

chase in excess of the amount so appropriated. No member of the board of trustees of a children's home shall sell or supply any article for the maintenance of the home or be interested in any contract made by the board."

It is inferred from your letter that Ashland county has a county children's home governed by the above quoted sections, and that such home was the intended beneficiary of the bequest quoted in your letter. A county children's home is not a body corporate, and has no legal existence as a person empowered to hold legal title or to take by a bequest. It seems, however, that the testator's intention that the sum of three hundred dollars shall be applied in the proper manner to the support of the children's home is clear. It is concluded, therefore, that the bequest has the legal effect of one made to the proper legal body for the use of, or in trust for, the support of the children's home. That legal body is pointed out by section 3080 of the General Code, and is the county commissioners. That section, in the opinion of this department, means that any donation, bequest, money or other personal property that may be made for the establishment and support of the children's home is to be received and held in trust for such purpose by the county commissioners. The trustees of the home have no authority to receive and hold money for that purpose, and in fact have no authority to disburse any money for the support of the home save in pursuance of appropriations made by the county commissioners, who constitute the public agency in supreme control of the fiscal affairs of the institution.

Accordingly, it is the opinion of this department that the county commissioners are authorized to receive, and the executor is entitled to pay over, the sum mentioned in the bequest for the use of the children's home.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

2226.

MUNICIPAL CORPORATION—BOND ISSUE FOR RE-CONSTRUCTING, IMPROVING AND EXTENDING AERIAL FIRE AND POLICE ALARM SYSTEM LEGAL UNDER PROVISIONS OF SECTION 3939 G. C.—CITY OF MASSILLON.

*Under the provisions of section 3939 G. C. a bond issue in the sum of sixteen thousand dollars for the purpose of reconstructing, improving and extending the aerial fire and police alarm system in the city of Massillon, Ohio, is legal and authorized by the provisions of said section.*

COLUMBUS, OHIO, July 2, 1921.

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

GENTLEMEN:—Receipt is acknowledged of your letter of recent date requesting an opinion upon the following statement of facts and inquiry:

*"Statement of Facts.*

The council of the city of Massillon, Ohio, authorized an issue of bonds in the sum of \$16,000.00 for the purpose of reconstructing,

improving and extending the aerial fire and police alarm system of the city of Massillon, Ohio. The two systems are combined and interwoven to a considerable degree, using the same cable, and it is found impossible to improve one without the other.

The bonds were duly advertised for sale in full compliance with the laws of the state; bids were received and the bonds were presumably sold but later the attorneys for the bond buyer advised that in view of an opinion of the Attorney-General holding that there was no authority of law to issue bonds for the equipment of the police department that they could not pass upon this bond issue as legal. The only opinion that we know of is the one relating to motor vehicles and we do not believe that would cover the point in question.

It has been the personal opinion of the writer that paragraphs 2 and 27 of section 3939 G. C., could be held, liberally construed, to permit bond issue for an aerial system as well as underground.

However, in view of the fact that the city of Massillon is desirous of disposing of these bonds, we are respectfully requesting your written opinion as follows:

Question: Is such bond issue as described legal?"

Upon request for additional information, you have submitted the following:

"Received your letter this morning in regard to the police and fire departments of Massillon, as to whether they are located in a joint building or occupy different buildings, will say that the police department of the city of Massillon is located on the corner of Factory and East Charles street across the street from the city hall."

The question presented by your inquiry as to the legality of the bond issue indicated, depends primarily upon the construction of section 3939 G. C., under the express provisions of which municipalities are authorized to issue bonds for certain enumerated and specific purposes.

Section 3939 G. C. provides in part as follows:

"When it deems necessary, the council of a municipal corporation, by an affirmative vote of not less than two-thirds of the members elected or appointed thereto, by ordinance may issue and sell bonds in such amounts and denominations, for such period of time, and at such rate of interest not exceeding six per cent per annum, as said council may determine, and in the manner provided by law for any of the following specific purposes:"

Then follow twenty-seven paragraphs or sub-sections, each describing the purpose for which bonds may be issued. Since the section is lengthy, and in so far as only three of these sub-sections apply to the question under consideration, the remaining paragraphs are omitted. The sub-sections chiefly of interest are as follows:

"Sub-section 27. For erecting any building necessary for a fire department, purchasing fire engines, fire boats, constructing water towers, and fire cisterns, and paying the cost of placing under ground the wires or other signal apparatus of any fire department, or installing and operating any municipal ice plant for the purposes of manufacturing ice for the citizens of any municipality."

"Sub-section 7. For erecting workhouses, prisons and police stations."

"Sub-section 2. For extending, enlarging, improving, repairing or securing a more complete enjoyment of a building or improvement authorized by this section, and for equipping and furnishing it."

Upon an examination of sub-section 27, it would seem that a municipality is authorized to issue bonds for the purpose of erecting any building necessary for a fire department or station, and for the paying of the cost of *placing underground* the wires or other signal apparatus of any fire department. The paragraph is silent as to overhead or aerial construction of such signal wires or apparatus.

It is suggested that a liberal construction placed upon paragraph 27 and read in conjunction with paragraph 2 would authorize and permit a bond issue for an aerial system as well as underground. Pursuant to such suggestion, it becomes necessary to more closely examine paragraph 2, since it would seem to be by the means of this enlarging section that authority or power, if there be any, is conferred upon the municipality for the purpose of erecting or reconstructing the aerial police and fire alarm system under consideration. It may be noted that this paragraph permits the extending, enlarging, improving, repairing or securing of a more complete enjoyment of a *building or improvement* authorized by section 3939 G. C. and for *equipping and furnishing it*.

It would appear from the provisions of this paragraph or sub-section that the legislature had intended to confer authority upon municipalities to equip and furnish the buildings authorized by section 3939 G. C. with the necessary additions, equipment and enlargements, as would be required to enable or permit said building to properly and adequately serve the purpose for which it was erected. In this connection, it may also be noted that a rather wide scope is indicated in the direction of power to improve and enlarge, etc., by the use of the phrase "securing a more complete enjoyment of a building or improvement authorized by section 3939 G. C. and for equipping and furnishing it." So it would seem that any building authorized by section 3939 G. C. could be equipped and furnished by the requisite additions, extensions and enlargements which would secure for that particular building a more complete enjoyment, or in other words, and as previously stated, that such building would the more adequately serve the purpose for which it was erected.

It is readily concluded therefore that a fire department station or building and a police station building, as authorized by paragraphs 27 and 7 of section 3939 G. C. would more completely serve the required purposes of each when equipped with the proper signal and alarm system, and which equipment could be said to secure for said buildings a more complete enjoyment of such as is authorized by paragraph or sub-section 2. It might be considered in this connection, as to whether a fire or police alarm system such as is contemplated, would properly be embraced by the term "equipment" or equipping of the building as used in sub-section 2. Bouvier's Law Dictionary defines the word "equipment" as follows: "Equipment, furnishings for the required purposes." In a legacy to be applied toward the rebuilding and equipment of a hospital, it was held "equipment" meant everything required to convert an empty building into a hospital.

In 3 Words and Phrases judicially defined 2432 "equipping" as used in Dig. St. c 18, providing that vessels running on any navigable waters of the

state shall be liable for all debts contracted by the owners in "equipping" such boats or vessels, did not mean such articles as might be consumed and constantly replaced but such as went towards the building, repairing, fitting or equipping the boat for boat purposes.

One of the definitions of the word "equipment" given by Webster and applied to a coal mine "are all its necessary adjuncts, and include pit and mules, which are an essential part of its apparatus." As applied to railroads, "equipment" means the necessary adjuncts of a railway, as cars and locomotives.

Thus it would seem to appear that the word "equipping" as used in paragraph 2 under consideration, would embrace and include the wires or signal apparatus of a fire department building provided for in sub-section 27, and those of a police station provided in sub-section 7. However, in this connection, it may be noted that while authority to equip the fire station or building with the necessary wires or signal apparatus may be established, there would seem to be some doubt as to the method of placing or constructing the same.

In this particular, paragraph 27 states:

*"and paying the cost of placing underground the wires or other signal apparatus of any fire department."*

Construing these words strictly, it would seem to be indicated that authority for laying or placing signal wires or apparatus would be confined to underground construction, thus excluding aerial construction, if such an interpretation be true, it would then follow that the specific provision in paragraph 27 would limit the operation of paragraph 2 to the laying of underground wires or apparatus for the equipment of such a fire station or building as is under contemplation, and that no authority would exist for aerial or other construction.

If such a view is tenable, and such construction is placed upon these words, it would follow that there would be no authority granted by the legislature to construct an aerial fire alarm system or equip the building mentioned in paragraph 27 with such an apparatus, and a bond issue for such a purpose would not be authorized by law.

However, on the other hand, it may be properly contended that the intention of the legislature in using the phrase "*and paying the cost of placing underground the wires or other signal apparatus of any fire department*" was not to exclude the method of aerial construction, as was no doubt at that time the usual and general one employed, but rather to include the newer and more improved method of underground construction, thus giving municipalities wider scope in selecting the manner of construction of this particular equipment, incident to fire departments.

Construing the same paragraphs as those under consideration in the case of *City vs. Dobson*, 81 O. S. 75, the court held, in substance, as follows:

Original section 3939 G. C. was passed 1879 (76 Ohio Laws 158) and remained such until the passage of the Longworth act (Ohio Laws 95-319). The purpose of the act was to enable a city with the approval of the electors to issue bonds for any improvement for which it might levy a tax. The evident purpose of the original provisions of the act was to enlarge the specific provisions or to cover omissions. Rules of interpretation are adopted to assist in ascertaining, and not to defeat the intention of the legislature, and hence the rule "*expressio unius est exclusio alterius*" does not apply. The purpose of the Longworth law was to make the statute so comprehensive as to

leave no excuse for constant appeals to the general assembly for special laws authorizing the issue of bonds, and if the purpose of the general provision was as has been suggested, then the omission of the words "hose and apparatus" from paragraph 27 does not indicate an intention to limit the general provisions of paragraph 2.

In view of such a court construction of paragraphs 27 and 2, it would seem that similar principles of reasoning applied to the question under consideration would conclude that the omission of "overhead or aerial provisions" in paragraph 27 would not indicate the intention of the legislature to limit the general provisions of paragraph 2. Such an interpretation of the intention of the legislature would seem to be even more forcibly suggested from a reasonable viewpoint, since in many cases it would be impracticable, if not impossible, to construct such signal apparatus solely under ground.

It would seem, therefore, to be reasonably concluded that an "aerial" system as well as underground would be authorized under the provisions of paragraph 27 and paragraph 2. Applying a similar process of reasoning to the police department or building used for a police station, it would seem that paragraph 7 when read in conjunction with paragraph 2 would authorize the equipping of such a building or station as is mentioned, with the necessary wires or signal apparatus, which would secure for the same "a more complete enjoyment" as a police station.

Arriving at such a conclusion, it would then appear that the combined provisions of paragraph 27, 2 and 7 would be necessary to vest in the municipality sufficient power to construct or reconstruct the aerial wires or signal apparatus for the police and fire alarm system, indicated in the present instance.

It is stated in the inquiry that the wires of the fire and police systems are so combined and interlaced in the conducting cable that it is impossible to improve one without also improving the other.

Under such a condition of facts it might be observed that the reconstructing or repairing of either of these systems separately would improve or impair the other necessarily, and that in such an event it would seem to be unreasonable to treat the separate wires within the cable as other than a single subject. In this connection, however, it may be noted that the power or authority for issuing bonds, if there be any, under the provisions of section 3939 G. C. for the purpose under consideration is derived from the authority granted to equip or furnish buildings mentioned in said section, securing for the same a more complete enjoyment such as is mentioned in paragraph or sub-section 2.

If this be true, it might appear that the ordinance of council originally authorizing the bond issue in question, contemplated the improvement of the police station or building as well as that of the fire department building or station in the same ordinance, and if "the improvement or equipment of the fire department building" and "the improvement or equipment of the police station or building" referred to two different buildings and subjects, it might seem that such an ordinance would be invalid by reason of the provisions of section 4226 G. C., which provides that a resolution or ordinance of council shall contain but one subject. It is believed, however, that while in a strict technical sense the equipment of the police department and that of the fire department are two distinct subjects when treated in the abstract, yet it is not so clear that a joint police and fire alarm cable, although containing separate wires and used interchangeably by both departments for police and fire calls, may not be to all intents and purposes reasonably termed a single subject, since in the way of service to the public safety

they fulfill in the end the same purpose, and are used jointly for the protection of life and property.

Referring to the former opinion of this department mentioned in your inquiry, relating to motor vehicles, and found on page 830, Vol. I, 1919 Opinions of Attorney-General, the following quotation is cited from the body of that opinion as pertinent to the present inquiry:

“Thus, while conceding the suggestion of the solicitor of Youngstown that sub-section 2 should be read in connection with sub-section 7, yet I am of the opinion that the conclusion does not follow that any authorization is found for issuing bonds to purchase automobiles, as it could not be said they pertain to the enjoyment or enlargement, etc., of the police station.”

The present case, however, is thought to be distinguishable from the one quoted in so much as that while automobiles would not seem to be a part of the necessary “equipment” or “enjoyment” of a police station, yet in the case under consideration the signal wires or apparatus of a police station would seem to be a most important and necessary part of such equipment; hence the questions and conclusions of that opinion would not be applicable to those under discussion.

In view, therefore, of the considerations presented and in light of the peculiar circumstances in the present case, which would seem to render impractical for consideration a separation of the police and fire alarm wires contained within the common cable, and believing that the intention of section 3939 G. C. would be defeated by a strict and perhaps over-technical application of legal principles to a subject so unique and peculiar in its circumstances as the one under consideration, it is the opinion of this department that the bond issue in question is legal and authorized by the provisions of section 3939 G. C.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

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2227.

DEAD BODY—MAY BE DISINTERRED AT ANY TIME AFTER PERMISSION IS FIRST OBTAINED FROM LOCAL BOARD OF HEALTH—SEE SECTION 3467 G. C.

*Under the provisions of section 3467 G. C. a body may be disinterred at any time after permission is first obtained from the local board of health.*

COLUMBUS, OHIO, July 2, 1921.

*Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—Your letter of recent date received in which you request the opinion of this department as follows:

“We desire to advise that the industrial commission on April 19, 1921, ordered that a postmortem examination be held in order to de-