

6676

1. BOND ISSUE—COUNTY—CONSTRUCTION OF COUNTY ROADS—PROCEEDS FROM SALE MAY NOT BE USED FOR SALARIES AND EXPENSES OF REGULAR EMPLOYEES OF COUNTY ENGINEER WHO TEMPORARILY PERFORMED ENGINEERING AND PLAN PREPARATION WORK ON PROJECT—SECTIONS 315.12, 315.08 RC
2. COUNTY—ROAD AND BRIDGE FUND—MONEY ADVANCED FOR SALARIES AND EXPENSES OF REGULAR EMPLOYEES OF COUNTY ENGINEER TEMPORARILY DOING ENGINEERING AND PLAN PREPARATION WORK ON BOND PROJECT—MAY NOT BE REIMBURSED FROM PROCEEDS OF BOND.

SYLLABUS:

1. Proceeds from the sale of bonds issued by a county for the construction of county roads may not be applied to the payment of the salaries and expenses of the *regular* employees of the county engineer who were temporarily assigned to perform preliminary engineering and plan preparation work on the bond financed project.
2. There is no authority for the reimbursement of the county road and bridge fund from the proceeds of a road construction bond issue for money advanced from the road and bridge fund to pay the salaries and expenses of the regular employees of the county engineer who were temporarily assigned to perform preliminary engineering and plan preparation on the bond financed project.

Columbus, Ohio, June 7, 1956

Hon. Frank T. Cullitan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

I have before me your request for my opinion which reads in material part as follows:

“We are in receipt of a communication from the Cuyahoga County Engineer requesting an opinion concerning the proper use of the proceeds of bond funds.

“The County Engineer points out that in 1951 the voters of Cuyahoga County approved a \$10,000,000 bond issue for paying the county's share of the cost of locating, establishing, altering, laying out, constructing, reconstructing and improving county roads and bridges and the payment of all costs and expenses incurred therefor, including all expense of plans and engineering. After the approval of the bond issue, the County Engineer informed the Board of County Commissioners that considerable preliminary engineering and other costs and expenses would be required before he could determine the cost of certain projects then to be constructed and the amount of bonds which would be needed to cover the project expense. The Commissioners therefore authorized the Engineer, in a resolution under date of January 24, 1952, a copy of which is herewith enclosed, that until proceeds would be derived from the sale of bonds such preliminary engineering and other costs and expense should be advanced from the motor vehicle road and bridge fund and said fund would be reimbursed after the bonds were sold.

“Some of the engineering and plan preparation work was done by the regular employees of the County Engineer's office who were temporarily assigned to work on the projects which were to be paid for from the proceeds of the bonds. In addition to this, other preliminary work on such projects was done under contracts with consulting engineers employed by the Commissioners to assist the County Engineer.

“After completion of the preliminary engineering and plan preparation work in the manner above indicated, contracts for the improvements that were to be financed by bond money were awarded and notes and bonds were then issued to cover the cost of the particular project. In the course of the construction of such bond projects, because of the impracticability of preparing a separate payroll for each project with the probability that

a number of county employees would thereby receive two to five pay checks each pay period, the County Engineer used money from his regular appropriations to defray the cost of construction engineering and supervision on the jobs. The Engineer did this with the understanding that the cost and expenses of his office and the pay of his employees in connection with such bond improvements would be paid back to the motor vehicle road and bridge fund from the proceeds of the bonds. When some of these bond-financed projects were completed, the Engineer presented to the Commissioners, for reimbursement from the bond proceeds to the motor vehicle road and bridge fund, itemized statements of all of the costs he had paid from that fund, which included all engineering plan preparation, construction supervision and the expenses of his office in connection with the construction of the bond-financed improvements.

“The matter was then discussed with the local state examiner’s office, and that office was of the opinion that the bond funds could not be legally used to pay any of the expenses of the County Engineer’s office in connection with the cost of construction of a bond-financed improvement, that Revised Code 315.12 provides the method for paying the employees and expenses of the operation of the County Engineer’s office, and that there was no statutory authority for reimbursement to the County Engineer from bond money of the salaries and expenses incurred by the Engineer where he assigned his employees to a bond issue project. * * *

“However, the narrow question presented in the County Engineer’s communication is as to the legality of the use of the bond funds by the County Engineer for engineering or professional services rendered by employees of his office in connection with engineering plan preparation and field supervision required on bond-financed projects and improvements.

“We are accordingly submitting to you for your consideration and written opinion the question of whether it is legal and proper to reimburse the motor vehicle road and bridge fund from the proceeds of a road bond issue for expenditures incurred by the county engineer for engineering work done by his employees by specific assignment to work on bond issue projects for specified periods of time when the charges for such engineering work were paid to the employees originally from the county engineer’s regular payroll.”

As I understand the facts, certain *regular* employees of the county engineer performed engineering and preliminary plan preparation work relative to certain road and bridge projects which were to be constructed out of the proceeds of a voted bond issue. The regular employees of the

county engineer's office were *temporarily* assigned to work on the projects, and evidently the work thus assigned took the employees away from their regular work and duties in that office.

The county engineer used money from his regular appropriation to defray the cost of construction engineering and supervision. This was done with the understanding that the costs and expenses of the county engineer's office and the remuneration of employees of that office who worked on the bond projects would be paid ultimately from the proceeds of the bond sale, which when realized, would, pursuant to the resolution of the county commissioners, reimburse the motor vehicle road and bridge fund for monies advanced from that fund.

The purpose of the voted bond issue included "all expense of plans and engineering." I believe it can be conceded that engineering or professional services are, even absent express mention in a bond issue resolution, properly to be considered as a part of the cost of the construction of an improvement and may be paid out of the proceeds of bonds provided for the construction of the improvement. In this connection, see *State, ex rel. Speeth v. Carney*, 163 Ohio St., 159, syllabus, paragraph 9. Evidently the state examiner did not deny the fact that the bond resolution was broad enough to cover engineering or professional services. The objection voiced to using bond money to reimburse the motor vehicle road and bridge fund was that some of the plan preparation and engineering was done by *regular* employees of the county engineer's office who were temporarily assigned to the bond projects, and that these people are paid pursuant to Section 315.12, Revised Code, and out of funds regularly appropriated for the maintenance of the county engineer's office.

Section 315.12, Revised Code, reads as follows:

"Two-thirds of the cost of operation of the office of county engineer, including *the salaries of all of the employees* and the cost of the maintenance of such office as provided by the annual appropriation made by the board of county commissioners for such purpose, *shall be paid out of* the county's share of the fund derived from the *receipts from motor vehicle licenses*, as distributed under section 4501.04 of the Revised Code, and from the county's share of the fund derived from *the motor vehicle fuel tax* as distributed under section 5735.27 of the Revised Code."

(Emphasis added.)

The foregoing section requires two-thirds of the cost of operation of the office of county engineer, including the salaries of all of the employees, to be paid out of the county's share of the motor vehicle license and fuel taxes. This provision was enacted by the 93rd General Assembly as Section 2782-2, General Code, and became effective September 6, 1939.

Prior to 1939, the expense of the county surveyor (engineer) and his office, in connection with the cost of the construction of a road improvement, was paid entirely from the county general funds. To this effect the syllabus of opinion No. 4141, Opinions of the Attorney General for 1932, page 352, reads:

"The expense of the county surveyor and his office, in connection with the cost of the construction of a road improvement, are to be paid from county general funds and such cost cannot be proportioned and paid from the proceeds of a special road tax levy authorized by section 5625-15 et seq., of the General Code."

In opinion No. 4150, Opinions of the Attorney General for 1935, page 424, it was held that the salary of a payroll clerk in the office of a county surveyor must be paid from the general fund of the county and there is no authority in law for the payment of any portion of such salary from the county road and bridge fund. The 1935 opinion was rendered four years before the enactment of Section 2782-2, General Code (now Section 315.12, Revised Code).

Your attention is also directed to opinion No. 4728, Opinions of the Attorney General for 1942, page 32, wherein it was held as disclosed by the first paragraph of the syllabus as follows:

"1. Section 2782-2, General Code, requires two-thirds of the cost of operation of the office of the county engineer, including salaries of all employes and the cost of maintenance thereof, to be paid out of the county's distributive share of the motor vehicle license and the motor vehicle fuel taxes. Such cost of operation embraces the cost of all services which the county engineer is required by law to perform, including the services of his office with respect to county ditch improvements."

Thus, it has been the consistent ruling of former attorneys general that expenses of operating the county engineer's office may not be apportioned with a view to charging specific funds for a proportionate share of such expenses.

The communication from the county engineer addressed to you, a copy of which I have studied, states that the bonds were issued by the county for the purpose of paying the county's share of "locating, establishing, altering, laying out, constructing, reconstructing and improving *county* roads and bridges," and that the bond issue was submitted to the electorate for the sole purpose of obtaining additional funds to finance road improvements and to supplement then existing funds available for highway purposes such as gasoline tax and motor vehicle license fees.

The contemplated road construction projects were *county* projects, at least in part, and therefore the county engineer had certain duties to perform. Section 315.08, Revised Code, provides that the county engineer shall prepare all plans, specifications, estimates of cost for the construction of roads constructed under the authority of the county.

It would seem, therefore, that the employees of the county engineer, in preparing engineering plans, conducting field surveys, and doing other work in connection with the particular road construction project, were aiding the county engineer in carrying out his regular duties. The fact that the particular project to which the employees were assigned was a project to be financed from *bond* issue proceeds, as opposed to financing by some other means, to my way of thinking is of no great significance. The fact is that the code provides for the payment of two-thirds of the county engineer's expenses, including salaries of employees, from the gasoline tax and automobile license tax allotment made to the county. The remaining one-third, in the light of what has been said in opinions issued by this office in the past, would be met from the county general fund.

Your attention is directed to the case of *Longworth v. Cincinnati*, 34 Ohio St., 101. The second paragraph of the syllabus in that case reads as follows:

"2. Where the surveying and engineering of such improvement were performed by the chief engineer of the city and his assistants, who were officers appointed for a definite period, at a fixed salary, which the law required to be paid out of the general fund of the city, the reasonable cost to the city, of such surveying and engineering, can not be ascertained and assessed upon the abutting property, as a necessary expenditure for the improvement."

That decision was rendered in 1877, and at a time when a municipal corporation was regarded in Ohio, as it still is in most states, as merely

the creature of the legislature. Municipalities since that time have been granted the "home rule" power and it is no longer true that a municipality has only those powers expressly granted to it by the state legislature.

In my opinion No. 5671, Opinions of the Attorney General for 1955, dated August 26, 1955, I held as disclosed by the second paragraph of the syllabus:

"2. The general fund of a municipality may legally be reimbursed from the funds realized from the sale of bonds issued in anticipation of collections of special assessments for an improvement, for the cost of the services of the city engineer and staff rendered in connection with such improvement, which cost is, under the provisions of Section 727.54, Revised Code, a proper element in the cost of the improvement. (Opinion No. 2165, Opinions of the Attorney General for 1928, page 1278, overruled.)

In the course of the 1955 opinion, *supra*, I discussed the Longworth case and made the following statement:

"It is very evident that the Supreme Court, in deciding the Longworth case, felt itself bound by the strict and narrow view which had from time immemorial been the rule for construction of municipal powers."

In rendering the 1955 opinion I did not apply the reasoning of the Longworth case to the facts before me, and, because of the "home rule" power in municipalities, I held that the general fund of a municipality may legally be reimbursed from the proceeds of bonds issued in anticipation of collections of special assessments for an improvement, for the cost of services of the city engineer and his staff rendered in connection with such improvement. At the same time I remarked that so far as counties and townships are concerned, such political subdivisions have those powers only as are expressly granted or necessarily implied. I mentioned this because I wish to make it plain that the 1955 opinion is not to be regarded as determinative of the question of reimbursement of one county fund from another.

Since counties do not enjoy the powers of local self-government or "home rule," I am constrained to contrive strictly the powers of counties relative to payment of salaries of regular employees of the county engineer out of proceeds realized from the sale of road construction bonds, whether

such salaries are paid *directly* or *indirectly* from such funds. The fact that the county engineer loaned the time and services of his regular employees to the performance of preliminary plan and survey work on a county road construction project, which project was to be financed from the proceeds of a voted bond issue, does not justify paying those employees from funds other than those specified and provided by law.

It goes almost without saying that the proceeds realized from the sale of bonds must be expended for the purpose recited in the bond resolution, and for no other purpose. Section 5705.14, Revised Code, dealing with transfer of funds, recites in material part as follows:

“No transfer shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as follows:

“(A) The unexpended balance in a bond fund that is no longer needed for the purpose for which such fund was created shall be transferred to the sinking fund or bond retirement fund from which such bonds are payable. * * *”

Section 5705.15, Revised Code, provides in pertinent part as follows:

“In addition to the transfers authorized in section 5705.14 of the Revised Code, the taxing authority of any political subdivision may, in the manner provided in this section and section 5705.16 of the Revised Code, transfer from one fund to another any public funds under its supervision, *except the proceeds or balances of loans, bond issues * * **” (Emphasis added.)

Although the purpose of the bond issue includes “all expense of plans and engineering” I am not of a mind to interpret that language as encompassing the compensation of regular employees of the county engineer who perform engineering work on the bond financed road project. Even if the resolution had been *expressly* worded to cover the compensation of the regular county employees, I would have to question its validity.

In view of what I have already said, it would appear that to “reimburse” the county road and bridge fund from the proceeds of this particular bond fund would violate the separate identities of the two funds. The unexpended balance in a bond fund that is no longer needed for the purposes for which such fund was created must be transferred to the bond retirement fund from which the bonds are payable.

Accordingly, it is my opinion that:

1. Proceeds from the sale of bonds issued by a county for the construction of county roads may not be applied to the payment of the salaries and expenses of the *regular* employees of the county engineer who were temporarily assigned to perform preliminary engineering and plan preparation work on the bond financed project.

2. There is no authority for the reimbursement of the county road and bridge fund from the proceeds of a road construction bond issue for money advanced from the road and bridge fund to pay the salaries and expenses of the regular employees of the county engineer who were temporarily assigned to perform preliminary engineering and plan preparation work on the bond financed project.

Respectfully,

C. WILLIAM O'NEILL
Attorney General