

Beginning at a point in the center line of the Plymouth Road where the west line of the Elizabeth Meister tract intersects said road as shown by the county plat of record and in Deed Book 128, page 587; thence with the east line of the Joseph B. Quaintance tract south two degrees thirty-two minutes west eight hundred eighty-two and eight tenths feet to a stake; thence north twelve degrees thirty-nine minutes west four hundred ninety-one and three-tenths feet to a point in the center line of the above mentioned Plymouth Road; thence with the center line of said road south fifty-eight degrees no minutes west seventeen and five-tenths feet to place of beginning and containing one and seventy-six hundredths (1.76) acres of land more or less.

After an examination, it is my opinion that the abstract discloses a sufficient title for the land under consideration to be in the name of Elizabeth A. Meister, free from encumbrances, and that the deed executed by Elizabeth A. Meister and John Meister, her husband, will sufficiently convey said premises to the state, when properly delivered.

The encumbrance estimates submitted have been approved by you and contain a certificate by the Director of Finance to the effect that there are unencumbered balances legally appropriated sufficient to pay seven hundred and fifty dollars (\$750.00), the amount of the purchase price.

The abstract, deed, encumbrance estimate and other data submitted by you are herewith returned.

Respectfully,
EDWARD C. TURNER,
Attorney General.

524.

MUNICIPAL ORDINANCES LEVYING SPECIAL ASSESSMENTS NEED NOT BE PUBLISHED.

SYLLABUS:

Municipal ordinances levying special assessments need not be published.

COLUMBUS, OHIO, May 23, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication as follows:

“Section 3914 G. C. authorizes municipal corporations to issue bonds in anticipation of the collection of special assessments and to issue notes in anticipation of special assessments or the issuance of special assessment bonds. The concluding sentence of this section reads:

‘Council ordinances and proceedings relating to the issuance of such bonds or notes shall not require publication.’

Former Attorney General Timothy S. Hogan on May 20th, 1914, Opinion No. 943, advised the Bureau that an assessing ordinance need not be published. Former Attorney General Jos. McGee on August 12, 1918, Opinion No. 1400 advised the state industrial commission that an assessing ordinance should be published.

We will very much appreciate your views in relation to this matter.”

You call my attention to the fact that there is an apparent inconsistency between the former opinion of this department, dated August 12, 1918, and found in Opinions of the Attorney General for 1918 at page 1079, and an earlier opinion, dated May 20, 1914, and found in Annual Report of the Attorney General for 1914 at page 682.

The opinion of 1914 did not consider, to any extent, the subject of the necessity of publication of an assessment ordinance. It does, however, specifically hold that there is no necessity for such publication.

A still earlier opinion, found in the Annual Report of the Attorney General for 1912 at page 1693, deals directly with this question and holds that, on authority of the case of *Kohler Brick Co. vs. City of Toledo*, 10 C. C. (N. S.) 137, an assessment ordinance need not be published. The third branch of the head notes of this case is as follows:

"An ordinance providing for the assessment of property benefited by a sewer improvement is of a special nature, and not within the meaning of Section 1695, Revised Statutes, which provides for the publication of ordinances of a general nature."

The discussion in the opinion is rather meager—in fact, the court after quoting the section of the Revised Statutes, reaches its conclusion in one sentence as follows:

"This ordinance was not an ordinance providing for an improvement; the improvement had been provided for; and it was not an ordinance of a general nature, but was of a special nature."

The section of the Revised Statutes referred to in that case is now Section 4227 of the General Code. The second sentence of that section is:

"Ordinances of a general nature, or providing for improvements, shall be published as hereinafter provided before going into operation."

This language is in substance the same as that of the section under consideration in the Kohler case, and the observation of the court above quoted is as pertinent today as it was then. It must be borne in mind that the assessment ordinance merely levies assessments against certain specific property. It is not in any sense of general interest to the community and, by other provisions of the law, specific notice of the passage of the resolution of necessity and of the filing of the assessment preliminary to the passing of the assessment ordinance must be given either personally or by publication. Further, the assessment is virtually the last step in the case of an improvement and, as the court points out, it is therefore not an ordinance providing for an improvement within the meaning of the statute. I am convinced that the reasoning of the court, which has been followed by my predecessor, is sound and it follows that an ordinance levying assessments need not be published.

You, however, point out what you regard as an inconsistency in the prior rulings of the department. It is true that in the 1918 opinion to which you refer, the particular ordinance under consideration was held to be of a general nature and to require publication. I call your attention to the fact that the ordinance there combined both the levy of assessments and the issuance of bonds. That opinion is predicated upon the fact of this combination of two distinct purposes.

Without passing directly upon the propriety of such a combination, it is pointed out that the bonds, if valid at all, were full, general obligations of the

municipal corporation and it necessarily followed that such an ordinance was of a general nature. That is to say, the conclusion was reached in view of the fact that the bond portion of the ordinance required publication rather than that such publication was required as to the assessment portion. As to the assessment feature, the opinion has only this much to say:

“Other than to observe that there are considerations and statutory provisions touching this question, which neither my predecessor nor the court in the case above cited took into consideration in arriving at the conclusion that an assessment ordinance does not require publication, I do not feel that there is any necessary occasion for me to consider and determine this particular question, so far as the matter before me is concerned.”

While this language would indicate a doubt in the mind of the writer, it is specifically stated that the necessity for publishing an assessment ordinance is not considered.

I might add that since the 1918 opinion, Section 3914 of the General Code has been amended so that the reasoning therein relative to the necessity of publishing ordinances for bonds in anticipation of the collection of special assessments is no longer applicable. In 109 O. L., at page 336, the following sentence which you have quoted, was added to that section:

“Council ordinances and proceedings relating to the issuance of such bonds or notes shall not require publication.”

While there may perhaps be some doubt on the subject, I am of the opinion that an assessment ordinance, which in fact affects only a certain limited number of people to whom notice has been therefore specially given of the initiation of the improvement and of the filing of the assessments to be levied, is not an ordinance of a general nature or one providing for an improvement and consequently that no publication thereof is necessary.

Respectfully,
EDWARD C. TURNER,
Attorney General.

525.

APPROVAL—FORMS FOR EASEMENTS AND RIGHTS OF WAY FOR
PUBLIC ROAD AND HIGHWAY PURPOSES.

COLUMBUS, OHIO, May 23, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works,*
Columbus, Ohio.

DEAR SIR:—I herewith formally transmit to your department forms for the purpose of conveying to the State of Ohio, easements and rights of way for public road and highway purposes. Carbon copies of the forms herewith enclosed which are designated as “R/W Form” 1, 2, 3, 4, 5, 6, and 7 were secured from this de-