

"The premium of any duly licensed surety company on the bond of any public officer, deputy or employe shall be allowed and paid by the state, county, township, municipality or other subdivision or board of education of which such person so giving such bond is such officer, deputy or employe."

The first of the two statutes above quoted authorizes the county commissioners to pay the expense or premium on the bond of the county treasurer given to the state, but nowhere does it authorize payment of the premium on a bond given by a surety company to indemnify original bondsmen on the bond of a county treasurer.

The latter of the two statutes, quoted supra, only authorizes the county to pay the premium on the bond of any public officer, deputy, or employe of the county, and clearly does not authorize payment of a bond of a surety company executed to indemnify the four freeholders on the bond of a county treasurer.

In view of the foregoing, I am of the opinion, in specific answer to your question, that a board of county commissioners may not pay for the premium on a bond executed by a surety company to indemnify four freeholders on the bond of a county treasurer.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2408.

SPECIAL ASSESSMENTS—PROPERTY OWNER MAY PRESENT SPECIAL ASSESSMENT BONDS OF MUNICIPALITY TO OFFSET SPECIAL ASSESSMENTS OWED BY HIM TO MUNICIPALITY WHEN.

SYLLABUS:

Where special assessments have been certified by a municipality to the county auditor, as provided by law, the owner of property against which any of said assessments have been levied, who holds bonds of such municipality issued in anticipation of the collection of such assessments, which bonds matured on or before January 1, 1933, and title to which was acquired by such property owner prior to said date, may, after the fiscal officer of such municipality has certified in writing his determination that such bonds can be used for the payment of taxes as provided in House Bill No. 94 of the 90th General Assembly, present said bonds to the treasurer of the county in which such municipality is located when such assessments become due and payable, and thereupon it becomes the duty of such county treasurer to accept said bonds in full or partial payment thereof.

COLUMBUS, OHIO, March 26, 1934.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication, which reads as follows:

"Inquiry has been made from me as to whether or not a property owner in a municipality owing special assessments to the municipality on his property could properly turn in the special assessment bonds of the municipality to offset special assessments owed by him."

Section 3892, General Code, reads as follows:

"When any special assessment is made, has been confirmed by council, and bonds, notes or certificates of indebtedness of the corporation are issued in anticipation of the collection thereof, the clerk of the council, on or before the second Monday in September, each year, shall certify such assessment to the county auditor, stating the amounts and the time of payment. The county auditor shall place the assessment upon the tax list in accordance therewith and the county treasurer shall collect it in the same manner and at the same time as other taxes are collected, and when collected, pay such assessment, together with interest and penalty, if any, to the treasurer of the corporation, to be by him applied to the payment of such bonds, notes or certificates of indebtedness and interest thereon, and for no other purpose. For the purpose of enforcing such collection, the county treasurer shall have the same power and authority as allowed by law for the collection of state and county taxes. Each installment of such assessments, remaining unpaid after becoming due and collectible, shall be delinquent and bear the same penalty as delinquent taxes. The city solicitor or the regular and authorized legal representative of any such municipality is hereby authorized and directed to act as attorney for the county treasurer in actions brought under authority of section twenty-six hundred and sixty-seven of the General Code for the enforcement of the lien of such delinquent assessments."

I assume that the assessments in question have been certified to the county auditor as provided by the above statute. After assessments have been so certified, the municipality has nothing further to do with their collection except that its legal representative may represent the county treasurer in enforcing collection. *Railroad Company vs. Bellaire*, 67 O. S. 297; *Scherler vs. Maple Heights*, 40 O. A. 389. The duty imposed upon the county treasurer to collect such assessments in the same manner as other taxes are collected, is mandatory. *State, ex rel., vs. Cooper*, 123 O. S. 23. Consequently, except as hereinafter pointed out, there is no authority for the county treasurer to accept bonds issued in anticipation of the collection of assessments to be applied to the payment of any of such assessments, and I know of no authority whereby a municipality could so accept such bonds where the assessments have not been certified to the county auditor.

House Bill No. 94 of the 90th General Assembly, provides that:

"It shall be the duty of the county treasurer, upon submission of evidence of a liquidated claim by a taxpayer, to accept it in full or partial payment as herein provided of those taxes which are to be allocated to the subdivision against which the claim exists.

Before any such liquidated claim is so used, it shall first be presented by the taxpayer to the fiscal officer of the subdivision for verification. If such fiscal officer, upon examination, determines that the liquidated claim can be used for the payment of taxes as provided in this

act, he shall in writing certify to such fact in duplicate, and such duplicate certificate shall be given to the taxpayer as evidence of his liquidated claim."

Taxes, as defined in this act, includes, among other things, "taxes and assessments levied against real estate and any delinquencies," while a liquidated claim includes "any sum of money that was due and payable January first, 1933, upon a written contractual obligation duly executed between the subdivision and the taxpayer prior to such date."

In my Opinion No. 1597, dated September 21, 1933, addressed to the Bureau of Inspection and Supervision of Public Offices, I held as follows:

"The term 'liquidated claims' as defined in sub-section (b) of Section 2 of House Bill No. 94 enacted by the 90th General Assembly, includes bonds issued by a subdivision in accordance with the provisions of the Uniform Bond Act, due and payable prior to January 1, 1933, when in the hands of the person to whom originally issued or in the hands of a holder who acquired title thereto prior to January 1, 1933."

This act is the only authority I know of whereby bonds may be accepted in payment of taxes or assessments.

Consequently, I am of the opinion that where special assessments have been certified by a municipality to the county auditor, as provided by law, the owner of property against which any of said assessments have been levied, who holds bonds of such municipality issued in anticipation of the collection of such assessments, which bonds matured on or before January 1, 1933, and title to which was acquired by such property owner prior to said date, may, after the fiscal officer of such municipality has certified in writing his determination that such bonds can be used for the payment of taxes as provided in House Bill No. 94 of the 90th General Assembly, present said bonds to the treasurer of the county in which such municipality is located when such assessments become due and payable, and thereupon it becomes the duty of such county treasurer to accept said bonds in full or partial payment thereof.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2409.

LIQUID FUEL TAX—BOARD OF EDUCATION UNAUTHORIZED TO PAY PROCEEDS THEREOF TO OTHER BOARDS OF EDUCATION ON ACCOUNT OF ATTENDANCE IN THEIR SCHOOLS OF PUPILS RESIDENT IN LATTER SCHOOL DISTRICT—CREDIT ALLOWED ON TUITION—COUNTY COMMISSIONERS UNAUTHORIZED TO PROCURE LIABILITY INSURANCE WHEN.

SYLLABUS:

1. *Boards of education are without authority to pay over to other boards of education the amount of the proceeds of the liquid fuel tax distributed to their*