

by Section 330-1, General Code, it is, in my opinion, the duty of the State Treasurer to readjust the State deposits in such a manner so that no one bank will have on deposit an amount in excess of the maximum fixed by law. The same rule would apply in case of the merger of banks and when national banks are consolidated by authority of the National Banking Act.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2048.

ENGINEERS—EMPLOYED BY MUNICIPALITY ON PER DIEM BASIS—
WHEN SALARIES PROPERLY INCLUDED AS PART OF COST OF
SPECIFIC IMPROVEMENT AND PAYABLE FROM ASSESSMENTS—
REIMBURSEMENT OF GENERAL FUND FROM SPECIAL ASSES-
MENTS UNAUTHORIZED.

SYLLABUS:

1. *When a municipality employs engineers on a per diem basis for the purpose of performing engineering services in connection with any improvements which have been undertaken, and such engineers' employment is dependent upon the existence of improvement projects, their daily wage may be designated as payable out of any such specific improvement fund or funds, and it constitutes a proper item of cost of such improvement or improvements, and as such is assessable.*

2. *If such engineers are paid salaries out of the general fund, there is no authority for reimbursing the general fund to the extent that a portion of such salaries may be allocated to a particular improvement, and therefore such engineering cost may not be assessed.*

COLUMBUS, OHIO, July 1, 1930.

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

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

“Section 3896, G. C., in part provides that the cost of an improvement which is to be assessed, shall include the expense of the preliminary and other surveys.

The syllabus of Opinion No. 2165, page 1278, year 1928, reads:—

‘Where the surveying and engineering of an improvement are performed by engineers appointed for a definite period and paid regular salaries by a city from appropriations made by council from the general fund, the cost of such service, although it may be definitely and accurately ascertained, cannot be included in the cost of the improvement and assessed against property owners, thereby effecting a reimbursement of the general fund from which the salaries of such engineers are paid.’

Question 1. When a municipality employs engineers on a per diem basis and definitely determines the engineering cost in connection with an improvement, the cost of which is to be assessed against benefited property, may such engineering be included as a part of the cost of such improvement?

Question 2. May the compensation of such engineers be paid from the general fund of a municipal corporation, and such fund be reimbursed from the special assessment improvement fund?”

I have considered the opinion of my predecessor to which you refer which was rendered in answer to a somewhat similar question to the one which you now present. In that opinion the fact was that the engineers were paid a regular salary out of the general fund. The conclusions therein were reached under authority of the case of *Longworth vs. Cincinnati*, 34 O. S. 101. The second branch of the syllabus of this case is as follows:

"Where the surveying and engineering of such improvement were performed by the chief engineer of the city and his assistants, who were officers appointed for a definite period, at a fixed salary, which the law required to be paid out of the general fund of the city, the reasonable cost to the city, of such surveying and engineering, can not be ascertained and assessed upon the abutting property, as a necessary expenditure for the improvement."

Consideration of this branch of the syllabus raises the inference that the holding of the court is predicated upon the fact that the cost of engineering on a specific improvement cannot be ascertained when such services are performed by the regularly appointed city engineer and his assistants. The opinion of the court discloses that a method had been adopted whereby the cost to the city of engineering on a specific improvement could be ascertained. The holding was based upon the fact that there existed no authority for reimbursing the general fund in the amount sought to be charged against a specific improvement and assessed as part of the cost thereof. The language of the court appearing at pp. 111 and 112 is very clear upon this point:

"Notwithstanding Section 544 does provide, that the costs of the improvement of a street, includes 'the expense of the preliminary and other surveys,' yet we think that this has reference only to cases in which the engineer doing the work was employed for that special purpose, and does not apply to work done by engineers appointed for a definite period of time, at fixed salaries, under the provisions of section 4 of the act of March 17, 1876 (73 Ohio Laws, 44). The finding of fact shows that the work was done by the chief engineer of the board of public works and his assistants, all of whom were in the employ of the city, at fixed salaries, and paid out of the general fund of the city; and also shows the manner of arriving at the amount that was charged and assessed for this improvement.

It is sufficient to say, that when the salaries of these engineers were paid from the general funds of the city, as required by law, that was the end of it, unless there was some law expressly authorizing the charge and assessment that was made in this case, for the purpose of reimbursing the city for the amount so paid; and, inasmuch as there is no such law, the courts did not err in holding that the charge was improperly included in the assessment."

This was recognized by my predecessor in the opinion to which you refer, where he said, after quoting from the opinion of the court in the *Longworth* case:

"There is little doubt from the language quoted that the Supreme Court did not consider the accuracy or inaccuracy of the apportionment of the cost as material."

The court recognized that where an engineer is employed for a special purpose, such as for the purpose of performing the engineering on a specific improvement, the

cost of such services was properly assessable as it would then be paid out of the specific improvement fund.

In the case you present if the engineers are not employed for any definite time or at any fixed salary, but are employed at the rate of a certain amount per day and by the day to perform engineering services in connection with any improvements which may be under way, then their compensation is clearly chargeable to the specific improvement upon which they work, and payable out of that specific improvement fund. Under such circumstances, engineering cost is part of the cost of the improvement and as such assessable, just as is the cost of day labor performed by men employed to work by the day on an improvement. Under this plan of employing engineers, they are employed for the specific improvements and if improvement work should not require their services, their compensation would cease. There is probably nothing to prevent council from designating the funds from which an engineer shall be paid at the time of his employment. If, however, these engineers are employed by the year as assistant city engineers at the rate of so much per day and their employment and pay is not dependent upon improvement projects being under way which require their services, then their salaries are, I believe, properly payable out of the general fund as regular employes of the city.

It, accordingly, becomes necessary to determine whether or not under the present law authority now exists for the reimbursement of the general fund during the course of the year to the extent that engineering salaries payable out of the general fund are apportioned to the various improvements under way. When an improvement is undertaken, a part of the cost of which is to be assessed, and bonds are issued in anticipation of the collection of those assessments, a bond fund must be established for that specific improvement. Section 5625-9, General Code. If these salaries are chargeable to a specific improvement, although originally paid out of the general fund, the reimbursement of the general fund necessitates a transfer of funds to the general fund. This transfer would have to be made from the bond or specific improvement fund or funds. The expenditure for engineering expense having already been made out of the general fund, a transfer of funds equal to such expenditure would have to be made from the improvement fund to the general fund. Section 5625-13, General Code, contains the only authority for transferring funds from one fund to another. It provides in so far as is pertinent as follows:

“No transfers shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as hereinafter provided:

a. The unexpended balance in a bond fund that is no longer needed for the purpose for which such fund was created shall be transferred to the sinking fund or bond retirement fund from which such bonds are payable.

b. The unexpended balance in any specific permanent improvement fund other than a bond fund, after the payment of all obligations incurred in the acquisition of such improvement, shall be transferred to the sinking fund or bond retirement fund of the subdivision; provided that if such money is not required to meet the obligations payable from such funds, it may be transferred to a special fund for the acquisition of a permanent improvement or improvements or, with the approval of the court of common pleas of the county wherein such subdivision is located, to the general fund of the subdivision.

* * * * *

Paragraphs a and b of Section 5625-13, supra, are the only paragraphs of the section which contain any provision whatever for transferring funds out of any bond

or specific permanent improvement fund. Such transfer may be made of unexpended balances only. The present law, in so far as this matter of reimbursing the general fund is concerned, to the extent that salaries paid out of the general fund may be chargeable to a specific improvement, is the same as it was at the time of the decision in the Longworth case.

Specifically answering your questions, I am of the opinion that :

1. When a municipality employs engineers on a per diem basis for the purpose of performing engineering services in connection with any improvements which have been undertaken, and such engineers' employment is dependent upon the existence of improvement projects, their daily wage may be designated as payable out of any such specific improvement fund or funds, and it constitutes a proper item of cost of such improvement or improvements, and as such is assessable.

2. If such engineers are paid salaries out of the general fund, there is no authority for reimbursing the general fund to the extent that a portion of such salaries may be allocated to a particular improvement, and therefore such engineering cost may not be assessed.

Respectfully,

GILBERT BETTMAN,

Attorney General.

2049.

APPROVAL, FINAL RESOLUTION AND COOPERATIVE CONTRACT FOR
ROAD IMPROVEMENTS IN STARK, GALLIA, CUYAHOGA, JEFFERSON,
SCIOTO AND HENRY COUNTIES.

COLUMBUS, OHIO, July 1, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval contracts relating to the following cooperative projects and the various proposals and types thereof :

- Section "P", State Highway 75, Stark County.
- Section "P" and "H-1", State Highway 75, Stark County.
- Section "P" (Bridge), State Highway 75, Stark County.
- Section "Gallipolis 2", State Highway 7, Gallia County.
- Section "D-3" and "E", State Highway 72, Stark County.
- Section D-1 (Brookpark), State Highway 460, Cuyahoga County.
- Section "A" (Part), State Highway 2, Cuyahoga County.
- Section "C-1" and "G-2", State Highway 380, Jefferson County.
- Section "C-1" (N. & W. R. R. Grade Crossing Elimination) State Highway 123, Scioto County.

You have also submitted final resolutions relating to the following improvements :

- Section "X" (Part), State Highway 17, Cuyahoga County.
- Section "Malinta", State Highway 317, Henry County.

Finding said contracts and resolutions proper as to form and legality, I have accordingly endorsed my approval thereon and return the same herewith to you.

Respectfully,

GILBERT BETTMAN,

Attorney General.