

sion in the law requiring advertisement and competitive bidding for the particular "supplies," then it would be illegal for a senator or representative to be interested in a contract for the purchase of "supplies" over \$50.00 for the use of the county from which he was elected, even if advertisement and competitive bidding was had before the contract was let.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2342.

SEWER—MUNICIPALITY AUTHORIZED TO REPAIR PRIVATELY OWNED SEWER LOCATED IN PUBLIC STREETS—TITLE NOT THEREBY VESTED IN MUNICIPALITY.

SYLLABUS:

Where a sewer, owned by private persons and located in the public streets of a municipality, becomes out of repair to the extent that it becomes dangerous to the public health or constitutes a nuisance, such municipality has the authority to purchase materials and make the necessary repairs to abate such nuisance, and such action will not operate to vest title to such sewer in such municipality.

COLUMBUS, OHIO, March 5, 1934.

HON. GEORGE N. GRAHAM, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication, which reads as follows:

"The Council of the Village of Highland Park which is in Stark County, and which was incorporated only a few years ago, never accepted the sewer system which was installed by a real estate concern which laid out the allotment, which later on became Highland Park Village.

The Village Council would now like to appropriate a sufficient amount of money to purchase materials to repair this sewer, the work to be done as a CWA project.

The question is: Would the Village of Highland Park have the legal right to appropriate a sufficient amount of money to purchase materials for repair on a sewer that does not belong to the Village, but used by the residents of the Village?

Another question is: Would the act on the part of the Village Council in making repairs on a sewer which they do not own constitute an acceptance by the Village which would place the Village in a position of keeping the sewer system in repair at any future time?"

I assume that the sewer in question is located in duly dedicated streets in the village and is not on private property. If this sewer was constructed prior to the time that the streets, in which it is located, were dedicated to the public, there is some question as to whether, by such dedication and acceptance thereof, the title to such sewers did not pass to the public. *Kinney, et al., vs. Cincinnati, et al.*, 6 N. P. (N. S.) 137. However, it is not necessary to consider this question

since your questions are based on the assumption that the sewer is not the property of the village.

A municipality is required by section 3714, General Code, to keep its streets open, in repair and free from nuisance, and if this sewer is out of repair to the extent that it is dangerous to the public health or constitutes a nuisance, the village would have the right to repair it where the parties owning such sewer, whose primary duty is to keep it in repair, have failed or refused to repair it. This is so both by reason of its police power and also because it is liable for any damages which would result in not performing the duty imposed upon it by section 3714, General Code, even though the sewer is not owned by it. In the case of *Mansfield vs. Bristol*, 76 O. S. 270, the following is held:

“Where a drain laid by property owners in a public street, under permission from the city, empties into a natural stream, and thereafter, without express license from the city, is used as a sewer to discharge sewage into the stream to the injury of a lower riparian owner, the drain is a nuisance, and the city is liable for negligence in not abating it.”

In Opinions of the Attorney General for 1932, Volume I, page 583, similar questions were discussed with reference to a privately owned sewer. The syllabus of that case reads as follows:

“1. Where a franchise, by which a private company was given the right to construct and maintain a sewerage system for hire in a city and to lay its pipes in the public streets, has expired, and said franchise is silent as to the disposition of said system upon its termination, title to such property located in said streets does not pass to the city but remains in the company, and the city would have no right to assume ownership thereof or to grant the right to another company to assume control thereof without due process of law.

2. In such case the city can acquire ownership of said property only by purchase or appropriation, unless it has been abandoned by the company.

3. Where in such case said sewerage system in the public streets becomes out of repair and obstructed causing the sewage to flow back into the cellars of certain property owners and damage directly results therefrom, the city would be liable therefor, provided it had actual or constructive notice of said condition.

4. The city, under its police power, would have the right to assume control of said sewer to the extent necessary to abate the nuisance, and keep it in repair and prevent the same from becoming dangerous to the public health.”

Since the making of such repairs is a duty imposed upon the municipality rather than its voluntary act, I am of the view that such act would not operate to transfer title in such sewer to the village.

Consequently, I am of the opinion that where a sewer, owned by private persons, and located in the public streets of a municipality, becomes out of repair to the extent that it becomes dangerous to the public health or constitutes a nuisance, such municipality has the authority to purchase materials and make the

necessary repairs to abate such nuisance, and such action will not operate to vest title to such sewer in such municipality.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2343.

APPROVAL, BONDS OF MOGADORE VILLAGE SCHOOL DISTRICT,
SUMMIT COUNTY, OHIO, \$1,800.00.

COLUMBUS, OHIO, March 6, 1934.

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

2344.

APPROVAL, BONDS OF ALLIANCE CITY SCHOOL DISTRICT, STARK
COUNTY, OHIO, \$2,800.00.

COLUMBUS, OHIO, March 6, 1934.

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

2345.

APPROVAL, BONDS OF WASHINGTON RURAL SCHOOL DISTRICT,
SCIOTO COUNTY, OHIO, \$3,500.00.

COLUMBUS, OHIO, March 6, 1934.

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

2346.

DOCTOR—BOARD OF TRUSTEES MAY NOT APPOINT MEMBER
THEREOF AS CONSULTING SURGEON OF DISTRICT TUBERCU-
LOSIS HOSPITAL.

COLUMBUS, OHIO, March 6, 1934.

SYLLABUS:

A doctor who is a trustee of a District Tuberculosis Hospital may not be appointed by the Board of Trustees to serve as consulting surgeon of such hospital.