

1756.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN
CARROLL COUNTY, OHIO.

COLUMBUS, OHIO, February 24, 1928

HON. GEORGE F. SCHLESINGER, *Director of Highways, Columbus, Ohio.*

1757.

APPROVAL, BONDS OF THE VILLAGE OF ROCKY RIVER, CUYAHOGA
COUNTY, OHIO—\$147,830.00.

COLUMBUS, OHIO, February 24, 1928

Re: Bonds of the Village of Rocky River, Cuyahoga County,
Ohio, \$147,830.00.*The Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—I have examined the transcript of the proceedings relating to the above bonds, which are a portion of three issues, in the sum of \$228,290.00, special assessment bonds, issued to cover the property owners' portion of certain street improvements.

The transcripts show that on December 27, 1927, bids were received and opened pursuant to the bond sale advertisements, seven bids being received, one of which being based on a 5% basis only, three of which being based on a 4½% basis only, and the remainder being based on both the 5% and 4½% basis. The bonds were awarded to the highest bidder at the 4½% rate. The bond sale advertisements included in the transcripts all recite that the bonds bear interest at the rate of 5% and do not contain any provision to the effect that a bidder may present a bid or bids for the bonds based upon their bearing a different rate of interest than specified in the advertisement as provided in Section 2293-28, General Code. This department has taken the position that unless the bond advertisement contains a provision for bidding on a different rate of interest than specified therein, the bonds can only be awarded to the highest bidder at the rate of interest specified in said advertisement.

The transcripts above referred to contain what purport to be copies of the bonds for the respective improvements. In each of said forms it is recited that the bonds are issued under authority of the general laws of the State of Ohio, particularly pursuant to and in full compliance with The Uniform Bond Act. Each of the transcripts also contains a certificate of the treasurer that the bonds have been taken up and paid for in full by the purchasers thereof.

Section 2293-37, General Code, provides as follows:

"Any bonds reciting that they are issued pursuant to this law, complying on their face with the provisions thereof, issued for a lawful purpose within the limitations prescribed by law, and for which the fiscal officer of the subdivision shall have been paid in full, shall in any action or proceeding involving their validity be conclusively deemed to have been issued, sold, executed and delivered in conformity herewith and with all of the provisions of statutes applicable thereto and shall be incontestible unless such action or proceeding is begun prior to the delivery of such bonds."

Inasmuch as the bond forms contain the language above referred to, comply on their face with the provisions thereof and are issued for a lawful purpose within the limitations prescribed by law, and inasmuch as it appears that the fiscal officer has been paid in full for said bonds, and inasmuch as each of said transcripts contains a certificate, signed by the mayor and village clerk, to the effect that no litigation of any nature was pending or threatened, restraining or enjoining the issuance and delivery of said bonds at the date of such certificate, it would seem that said bonds are incontestible in any action or proceeding involving their validity.

You are therefore advised that notwithstanding the defect in the manner of sale of said bonds above pointed out, I am of the opinion that said defect cannot be hereafter set up and the purchase of the above bonds by you is therefore approved.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1758.

PUBLICATION—ANNUAL REPORT OF FISCAL OFFICER OF MUNICIPAL CORPORATION—SECTION 4228, GENERAL CODE DISCUSSED.

SYLLABUS:

The provisions of Section 4228, General Code, do not apply to the publication of the annual report of the fiscal officer of a municipal corporation, but such report is required to be published in a newspaper published in the municipality and if there be no such newspaper, then in a newspaper of general circulation in such municipality as required by Section 291, General Code.

COLUMBUS, OHIO, February 24, 1928

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

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

"The pertinent part of Section 291 as amended, 112 O. L. page 355, reads:

'On or before the thirty-first day of March annually, the chief fiscal officer of each political subdivision or taxing district of each county shall prepare a financial report for the preceding fiscal year, in such form as will