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MUNICIPALITY—AUTHORITY UNDER HOUSE BILL NO. 80 FOR AN ADDITIONAL LEVY FOR THE GENERAL IMPROVEMENT OF STREETS—WHAT IMPROVEMENT MAY CONSIST OF.

SYLLABUS:

A municipality may, under the provisions of House Bill 80, by a vote of the people, authorize an additional levy, when necessary, for the improvement of streets generally, which may comprehend the construction of pavements, curbs, gutters, sanitary sewers, storm water sewers, sidewalks, and grading and graveling. In the expenditure of the proceeds of such an additional levy, the municipal authorities will be limited to such improvements as are incident to the proper improvement of streets.

COLUMBUS, OHIO, September 7, 1927.

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

GENTLEMEN: This will acknowledge your recent communication, as follows:

“House Bill No. 80, passed by the 87th General Assembly, and effective August 10, 1927, repealed Section 5649-5 of the General Code, providing for an additional levy by vote of the people for any purpose for which bonds may be issued. Section 15 of House Bill No. 80 makes provision for an additional levy when necessary, reciting the purposes for which such levy in excess of the fifteen mill limitation may be voted upon. Paragraph 6 of Section 15 of House Bill No. 80 is as follows:

‘6. For the construction or acquisition of any specific permanent improvement or class of improvements which the taxing authority of said subdivision may include in a single bond issue.’

Question: Could street improvements generally be paid for from a one mill increase, such as sanitary sewers, storm water sewers, paving, constructing curb, gutter and sidewalks and grading and graveling?”

The pertinent part of Section 15 of House Bill No. 80 is as follows:

“The taxing authority of any subdivision at any time prior to September 15th, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the fifteen mill limitation will be insufficient to provide an adequate amount for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes:

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6. For the construction or acquisition of any specific permanent improvement or class of improvements which the taxing authority of said subdivision may include in a single bond issue.

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Such resolution shall be confined to a single purpose, and shall specify the amount of increase in rate which it is necessary to levy, the purpose thereof and the number of years during which such increase shall be in effect which may or may not include a levy upon the duplicate of the current

year. The number of years shall be any number not exceeding five, except that when the additional rate is for the payment of debt charges, the increased rate shall be for the life of the indebtedness.

Such resolution shall go into immediate effect upon its passage, and no publication of the same shall be necessary other than that provided for in the notice of election."

Paragraph 6 plainly grants the authority for an additional levy upon the approval of the voters for any "class of improvements which the taxing authorities of such subdivision may include in a single bond issue". It necessarily follows that resort must be had to the law authorizing the issuance of bonds to determine the purposes for which the additional levy may be made. House Bill No. 1, which also became effective August 10, 1927, is what is termed "The Uniform Bond Act". Sections 2293-19 et seq., of the General Code, as found in House Bill No. 1, provide for the submission of bond issues to the voters of subdivisions for their approval. As to the purposes for which bonds may be issued, Section 2293-20 provides as follows:

"The resolution provided for in the foregoing section shall relate only to one purpose. 'One purpose' shall be construed to include, in the case of a county or township any number of roads, highways, bridges and viaducts; in the case of a municipality any number of streets, bridges and viaducts, including the municipality's share in streets to be improved in part by assessment; in the case of a school district any number of school buildings; and in any case all expenditures, including the acquisition of a site and purchase of equipment, for any one utility, building or other structure, or group of buildings or structures for the same general purpose, or for one or more roads, highways, bridges and viaducts included in the same resolution."

It appears to be clear, therefore, that bonds may be issued for the improvement of any number of streets, bridges and viaducts and such bonds may be all a part of one bond issue. Because of the paragraph of Section 15 of House Bill No. 80, to which you have referred, it necessarily follows that there is similar authority to vote an additional tax levy for this general purpose.

You will observe that Section 2293-20 merely states that one purpose shall be construed to include any number of streets, bridges and viaducts. It does not use the word "improvement," but this must be read into the statute and, in my opinion, the improvement so authorized includes anything that is ordinarily incident to the improvement of a street and not the pavement alone. This would comprehend the improvement which you suggest, viz., sanitary sewers, storm sewers, paving, constructing curb, gutter and sidewalks and grading and graveling.

The question suggests itself, however, whether at the time of obtaining the authority of the electors for the additional levy the authorities should have certain specific streets in mind and indicate to the voters upon the ballot the specific streets. At first glance it would appear that such a course would be unnecessary, since the statute apparently gives authority to vote upon an additional levy for any class of improvements for which a single bond issue may be authorized for any number of streets, as hereinbefore pointed out. The requirements of Sections 2293-9 and 2293-10 of the General Code, as found in House Bill No. 1, should not, however, be overlooked. Section 2293-9 sets forth the different maturities for various classes of bonds and Section 2293-10 provides for the certification by the fiscal officer of the maximum maturity based upon his calculation in accordance with Section 2293-9. If a general bond issue were authorized without particular streets in mind, it would manifestly be impossible

for the fiscal officer to determine the maximum maturity of the bonds, since no plans could be prepared showing the apportionment to the different kinds of improvement. For example, a maximum maturity of twenty-five years is provided for sanitary and storm sewers, whereas sidewalks, paving, curbs and gutters are limited to ten years. Therefore, in order to determine the maximum maturity of a general bond issue, it would seem to be necessary to have specific street improvements in mind for which plans have been made and a definite apportionment of the cost determined.

You will observe, however, that the above argument loses its force when applied to a levy as distinguished from a bond issue. There is obviously no necessity for any fiscal officer's certificate in the case of a vote for an additional levy. I therefore feel that, while in the issuance of bonds it may be necessary to enumerate the particular streets to be improved and the definite character of the improvement in order that the fiscal officer's certificate may be properly made, yet an additional levy may be authorized without the same degree of definiteness.

I am therefore of the opinion that a municipality may, under the provisions of House Bill 80, by a vote of the people, authorize an additional levy, when necessary, for the improvement of streets generally, which may comprehend the construction of pavements, curbs, gutters, sanitary sewers, storm water sewers, sidewalks and grading and graveling. In the expenditure of the proceeds of such an additional levy, the municipal authorities will be limited to such improvements as are incident to the proper improvement of streets.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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957.

APPROVAL, BONDS OF THE VILLAGE OF BROOK PARK, CUYAHOGA COUNTY, OHIO—\$6,000.00.

COLUMBUS, OHIO, September 7, 1927.

*Industrial Commission of Ohio, Columbus, Ohio.*

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958.

APPROVAL, NOTE OF SOUTH BLOOMFIELD RURAL SCHOOL DISTRICT, MORROW COUNTY—\$1,920.00.

COLUMBUS, OHIO, September 7, 1927.

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