of the old pavement that can be termed a repavement. Matter of Astor, 53 N. Y. 617, cited by relator, does not touch the question. Although *Ten Eyck* vs. *Rector,* 65 Hun, 194, 20 N. Y. Supp. 157, contains some loose expressions, defining paving and repaving, which might uphold relator's contention that 'paving' means when pavement is laid for the first time in a dirt road and that any subsequent paving thereof is 'repaving,' it decided merely that an agreement between landlord and tenant, whereby the latter is to pay all assessments for paving, is broad enough to include assessments for repaving.

The charter (Section 279) recognizes (a) repair of paved streets by the commissioner of public works, and (b) repaving, when the commissioner certifies that it is not expedient to make further repairs. 'Repairing' means restoration of the paved surface. 'Repaving' means paving again, taking up the old pavement and replacing it with new. To the extent that the new pavement extends beyond the lines of the old, the street is not repaved, but is paved for the first time. If a street is paved for one-half its width by local assessment, and later the pavement is extended to the entire width of the street without disturbing the first pavement, probably no one would claim that the new pavement was a repavement. The circumstances that the old pavement is relaid at the same time that the new pavement is laid does not make the work one of repaving. The purpose of the charter is, it would seem, to impose the entire original cost of new pavement on the property benefited, and to charge the city at large with one-third of the expense of replacing the old pavement when it becomes worn out."

In line with the foregoing case is the case of *In re Petition of Pittsburgh,* 79 Pa. Sup. Ct. 401.

In view of the foregoing, I feel that the trend of modern authority is to the effect that, where a wider pavement is substituted for an earlier narrower one, assessment of the cost of the additional width may be made as for a new improvement, but so much of the width of the new pavement as represents the prior existing pavement must be treated as a reimprovement and the assessments therefor must be governed accordingly.

In specific answer to your second question, therefore, I am of the opinion that where a street has been paved a width of ten feet and the cost thereof assessed against the abutting property owner, the cost of paving an additional width of ten feet may be assessed against abutting property as an original assessment.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1869.

MUNICIPALITY—POWER TO BORROW MONEY—CERTIFICATES OF INDEBTEDNESS—TAX SETTLEMENT.

SYLLABUS:

1. *A municipal corporation may not borrow money in anticipation of the collection of current revenues other than tax levies.*

2. *A municipal corporation may authorize and issue certificates of indebtedness in anticipation of the February, 1928, tax settlement and authorize the trustees of the sinking fund to use the proceeds of such sale for the redemption of bonds and the payment of interest, provided, however, that the aggregate of such certificates of indebtedness shall not exceed one-half of the amount estimated to be received from such settlement as estimated by the budget commission, other than taxes to be received for the payment of debt charges and all advances, and provided further that in any event the amount borrowed for such purposes shall not exceed the estimate by the budget commission of the amount to be received at such settlement for such purposes.*

COLUMBUS, OHIO, March 19, 1928.

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

GENTLEMEN:—This will acknowledge your two recent communications asking my opinion as to the proper interpretation of the language of Section 2293-4 of the General Code in certain respects. In your first letter you specifically ask:

> "May money be borrowed by a municipal corporation in anticipation of the collection of current revenues other than tax levies?"

Your second letter inquires:

> "May the council of a municipality authorize and issue certificates of indebtedness in anticipation of the March, 1928, tax settlement and authorize the trustees of the sinking fund to use the proceeds of such sale for the redemption of bonds and the payment of interest?"

Section 2293-4 of the General Code is as follows:

> "In anticipation of the collection of current revenues in and for any fiscal year, the taxing authority of any subdivision may borrow money and issue notes therefor, but the aggregate of such loans shall not exceed one-half of the amount estimated to be received from the next ensuing semi-annual settlement of taxes for such fiscal year as estimated by the budget commission, other than taxes to be received for the payment of debt charges, and all advances. The sums so anticipated shall be deemed appropriated for the payment of such notes at maturity. The notes shall not run for a longer period than six months and the proceeds therefrom shall be used only for the purposes for which the anticipated taxes were levied, collected and appropriated. No subdivision shall borrow money or issue certificates in anticipation of the February tax settlement before January first of the year of such tax settlement."

This section is a part of the Uniform Bond Act, enacted by the 87th General Assembly and found in 112 O. L., commencing at page 364. The section in question is of general application to subdivisions of the state and is a substitute for two prior sections, the one providing for temporary borrowing by a municipality and the other applicable to temporary borrowing of other subdivisions. These sections were 3913 and 5655, respectively, and were repealed at the time of the enactment of the Uniform Bond Act. Section 3913 of the Code formerly read as follows:

> "In anticipation of the collection of current revenues in and for any fiscal year (excepting taxes and assessments to be received for the pay-

ment of interest or principal of bonds, notes or other indebtedness), such corporations may borrow money and issue certificates of indebtedness therefor, signed as municipal bonds are signed, but no loans shall be made to exceed the amount estimated to be actually received from such taxes and other current revenues for such fiscal year, after deducting all advances. Such corporation may borrow money and issue certificates of indebtedness in anticipation of the collection of taxes and assessments to be received during the fiscal year for the payment of interest or principal of bonds issued previous to January 1, 1922. The proceeds of any such certificates shall be used only for the purpose for which the anticipated revenues, taxes or assessments were raised, collected or appropriated. The sums so anticipated shall be deemed appropriated for the payment of such certificates at maturity. The certificates shall not run for a longer period than six months, nor bear a greater rate of interest than six per cent and shall not be sold for less than par with accrued interest."

Section 5655 of the Code was as follows:

"In anticipation of the collection of current revenues in any fiscal year, the county commissioners of any county, the board of education of any school district or the township trustees of any township may borrow money and issue certificates of indebtedness therefor, but no loans shall be made to exceed the amount estimated to be actually received from taxes and other current revenues for such fiscal year, after deducting all advances. The sums so anticipated shall be deemed appropriated for the payment of such certificates at maturity. The certificates shall not run for a longer period than six months nor bear a greater rate of interest than six per cent and shall not be sold for less than par with accrued interest. The proceeds of any such certificates shall be used only for the purposes for which the anticipated revenues or taxes were raised, collected or appropriated. No political subdivision or taxing district shall borrow money or issue certificates in anticipation of the February tax settlement before January 1 of the year of such tax settlement."

The answer to your first question is fairly evident from a reading of Section 2293-4, supra. Especially is this so in view of the provisions of the earlier sections above quoted. You will observe that Section 3913 mentioned specifically that the loan should not be in excess of the amount estimated to be received from "such taxes and other current revenues". The same was also true of the language of Section 5655, supra. The later provisions of both sections also clearly recognize the difference between revenues derived from taxation and other revenues, and, reading the sections as a whole, it is clear that, in the old sections, subdivisions had authority to borrow in anticipation of current revenues other than tax levies.

In the analogous Section 2293-4 of the Code, however, important changes have been made. While all the sections use the phrase "in anticipation of the collection of current revenues in and for any fiscal year," which is very broad if not qualified by succeeding language, yet the third sentence of Section 2293-4 is, in my opinion, conclusive of the question you present. It is there stated positively that the proceeds of the notes authorized by the section shall be used only for the purposes for which the anticipated taxes were levied, collected or appropriated. Here is a distinct departure from the language of the earlier sections. Both Sections 3913 and 5655, in their similar prohibitory language, restricted the application of the proceeds to the purposes for which "the anticipated revenues or

taxes" were raised, collected or appropriated. In my opinion, therefore, the first portion of Section 2293-4 of the General Code must be read in the light of the use to which the proceeds of the borrowed monies may be put, and, in view of the change in the language as indicated above, I have no hesitancy in saying that the Legislature intended to restrict the authority conferred to borrow in anticipation of the collection of current revenues to such current revenues as are derived from general taxation.

In your second question you ask in substance whether Section 2293-4 authorizes any borrowing by a municipality for the purpose of the redemption of bonds and the payment of interest. Your inquiry is undoubtedly caused by the language found in the latter part of the first sentence of the section.

This clause imposes a limitation upon the aggregate of the amount of the loans which may be negotiated by any subdivision, the measure of the amount being fixed as one-half of the amount estimated by the budget commission to be received from the next ensuing settlement of taxes after deducting therefrom the amount to be received for the payment of debt charges and all advances made against the settlement. In view of this language, the question naturally arises whether any monies may be borrowed for the purpose of anticipating receipts from taxation for the payment of debt charges of any character.

Had the legislature intended to prohibit borrowing of this character, certainly more apt language might have been used. You will observe by reading Section 3913, supra, that municipalities under that section clearly did not have the right to borrow for the payment of interest and principal on bonds, notes or other indebtedness. The language incorporated in the parenthesis in that section and qualifying the term "current revenues" was put in for the express purpose of accomplishing such a prohibition. By reference to the history of that section it is found that the portion in the parenthesis was placed therein in 1923 and, prior to the amendment of that section, this department, in Opinions of the Attorney General for 1922, at page 587, ruled as stated in the syllabus:

> "Under Section 3913, G. C., as amended 109 O. L. 336, the council of a municipal corporation may borrow money and issue certificates of indebtedness for the purpose of anticipating current sinking fund revenues."

In the opinion it is pointed out that the section formerly read "in anticipation of the general revenue fund in any fiscal year", which obviously prevented borrowing in anticipation of current sinking fund revenue. The change of the section to "in anticipation of the collection of current revenues" was held by the then attorney general to broaden the power of borrowing so as to comprehend a borrowing for the purpose of anticipating current sinking fund revenue.

As I have before pointed out, the section was amended in 1923 so as to include the portion in parenthesis, which clearly negatived the right of the municipality to borrow in anticipation of current sinking fund revenues. Section 5655 did not, however, at any time contain any similar restriction, so that it may well be concluded that subdivisions other than municipalities might anticipate current levies for debt charges at least prior to the enactment of Section 2293-4, supra.

In the light of the history of the analogous sections of the General Code, I feel that the language of Section 2293-4, supra, does not justify a conclusion that a municipality may not borrow money in anticipation of debt charges. The language of the latter part of the first sentence of that section constitutes a mere limitation upon the aggregate amount borrowed. In the computation of that amount, the portion to be received for debt charges may not be considered, but it does not

follow necessarily therefrom that money may not be borrowed for that purpose. As I view this language, it merely prescribes a measure for the determination of the maximum amount which the municipalities are authorized to borrow in anticipation of tax revenues. Such borrowing cannot exceed one-half of the amount estimated by the budget commission to be received from taxation other than taxes for debt charges and less advancements. If the municipality stays within this limitation, it may borrow in anticipation of any tax revenues and the proceeds thereof may be used for the purposes for which the anticipated taxes were levied, collected or appropriated. Of course borrowing in anticipation of debt charges could not exceed in any event the amount estimated to be received for such purposes.

By way of specific answer to your questions, therefore, I am of the opinion:

1. A municipal corporation may not borrow money in anticipation of the collection of current revenues other than tax levies.

2. A municipal corporation may authorize and issue certificates of indebtedness in anticipation of the February, 1928, tax settlement and authorize the trustees of the sinking fund to use the proceeds of such sale for the redemption of bonds and the payment of interest, provided, however, that the aggregate of such certificates of indebtedness shall not exceed one-half of the amount estimated to be received from such settlement as estimated by the budget commission, other than taxes to be received for the payment of debt charges and all advances, and provided further that in any event the amount borrowed for such purposes shall not exceed the estimate by the budget commission of the amount to be received at such settlement for such purposes.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1870.

BUILDING AND LOAN—DEPOSIT OF IDLE FUNDS DISCUSSED.

SYLLABUS:

A building and loan association may deposit its idle funds in any financial institution, subject to inspection by the United States or the State of Ohio, and receive a passbook as evidence of such deposit.

COLUMBUS, OHIO, March 19, 1928.

HON. J. W. TANNEHILL, *Superintendent of Building and Loan Associations, Columbus, Ohio.*

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

> "Under Section 9661 of the General Code of Ohio, a building and loan association is authorized to deposit any of its idle funds 'in any financial institution that is subject to inspection by the United States, or by the State of Ohio; and receive therefor certificates of deposit.'