

2648.

APPROVAL, BONDS OF SENECA TOWNSHIP RURAL SCHOOL DISTRICT, MONROE COUNTY, OHIO—\$20,000.00.

COLUMBUS, OHIO, December 9, 1930.

Re: Bonds of Seneca Township Rural School District, Monroe County, Ohio, \$20,000.00.

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

GENTLEMEN:—I have examined the transcript of the proceedings of the board of education and other officers of the Seneca Township Rural School District, Monroe County, relative to the above issue of bonds, and find the same to be regular and in conformity with the provisions of the Constitution and General Code of Ohio.

I am of the opinion that bonds issued under the proceedings set forth in the transcript, which is an authenticated copy of the proceedings of said officials, will, upon delivery, constitute a valid and binding obligation of said school district.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2649.

DISAPPROVAL, BONDS OF CITY OF CLEVELAND HEIGHTS, CUYAHOGA COUNTY, OHIO—\$70,000.00.

COLUMBUS, OHIO, December 9, 1930.

Re: Bonds of City of Cleveland Heights, Cuyahoga County, Ohio, \$70,000.00.

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

GENTLEMEN:—I have examined transcripts relating to the above purchase of bonds, which purchase appears to be part of two issues of bonds of the city of Cleveland Heights in the aggregate amounts of \$534,700 and \$15,500. The series of bonds in the aggregate amount of \$534,700 appears to have been issued in anticipation of the collection of special assessments which have been levied for certain street improvements. The proceedings leading up to the levy of these assessments as disclosed by these transcripts have been taken in accordance with the steps outlined in Ordinance No. 2420 passed by council February 13, 1922, presumably under authorization of the charter of the city of Cleveland Heights which became effective January 1, 1922. It appears that notices of the filing of these assessments have been served upon the owners of each lot or parcel of land assessed in the manner provided for the service of summons in civil actions and not by three weeks' publication as provided in Section 3895, General Code. This raises the question of whether or not under the so-called home rule provisions of the Constitution as adopted in 1912 a municipality may by the adoption of a city charter provide for a method of levying special assessments for street improvements which is in conflict with the state law governing the levy of special assessments. Section 6, Article XIII of the State Constitution provides as follows:

"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.