

the plat by virtue of Section 3600 of the General Code, irrespective of where the plat was located. As I have before pointed out, by subsequent enactment a city from which the plat was distant less than three miles, became an interested party to the extent that the consent of its planning commission was made a condition precedent to action in either dedicating or amending a plat. This was in effect a limitation upon the prior absolute authority of the interested property owners to change the plat at will. The third interested party is the county which, in this respect, acts in most cases in behalf of the township, the latter having originally been vested with authority to vacate township roads, this jurisdiction having been taken away from the township and given to the county commissioners.

These streets and alleys being as they are township roads in most cases, impose an obligation upon the township to keep them in repair. This involves the expenditure of money, and, accordingly, the county commissioners are given the authority contained in Section 6860 of the General Code to make changes in the manner therein provided. In my opinion the authority in Section 6860 is not restricted by the provisions of Sections 4346, 4355 and 3586-1 of the General Code so as to require precedent consent by the planning commission to action by the county commissioners. In other words, I am of the opinion that Section 6860 of the General Code confers upon the county commissioners the authority to alter, widen, straighten, vacate or change the direction of streets and alleys in platted ground outside of the limits of a city, irrespective of the location of that ground and without securing the consent of the planning commission of any city, provided, of course, that the provisions governing the exercise of such power as found in the succeeding sections of the General Code be followed.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1628.

APPROVAL, FINAL RESOLUTION ON ROAD IMPROVEMENTS IN
WASHINGTON COUNTY.

COLUMBUS, OHIO, January 27, 1928.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works,*
Columbus, Ohio.

1629.

BONDS—SCHOOL DISTRICT—IMPROVEMENT RESTRAINED BY IN-
JUNCTION—NOTES DUE AND PAYABLE—PROCEDURE OF BOARD
OF EDUCATION DISCUSSED.

SYLLABUS:

1. *Where bonds have been authorized by the electors of a school district and where the board of education has borrowed money and issued notes in accordance with the provisions of Section 5654-1, General Code, and where an injunction proceeding has*

been instituted and the board of education restrained from proceeding with the improvement, pending the final determination of said injunction proceeding, the notes having in the meantime become due and payable, it is the duty of the board of education to pay said notes out of the fund realized out of the note issue in order to stop the accumulation of interest charges thereon.

2. *If the injunction proceeding results in a decision favorable to the board of education, said board may again borrow money and issue notes and proceed with the construction of the improvement and the issuance of bonds, without regard to the former note issue.*

COLUMBUS, OHIO, January 28, 1928.

HON. RALPH E. HOSKOT, *Prosecuting Attorney, The Dayton Savings and Trust Building, Dayton, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent communication, which reads as follows:

“The following situation has arisen in the case of one of the school boards of this county.

The question of issuing bonds in the sum of \$150,000.00 for the erection of a combination grade and high school was submitted to the electors of the school district by the board of education of Jefferson Township, this county. The bond issue was approved by the electors in 1926. Thereafter a site was chosen for the erection of this building and notes were issued by said board of education for \$150,000.00 dated January 1, 1927, said notes falling due one year thereafter. After the issuing of said notes and prior to the letting of contracts for said school building an injunction proceeding was instituted in the common pleas court of this county and the board of education was restrained from taking any further steps toward the erection of this building. This suit is still pending. Said notes which were issued fell due on December 31, 1927.

Please give us your opinion as to whether or not these notes may be paid off with the funds now on hand and new notes again issued after this litigation is brought to a close? This form of financing is perhaps the best method for the reason that it will stop the interest charges on the amount borrowed.

If in your opinion this may not be done, may these notes be renewed by the board of education and if so for what length of time may the renewal notes run and may they in turn be renewed in case the litigation is not brought to a close and the building completed before they become due?

We would appreciate it if you will give us this opinion at your earliest possible opportunity as the board desires to stop the interest running on this amount of money if it is possible.”

Section 5654-1, General Code, was enacted by the 86th General Assembly on April 17, 1925 (111 O. L. 494). On April 21, 1927, the 87th General Assembly passed House Bill No. 1, known as “The Uniform Bond Act” (112 O. L. 364), and in said act specifically repealed Section 5654-1, the repeal becoming effective August 10, 1927. However, on the same day that House Bill No. 1 was passed, April 21, 1927, the legislature passed House Bill No. 67, known as “The Norton-Edwards Highway Bill” (112 O. L. 430), which act became effective January 2, 1928. Section 5654-1, General Code, was re-enacted in House Bill No. 67 in substantially the same form as it stood prior to its repeal in House Bill No. 1. The effect of the above legislation,

briefly, was to suspend the operation of Section 5654-1, General Code, from August 10, 1927, the effective date of House Bill No. 1 to January 2, 1928, the effective date of House Bill No. 67.

Inasmuch as the bond issue referred to in your communication was voted on at the 1926 election and thereafter notes were issued by said board of education in the sum of \$150,000.00, dated January 1, 1927, it is obvious that these proceedings were had pursuant to the provisions of Section 5654-1, General Code, previous to its repeal in House Bill No. 1 above referred to.

Prior to its repeal in House Bill No. 1, Section 5654-1, General Code, read as follows:

“Whenever the county commissioners of any county, the township trustees of any township, or the board of education of any school district, have duly authorized the issuance of bonds for the construction or improvement of roads, bridges, school houses, or other public buildings, such bond issuing authority may borrow money in anticipation of the issuance of such bonds in an amount not exceeding the estimated cost of such construction or improvement, and not exceeding the amount of bonds so authorized, and issue the notes of such political subdivision as evidencing such indebtedness. The notes shall be made payable at a time not more than one year from their date and bear interest at not more than six per centum per annum. Such notes shall be the full general obligations of the political subdivision authorizing the same and for the payment of the same, the full faith, credit and revenues of such political subdivision shall be pledged. Prior to the issuance of such notes the resolution authorizing the issuance of the bonds anticipated by such notes, shall be certified to the county auditor and a tax for such bonds included in the annual budget as required by law. The bonds shall not be advertised for sale nor issued until the contract is let and shall be issued in an amount not exceeding the full amount of the accepted bid by more than the estimated amount of such other items of cost as may be legally included in the total cost of such construction or improvement; provided, however, that where such issue of bonds is for the furnishing of a building, as well as the construction or improvement of the same, and a contract for such furnishings cannot be let in time to make the bonds available for the payment of the notes issued for the construction of such building, the estimated cost of such furnishings may be used in lieu of the contract cost of the same. If the cost as thus determined is less than the amount of the bonds as previously authorized, the resolution authorizing such bonds shall be amended so as to reduce the issue, and a copy thereof certified to the county auditor. Taxes levied for the retirement of said bonds and assessments levied to defray, in whole or in part, the cost of such construction or improvement and anticipated by said bonds, shall thereafter be reduced to the extent required by the reduction of such bonds. The par value received from the sale of said bonds and any excess funds resulting from the issuance of said notes shall be used to retire said notes.”

Briefly stated, Section 5654-1, supra, granted authority to boards of education, among others, to borrow money and issue temporary notes in anticipation of an issue of bonds for the construction or improvement of school houses. While the section uses the words, “may borrow money * * * and issue notes” the section further provides that the bonds shall not be advertised for sale nor issued until the contract is let and shall be issued in an amount not exceeding the full amount of the accepted bid by more than certain allowable estimated items of cost. Inasmuch as the bonds

can not be issued until the contract or contracts are entered into and inasmuch as the contract or contracts can not be entered into until the clerk of the board of education has certified that the money required for the payment of such contract or contracts is in the treasury or in process of collection, as provided in Sections 5660 and 5625-33, General Code, the effect of Section 5654-1, supra, is to force boards of education to borrow money and issue temporary notes in all cases where bonds are to be issued for school house improvements.

The obvious purpose of the legislature in enacting Section 5654-1, supra, is to prevent boards of education, boards of county commissioners and boards of township trustees from issuing bonds in excess of the actual cost of an improvement for which such bonds are to be issued and to provide a method of temporary financing until the actual cost of the improvement can be determined. The notes authorized by said section are purely a temporary financing proposition and are intended to be paid as soon as the proceeds of the sale of bonds become available. This is made clear by the fact that the legislature has provided for a maximum maturity of said notes of only one year and by the further fact that Section 5654-1, General Code, provides that the par value received from the sale of said bonds and any excess funds resulting from the issuance of said notes shall be used to retire said notes.

You state in your letter that the notes were dated January 1, 1927, and that they fell due on December 31, 1927. The notes, therefore, are at the present time due and unpaid, and in view of the fact that an injunction proceeding is pending which prevents the advertising for bids and entering into contracts for the construction of the proposed improvement, it is obviously impossible to issue bonds to provide a fund for the retirement of said notes. While Section 5654-1, General Code, provides for the retirement of such notes out of the proceeds of the sale of bonds and the excess funds resulting from the issue of said notes, this clearly does not mean that such notes can be paid only out of the proceeds of the bond sale and the excess in the note fund. As stated above, the notes are purely a temporary financing proposition to enable the board of education to proceed with the improvement until such time as the actual cost of the same can be ascertained by the letting of contracts and bonds can be issued in the amount of such cost. When, therefore, anything occurs while the notes are still outstanding, such as the institution of injunction proceedings, as in the instant case, which interrupts indefinitely the proceeding with the improvement, it seems to me that a board of education would, under such circumstances, be justified in paying the notes out of the money borrowed and for which the notes were issued, in order to stop the accumulation of interest charges on said notes.

In the case which you present, the notes being due at the present time and there being a fund available for their retirement, I am of the opinion that it is not only within the power but that it is the duty of the board of education to pay said notes out of the fund realized by the issuance of the same in order to stop the accumulation of interest charges on said notes.

I am further of the opinion that if the injunction proceeding results in a decision favorable to the board of education and to the bond issue, that money may be again borrowed and new notes issued. In fact, inasmuch as Section 5654-1, General Code, was re-enacted in House Bill No. 67 above referred to, the board of education, upon the successful termination of the injunction proceeding, would be compelled to borrow money and again issue notes before the contract or contracts for the improvement could be entered into and the bonds issued.

Respectfully,
EDWARD C. TURNER,
Attorney General.