

tangible personal property to metropolitan housing authorities organized and existing pursuant to Section 1078-29, et seq., General Code, are not subject to the imposition of the Ohio retail sales tax.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2660.

WORKS PROGRESS ADMINISTRATION PROJECTS—
COUNTY COMMISSIONERS AND VILLAGES AUTHORIZED TO SPONSOR SIDEWALK, STREET AND STORM SEWER IMPROVEMENTS—IF VILLAGES PAY ANY PART OF COST—ACTION MUST BE BY ORDINANCE AND USUAL LEGISLATIVE STEPS.

SYLLABUS:

County commissioners and villages are authorized under Section 2450-2, et seq., General Code, to adopt resolutions providing that the board of county commissioners sponsor the construction of sidewalk, street and storm sewer improvement projects, within municipal corporations within their county as Works Progress Administration Projects, providing none of the cost of the same is paid by said villages. However, if the villages pay any part of such cost, the action of council providing for the expenditure of the money of the village on such project must be by ordinance and must follow the usual legislative steps required in such case.

COLUMBUS, OHIO, June 30, 1938.

HON. FREDERICK R. PARKER, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR: This is to acknowledge receipt of your recent communication requesting my opinion, which reads as follows:

"I am handing you herewith the original letter from the Ohio Works Progress Administration, No. 1, together with the papers referred to in the letter including resolutions from six villages in this county.

Inasmuch as the opinion requested in this letter is of general interest throughout the state, I am passing this matter on to you and will appreciate your opinion in the premises."

The enclosed letter from the Works Progress Administration in Ohio reads as follows:

"Re: Project 86-6021, Improvement of Rds. and
Sts., Williams County.

Dear Sir:

Recently the county commissioners and various municipalities within Williams County adopted certain resolutions authorizing the W.P.A. to proceed with improvements within the corporations, under the above county-wide road project, which has been approved and is now operating.

We are asking that you furnish this office with an opinion as to whether or not the county commissioners and villages involved are within their legal rights in adopting the resolutions submitted to us. For your information, we are attaching copies of these resolutions, along with a copy of the official description of the project and are asking that same be returned to this office with your answer to this letter."

There are also enclosed five resolutions from the five villages named in the resolution of the board of county commissioners of Williams County. I assume that the statement in your letter that "resolutions from six villages in the county are enclosed" is a mistake and that instead, the resolutions referred to in your letter are the ones hereinabove enumerated. The resolutions of the villages are all the same in substance and all of them indicate that they were passed by unanimous vote of counsel.

For reference, I quote from one of said resolutions:

"The council of the village of, Williams County, Ohio, met in their office on the.....day of, with the following members of the council present:

Messrs.

Mr.....offered the following resolution and moved its adoption:

Whereas, we, as the.....council of the village of....., Williams County, Ohio, deem it advisable to grant the board of county commissioners permission to sponsor a sidewalk and street and storm sewer project, therefore:

Be it resolved, that we, the council of the village of....., Williams County, Ohio, do hereby grant the board of county commissioners of Williams County, Ohio, permis-

sion to sponsor a sidewalk and street and storm sewer project within the said village of Ohio.

Mr. seconded the adoption of the foregoing resolution and the roll being called upon its adoption, the vote resulted as follows:

.....
.....

And thereupon the resolution was declared duly adopted this.....day of, 1938.

.....
.....

Attest:
Clerk of Village of President of Council."

The resolution of the board of county commissioners referred to above reads as follows:

"RESOLUTION:

The Board of County Commissioners of Williams County, Ohio, met in their office on the 25th day of April, 1938, with the following members of the Board present: D. C. Stoll, W. O. Headley and J. B. McKarns.

Mr. McKarns offered the following resolution and moved its adoption:

Whereas, The Villages within the county have adopted and filed with this board a uniform resolution granting the county permission to sponsor a street and sidewalk improvement program within the villages and

Whereas, it is necessary that this board accept the above mentioned resolution, therefore

Be it resolved, that we, the board of county commissioners of Williams County, Ohio, do hereby accept the resolution adopted by the villages of Bryan, Montpelier, West Unity, Pioneer and Stryker granting this board of commissioners permission to sponsor a street and sidewalk improvement program within the various villages.

Upon this motion being duly seconded by Mr. Headley, vote was taken upon the adoption of the foregoing resolution which resulted as follows:

Mr. D. C. Stoll, yes.

Mr. W. O. Headley, yes.

Mr. J. B. McKarns, yes.

And thereupon the President declared this resolution duly adopted this 25th day of April, 1938."

A copy of Presidential Letter No. 7177 is also enclosed approving this project as of August 16, 1937, which I quote as follows:

"Location—Williams County.

Description—County-wide. Improve roads throughout Williams County, by grading, draining, surfacing and performing other incidental work. These roads are not a part of the Federal Aid Highway System. Headquarters for purposes of supervision, at Bryan. Exclusive of projects specifically approved. County owned property. Sponsor: Williams County.

District Serial No.—86-6021.

Presidential Limitation—\$31,586.

Official Project Number—465-42-1-57."

This Presidential Letter No. 7177 indicates a limitation in the amount of money allocated to this project to the sum of \$31,586.00 Federal Funds.

I am somewhat familiar with the fact that W.P.A. projects generally require participation in the cost of the proposed improvement in a certain amount by the local political subdivision or subdivisions in which the expenditure of Federal Funds is to be made. I, therefore, supplemented the information contained in your communication by the additional fact that in this specific W.P.A. project there is to be added to the \$31,586.00 federal funds, the sum of \$27,304.00.

Now, if no part of the cost of this project is borne by the villages and the county supplies the required \$27,304.00 to be added to the \$31,586.00 and thereby the proposed improvement does not involve the expenditure of money by the villages or either of them, and the purpose of the action by council is only to delegate the county commissioners as sponsor of the project and to authorize said board of county commissioners to construct the proposed improvement within the municipal corporation, in that event a resolution by council of the village is proper legislative action.

The council of a municipality has jurisdiction over streets, sidewalks and storm sewers within the corporation by authority of Section 3714, General Code, which reads as follows:

"Municipal corporations shall have special power to regulate the use of the streets, to be exercised in the manner provided by law. The council shall have the care, supervision and control of public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts,

within the corporation, and shall cause them to be kept open, in repair, and free from nuisance."

Official action of the council of a municipality is by ordinance or resolution provided in Section 4224, General Code, which provides in part as follows:

"The action of council shall be by ordinance or resolution and on the passage of each ordinance or resolution the vote shall be taken by 'yeas' and 'nays' and entered upon the journal, * * *"

"Resolution," has been defined as a declaration of a legislative body which evidences a purpose or an intent to do some act but which is not the doing of the act itself.

As held in *Wuebken vs. Hopkins, et al*, 29 O. App., p. 386, syllabus 2:

"Under Section 4224, General Code, providing council may act either by ordinance or by resolution, unless the statute prescribes one or the other method of procedure, adoption of resolution is the proper procedure for informal enactment providing for disposition of a particular item of business, while passage of ordinance is proper procedure for enactment of regulation of a general or permanent nature."

It was held in *Cincinnati vs. Beckett*, 26 O. S. 49, as follows:

"A resolution which awards a contract for improvement is not one of a general or permanent nature."

Statutory authority for the council of a village to give its consent and to delegate its power and authority to the board of county commissioners to proceed with an improvement within the corporate limits of the village and the method to be followed in such arrangement is found in Sections 2450-1 to 2450-6, inclusive, of the General Code, effective July 17, 1935.

Section 2450-2 of the General Code reads as follows:

"The board of county commissioners of any county may enter into an agreement or agreements with the legislative authority of any city, village, school district, library district, health district, park district, or other taxing district,

or with the board of county commissioners of any other county as legislative authority thereof, and such legislative authorities shall have power to enter into such agreements with the board of county commissioners, whereby such board undertakes, and is authorized by the contracting subdivision, to exercise any power or powers, to perform any function or functions, or to render any service or services, in behalf of the contracting subdivision or of its legislative authority, which such contracting subdivision or its legislative authority is authorized to exercise, perform or render. Upon the execution of such agreement and within the limitations prescribed by it, the board of county commissioners shall have and may exercise the same powers as the contracting subdivision possesses with respect to the performance of any function or the rendering of any service, which by such agreement they undertake to perform or render, and all powers necessary or incidental thereto, as amply as such powers may be possessed and exercised by the contracting subdivision directly. In the absence in such agreement of provisions determining by what officer, office, department, agency, or authority the powers and duties of the board of county commissioners in accordance with such agreement shall be exercised or performed, the board of county commissioners shall from time to time determine and assign the same. Nothing in this act nor in any agreement by it authorized shall be construed to suspend the possession by a contracting subdivision of any power or function exercised or performed by the board of county commissioners in pursuance of such agreement. Nor shall the county commissioners by virtue of any agreement entered into under the authority of this section be deemed to have acquired any power to levy taxes within and in behalf of a contracting subdivision."

The authority for the county commissioners to co-operate with the Federal government and to enable all political subdivisions of Ohio to participate in Federal aid provided by the emergency relief appropriation act of 1935, passed by the 74th Congress of the United States and any act amendatory or supplementary thereto is conferred by House Bill No. 544, 116 O. L. 580, to which reference is hereby made.

It would seem then that action by resolution of the council of a village granting permission to the board of county commissioners

to sponsor a sidewalk, street and storm sewer project within the corporation, is sufficient in the event said resolution does not directly or indirectly provide for the expenditure of public monies of the village. However, in the event that the village is to pay any part of the cost of the project, the action of council must be by ordinance and the same would be subject to referendum. The proper procedure would be for the village to follow the ordinary legislative steps required to bring about any improvement to the point of letting the contract and then, in lieu of letting the contract, as provided by law, the legislation by resolution as outlined in your letter, can be taken, granting the sponsoring of the construction of the improvement to the board of county commissioners.

Therefore, in specific answer to your question, it is my opinion that county commissioners and villages are authorized under Section 2450-2, et seq., General Code, to adopt resolutions providing that the board of county commissioners sponsor the construction of sidewalk, street and storm sewer improvement projects within municipal corporations within their county as Works Progress Administration projects, providing none of the cost of the same is paid by said villages. However, if the villages pay any part of such cost, the action of council providing for the expenditure of the money of the village on such project must be by ordinance and must follow the usual legislative steps required in such case.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

2661.

STATE BRIDGE COMMISSION—BRIDGE COMMISSION OF ANY COUNTY OR CITY—WHERE ONLY REVENUES PLEDGED—BONDS DO NOT MEET QUALIFICATIONS ENUMERATED IN SECTION 2296-15a G. C.—INELIGIBLE AS SECURITY FOR DEPOSIT OF PUBLIC MONEYS.

SYLLABUS:

Bonds issued under the provisions of Section 1084-1, et seq., General Code, by the State Bridge Commission or the bridge commission of any county or city, pledging only the revenues of said bridges, do not