

Second, the employment of a supervisor of teachers of music by joint action of the several school districts in the several groups of districts in Washington County, as stated in your inquiry, is unauthorized, and void.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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93.

DISAPPROVAL, BONDS OF STARK COUNTY, OHIO ROAD IMPROVEMENT—\$45,000.00.

COLUMBUS, OHIO, February 14, 1929.

*Industrial Commission of Ohio, Columbus, Ohio.*

Re: Bonds of Stark County, Ohio, Road Improvement, \$45,000.00.

GENTLEMEN :—Transcripts of the proceedings of the Stark County Commissioners and other officers of Stark County, pertaining to four issues of road improvement bonds, aggregating \$191,500.00, of which the Industrial Commission desires to purchase \$45,000.00, have been submitted to this department for examination.

It appears in the transcript of the proceedings pertaining to the Canton-Bolivar, Section B, road improvement, amounting to \$32,500.00, that the bond resolution was passed on July 18, 1928, authorizing \$41,500.00 of bonds, which resolution provided that said bonds were to bear interest at the rate of 4½% per annum, payable semi-annually. Said resolution was amended on October 1, 1928, reducing the amount to \$32,500.00, being the cost of the improvement, which amending resolution did not change the interest rate. The bonds of this issue were offered to the Stark County Sinking Fund Trustees, and rejected and then advertised for sale, in connection with the three other Stark County road improvement bonds already mentioned. All four issues were advertised to bear interest at the rate of 4½% per annum, payable semi-annually, and the advertisement did not state that anyone desiring to do so may bid for such bonds based upon a different rate of interest, as permitted under Section 2293-28 of the General Code.

On October 24, 1928, bids were received on all four of said issues from seven bidders. Six of the bidders submitted bids on each issue at interest rate of 4½% as provided in the advertisement. The seventh bidder submitted a bid on three of the issues at an interest rate of 4½%, and in the case of the Canton-Bolivar issue, their bid was at an interest rate of 4%. An inspection of the tabulation of bids discloses the fact that this seventh bidder was not high on any of the three issues upon which an interest rate of 4½% was bid. The Board of Stark County Commissioners awarded the four issues of bonds in the aggregate to the seventh bidder on account of the fact that said bid of 4% on the Canton-Bolivar issue made said bid high, considering the four issues in the aggregate.

It has been repeatedly held by my predecessor that unless the advertisement states that bids may be presented based upon bonds bearing a different rate of interest (Section 2293-28 and Section 2293-29, General Code), the acceptance of a bid bearing a lower or different rate of interest is void; and unless the advertisement contains such a provision, there is no assurance that the bidder who based his bid upon the rate of interest in the advertisement, would not have submitted a bid based upon a

different rate of interest higher than the bid which was in fact accepted. Opinions of Attorney General, 1927, Vol. III, 2076, 2378, 2380.

In this particular case, it is significant that the successful bidder was not high bidder in any one of the other three issues and that the successful bidder was the only one who submitted a bid at other than the advertised interest rate.

I am of the opinion, therefore, that in this case, the acceptance of a bid based upon a different rate of interest than specified in the advertisement, there being no provision in said advertisement that bids might be submitted based upon a different rate of interest, is void. I am, therefore, compelled to advise you not to purchase the above issue of bonds.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

94.

#### MUNICIPALITY—AIRPORT—HOW AND WHERE LAND MAY BE ACQUIRED—CONDITIONS.

##### SYLLABUS:

*A municipality may acquire the fee simple to lands outside of the municipality and outside of the county in which the municipality is located, either by gift, purchase or condemnation, for the purpose of establishing a municipal airport. The situation of the land, of course, must be such as to make it reasonably convenient to the municipality. This would be a question of fact in each case and the judgment of the municipality would be final in the absence of fraud or abuse of discretion.*

COLUMBUS, OHIO, February 15, 1929.

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

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

“We are in receipt of a letter from Mr. Edward Lamb, Assistant Director of Law, city of Toledo, Ohio, which reads:

‘We are desirous of determining the possibility of acquiring an airport for the city of Toledo. The ownership of this proposed site is located seven (7) miles outside of the municipality of Toledo and in another county. The holding company which now has title has offered the proposed site to the city of Toledo, and the question arises as to the possibility of ownership by the city of Toledo.

If you could have the Attorney General forward an opinion to me through yourself, I would greatly appreciate it.’

This being a matter of general interest, the Bureau will greatly appreciate your opinion respecting the power of a municipal corporation to accept or purchase a tract of land for the purpose of constructing a municipal airport, which land is not situate in the county.”

Section 3939 of the General Code, in so far as pertinent, provides as follows: