

5490.

APPROVAL—BONDS OF PORTSMOUTH CITY SCHOOL DISTRICT, SCIOTO COUNTY, OHIO, \$5,000.00.

COLUMBUS, OHIO, May 8, 1936.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

5491.

APPROVAL—BONDS OF CITY OF ROCKY RIVER, CUYAHOGA COUNTY, OHIO, \$10,000.00.

COLUMBUS, OHIO, May 8, 1936.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

5492.

REASSESSMENTS—COUNTY RECORDER SHOULD CHARGE STATUTORY FEE FOR CANCELLING ORIGINAL ASSESSMENTS ON REGISTERED LAND.

**SYLLABUS:**

*Where reassessments are made by a subdivision under the provisions of Section 2293-5j, General Code, or Amended Senate Bill No. 365 of the first special session of the 91st General Assembly, the county recorder is required to make the statutory charge for cancelling the memorials of the original assessments on registered lands.*

COLUMBUS, OHIO, May 9, 1936.

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

GENTLEMEN: I acknowledge receipt of your communication in which you submit to me for an opinion the question raised by the city solicitor of Cuyahoga Falls in his letter which reads as follows:

“Under Section 2293-5L, General Code of Ohio, and under Section 4 of Amended Senate Bill No. 365, approved by the

Governor on December 20, 1935, does a subdivision, reassessing its original assessments on registered land under either of said sections or laws, have to pay the recording fee to the county recorder in the case of registered lands for the notation of said reassessment on the memorials thereof, and as allowed by Section 8572-112, to-wit: 'For filing, examining and entering a memorial of each lien, charge or demand upon registered land and indexing the same, for each separately registered parcel of land—50c'?

In other words, does the language of Section 2293-5L, General Code, and Section of the above amended Senate Bill No. 365, make it mandatory upon the recorder of a county in the registration department to cancel the original entries of original assessments theretofore certified to and recorded on the registered parcel of land without charging a fee therefor? While it is my opinion and belief that the city would be liable for re-entry fees in the filing of reassessment liens on the memorial of registered land titles in the recorder's office, yet I do not believe that the city should be charged under these sections for the cancellation of the original assessment liens.

Since we are about to embark on a large program on attempted reassessments, I would appreciate your opinion on this matter at the earliest possible date."

Sections 2293-5, et seq., General Code, and Amended Senate Bill No. 365 of the first special session of the 91st General Assembly, provide for the issuance of refunding bonds. Whenever a series of bonds issued in anticipation of the collection of special assessments are refunded, Section 2293-5j provides that the taxing authority may and said Amended Senate Bill No. 365 provides that the taxing authority shall, reassess against each lot or parcel of land upon which the original assessments were levied and are due and unpaid, the due and unpaid part of the installments of such assessments with interest, plus other costs which are authorized by such statutes to be included in the amount of the reassessment. Section 4 of said Amended Senate Bill No. 365 reads as follows:

"After the taxing authority has approved said reassessments, like proceedings shall be had for the levy, certification, payment and collection of said reassessments as apply to the levy, certification, payment and collection of original assessments, and all provisions of law relating to the levy, certification, payment and collection of original assessments, except so far as in this act otherwise set forth, shall govern such levy, certification, payment

and collection of such reassessments, and excepting that such certification shall distinctly state the fact that it is a reassessment, and shall specify the original assessments for which the same is substituted. Upon certification of the first installment of such reassessment for collection to the county auditor and to the county recorder when registered title is involved, the county auditor and also the county recorder in case of registered lands, shall cancel the certified installments of original assessments so reassessed against the lots or parcels on which the reassessment has been made and the interest and penalty thereon, as the same stand on the tax list and duplicate, and on the original certificate of title. Any special assessment or assessments reassessed as provided in this section shall not again be reassessed. The fiscal officer shall thereafter certify for collection annually only the reassessment installments and shall not certify the installments of the original assessment."

Section 2293-5L makes the same provision with reference to registered lands. Section 8572-56 reads as follows:

"When in a city, village, township or county, an ordinance, resolution or order is passed or made by a council, board or other authority, to lay out, establish, alter, widen, grade, regrade, re-locate or construct or repair a highway, road, street, sidewalk, drain or sewer, or to make any other public improvement, or to do any work, the whole or a portion of the expense of which may be assessed or levied upon real estate, if any registered land or any land included in an application for registration then pending is affected by the act or proceeding, and liable to such assessment, or if an ordinance or resolution is passed making or levying any such assessments on registered real estate or certifying to the auditor or other officer or board any such assessments to be made or levied on any registered land, the clerk of the board or council passing such ordinance, resolution or order or issuing such certificate, shall file in the recorder's office a notice of the passage or issuance thereof giving a list of the lands assessed, or to be assessed and a memorial thereof shall thereupon be noted by the recorder on the register of each certificate of title for such land. Unless there is filed with the recorder, within ninety days after the passage or issuance of such ordinance, resolution or order, such notice or list of lands, registered lands shall not be liable for such assessments. In case of the repeal or nullification otherwise of such ordinance, resolution or order,

such clerk or officer or board shall within five days thereafter notify the recorder thereof who shall thereupon cancel such memorials."

Section 8572-112 provides in part as follows:

"The recorder shall receive the following fees:

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For cancellation of any memorial or memorandum or entry of change of address or notice of dower, for each separately registered parcel, 25c. \* \* \* "

There is nothing in the statutes which would relieve the county recorder from charging the required fee for cancelling the memorial of the original assessments.

In the case of *Radway v. Selectmen of Dennis, et al.*, 266 Mass., 329, 165 N. E., 410, decided by the Supreme Judicial Court of Massachusetts on February 28, 1929, it was held as disclosed by the first paragraph of the syllabus (165 N. E., 410):

"G. L. c. 262, section 38, requiring payment of fees of register of deeds when instrument is left for recording; applies to municipal officers with reference to instruments required to be recorded by city."

An examination of section 38 of Chapter 262 of Annotated Laws of Massachusetts shows that it provides:

"The fees of registers of deeds except as otherwise provided, to be paid when the instrument is left for recording, filing or deposit, shall be as follows: (Then follows setting out of fees for described services)."

The court stated at page 411:

"By G. L. c. 262, sect. 28, the fees of registers of deeds must be paid when the instrument is left for recording. The statutes make no exceptions in favor of municipal officers. They, as well as all others, must comply with the mandate of the statute as to fees."

See also Opinions of the Attorney General for 1927, Vol. III, page 2146, wherein it was held:

“1. When right of way deeds are executed and delivered to the state and are filed with a county recorder by a state department for recording, as provided for in Section 267, General Code, it is the duty of such department to pay to the county recorder the proper recording fees.

2. When right of way deeds are executed and are delivered to the state and filed by the Board of County Commissioners, as provided for in Section 267, General Code, it is the duty of such Board to pay to the county recorder the proper recording fees.”

I am therefore of the opinion that where reassessments are made by a subdivision under the provisions of Section 2293-5j or Amended Senate Bill No. 365 of the first special session of the 91st General Assembly, the county recorder is required to make the statutory charge for cancelling the memorials of the original assessments on registered lands.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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5493.

DEPOSITORY—DEBENTURES BUT NOT MORTGAGES ISSUED UNDER NATIONAL HOUSING ACT PROPER SECURITY FOR STATE FUNDS.

*SYLLABUS:*

1. *Debentures issued by the Federal Housing Administrator under the provisions of the National Housing Act of June 27, 1934, Title 12, Section 1710 U.S.C.A., 48 Stat. 1246, in exchange for mortgages insured under such act prior to July 1, 1937, are interest bearing obligations for the payment of the principal and interest of which the faith of the United States is pledged and may be hypothecated to secure the deposit of state funds under the provisions of Section 330-3, General Code.*

2. *Mortgages which are insured by the Federal Housing Administrator under the provisions of such act of Congress are not such interest bearing obligations for the payment of the principal and interest of which the faith of the United States is pledged as may be hypothecated to secure the deposit of state funds under authority of Section 330-3, General Code.*