

and approval a deed form of a deed to be signed by the Governor, conveying the above described property to the city of Dayton. An examination of said deed shows that the same is in all respects in proper form with the exception that the sentence in the first paragraph of said deed with respect to the sale to the city of Dayton is not complete arising out of the fact that the words "canal lands" as used in said paragraph stands objectively to the predicate "to appraise" rather than to the predicate "sold." This can be corrected by striking out the words "to appraise" in the last line of the first paragraph of said deed as they appear after the terms "January, 1927." Assuming that this correction in the deed will be made, the deed is likewise approved as is evidenced by my approval endorsed thereon.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

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715.

DISAPPROVAL, BONDS OF CITY OF YOUNGSTOWN, MAHONING  
 COUNTY—\$250,000.00.

COLUMBUS, OHIO, August 7, 1929.

Re: Bonds of city of Youngstown, Mahoning County, Ohio, \$250,000.00.

*Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—I have examined the transcript relative to the above bonds, which are part of an issue of street improvement bonds in the aggregate amount of \$493,-951.02. These bonds are issued in anticipation of the collection of assessments covering forty-four separate street improvements.

The proceedings toward the construction of the various improvements in question were commenced prior to July 10, 1927, the effective date of the Uniform Bond Act, and therefore, references herein to the sections of the General Code are to their provisions prior to amendment by the 87th General Assembly.

The portion of the transcript relating to the improvement of North Phelps street by paving refers to this improvement in the resolution of necessity as an improvement of North Phelps street from Woods street to Lincoln avenue by re-surfacing the same. The ordinance determining to proceed with this improvement describes the extent of North Phelps street to be improved in the same way as the ordinance of necessity, viz., from Woods street to Lincoln avenue. The notice published pursuant to the provisions of Section 3895, General Code, refers to the improvement as "Phelps Street resurfacing from Lincoln avenue to Rayen avonue." Following this publication, Ordinance No. 31602 levying special assessments for the improvement, refers to the street as Phelps street from Lincoln avenue to Rayen avenue. The publications of the ordinance levying special assessments accordingly refer to the improvement as Phelps street between Lincoln avenue and Rayen avenue. The transcript does not show that Woods street and Rayen avenue are the same street and it therefore appears that assessments have been levied for an improvement without the preliminary resolutions of necessity and determination to proceed having been passed. The bond resolution authorizes bonds in anticipation of the collection of assessments for the improvement of North Phelps street from Woods street to Lincoln avenue. The tabulation of assessments due upon which the amount of the bonds is computed, shows this improvement as North Phelps street from Woods street to Lincoln avenue. There

have been no assessments levied upon the property fronting upon North Phelps street from Woods street to Lincoln avenue, but as indicated only upon Phelps street between Lincoln avenue and Rayen avenue.

The proceedings relative to the Phelps Street Improvement also contain three weeks' publication of notice that estimated assessments are on file in the office of the clerk of council and open for inspection and examination, which notice was published pursuant to the provisions of Section 3895, General Code, which is as follows :

"Before adopting an assessment made as provided in this chapter, the council shall publish notice for three weeks consecutively, in a newspaper of general circulation in the corporation, that such assessment has been made, and that it is on file in the office of the clerk for the inspection and examination of persons interested therein."

This notice was first published October 29, 1927. The ordinance levying the assessments was passed by council November 28, 1927. Section 3848, General Code, is as follows :

"If any person objects to an assessment, he shall file his objections, in writing, with the clerk, within two weeks after the expiration of such notice, and thereupon the council shall appoint three disinterested freeholders of the corporation to act as an equalizing board."

The notice referred to in this section is the notice provided for in Section 3895. *Cuyahoga Falls vs. Beck*, 110 O. S. 82.

Obviously, there is no authority to levy assessments, in view of the provisions of Section 3848, until five weeks after the date of the first publication provided in Section 3895.

I am well aware that there are numerous cases applying the rule of estoppel so as to preclude property owners from bringing an action in injunction where no objections have been filed to assessments. The rule is laid down in *Pennsylvania Company vs. Cole*, 182 Fed. 588, wherein it is held that a property owner is estopped only where he has had notice of an intention to tax his property for a portion of the cost of constructing the improvement and an opportunity to present objections thereto. It appears in this case that the statutory time for filing objections not having been allowed to property owners that a legal notice has not been given, and the statutory opportunity to present objections has not been granted. A serious question may be raised as to the validity of the assessments made to pay the cost of this improvement.

Referring to the proceedings for the improvement of Donation street, the same comments just made relating to the levy of assessments for the Phelps street improvement are applicable. Publication was made for three weeks pursuant to the provisions of Section 3895, supra, the first publication having been made on October 29, 1927. The ordinance levying assessments was passed November 28, 1927, less than five weeks from the date of the first publication under Section 3895.

There appears in the transcript several irregularities in the publication of ordinances levying assessments as to the aggregate amount of assessments levied. For instance, in the case of the improvement of Lowell avenue, the aggregate amount of assessments levied is \$4,537.38. The ordinance levying assessments in this amount was published in two newspapers. In one of the publications it appears that the aggregate amount of the assessments levied is \$5,337.38. A similar error appears in one of the publications of the ordinance levying assessments for the improvement of Dixon street and Lucius avenue.

The affidavits in proof of publication of bond sale advertisement disclose that

notices of the sale of these bonds were published in two newspapers for four consecutive weeks, beginning May 16, 1929, and May 18, 1929. These notices contain the statement that "Sealed bids will be received to be opened at twelve noon, Eastern Standard Time, Saturday, June 8, 1929." The date of sale appears accordingly to have been fixed twenty-one and twenty-three days, respectively, after the date of first publication of the notices thereof. The transcript discloses that pursuant to the above notices, bids were received and the bonds awarded to one of the bidders pursuant to the bid submitted on June 8. Section 3934, General Code, provided that publication of such notice must be had for four consecutive weeks in two newspapers printed and of general circulation in the county in which the municipal corporation is situated. I am of the opinion that the notice which purports to have been published pursuant to the provisions of Section 3924, General Code, as in force and effect prior to repeal by the 87th General Assembly, is an invalid notice in that twenty-eight days did not elapse between the first date of publication thereof and the date of sale. *State of Ohio vs. Kuhner and King*, 107 O. S. 406. Accordingly, the award of these bonds is invalid.

In view of all the foregoing, I am compelled to advise you not to purchase these bonds.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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716.

APPROVAL, BONDS OF MAHONING COUNTY—\$82,195.50.

COLUMBUS, OHIO, August 7, 1929.

*Industrial Commission of Ohio, Columbus, Ohio.*

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717.

DISAPPROVAL, BONDS OF GEAUGA COUNTY—\$26,000.00.

COLUMBUS, OHIO, August 7, 1929.

Re: Bonds of Geauga County, Ohio—\$26,000.00.

GENTLEMEN:—The transcript of the proceedings relative to the above issue of bonds discloses that, after being offered to and rejected by the trustees of the sinking fund, the issue was advertised for sale for two consecutive weeks commencing April 26, 1929, pursuant to the provisions of Section 2293-28, General Code. This publication states that these bonds shall bear interest at the rate of five per cent per annum, but does not contain any statement to the effect that anyone desiring to do so may present a bid or bids for such bonds based upon bonds bearing a different rate of interest than specified, as is permitted under Section 2293-28, General Code.

Pursuant to the foregoing publication, these bonds were awarded to bear interest