

This section expressly provides that interest be charged on assessments where bonds are issued in anticipation of the collection of such assessments, but does not expressly authorize interest charges where no bonds are issued, and under the strict rule that governs the construction of statutes of this nature, I think no such authority can be implied.

Statutes authorizing the levy of assessments will be strictly construed and all doubts resolved in favor of the property owner. Sutherland Statutory Construction, Vol. II, page 1012.

Unless the statutes allow interest to be charged in assessments, none can be charged. McQuillin Municipal Corporations, Vol. V, page 762.

In the instant case, the cost of the improvement was paid out of the general road fund of the county and the assessments were levied to reimburse this fund. If these assessments could bear interest at the rate of six per cent, then the general road fund would be benefited to this extent at the expense of only a portion of the taxpayers of the county. I am of the view that this cannot be done, at least without express statutory authority. These statutes authorize the levy of assessments for the purpose of paying only the cost of improvement, except that where bonds are issued, they may bear interest at the same rate as the bonds. This, of course, is necessary to provide enough money to pay the principal and interest of the bonds as they mature, and may be regarded as a part of the cost of the improvement.

I am of the opinion, therefore, that where assessments have been levied to pay all or any portion of the cost of a county road improvement, the deferred installments may not bear interest where no bonds have been issued in anticipation of the collection of such assessments.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4099.

MUNICIPALITY—MAY NOT ACQUIRE LAND OUTSIDE CORPORATE LIMITS FOR PURPOSE OF REGULATING COURSE OF STREAM AND ISSUE BONDS FOR GENERAL FLOOD CONTROL.

SYLLABUS:

1. *Municipal corporations have no power to acquire land outside of their corporate limits in order to straighten or change the course of a stream for the general purpose of flood protection to the entire municipality and its inhabitants.*

2. *A municipality may not issue bonds for the general purpose of flood control.*

COLUMBUS, OHIO, February 26, 1932.

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

GENTLEMEN:—Your letter of recent date is as follows:

“You are respectfully requested to furnish this Department with a written opinion on the following question:

Question. May a municipality legally issue bonds for flood prevention where the citizens of such municipality, or property belonging to such municipality, is threatened by flood; the work necessary for such flood prevention to be done outside of the city limits, and the money derived from the sale of bonds expended on work done outside of the city limits, and for the purchase of land outside the city limits, necessary in the straightening of a stream?

We are enclosing letter of the City Solicitor of Mt. Vernon, describing the particular situation involved."

Attached to your letter is the following communication:

"As Solicitor of the City of Mt. Vernon, Ohio, I am making a request for information concerning the authority of the City of Mt. Vernon to issue bonds for flood protection where the work must be done outside the limits of the municipality.

The City of Mt. Vernon is bounded on the west and southwest by the Kokosing river and incidentally the water works plant is located on the west side of the city. These grounds are protected at the present time by an earthen embankment or dyke and which dyke has been sufficient under normal conditions to protect the city and the city's property from moderate floods. At the present writing however, the channel of the river has become so clogged by debris that the river is gradually working out a new channel which is threatening to shift the bed of said stream in such a way as to be a serious menace to the City of Mt. Vernon, not only to the citizens but also other property belonging to the municipality.

The Pennsylvania railroad, the B. & O. railroad and the state highway department have property which in order to be protected will require some flood prevention work, which will be the straightening and clearing of the channel of said river, but what work they do, while it will give relief when the flood reaches their work, yet it will not protect City property as the points where work must be done on said channel in order to protect Mt. Vernon are outside of the limits necessary for the protection of the highway and railroad properties. If it is possible for the City of Mt. Vernon to issue bonds for the purpose of undertaking and carrying on this flood prevention work outside of the City limits I believe we can solve our problem.

The question I am putting up to you is:

'Can the City of Mt. Vernon legally issue bonds for flood prevention where the citizens of said City or property belonging to said municipality is threatened by flood where the work necessary for such flood prevention must be done outside the City limits and the money derived from said bonds expended on work done outside of the City Limits?'"

There are several questions involved in the foregoing inquiry. It is first necessary to determine whether or not a municipality has the power to acquire land outside of its corporate limits for the purpose of changing the course of a stream.

The general rule with respect to a municipality acquiring land outside of its corporate limits is that without legislative grant the authority of the municipal corporation is confined to its own area and its acts and ordinances have no force beyond its corporate limits. McQuillin on Municipal Corporations, 2nd ed., Vol. V, Section 1969.

The statutes of Ohio have in certain specific instances authorized municipali-

ties to acquire land outside of their corporate limits for certain purposes. Section 3677, General Code, provides that municipal corporations shall have power to appropriate property within or without the limits of the corporation for the purpose of providing for a supply of water for itself and its inhabitants and that it may acquire lands outside its corporate limits for the purpose of providing a landing field for aircraft. Section 3939, General Code, provides that municipal corporations shall have power to extend the waterworks system outside of the corporate limits, to improve any water course passing through the corporation and to purchase or condemn land necessary for landing fields whether within or without the limits of a municipality. The other section conferring general power to acquire real estate in Section 3631, General Code, which makes no reference to land outside of the corporate limits.

It appears, therefore, that the legislature has not extended to municipalities the power to acquire land outside of their corporate limits for the purpose of changing the course of a stream—at least not expressly. The only section of the General Code conferring such power on municipalities is Section 3783-1, which section provides as follows:

“When it is necessary in the construction and in the protection thereof by any municipal corporation, of wells, pumps, cisterns, aqueducts, water pipes, dams, reservoirs, reservoir sites, sewers, drains, sewage disposal or water purification plants and waterworks, for supplying water to itself and its inhabitants, or disposing of sewage, to relocate, straighten, change or cross a road or stream of water, such municipal corporation may relocate, straighten, change or cross said road or stream, but without unnecessary delay it shall place such road or stream in such condition as not to impair its usefulness.”

The course of a stream may be changed by the corporation only for the purposes provided in the foregoing section and these purposes are undoubtedly exclusive. Among these purposes, there is no mention of the general purpose of flood control, nor is there any express authority to change the course of a stream outside of the corporate limits of a municipality. Of course, the purpose of flood control may be effectuated to the extent that the change in the course of a stream is necessary to protect the public works therein mentioned. Since certain of these public works may be outside of the corporate limits of a municipality, I think the course of a stream outside such limit may be changed to protect such works. This would be true, for instance, in the case of a waterworks which may be outside the corporate limits, under Section 3939, General Code. Under such circumstances, and for such purpose, the course of a stream outside the corporate limits may be changed. This is a much narrower purpose than the general purpose of flood control, although under certain circumstances it may be sufficient to accomplish that object.

In specific answer to what I shall consider your first question, it is my opinion that municipal corporations have no power to acquire land outside of their corporate limits in order to straighten or change the course of a stream for the general purpose of flood protection to the entire municipality and its inhabitants.

You next inquire as to whether or not a municipality may issue bonds for the purpose of flood prevention. This question may not be answered categorically. The Uniform Bond Act, Section 2293-2, provides that municipalities may issue bonds for the purpose of acquiring or constructing any permanent improvement

which municipalities are authorized to acquire or construct. A permanent improvement is defined in Section 2293-1, General Code, as "any property, asset or improvement with an estimated life or usefulness of five years or more". The General Code authorizes municipalities to improve water courses. Sections 3939, 3623 and 3812, General Code. Unquestionably water courses or streams may be improved by the construction of improvements, which would fall within the definition of permanent improvements as defined in the Uniform Bond Act and which would serve to effectuate the purpose of flood control. Section 3812, General Code, relating to the power to levy special assessments, provides that such assessments may be levied to pay any part of the cost of changing the channel of a stream or water course, constructing any retaining wall or flood gates. To that extent bonds may be issued to effectuate the purpose of flood control, but the legislature has not expressly authorized the issuance of municipal bonds for general flood control purposes as such.

It is, therefore, my opinion that a municipality may not issue bonds for the general purpose of flood control.

In formulating the foregoing conclusions, it must be borne in mind that the legislature has made adequate provision and set up complete machinery in order to protect the citizens of Ohio and their property from damage by floods. These provisions are contained in the "Conservancy Act of Ohio", being Sections 6828-1, et seq., General Code.

General flood protection may also be provided under the so-called Single County Ditch Law, Sections 6442, et seq., General Code. In this connection, I direct your attention to Opinion No. 2919, rendered under date of February 6, 1931, copy of which is enclosed.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4100.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES AS RESIDENT DISTRICT DEPUTY DIRECTOR IN PAULDING COUNTY—EUGENE P. LIGHT.

COLUMBUS, OHIO, February 26, 1932.

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

DEAR SIR:—You have submitted for my examination a bond in the penal sum of \$5,000.00 upon which the name of Eugene P. Light appears as principal and The Fidelity and Casualty Company of New York appears as surety, conditioned to cover the faithful performance of the duties of the principal as Resident District Deputy Director in Paulding County.

Finding said bond legal and proper as to form, I have endorsed my approval thereon and return the same herewith.

Respectfully,

GILBERT BETTMAN,

Attorney General.