

3880.

## DISAPPROVAL, BONDS OF SHELBY COUNTY, \$36,000.00.

COLUMBUS, OHIO, December 9, 1926.

Re: Bonds of Shelby County, \$36,000.00.

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

GENTLEMEN:—The foregoing bonds in the amount of \$36,000.00 consist of two issues, one in the amount of \$21,000.00 and one in the amount of \$15,000.00.

Said bonds are issued under authority of section 1223 of the General Code for inter-county highway road improvements. The resolutions applying for state aid were in each instance passed by the board of county commissioners on February 8, 1926.

The resolution on which the \$15,000.00 issue is based does not contain the recorded vote of but two of the county commissioners. The resolution on which the \$21,000.00 issue is based shows the passage thereof by the recorded vote of two commissioners voting "yes" and one commissioner voting "no."

All other proceedings and actions of the board of county commissioners are shown to have been passed by a recorded vote of but two of the commissioners, and no record is shown as to the proceedings or action of the other member of the board.

The transcripts recite that the board of county commissioners consists of three acting members. It is therefore apparent that one of said members has refused to act or take part in the proceedings for these improvements and the issuance of said bonds. The transcript does not contain any statement as to whether or not the bonds have been signed by all of the members of said board of county commissioners.

Section 2406 of the General Code provides that the clerk shall keep a full record of the proceedings of the board of county commissioners and shall call and record the yeas and nays on each motion which involves the levying of taxes or appropriation or payment of money.

The transcripts do not show a complete record for the reason that only two members are shown to be acting on these proceedings.

Section 1191 of the General Code provides in part:

*"The commissioners of any county may make application to the state highway commissioner for aid from any appropriation by the state from any fund available for the construction, improvement, maintenance or repair of inter-county highways. \* \* \*"*

Section 1204 of the General Code provides that when twenty-five per cent or more of the owners of the lineal feet abutting on an inter-county highway or main market road, petition the county commissioners for its construction, etc., the county commissioners shall grant the petition, if they are of the opinion that the improvement will be for the best interests of the public, and they shall make application for state aid, etc.

Section 1223 of the General Code also provides that the county commissioners shall issue and sell the bonds for an inter-county highway improvement.

It will now be observed that the various sections prescribing the duties of the county commissioners make provisions that such proceedings shall be had by the county commissioners and make no statutory provisions for said proceedings to be had or performed by a part of the board of county commissioners.

Section 6907 of the General Code provides that when a petition is presented to the county commissioners by any county asking for the construction, etc., of any county road under the county highway laws, signed by at least fifty-one per cent of the land or lot owners who are to be taxed, etc., the *county commissioners* shall proceed with said improvement.

Following this section, it is provided in section 6910 of the General Code that the county commissioners may proceed with the improvement without a petition upon the passage of the resolution by unanimous vote declaring the necessity therefor.

The bond resolution in each of the transcripts in connection with this issue of bonds recites:

"Said bonds shall be prepared, issued and delivered under the direction of the board of county commissioners of the said county and shall be signed by the members of said board and attested by the signature and official seal of the county auditor."

The provisions of section 6910 of the General Code for the unanimous vote of the members of the board of county commissioners where there is no petition for the improvement is the only statutory provision concerning the vote of said county commissioners for road improvements. The point has not been settled satisfactorily by any court action, and for that reason, it has been the general policy to have the specific proceedings for road improvements passed by the action of at least all the members of the board of county commissioners.

An objection is especially raised in this case for the reason that it is apparent that the action of the board of commissioners on these proceedings has not been unanimous and that objections to the improvement or to the issuance of the bonds are apparent. Under no circumstances could the bonds be accepted when signed only by two members of the board of county commissioners. In view of the irregularity of the other proceedings, I am not inclined to approve the issue, and you are therefore advised not to accept said bonds.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*

3881.

APPROVAL, BONDS OF SOUTH EUCLID-LYNDHURST VILLAGE SCHOOL  
DISTRICT, CUYAHOGA COUNTY, \$60,000.00.

COLUMBUS, OHIO, December 10, 1926.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

3882.

APPROVAL, BONDS OF VILLAGE OF NORTH OLMSTED, CUYAHOGA  
COUNTY, \$9,361.00.

COLUMBUS, OHIO, December 10, 1926.

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