

acts under the name and by the authority of the state. Such being the case the general rule of law applies, which, as stated in 36 Cyc. 1171, is as follows:

"The state, or the public, is not to be considered as within the purview of a statute, however general and comprehensive the language of such act may be, unless expressly named therein or included by necessary implication."

To the same effect see *The State of Ohio ex rel. Parrott et al. vs. The Board of Public Works of the State of Ohio*, 36 O. S. 409, the third paragraph of the syllabus of which reads:

"3. The state is not bound by the terms of a general statute unless it be so expressly enacted."

As stated by Chief Justice McIlvaine, who wrote the opinion of the court, on page 414:

"The doctrine seems to be, that a sovereign state, which can make and unmake laws, in prescribing general laws intends thereby to regulate the conduct of subjects only, and not its own conduct."

In view of the foregoing and answering your first question specifically I am of the opinion that the Bureau of Motor Vehicles, being an agency of the state and in fact the state itself, is not within the purview of the statute above quoted and a county auditor is without authority to require a bond of indemnity from the Bureau of Motor Vehicles as a condition precedent to the issuance of a duplicate warrant in place of a warrant which has been lost, destroyed or misplaced.

2. Answering your second question I deem it unnecessary to discuss at length the rights of a holder in due course of negotiable paper. You state that the treasurer of Summit County has been notified to stop payment upon the warrant in question. You further state that such warrant was dated June 4th, 1927, and upon its face in plain type was printed "This warrant must be cashed within thirty days."

In view of the foregoing and answering your second question specifically, it is my opinion that any holder of this warrant is charged with notice of the period within which such warrant must be presented for payment and inasmuch as such period has long since expired the auditor of Summit County would assume no personal liability in the event a duplicate warrant be now issued.

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

990.

BONDS—INTEREST OF SPECIAL ASSESSMENTS ARE TO BE TREATED AS PART OF IMPROVEMENT AND INCLUDED IN AMOUNT OF ASSESSMENTS.

SYLLABUS:

1. *Where bonds are issued in anticipation of the collection of special assessments for municipal improvements, the interest thereon is to be treated as part of the cost of the improvement and included in the amount of the assessments.*

2. *In the event that any installment of an assessment is not paid when due and collectible, such unpaid installment bears interest at the same rate of interest as the bonds issued in anticipation of the collection of such assessments.*

3. *By the provisions of Section 3892 of the General Code, as amended in Amended Senate Bill No. 27 (87th General Assembly), the installments of assessments when certified to the county auditor are to be collected in the same manner and at the same time as other taxes are collected and, accordingly, one-half of each annual installment is payable with the December collection and the other half thereof with the June collection. Interest upon unpaid installments should be computed as to each half from the last day for the payment of taxes.*

COLUMBUS, OHIO, September 12, 1927. °

HON. OSCAR A. HUNSICKER, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—This will acknowledge letter of Mr. Ferbstein, Assistant Prosecuting Attorney, which is as follows:

“We respectfully request from your office an interpretation of Section 3892 of the General Code as amended by Senate Bill No. 27, passed by the last legislature.

Our question arising under this section is whether the auditor should add interest to the special assessments at the rate carried by the bonds or notes issued for the improvement for which the special assessment is made and if so what date he should begin to charge such interest.”

Section 3892 of the General Code, as amended in Amended Senate Bill No. 27, is as follows:

“When any special assessment is made, has been confirmed by council, and bonds, notes or certificates of indebtedness of the corporation are issued in anticipation of the collection thereof, the clerk of the council, on or before the second Monday in September, each year, shall certify such assessment to the county auditor, stating the amounts and the time of payment. The county auditor shall place the assessment upon the tax list in accordance therewith and the county treasurer shall collect it in the same manner *and at the same time* as other taxes are collected, and when collected, pay such assessment, *together with interest and penalty, if any*, to the treasurer of the corporation, to be by him applied to the payment of such bonds, notes or certificates of indebtedness and interest thereon, and for no other purpose. For the purpose of enforcing such collection, the county treasurer shall have the same power and authority as allowed by law for the collection of state and county taxes. *Each installment of such assessments, remaining unpaid after becoming due and collectible, shall be delinquent and bear the same penalty as delinquent taxes. The city solicitor or the regular and authorized legal representative of any such municipality is hereby authorized and directed to act as attorney for the county treasurer in actions brought under authority of Section twenty-six hundred and sixty-seven of the General Code for the enforcement of the lien of such delinquent assessments.*”

The italics in the language above quoted indicates what was added to the section in the amendment thereof. Evidently, therefore, the amendment was made to make it clear that assessments are to be collected in exactly the same manner as taxes and

that not only the assessment but also the interest and penalty thereon, if any, are to be paid to the treasurer of the corporation originally levying the assessment. In addition, the duty of collection is placed upon the solicitor of the municipality in the event suit is necessary.

Your question is whether, under this section, the auditor should add interest to the special assessments at the rate carried by the bonds or notes issued for the improvement for which the special assessment is made and what date the interest, if so charged, should commence.

Section 3817 of the General Code provides as follows:

“When bonds are issued in anticipation of the collection of the assessment, the interest thereon shall be treated as part of the cost of the improvement for which assessment may be made. If such assessment or any installment thereof is not paid when due, it shall bear interest until the payment thereof at the same rate as the bonds issued in anticipation of the collection thereof, and the county auditor shall annually place upon the tax duplicate the penalty and interest as therein provided.”

It is clear from these provisions that the computation of the assessment in the first place includes interest upon the bonds issued in anticipation of the collection thereof. The second sentence of that section also indicates that, upon delinquency in the payment of any assessment, interest shall be charged at the rate carried by the bond issue. Under the provisions of Section 3892 of the General Code, assessments are to be collected in the same manner and at the same time as other taxes are collected. Obviously, therefore, the interest upon any particular installment of an assessment should not be charged until the last date for the payment of taxes. This is emphasized by the sentence in Section 3892 of the General Code as amended, which states:

“Each installment of such assessments, remaining unpaid after becoming due and collectible, shall be delinquent and bear the same penalty as delinquent taxes.”

In order to determine, therefore, when the assessments are due and payable, reference must be made to those sections of the General Code dealing with the collection of taxes.

Section 2653 of the General Code is as follows:

“Each person charged with taxes on a tax duplicate in the hands of a county treasurer may pay the full amount thereon on or before the twentieth day of December, or one-half thereof before such date, and the remaining half thereof on or before the twentieth day of June next ensuing, but all road taxes so charged shall be paid prior to the twentieth day of December.”

The plain and unambiguous language of this section scarcely calls for interpretation. Obviously all taxes other than road taxes may be paid in two installments, and, since assessments are to be paid in the same manner and at the same time as taxes, any annual assessment may be likewise paid in two installments. This is the only interpretation of the language of these sections that I am able to make, although I realize it has long been the practice to make assessments payable at either one or the other of the collection periods and not split them between the two.

Since the interest referred to in Section 3817 of the General Code is not chargeable until the assessment is due and unpaid, it necessarily follows that one-half of any annual installment is chargeable with interest after the 20th day of December, unless the time of payment of taxes has been extended beyond that date in accordance with law. If such extension is granted, the interest should commence from the date to which such extension is made. The remaining half of the installment of the assessment is not due and payable until the 20th day of June, or such date to which the time of payment of taxes has been lawfully extended.

I direct your attention further to the fact that the language of Section 3892 now is specific as to the imposition of a penalty of the same character as that for delinquent taxes.

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

991.

CORPORATION—WHEN CORPORATION MAY PROPERLY CLAIM EXEMPTION OF A PORTION OF ITS STOCK UNDER SECTIONS 6373-2 (f) AND 6373-14, GENERAL CODE.

*SYLLABUS:*

*A corporation organized under the laws of this state, may properly claim exemption of a portion of its stock under Section 6373-2 (f) and Section 6373-14 of the General Code, where the disposal of the portion then proposed to be disposed of in good faith and not for the purpose of avoiding the provisions of the securities act, is made for the sole account of the issuer, without any commission, and at a total expense of not more than two per cent of the proceeds realized therefrom, plus five hundred dollars, and where no part of the stock to be presently disposed of is issued, directly or indirectly, in payment of patents, services, good will or for property not located in this state. Under such circumstances, the facts surrounding any prior issue of the same class of stock or other securities by such corporation are immaterial.*

COLUMBUS, OHIO, September 12, 1927.

HON. NORMAN E. BECK, *Chief Division of Securities, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your recent letter as follows:

“A corporation was organized under the laws of the State of Ohio with an authorized capitalization of 100 shares of common stock, par value \$100.00 per share. 500 shares of its authorized capital stock were qualified, under Section 6373-14, General Code of Ohio, same being disposed of through a licensed dealer at a commission of 10%. The securities so qualified are now outstanding. This company now proposes to qualify the balance of its authorized 500 shares of common stock by exemption under Section 6373-2 (f). Section 6373-2 (f) reads as follows:

“The issuer, organized under the laws of this state, where the disposal, in good faith and not for the purpose of avoiding the provisions of this act, is made for the sole account of the issuer, without any commission and at a total expense of not more than two percentum of the proceeds realized there-