

for the permanent maintenance and upkeep of a municipal cemetery and provide that a portion of the funds received from the sale of lots in such cemetery shall be deposited in such fund.

Section 4 of the ordinance submitted contains the provision that the director of public service shall, under certain circumstances as therein set forth, pay out these trust funds. In this connection, your attention is directed to Section 5625-33, General Code, providing that no subdivision shall "make any expenditure of money unless appropriated as provided in this act", the reference being, of course, to the Budget Law.

Section 4 of the ordinance contains the further provision that the director of public service may invest the trust fund under consideration. In this connection, your attention is directed to Section 4169, General Code, which provides in part as follows:

" * * * * * The council and its successors shall invest and keep invested such funds in interest bearing debts of the city, if any, and if no such debts are owing by the city, in safe interest bearing bonds, or stocks for the benefit of such cemetery funds, that will bear as great an income as possible, and all such money and the income thereof shall be exempt from taxation, the same as other cemetery property."

I am of the opinion that a city may not, by ordinance, provide that the director of public service may invest trust funds for the permanent maintenance and upkeep of a city cemetery in view of the express provision of Section 4169, General Code, that such funds shall be invested by council.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1476.

COUNTY COMMISSIONERS—UNAUTHORIZED TO CANCEL ASSESSMENTS LEVIED TO PAY PART OF COST OF STATE HIGHWAY WHEN BONDS ISSUED.

SYLLABUS:

After a board of county commissioners has levied assessments against abutting property to pay a part of the cost of a state highway and has issued bonds in anticipation of the collection of such assessments, such board of county commissioners has no authority to cancel and set aside such assessments.

COLUMBUS, OHIO, February 1, 1930.

HON. EMERSON C. WAGNER, *Prosecuting Attorney, New Lexington, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"Would you please give me your opinion upon the following question: Can the board of county commissioners cancel and set aside special assessments heretofore made against abutting property owners on an inter-county highway, when bonds have been issued?"

Said inter-county highway was constructed along about the year 1922.”

An answer to your inquiry must, in my view, be primarily predicated upon the fact that there are no provisions in the General Code whereby a board of county commissioners are authorized to cancel and set aside special assessments which have been previously levied.

There are, however, other considerations which clearly indicate that such authority does not exist.

Section 2293-24, General Code, being part of the Uniform Bond Act, authorizes subdivisions to issue bonds in anticipation of the collection of special assessments. The section provides that when such bonds are issued, all assessments collected for an improvement shall be applied to the payment of the bonds and interest thereon. The section further provides that such bonds shall be the general obligations of the issuing subdivision and that the full faith, credit and revenues of the subdivision shall be pledged for the payment of their interest and principal.

Section 2293-26, General Code, provides what a resolution or ordinance authorizing the issuance of bonds shall contain. It is therein expressly set forth, *inter alia*, that:

“The resolution or ordinance provided for in this section shall provide for the levying of a tax sufficient in amount to pay the interest on and retire at maturity all of the bonds covered by said resolution or ordinance; but the amount of the tax to be levied in any year may be reduced by the amount to be available for such purposes from special assessments,
* * * .”

It is pertinent in a consideration of this question to bear in mind that the Uniform Bond Act has set forth express limitations of net indebtedness which may be incurred by subdivisions with and without a vote of the electors. Section 2293-13 of the Act provides that bonds issued in anticipation of the collection of special assessments shall not be considered in calculating the net indebtedness. It is evident that this exemption of assessment bonds from consideration in determining the net indebtedness, is predicated upon the assumption that assessments in anticipation of the collection of which such bonds have been issued, will be collected by the subdivision and that such bonds are not, therefore, primarily a tax burden upon the entire subdivision. If it had been contemplated that such assessments may be at any time set aside by the taxing authority, the exemption of Section 2293-13 would be meaningless and defeat all of the sections of the Uniform Bond Act providing limitations of net indebtedness which may be incurred by subdivisions. It is true that Section 2293-26, *supra*, provides that the resolution authorizing assessment bonds must levy a tax for their payment, but such levy should be collected only to the extent that the subdivision is unable to collect assessments.

Specifically answering your question, I am of the opinion that, after a board of county commissioners has levied assessments against abutting property to pay a part of the cost of a state highway and has issued bonds in anticipation of the collection of such assessments, such board of county commissioners has no authority to cancel and set aside such assessments.

Respectfully,

GILBERT BETTMAN,

Attorney General.