

The authority of the controlling board under paragraph (f) of Section 4 above quoted, is to allot from any funds appropriated by the Legislature for the maintenance of such controlling board, such amounts to any department, board or institution or other agency of the state for *operation or maintenance* of such agency if it be shown to the satisfaction of such controlling board that such allotment is necessary or expedient.

Appropriations were made to the controlling board under the heading of maintenance for the several purposes therein stated. But no appropriation was made to said board for the purpose here in question, and with respect to the question here presented, it is sufficient to note that under the provisions of paragraph (f) above noted, the controlling board has no authority to allot any of its funds to any department, board or institution of the state other than for the purposes of operation and maintenance. This does not include the acquisition of real property by any such department, board, institution or other agency on behalf of the state.

I am therefore of the opinion that the only way in which the Schoenbrunn Committee, or the members thereof, can be reimbursed for the money expended in the acquisition of the property here in question is by special appropriation on the part of the Legislature pursuant to action of the sundry claims board.

Respectfully,

GILBERT BETTMAN,
Attorney General.

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DISAPPROVAL, BONDS OF CITY OF KENT, PORTAGE COUNTY—
\$10,909.48.

COLUMBUS, OHIO, September 17, 1929.

Re: Bonds of City of Kent, Portage County, Ohio, \$10,909.48.

Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The above bonds purchased by your commission consist of a part of two issues of bonds of the city of Kent for the improvement of Rockwell Street and Earl Avenue. The transcript relative to the Earl Avenue improvement discloses that, pursuant to the provisions of Section 3835, General Code, resolution was passed by three-fourths of the members elected to council, declaring the necessity of the improvement, on June 7, 1926, no petition having been filed. This resolution provided that the whole cost of the improvement, less one-fiftieth and the cost of intersections shall be assessed by the front foot upon all lots and lands bounding and abutting upon the proposed improvement, which provision complied with Section 3820, General Code, this section being as follows:

“The corporation shall pay such part of the cost and expense of improvements for which special assessments are levied as council deems just, which part shall be not less than one-fiftieth of all such cost and expense, and in addition thereto, the corporation shall pay the cost of intersections.”

On April 18, 1927, the council passed Ordinance No. 451, determining to proceed with the improvement, which ordinance provided that the whole cost of the improvement, including the cost of intersections, shall be assessed by the front foot upon

all lots and lands bounding and abutting upon the proposed improvement. The only authority by virtue of which a municipality may assess the entire cost of an improvement is Section 3836, General Code. This section, prior to amendment by the 87th General Assembly, provided that the entire cost of any improvement of a street or highway may be assessed when a petition subscribed by three-fourths in interest of the owners of property abutting upon a street or highway of any description between designated points has been regularly presented to council. A certificate is included in the transcript signed by the city auditor in which it is stated that no petition was filed by the property owners on Earl Avenue for the improvement thereof. This certificate recites that a committee of the property owners appeared before council and requested the improvement and that after the legislation was started they agreed to pay the entire cost as set forth in an agreement copy of which is included in the transcript. This agreement is dated April 23, 1927, and is as follows:

"To the Honorable Mayor and Council of the City of Kent, Ohio.

We, the undersigned property owners on Earl Avenue in the city of Kent, county of Portage, State of Ohio, do hereby agree to pay the entire cost of improving said avenue by draining, grading, curbing and paving, in front of our several properties, and we also agree to pay jointly and equally to said city the 2%, which would otherwise be paid by such city, not only as applicable to our property abutting on such improvement, but also the property of the ones abutting who will not agree to pay such 2%. It being understood that bonds are to be issued for the 98% assessed, except for such portion as may be paid in cash.

Signed

Anna M. George, et al."

The transcript discloses that, pursuant to the ordinance determining to proceed, the entire cost of the improvement was assessed and that bonds were authorized in anticipation of the collection of these assessments. It is to be noted that the agreement of April 23rd, signed by certain property owners, expressly provides that it is understood that bonds were to be issued for the 98% assessed. Irrespective of whether or not this agreement is binding upon the parties who have signed it, the agreement apparently does not purport to be a petition as contemplated by Section 3836, General Code. There is no evidence to the effect that it was signed by three-fourths in interest of the property owners nor was it apparently executed until after the passage of the resolution determining to proceed, which appears to have been passed on April 18, 1927. I am of the opinion that this agreement does not constitute a compliance with Section 3836, as then in force and effect, such as to authorize the assessment of the entire cost of the improvement.

The transcript relative to the Rockwell Street improvement discloses that fifty per cent of the cost shall be paid by assessment, but there appears no evidence of the assessments having been levied and bonds appear to be issued in the amount of \$5,414.10, which includes the city's portion and the portion to be paid by assessment.

In view of the foregoing, I am compelled to advise you not to purchase these bonds.

Respectfully,

GILBERT BETTMAN,

Attorney General.