizing, it is my opinion that:

1. When a petition is presented to a board of county commissioners for a road improvement requesting that a portion of the road be constructed each year until completed, and no action is taken by the commissioners upon such petition until the following year, at which time the commissioners view the line of the proposed improvement, it will be presumed that the commissioners have resolved not to proceed

under the petition when they again view the proposed improvement the next year and unanimously pass a resolution declaring the necessity of improving a part of such road without including in such resolution any reference to the petition filed two years previous to the passage of such resolution.

2. There is no provision of law authorizing a board of county commissioners to cancel and set aside special assessments which have been previously levied to pay a part of the cost of a road improvement.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2119.

BLANKET BOND FORMS—COVERING OFFICERS AND EMPLOYES OF BUILDING AND LOAN ASSOCIATIONS—DISAPPROVED.

SYLLABUS:

Disapproval of certain blanket forms of bonds, suggested as being proper for the Superintendent of Building and Loan Associations to prescribe for building and loan associations in bonding their officers and employes as required by Section 9670, General Code.

COLUMBUS, OHIO, July 21, 1930.

HON. JOHN W. PRUGH, *Superintendent, Division of Building and Loan Associations, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

> "Section 9670 of the General Code of Ohio authorizes the Superintendent of Building and Loan Associations to prescribe the form of bond to be executed by and on behalf of the officers and employes of building and loan associations.
>
> We submit herewith three forms of bond known as Building and Loan Blanket Bond Standard Form No. 16, viz.:
>
> (1) Bond which contains a rider specifically stating that such bond covers 'faithful performance of duty' in compliance with the section above referred to.
>
> (2) A form which eliminates Section 16 of the bond, which section provided that the bond 'is not given to comply with any statutory requirement and shall not be considered as a statutory bond', thereby by implication at least reading such coverage into the bond.
>
> (3) A form of bond which by rider attached thereto eliminates Section 16 as contained in the body of the bond.
>
> In the opinion of the undersigned either of the forms above referred to can be considered as being a proper form of bond within the limits of Section 9670 of the General Code.
>
> This is particularly true we believe of Form No. 1 above.
>
> This question has been under consideration for a long time, and we have been confronted with a great many conditions due to the doubt raised as to