

instead of one to collect an account or claim against the United States, is an adversary proceeding instituted by the United States against owners of land to take it from them. The landowners are not plaintiffs prosecuting claims but defendants resisting a proceeding to deprive them of what is theirs until a condition precedent is fulfilled. *Mason City R. R. Co. vs. Boynton*, 204 U. S. 570, 27 Sup. Ct. 321, 51 L. Ed. 629. The exercise of the right of eminent domain is a prerogative of sovereignty in this country, but it is subject to the condition imposed by the Constitution of paying 'just compensation therefor.'"

Section 742, Lewis' *Eminent Domain* (3rd Ed.), discussing the question of the payment of interest, says:

"In the absence of any statutory provision controlling the subject, the rules in respect to interest must be derived from the constitutional provision requiring just compensation to be made for property taken."

The Auditor of State could not draw his warrant on the treasurer for the amount of the compensation awarded by the jury until he duly received a requisition therefor from the Superintendent of Public Works, and, it appearing that the requisition was not issued until more than four months after the verdict of the jury was confirmed by the court, the state having taken possession of the property, I am of the opinion that the property owners will not receive the compensation guaranteed by the constitution unless interest is paid on the compensation awarded from April 25, 1927, to September 1, 1927, at the legal rate of six per cent.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1021.

DISAPPROVAL, BONDS OF THE VILLAGE OF NEW PARIS—\$37,000.00

COLUMBUS, OHIO, September 20, 1927.

In re: Bonds of the Village of New Paris—\$37,000.00.

Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The transcript pertaining to the above issue of bonds discloses that at a special meeting of council held on the 31st day of August, 1926, a resolution declaring the necessity of constructing a water works system in said village and providing for the submission of the question of issuing bonds to provide the funds necessary to pay the cost of such improvement, and the levying of a tax outside of existing limitations for the retirement of said bonds and interest was adopted. The minutes of said meeting do not show that said resolution was read on three different occasions or that said rule was dispensed with by a vote of three-fourths of all members elected thereto. Section 4224, General Code, provides in part as follows:

"No by-law, ordinance or resolution of a general or permanent nature, or granting a franchise, or creating a right, or involving the expenditure of money, or the levying of a tax, or for the purchase, lease, sale, or transfer

of property, shall be passed, unless it has been fully and distinctly read on three different days, and with respect to any such by-law, ordinance or resolution, there shall be no authority to dispense with this rule, except by a three-fourths vote of all members elected hereto, taken by yeas and nays, on each by-law, resolution or ordinance, and entered on the journal."

The case of *The Elyria Gas and Water Co. vs. The City of Elyria*, 57 O. S. 374 was an injunction proceeding, wherein it was sought to enjoin the issue and sale of bonds of the city for the purpose of raising a fund with which to build water works. One of the grounds on which the injunction was asked was that the resolution declaring the necessity for the issue and sale of the bonds and directing the submission of the question of their issue and sale to the electors of the city was not read on three different days before its adoption nor was the rule requiring such reading dispensed with. The second and third paragraphs of the syllabus read as follows:

2. "The proper adoption, by the council, of the resolution declaring it to be necessary to issue and sell the bonds of the corporation for a specified purpose authorized by Section 2835, of the Revised Statutes, and providing therein for the submission of the question of their issue to the electors at an election to be held for that purpose, is essential to the validity of all subsequent proceedings, and without which there can be no lawful issue or sale of the bonds.

3. Such a resolution is of a general and permanent nature, within the meaning of Section 1694, of the Revised Statutes, and must, before it can be legally adopted by the council, be read on three different days, or the rule requiring such reading be dispensed with by three-fourths of the members elected to the council."

Section 1694, Revised Statutes became Section 4224, General Code, in the revision of 1910, and the provisions relative to the reading of resolutions and ordinances on three different days and providing for the dispensing with said rule in Section 4224, General Code, are virtually the same now as they were at the time of the decision in the case above referred to.

The above case has never been overruled by the Supreme Court and is still the law, and I am therefore compelled to advise you not to purchase the above issue of bonds.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1022.

DISAPPROVAL, BONDS OF TRUMBULL COUNTY, \$11,000.00.

COLUMBUS, OHIO, September 20, 1927.

Re: Bonds of Trumbull County, \$11,000—Secedar Road Improvement No. 2.

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

GENTLEMEN:—Examination of the transcript of the proceedings of the board of county commissioners and other officers of the County of Trumbull, relative to the