

a beautician or hairdresser. I assume this fact to be true. In addition, it is also well known that the cutting of children's hair is one of the usual and ordinary practices of barbers. It is thus apparent that the occupation of barbering and the occupation of a beauty culturist overlap in some respects, in that the cutting or trimming of women and children's hair is included in both occupations, although this is not the main part of either business, but merely an incidental part thereof.

Without further extending this discussion it is my opinion that children's hair may be cut by either licensed barbers or by licensed cosmetologists, inasmuch as such practice is a part of the ordinary and usual vocation of both.

Respectfully,

JOHN W. BRICKER,

Attorney General.

3798.

BOND—CITY AUTHORIZED TO SELL BONDS IN ANTICIPATION OF
COLLECTION OF UNPAID ASSESSMENTS, THOUGH PAST DUE,
WHEN.

SYLLABUS:

Where notes are issued and sold by a city in anticipation of the issue of bonds in anticipation of the collection of special assessments and said notes have become due, bonds may be sold in anticipation of the collection of such assessments as are unpaid, even though a portion thereof are past due.

COLUMBUS, OHIO, January 12, 1935.

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

GENTLEMEN:—I acknowledge receipt of your communication which reads as follows:

“We are inclosing a letter received from the City Auditor of Massillon containing five questions relative to the legal authority of the city to issue bonds now, in order to pay notes issued in 1929 in anticipation of the sale of bonds in anticipation of the collection of special assessments.

After a discussion of this matter with the Auditor and other officials of the city, it develops that there is only one question on which your legal opinion is desired and that is, whether the city may issue bonds in an amount equal to the assessments levied and delinquent, and the assessments levied but not yet due.”

Section 2293-24, General Code, reads as follows:

“Subdivisions shall have power to issue bonds in anticipation of the collection of special assessments. Such bonds may be in sufficient amount to pay that portion of the estimated cost of the improvement or service for which the assessments are levied, and the assessments as paid shall be applied to the liquidation of such bonds. Subdivisions

may borrow money and issue notes, due and payable not later than two years from the date of issue, in anticipation of the levy of special assessments or of the issuance of bonds as provided in this section. The notes shall not exceed in amount that portion of the estimated cost of the improvement or service for which the assessment is levied. When such notes are issued, the proceeds of bonds thereafter issued in anticipation of the collection of assessments and all of the assessments collected for the improvement shall be applied to the payment of the notes and interest thereon until both are fully paid; and thereafter said assessments shall be applied to the payment of said bonds and interest thereon. Bonds or notes issued under this section may be combined in a single issue with other assessment bonds or notes, and with bonds or notes to pay the subdivision's share of the cost of the permanent improvements for which such assessment bonds are issued. Bonds or notes issued in anticipation of the levy of special assessments or the collection thereof shall be full general obligations of the issuing subdivision, and for the payment of the principal and interest of same the full faith, credit and revenue of such subdivision shall be pledged."

Section 2293-26, General Code, provides for the issuance of bonds when notes have been issued in anticipation thereof and are about to mature.

Section 2293-29, General Code, reads in part as follows:

"* * * If anticipatory notes have been issued, the moneys remaining from the proceeds of sale of such notes, and money from the sale of bonds shall be used for the purpose of paying such anticipatory notes."

Assuming that the proceedings leading up to the issuance and sale of these notes were regular, it clearly became the duty of the city council to issue bonds to pay such notes. Upon the failure of council so to do, it could have been compelled in a mandamus proceeding to issue bonds or take other action to procure the money to satisfy the notes. *State, ex rel. vs. Putnam*, 121 O. S. 109; *Stitt vs. State, ex rel.*, 42 O. App. 441.

Of course, where bonds are issued in anticipation of the collection of assessments, it is necessary to provide for the levying of a tax sufficient in amount to pay the interest thereon and to retire them at maturity, which tax may be reduced in any year by the amount which is available for such purposes from such special assessments, and when notes are issued in anticipation of such bond issue, it is necessary to levy a tax each year not less than that which would have been levied if bonds had been issued without the prior issuance of notes. Sections 2293-25 and 2293-26, General Code. I assume, however, that this was done in the instant case but that owing to tax delinquencies a sufficient amount from such levies was not collected to equal the amount of unpaid, past due assessments. Section 2293-24, General Code, clearly authorizes the issuance of bonds in anticipation of the *collection* of special assessments and I know of no provision against issuing such bonds after the assessments are due but not yet collected.

I am of the opinion, therefore, that where notes are issued and sold by a city in anticipation of the issue of bonds in anticipation of the collection of

special assessments and said notes have become due, bonds may be sold in anticipation of the collection of such assessments as are unpaid, even though a portion thereof are past due.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3799.

COUNTY SURVEYOR—AUTHORIZED TO PURCHASE LUBRICANTS
FOR USE ON COUNTY HIGHWAY TRUCKS IN MAKING EMER-
GENCY ROAD OR BRIDGE REPAIRS.

SYLLABUS:

When the money required therefor is appropriated by the county commissioners and a certificate furnished by the county auditor as required by section 5625-33, General Code, the county surveyor has the authority to make purchases of lubricants to be used on county highway trucks needed in making emergency road or bridge repairs.

COLUMBUS, OHIO, January 12, 1935.

HON. KENNETH KREIDER, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—This will acknowledge receipt of a communication of recent date from your predecessor in office, which reads as follows:

“The benefit of your opinion is requested with regard to the following situation:

At a time when the Board of County Commissioners was not in session, a chief deputy surveyor, who by reason of the illness of the county surveyor had been acting in his stead for a period of several months, immediately prior to the date of ordering, ordered a quantity of grease to be used in the operation of county highway trucks. It was specified that such grease should be delivered at once, for the reason that, as the deputy surveyor is said to have stated at the time, it was necessary to have this lubricant on hand for use within the next two or three days, as such supply was running low and the trucks were then being used daily in connection with repairs on a certain bridge.

This grease was, accordingly delivered within seventy-two hours after placing of this order by the acting surveyor. But before the date of delivery, the surveyor died, a successor was promptly named by the Board of County Commissioners and he discharged the former chief deputy and refused to accept said grease when delivered. The cost of this grease was \$75.00 and the auditor's certificate was attached to the original order.

Subsequently the grease was accepted and used. Our question is whether the County may legally pay for the same.”

Section 2792-1 of the General Code reads as follows: