signed by a licensed surety company, executed after House Bills Nos. 40 and 333 passed by the 87th General Assembly became effective shall be paid by the state, county, township, municipality, school district or other subdivision of which such person so giving such bond is an officer, deputy or other employe."

In the body of the opinion it is clearly pointed out that any officer may give a new bond, with the approval of the county commissioners, which would have the effect of releasing the original bond for the remainder of his term. The opinion also pointed out that if for any reason an officer had occasion to execute a new bond for the unexpired portion of the term, a surety bond could be executed and the expense or premium thereof should be paid by the commissioners or the proper officers of the subdivision of which such person was an officer. While the above legislation clearly authorizes the payment of a premium on bonds of county officers, by the county commissioners, it is not believed that the same is retroactive. In other words, such payment should properly be made after the law became effective, but there is no justification for the payment of obligations incurred by such officers in securing bonds prior to the effective date of said law.

As pointed out in the opinion above referred to, if, after the taking effect of the new act, the officer saw fit to give a new bond, which was approved by the county commissioners, the premium of the new bond covering the unexpired portion of his term should be paid by the county commissioners. I am further inclined to the view that any renewal premiums that became due after the law became effective should be paid by the commissioners. In effect, I do not see any distinction btween paying the renewal premium on a bond already in existence and paying the premium on a new bond executed for the identical purpose.

Based upon the foregoing, and in specific answer to your inquiries, it is my opinion that:

1. County commissioners were unauthorized to pay refunds upon the premiums on bonds of county officers which were paid prior to the effective date of the law authorizing the payment of premiums of surety bonds for county officers as enacted in 112 Ohio Laws.

2. In the event that such officers had bonds executed new after the effective date of said law for the unexpired portion of the term of such officers, which said bonds were duly approved by the county commissioners, the premium thereon should be paid by the county commissioners.

3. In those cases in which bonds had been executed prior to the enactment of the law, and premiums accrued thereon after the effective date of said law, for a period of the official term to run after the effective date of said law, such renewals should be paid by the county commissioners to the insurance companies to which the premium is due.

Respectfully,
GILBERT BETTMAN,
Attorney General.

490.

MUNICIPALITY—WHEN ISSUANCE OF BONDS IN ANTICIPATION OF SPECIAL LEVY FOR CONSTRUCTING GAS MAINS PROHIBITED.

SYLLABUS:

A village may not issue bonds in anticipation of the levy of special assessments.

and thereby lend its credit, for the construction of gas mains, when such village has no gas works and does not contemplate the purchase and distribution of gas to its people, but proposes to join such mains with the mains of a privately owned gas company which will supply gas to the consumers direct.

COLUMBUS, OHIO, June 7, 1929.

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

GENTLEMEN:—Your letter of recent date is as follows:

> "May a village legally issue bonds in anticipation of the levy of special assessments for the construction of gas mains, which mains are to remain the property of the village but are to be used by a private corporation for the purpose of supplying gas to the property owners of the village who are assessed for said mains?"

Section 2293-2, General Code, a part of the Uniform Bond Act, authorizes municipalities to issue bonds for the purpose of acquiring or constructing any permanent improvement which a municipality is authorized to acquire or construct. Permanent improvement is defined in paragraph (e) of Section 2293-1, General Code, as "any property, asset or improvement with an estimated life or usefulness of five years or more, and including land and interests therein and reconstructions, enlargements and extensions thereof having an estimated life or usefulness of five years or more." Under ordinary circumstances, there would probably be no question about gas mains being a permanent improvement when there is available a source of supply of gas.

Your letter states that it is contemplated to assess the cost of construction of these gas mains upon the abutting property. Section 2293-24 provides that subdivisions shall have power to issue bonds in anticipation of the collection of special assessments. It is further provided in this section that bonds so issued shall be the full, general obligation of the issuing subdivision and the full faith, *credit,* and revenue of such subdivision shall be pledged for the payment thereof. It, therefore, becomes necessary to determine whether or not a municipality has authority to issue bonds for the purpose of acquiring or constructing gas mains which mains are to remain the property of the municipality.

Further inquiry as to the facts bearing upon the question presented discloses that the village seeking to install these mains has no gas works, but that it lies adjacent to a municipality having a privately owned and operated gas works and that the gas mains in the adjoining municipality now reach to the limits of this village. It is contemplated that, upon completion of the mains proposed to be constructed, the privately owned gas company in the adjoining municipality will use these mains in supplying gas to consumers in the village direct.

Section 3939, General Code, which is also a part of the Uniform Bond Act, provides in paragraph 8 that municipal corporations shall have the power to construct or purchase gas works for the supplying of gas to the corporation and the inhabitants thereof. A somewhat similar situation was considered in 1914 by the then Attorney General, as found in an opinion of the Attorney General, 1914, Vol. I, p. 832, the syllabus being as follows:

> "Where a municipality having a waterworks supplies water to another municipality, a village under the authority of Section 3973, General Code, and the municipality thus supplied constructs a system of pipes for distributing such water to its inhabitants, it has 'waterworks' within the meaning of Section 4357, General Code."

This opinion was predicated upon a situation whereby the village was itself purchasing the water from the city and distributing it to its inhabitants. In the case under consideration, if the village were purchasing the gas from the adjacent city, following the reasoning of this opinion, it might be held that the village in question has a gas works within the meaning of Section 3939, General Code. If such were the case, the laying of the gas mains herein considered would constitute an enlargement or extension as contemplated in paragraph (e) of Section 2293-1, supra.

From the facts here presented, however, the village does not contemplate purchasing and distributing gas to its inhabitants. Therefore, there would here seem to exist no authority for the village lending its credit to such a project on any theory that it has a gas works and the improvement contemplated is an extension or enlargement thereof.

The only direct authority appearing in the statutes for the construction of gas mains, as distinguished from the acquisition or purchase of a gas works, and for the levying of assessments to pay the cost thereof, is contained in Section 3993, General Code, which was enacted in 1869. This section is as follows:

> "Council may prescribe, by ordinance, for the laying down of gas pipes in highways about to be paved, macadamized, or otherwise permanently improved, and for the assessment of the cost and expense thereof upon the lots or parcels of land adjoining or abutting upon the highways in which they are laid. In no case, excepting as a sanitary measure, shall the council require house connections to be built further from the main pipe than the outer line of the curb-stone."

It may be noted that its only application is in case a highway is to be paved, macadamized or otherwise permanently improved, none of which facts appear to exist in the case under consideration.

In view of the facts as presented, a serious constitutional question arises involving the provisions of Section 6 of Article VIII of the Ohio Constitution to the effect that no city or town may raise money for or loan its credit to or in aid of any private enterprise. In the case of *Alter* vs. *Cincinnati, et al.*, 56 O. S. 47, the first two branches of the syllabus are as follows:

> "1. Under Section six of Article eight of the Constitution, a city is prohibited from raising money for, or loaning its credit to, or in aid of, any company, corporation, or association; and thereby a city is prohibited from owning part of a property which is owned in part by another, so that the parts owned by both, when taken together, constitute but one property.
>
> 2. A city must be the sole proprietor of property in which it invests its public funds, and it cannot unite its property with the property of individuals or corporations, so that when united, both together form one property."

In the opinion of the court, at page 64, the following language is used:

> "This section of the constitution not only prohibits a 'business partnership,' which carries the idea of a joint or undivided interest, but it goes further and prohibits a municipality from being the owner of part of a property which is owned and controlled in part by a corporation or individual. The municipality must be the sole owner and controller of the property in which it invests its public funds. A union of public and private funds or credit, each in aid of the other, is forbidden by the constitution. There can be no union of public and private funds or credit, nor of that which is produced by such funds or credit."

It would appear that the contemplated use of the gas mains would preclude the village from being the sole controller of the property for the construction of which its credit is sought to be loaned, and further, that the contemplated procedure would constitute the joining the municipal and private property together to make one property, the parts owned by the village and the privately owned gas works being each necessary to the successful operation of the whole. In view of the fact that the village mains are to be connected with the mains of the privately owned gas works and used solely by such gas works, it could be said that the village was lending its credit to and in aid of a private enterprise.

In view of the foregoing, I am of the opinion that a village may not issue bonds in anticipation of the levy of special assessments; and thereby lend its credit, for the construction of gas mains, when such village has no gas works and does not contemplate the purchase and distribution of gas to its people, but proposes to join such mains with the mains of a privately owned gas company which will supply gas to the consumers direct.

Respectfully,
GILBERT BETTMAN,
Attorney General.

491.

PENSION FUNDS—FIREMEN AND POLICE—LEVIES TO MAINTAIN WITHIN FIFTEEN MILL LIMITATION.

SYLLABUS:

Levies made for the maintenance of firemen's pension funds and police relief funds under the provisions of Section 4605 *and* 4621, *General Code, as amended in Amended Senate Bills Nos.* 79 *and* 80, *enacted by the* 88*th General Assembly, are not outside of the fifteen mill limitation as contained in Section* 5625-2, *General Code.*

COLUMBUS, OHIO, June 7, 1929.

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

GENTLEMEN:—Your letter of recent date is as follows:

> "Amended Senate Bills Nos. 79 and 80 amend sections relative to the firemen's pension fund and policemen's relief fund in municipalities. Each bill provides for levy of taxes in addition to all other levies authorized by law.
>
> By virtue of the provisions of Section 5625-21, the bureau is required to prescribe the form of budget to be submitted by various taxing districts to the budget commission.
>
> Question: Are levies for firemen's pensions and police relief funds outside of the fifteen mill limitation provided by Section 5625-2, G. C., as amended 112 Ohio Laws 392?
>
> Budget forms should be in the hands of local officials in the near future, for which reason the bureau will appreciate an early reply."

Amended Senate Bill No. 79, enacted by the 88th General Assembly, amends seven sections of the General Code, contained in Chapter 1, Division VI, Title XII, under the heading, Firemen's Pension Fund, and repeals Section 4606, therein. Section 4605, General Code, as amended, is as follows: