

"The General Assembly shall provide for the organization of cities, and incorporated villages, by general laws, and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power."

The Supreme Court of Ohio in the case of *Berry, et al. vs. City of Columbus*, 104 O. S. 607, has laid down the principle that the provisions of the foregoing section of the Constitution adopted in 1851 are not repealed by the home rule provisions of the Constitution adopted in 1912. The per curiam opinion is as follows:

"It is ordered and adjudged by this court, that the judgment of the said Court of Appeals be, and the same is hereby, reversed, and the judgment of the Common Pleas Court is hereby affirmed, for the reason that Section 6, Article XIII of the Ohio Constitution, was not repealed by the adoption of Section 13, Article XVIII, or of any other home rule provisions in said article; that the provisions of the city charter relating to assessments are in conflict with and must yield to the requirements of the state laws governing special assessments for street improvements. *Toledo vs. Cooper*, 97 Ohio St., 86; *State, ex rel. Dayton vs. Bish et al., ante*, 206."

See also *State, ex rel. vs. Williams*, 111 O. S. 400.

The provisions of Section 6, Article XIII and Section 13, Article XVIII were again under consideration by the Supreme Court in the case of *Phillips vs. Hume*, 122 O. S. 11, holding as set forth in the second branch of the syllabus:

"The requirement for advertising provided in Section 4328, General Code, is one of the methods of limitation expressly imposed upon the debt incurring power of municipalities, when an expenditure exceeds five hundred dollars; and if the provisions of a city charter are in conflict with a state law upon that method they must yield to the requirements of the state law."

In view of the foregoing decisions of the Supreme Court of Ohio, I think that considerable question may be raised as to the validity of these assessments which appear to have been levied without having complied with the provisions of Section 3895, General Code, and I accordingly advise you not to purchase these bonds.

The opinion herein expressed is upon the issue in the amount of \$534,700 issued in anticipation of the collection of assessments and of course has no applicability to the issue in the amount of \$15,500 for the purpose of paying the city's portion of certain sewer improvements. Your purchase resolution, however, does not disclose what part of your purchase is made up of this last mentioned issue.

Respectfully,

GILBERT BETTMAN,  
Attorney General.

2650.

APPROVAL, BONDS OF BELLAIRE CITY SCHOOL DISTRICT, BELMONT COUNTY, OHIO—\$10,000.00.

COLUMBUS, OHIO, December 9, 1930.

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