

1458.

APPROVAL, BONDS OF VILLAGE OF GENEVA, OHIO, IN AMOUNT OF \$30,000 TO ENLARGE AND IMPROVE PUMPING STATION.

COLUMBUS, OHIO, July 24, 1920.

*Industrial Commission of Ohio, Columbus, Ohio.*

1459.

MUNICIPAL CORPORATIONS—CONTRACT ENTERED INTO FOR STREET IMPROVEMENT CALLING FOR MONTHLY ESTIMATES—WHERE LATER CONTRACTOR ENTERS INTO ARRANGEMENT TO RECEIVE AGGREGATE PAYMENT WITH INTEREST—WHEN CITY LIABLE FOR INTEREST—WHEN SAME CANNOT BE RECOVERED BACK.

*A municipality having legally entered into a street improvement contract calling for payment of monthly estimates, is not bound by an arrangement afterwards entered into whereby the contractor in lieu of monthly payment of estimates, was to receive an aggregate payment with interest calculated from the dates of the coming due of the estimates; and the contractor cannot recover such interest against the municipality. But if the municipality voluntarily makes payment of the interest, the rule in State ex rel. Hunt vs. Fronizer, 77 O. S. becomes applicable, and the payment cannot be recovered back.*

COLUMBUS, OHIO, July 24, 1920.

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

GENTLEMEN—You have recently submitted a statement of facts and inquiry as follows:

"The J. C. D. Co., was given a contract for paving T. Street in May, 1919, for \$39,534.42. It was provided that payment should be made monthly on engineer's estimate, less 10 per cent. They were paid as follows:

July 1, 1919.....	\$15,000 00
February 17, 1920.....	23,310 50

Total.....	\$38,310 50
Interest on past due estimates.....	752 80

	\$37,557 70
5 per cent. to be held one year.....	1,976 72

Total.....	\$39,534 42
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Bonds were sold for the village portion of this improvement before the contract was let and a portion of the assessments were paid in cash. The bonds for the special assessment portion were not sold until February, 1920, neither was money borrowed on notes under section 3915 G. C. The local officials claim that they had a gentleman's agreement with the D. Company to pay them interest upon past due estimates instead of borrowing money on notes.