2219.

ROADS—AUTHORITY OF DIRECTOR OF HIGHWAYS TO ESTABLISH ROADS AND HIGHWAYS AS PART OF STATE SYSTEM—NO APPEAL IF PROCEEDING WAS PENDING PRIOR TO EFFECTIVE DATE OF NORTON-EDWARDS ACT.

SYLLABUS:

No appeal lies from the decision of the Director of Highways establishing additional roads or highways as a part of the state highway system or making any changes in existing highways or roads comprising the state highway system, where the proceeding as the result of which the order is made was pending at the effective date of the Norton-Edwards Act.

COLUMBUS, OHIO, June 11, 1928.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your recent communication as follows:

> "A further question has arisen in this department regarding the application of the old and new highway laws, specifically in regard to Section 1189. The facts are as follows:
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> Petition having been received by this department for the relocation of a portion of State Highway (I. C. H.) 75 in Stark County, a public hearing was held in the Court House at Canton, Ohio, on August 12, 1927, as provided for and according to Section 1189, an engineer from this office having been duly authorized to hold and conduct the said hearing.
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> It being my policy to have the engineer holding the hearing the Division Deputy in whose division the Bureau of Construction, and the State Highway Engineer, to make separate recommendations and secure all data possible, and this proposed change not being of immediate importance, the date and recommedations for the same were not available until after January 2, 1928.
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> On May 4, 1928, having the testimony of the hearing together with other data and recommendations before me, I did determine to grant the request for the proposed relocation and caused the same to be entered on the Journal of the Department of Highways.
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> Since such action I am in receipt of a notice from certain interested parties that they intend to take an appeal from my decision, basing their right to such appeal on the provisions of Section 1189 as effective on and after January 2, 1928.
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> I am, therefore, requesting your opinion as to whether such appeal will lie, it being my contention that the hearing being held under the provisions of Section 1189 as in force prior to January 2, 1928, which did not provide for such appeal and that the same is a pending proceeding and that the law in effect at the time of the hearing governs until finally disposed of."

For the purpose of answering your inquiry it is unnecessary to quote in full the provisions of Section 1189, General Code, which is of considerable length. Both before and after its amendment in 112 O. L. the section dealt with the method to be followed by the Director of Highways in establishing additional roads or highways as part of the state highway system or making changes in existing highways or roads comprising the state highway system. It then provided as it now provides for a

hearing by the Director with notice published in the manner prescribed by the section and served upon property owners to be assessed. Prior to the amendment of the section the order made by the Director after hearing was apparently final, since no provision was made for any review or appeal. In the amendment of the section, which is found in 112 O. L. at page 437, the following sentence was added:

> "Appeal may be taken from the findings establishing such highways or roads to the court of common pleas in the county or counties where same are situated."

It is obvious, therefore, that interested parties may now have a hearing *de novo* in the Court of Common Pleas in case they are dissatisfied with the order of the Director. The change effected by the addition of this sentence is clearly remedial in character. It accordingly becomes necessary to determine whether or not the proceedings to which you refer is to be governed by the section as it stood prior to its amendment; that is to say, whether or not, as to this proceeding, the right of appeal exists.

There have been numerous recent opinions of this department addressed to you dealing with inquiries as to under what circumstances a proceeding is pending so as to be unaffected by the amendment of the highway laws contained in the Norton-Edwards Act, and it is unnecessary to quote therefrom. In the present instance a petition was filed for the relocation of the highway long prior to January 2, 1928, and a public hearing upon the petition was held on August 12, 1927.

It is clear, therefore, that generally speaking this is a proceeding pending so as to be unaffected by the provisions of the Norton-Edwards Act within the rule announced in my prior opinions, unless a different rule applies because of the fact that the amendment of Section 1189, General Code, providing for an appeal is remedial in character.

The question must be answered by the interpretation of Section 1230, General Code, which is the saving clause of the Norton-Edwards Act and the provisions of Section 26, General Code.

Section 1230, General Code, is as follows:

> "Nothing in this act shall in any way nullify or affect the obligations or rights of any county, township or other subdivision of the state contracted on or before and in effect at the time this act becomes effective, nor shall the existing rights and obligations of any persons contracting with the state or any political subdivision thereof be affected. All bonds or notes issued by counties or townships under authority of any sections of the General Code of Ohio which have been amended or repealed by this act shall remain in full force and effect and the provisions or authority providing for the retirement of said bonds and notes with interest therefor shall remain in force and effect until all have been paid.
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> All levies or bonds voted by any county, township or other subdivision of the state prior to the time of the taking effect of this act shall be in full force and effect as provided by law at the time voted and approved by the electors. This act shall be effective the first Monday of January, 1928."

A reading of this section fails to throw any light upon the question here presented. We must accordingly examine the provisions of Section 26, which are as follows:

> "Whenever a statute is repealed or amended, such repeal or amendment shall in no manner affect pending actions, prosecutions, or proceedings, civil

or criminal, *and when the repeal or amendment relates to the remedy, it shall not affect pending actions, prosecutions or proceedings, unless so expressed,* nor shall any repeal or amendment affect causes of such action, prosecution, or proceeding, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act." (Italics the writer's.)

It is interesting to observe that this section at an early date, read as follows:

"That whenever a statute is repealed or amended, such repeal or amendment shall in no manner affect pending actions, prosecutions, or proceedings, civil or criminal; nor causes of such action, prosecution, or proceeding, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act."

The statute in this form was adopted in 63 O. L. at page 22, in an act amendatory of the second section of the act of April 8, 1856. The statute was amended later, however, to include the language italicized in the above quotation thereof.

Prior to the amendment the general interpretation of the courts had been that changes in statutes of a remedial character only became applicable at once even as to existing proceedings. Thus in the case of *Rouse, et al.* vs. *Chappel, et al.*, 26 O. S., page 306, the court had under consideration the question whether a new provision of law passed after a judgment rendered by the Superior Court of Cleveland, allowing appeals to the District Court, could be said to apply. In the course of the opinion the court stated as follows:

"The appeal was taken from a judgment in an action in which the Superior Court of Cleveland had original jurisdiction, and in which the parties had not the right, by virtue of any law of this state, to a trial by jury. The appeal was therefore authorized by the act of January 30, 1875, to amend an act to establish the Superior Court for the City of Cleveland (72 Ohio L. 189), unless the provisions of Section 2 of the act 'concerning the enacting and repealing of statutes,' as amended by the act of February 19, 1866 (S. & S. 1), prevent the act allowing the appeal from taking effect upon actions pending in the Superior Court at the time of its passage.

It has been uniformly held by this court that statutes which merely affect the manner of trying or conducting an action are remedial in their character, and apply as well to cases pending and causes of action existing at the time they take effect as to future cases and causes of action, and therefore do not affect pending actions within the meaning of Section 2 of that act. *Westerman, et al.* vs. *Westerman*, 25 Ohio St. 500.

The act in question is, in our opinion, of that character, and is properly applicable to this case, notwithstanding the fact that under the provisions of the act of May 5, 1873, to establish a Superior Court for the City of Cleveland (70 Ohio L. 297), a judgment rendered at a regular term could not be reviewed except upon proceedings in error at a general term."

The change in the provisions of Section 26 deals specifically with amendments relating to the remedy. It is stated that such amendments shall not affect pending actions, prosecutions or proceedings unless so expressed.

The provisions of Section 1280, General Code, certainly do not contain any expressions which can be construed as evidencing the intention of the Legislature to make the remedial portions of the act applicable to pending proceedings. There is not even an inference to this effect. And it is settled by the Supreme Court, in interpret-

ing the language of Section 26 with relation to the amendment of remedial statutes, that the intention must be manifested by express provision, rather than by inference, in order to make remedial statutes applicable to pending proceedings.

In the case of *Kelley* vs. *State*, 94 O. S. 331, the first and second branches of the syllabus are as follows:

> "1. The amendment of Section 1637, General Code, passed February 6, 1914 (104 O. L., 179), withdrawing the jurisdiction of the court of insolvency of Hamilton County after December 31, 1914, in actions for divorce and alimony, read and construed as though Section 26, General Code, were a part thereof.
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> 2. The Legislature having failed to incorporate in such amending and repealing act an express provision making it applicable to pending actions, those actions by virtue of the provisions of Section 26, General Code, are exempt from the operation of the amended statute. The insolvency court of Hamilton County, therefore, was authorized to hear and determine all actions in divorce and alimony which were pending in that court December 31, 1914."

I accordingly feel that both the statutes and their interpretation by the court are such that the amendment of a section, although remedial in character, has no effect upon pending proceedings unless otherwise clearly expressed by the Legislature. There being no such expression in this instance, it necessarily follows that, since the proceeding was in this instance pending at the time the Norton-Edwards Act went into effect, the right of appeal provided by the amendment therein of Section 1189, General Code, is not available.

You are accordingly advised that no appeal lies from the decision of the Director of Highways establishing additional roads or highways as a part of the state highway system or making any changes in existing highways or roads comprising the state highway system, where the proceeding as the result of which the order is made was pending at the effective date of the Norton-Edwards Act.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2220.

BONDS—CITY MAY ISSUE SAME FOR PURCHASE OF STREET SIGNS.

SYLLABUS:

A municipal corporation may legally issue bonds for the purpose of purchasing and installing street signs.

COLUMBUS, OHIO, June 11, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication as follows:

> "Neither Section 3939, G. C., nor any other section of the General Code, to our knowledge, specifically authorizes municipal corporations to purchase street signs.