

tion, with reference to the property abutting thereon, which plans, specifications, estimates and profiles shall be open to the inspection of all persons interested."

Section 3818, General Code, provides for the service of notice of the passage of the resolution of necessity upon the owner of each piece of property to be assessed. Section 3823, General Code, provides that any person to be assessed claiming that he will sustain damages by reason of the improvement shall file a claim for such damages within two weeks after the service of the notice thereof or the completion of the publication thereof.

Section 3824, General Code, provides as follows:

"At the expiration of the time limited for so filing claims for damages, the council shall determine whether it will proceed with the proposed improvement or not, and whether the claims for damages so filed shall be judicially inquired into, as hereinafter provided, before commencing, or after the completion of the proposed improvements."

It is well established that council cannot determine to proceed with such an improvement or pass an ordinance for that purpose until after the expiration of the time for filing claims for damages. *Joyce vs. Barron*, 67 O. S. 264. It is obvious that there is no authority whereby a municipality may issue notes in anticipation of the levy of assessments for an improvement until it is determined whether or not it will proceed with the improvement. After having determined to proceed as provided in Section 3824, supra, notes may be issued in anticipation of the levy of assessments under the provisions of Section 2293-24 of the Uniform Bond Act. I am clearly of the opinion that such notes may not be authorized until the resolution or ordinance determining to proceed has been passed.

In view of the foregoing and in specific answer to your question, it is my opinion that a municipality may not authorize notes in anticipation of the levy of special assessments for an improvement until the resolution determining to proceed with such improvement has been passed as provided in Section 3824, General Code. Section 5625-35, General Code, does not, therefore, dispense with the requirement contained in Section 5625-33, General Code, as to the fiscal officer's certificate until the resolution determining to proceed has been passed as required by Section 3824, General Code, and an ordinance authorizing notes has been adopted in accordance with Section 2293-24, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2267.

POLICE RELIEF FUND—DUTY OF COUNCIL TO MAINTAIN FUND
WHEN THERE ARE NO PENSIONS TO BE PAID—WHEN COUNCIL
MAY LEGALLY REPEAL SUCH LEGISLATION.

SYLLABUS:

1. *Where a municipal council has passed an ordinance establishing a police relief fund and a board of trustees has been created and no other action has been taken, the council may legally repeal legislation establishing said fund if it chooses to do so.*

2. *Under the provisions of Section 4621 of the General Code, it is the duty of council to provide funds to maintain the police relief fund even though there are no pensions to be paid therefrom at the time said levy is requested, in the absence of legislation repealing the ordinance establishing the police relief fund.*

COLUMBUS, OHIO, August 29, 1930.

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

GENTLEMEN :—Acknowledgment is made of the receipt of your communication which reads :

"The city of -----, on December 16, 1929, passed an ordinance establishing a police relief fund. On the 3rd of February, 1930, council appointed two members of its body to be members of the board of trustees, the police department elected two members and two citizens members were elected by council members and the police department members, as provided in Section 4616, General Code, amended in 113 O. L., p. 64. The board of trustees adopted rules and regulations governing the fund and the distribution thereof, but there have been no members retired from the department on pension, and there has been no fund actually created at the date of this writing. A budget has been presented to council by the members of the board of trustees, asking that a levy be made to produce \$1100.00 for the fund, which is to be used for the payment of relief to members of the department. On July 7, 1930, council passed an ordinance as an emergency measure repealing the ordinance creating the police relief fund.

Question 1. May a council legally repeal an ordinance providing for a police relief fund, after having established the board to administer such fund, as above indicated?

Question 2. In view of the provisions of Section 4621, General Code, is it the duty of council to provide funds for a police relief fund when there are no pensions to be paid therefrom, but relief payments are contemplated?"

Section 4616 of the General Code, as amended by the 86th General Assembly, provides that the council of a municipality, which has a police department supported at public expense, "may declare the necessity for the establishment and maintenance of the police relief fund." The section further provides that in case the council makes such declaration of necessity, there shall be created a board to be known as trustees of the police relief fund. Section 4621, to which you refer and which provides for the levying of a tax, reads :

"In each municipality availing itself of these provisions to maintain the police relief fund the council thereof each year in the manner provided by law for other municipal levies, and in addition to all other levies authorized by law shall levy a tax of not to exceed three tenths of a mill on each dollar upon all the real and personal property as listed for taxation in the municipality but sufficient in amount within the three-tenths of a mill to provide funds for the payment of all pensions granted to policemen under existing laws. In the matter of such levy the board of trustees of the police relief fund shall be subject to the provisions of law controlling the heads of the departments in the municipality and shall discharge all the duties required of such heads of departments."

In the first place, it must be observed that it is a discretionary matter as to whether

or not the council of a municipality does declare the necessity for the establishment of a police relief fund. Your question, of course, is whether or not, after having declared such necessity and having created the board of trustees, the council of the municipality may now repeal such legislation and terminate such board and the fund. While there is no express authority in the statutes authorizing a municipality to discontinue such a fund and such a board when once established, it is a well known principle of law applicable to all legislative bodies that no express power is required to amend or repeal any legislation which it is authorized to enact. It is believed that the case of *State ex rel vs. Colson, Auditor*, 7 O. App. 438, is dispositive of this phase of your question. In that case the council had passed an ordinance creating a board of health under the provisions of Section 4404, General Code. Said section provided that the council of each municipality "shall establish a board of health composed of five members," etc. After having created said board, council proceeded to repeal the legislation. It was argued that council had no power to abolish the board without further action on the part of the Legislature. In other words, it was contended that the council of a municipality having once passed legislation in pursuance of a grant of power, the act must remain the law of that particular municipality until the Legislature grants the power of repeal. The court in its opinion, referring to the contentions above mentioned, stated:

"We cannot assent to this proposition.

Of course, it goes without saying that the council of a municipality can only exercise the powers delegated to it by the General Assembly. But is a specific grant of power required to authorize the council to amend or repeal an ordinance which it had the power to pass? The efficacy of any legislative body would be entirely destroyed if the power to amend or repeal its legislative acts were taken away from it. The grant of the power to pass the ordinance in question, or any ordinance for that matter, carries with it the power to amend or repeal the same act.

The constitution itself provides the method by which it may be changed.

The Legislature may repeal or modify an act which it has passed, and it seems to us to be utterly illogical to say that a municipality cannot repeal an act of its legislative body, whether the power to repeal is expressly granted or not. And we think that the repeal of the ordinance creating the board of health also abolished all appointive positions under such board. *State ex rel vs. Covington*, 29 Ohio St., 102; *State ex rel vs. Jennings*, 57 Ohio St. 415; *McHugh vs. Cincinnati*, 1 Cin. S. C. R., 145, and *State vs. Brown*, 38 Ohio St., 344."

In view of the foregoing, it must be conceded that the council of the municipality has power to repeal an ordinance establishing the police relief fund and creating the trustees of such board. A different question in all probability would be presented in the event that pensions had been awarded to members of the department in pursuance of the establishment thereof. In other words, it is a well established proposition of law that legislative bodies may not pass retroactive measures the effect of which is to disturb vested rights of individuals.

In my opinion No. 1331, issued to your Bureau under date of December 24, 1929, it was indicated that where a pension is once fixed, it is not within the power of the board of trustees to make a reduction in the pensions already granted. In view of this situation, in all probability if pensions had heretofore been granted or relief provided for, council of the municipality could not end the police relief fund without providing for the vested rights of those pensioners existing at the time of the repeal

of such act. However, it is probable that council could terminate the fund in so far as future relief to be granted is concerned. In any event, in the case you present apparently nothing has been done and therefore the question of vested rights would not arise.

In considering the second branch of your inquiry as to whether it is the duty of council to provide funds for a police relief fund when there are no pensions to be paid, but relief payments are contemplated, it is assumed that you refer to a case in which no attempt has been made to repeal the legislation creating the police relief fund. It will be noted that Section 4621 supra, provides in substance that each municipality availing itself of the provisions of the act "to maintain the police relief fund * * * shall levy a tax not to exceed three-tenths of a mill," etc. It is true that the remaining portion of the sentence, relating to a fund "sufficient in amount within the three-tenths of a mill to provide funds for the payment of all pensions granted to policemen under existing laws" might be construed as limiting the power to levy for the purpose of paying pensions. However, by taking the provisions of the section by its four corners, it is believed that the purpose of the levy is to provide for relief and such relief as the board of trustees has determined shall be granted. As pointed out in Opinion 1927, issued to your Bureau under date of March 30, 1930, there is no valid distinction between pensions and relief. In effect, relief and pensions are one and the same thing. Therefore, it is believed that where a municipality has taken such action as is necessary for the establishment of a police relief fund and the creation of a board of trustees of such fund, it is the mandatory duty of council of such municipality to provide a reasonable sum under the provisions of Section 4621 to maintain the police relief fund even though there are no pensions to be paid therefrom but there are contemplated payments for relief. In other words, the act contemplates that there will be obligations to be paid from the fund and in anticipation thereof the council should provide a reasonable amount for said purpose notwithstanding at the time the relief is requested there are no existing obligations.

Based upon the foregoing, and in specific answer to your inquiries, I am of the opinion:

1. Where a municipal council has passed an ordinance establishing a police relief fund and a board of trustees has been created and no other action has been taken, the council may legally repeal legislation establishing said fund if it chooses to do so.

2. Under the provisions of Section 4621 of the General Code, it is the duty of council to provide funds to maintain the police relief fund even though there are no pensions to be paid therefrom at the time said levy is requested.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2268.

APPROVAL, BONDS OF LAUREL RURAL SCHOOL DISTRICT—HOCKING
COUNTY, OHIO—\$3,500.00.

COLUMBUS, OHIO, August 29, 1930.

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