

1530.

ROADS AND HIGHWAYS—IMPROVEMENT ABANDONED—PROCEEDS OF BOND ISSUE MAY NOT BE USED FOR OTHER IMPROVEMENTS—MUST BE TRANSFERRED TO SINKING FUND—MAY BE USED TO PURCHASE NEW ISSUE OF COUNTY ROAD BONDS.

*Where a road improvement project undertaken under authority of sections 6906 et seq., is abandoned, the proceeds of bonds issued to provide funds for said improvement may not, in view of the provisions of sections 6929 and 5654 G. C., be used for other improvements. However, under the provisions of sections 2976-18 et seq. G. C. (108 O. L., Part I, page 700), such proceeds, when transferred to the sinking fund, become available for the purchase of a new issue of county road bonds.*

COLUMBUS, OHIO, August 30, 1920.

HON. E. E. LINDSAY, *Prosecuting Attorney, New Philadelphia, Ohio.*

DEAR SIR:—You have recently written to this department as follows:

“About four years ago our board of commissioners and the board of trustees of one of our townships entered into an agreement to improve a portion of a certain road within the township under the provisions of section 6921 of the General Code, whereby the county agreed to pay 75 per cent of the cost thereof and the township to pay 15 per cent of the costs thereof, the balance to be assessed against the property benefited.

Bonds were issued in anticipation of the collection of the taxes and assessments to pay the costs of such improvement by the county commissioners under the provisions of section 6929. The money was received for the bonds and placed in the county treasury, since which time the county commissioners have been levying a tax to retire the same under provisions of section 6925 and 6927. But for various reasons, the improvement was not made and will not be made, consequently no assessment has been made or can be made against the abutting property as contemplated, and the money is still in the treasury.

Inasmuch as the statute provides that the proceeds of such a bond sale cannot be used for any other purpose, the question now is, what can be done with this money?

I find no statute that fits the case. The township trustees have an interest in it as well as the county commissioners, and the township trustees are desirous of having all or a portion of it used to improve other roads in their township.

As I am unable to find any statute covering this kind of a situation, I would be glad to have your ruling on the same.”

Section 6929 G. C., under authority of which the bonds in question were issued, specifically provides that the proceeds are to be applied exclusively to the improvement on account of which the bonds were issued. This specific provision is supplemented by the several provisions of section 5654 G. C., which reads:

“The proceeds of a special tax, loan or bond issue shall not be used for any other purpose than that for which the same was levied, issued or made, except as herein provided. When there is in the treasury of any city, village, county, township or school district a surplus of the proceeds of a special tax or of the proceeds of a loan or bond issue which cannot

be used, or which is not needed for the purpose for which the tax was levied, or the loan made, or the bonds issued, all of such surplus shall be transferred immediately by the officer, board or council having charge of such surplus, to the sinking fund of such city, village, county, township or school district, and thereafter shall be subject to the uses of such sinking fund."

Since the improvement project is not to be carried out, there remains no option in the commissioners, except transfer to sinking fund. While this step, in effect, prevents the direct use of the proceeds in question on an improvement other than the one for which the bonds were issued, yet in a sense such use may be indirectly brought about through the medium of the county sinking fund act (108 O. L., Part I, p. 700), in that moneys will be available in the sinking fund for the purchase of a new and independent issue of bonds, authorized for a specific improvement.

It is suggested that prior to making transfer to the sinking fund, the commissioners adopt a resolution definitely abandoning the original improvement project. Such resolution might properly embrace a statement of the reasons for the action being taken.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

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1531.

ROADS AND HIGHWAYS—WHEN PROCEEDS OF LEVY AUTHORIZED BY SECTION 6926 G. C. MAY BE DIRECTLY EXPENDED BY COUNTY COMMISSIONERS IN IMPROVEMENT OF VILLAGE STREET—SECOND CONCLUSION IN OPINION NO. 1182, DATED APRIL 27, 1920, REVISED.

*Subject to the prior consent of the village as provided by section 6949 G. C., the proceeds of the levy authorized by section 6926 G. C. may be directly expended by county commissioners in the improvement of a village street or part thereof, not theretofore improved by the State Highway Commissioner, and lying on the line of an inter-county highway. Question whether county commissioners may make like expenditure on village street if already improved by State Highway Commissioner, not passed upon.*

*(Second conclusion in Opinion No. 1182, dated April 27, 1920, revised.)*

COLUMBUS, OHIO, August 30, 1920.

HON. BARCLAY W. MOORE, *Prosecuting Attorney, Cadiz, Ohio.*

DEAR SIR:—Under date April 27, 1920, there was rendered to you in connection with the road laws an opinion wherein the following conclusions were expressed:

"1. The proceeds of the tax levy authorized by section 6926 G. C. may be expended by county commissioners in the improvement of such sections of an inter-county highway within the county as have not become subject to maintenance by the state as provided by sections 1224, 7464 and 7465 G. C.