

Kent Normal School, Kent, Ohio, and the Thatcher Heating Company of Akron, Ohio. This contract covers the construction and completion of Contract for steam piping, water piping, and gas piping; and Condensation return pumps (Extension of Tunnels), Kent State Normal School, Kent, Ohio, and calls for an expenditure of Six thousand four hundred and thirty-eight dollars (\$6,438.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also furnished evidence to the effect that the consent and approval of the Controlling Board to the expenditure has been obtained as required by Section 12 of House Bill No. 502 of the 87th General Assembly. In addition you have submitted a contract bond, upon which the Commercial Casualty Insurance Co. appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2627.

APPROVAL, BONDS OF DARKE COUNTY, OHIO—\$83,000.00

COLUMBUS, OHIO, September 27, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2628.

TAX AND TAXATION—SPECIAL ASSESSMENTS—DELINQUENT—PEN-
ALTY—PAYABLE TO SINKING FUND.

SYLLABUS:

Where bonds have been issued in anticipation of the collection of special assessments, penalties collected on delinquent assessments must be paid to the sinking fund or the bond retirement fund, as the case may be, and such penalties cannot be placed in the general fund or used for general purposes.

COLUMBUS, OHIO, September 27, 1928.

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

GENTLEMEN:—This will acknowledge your recent communication, as follows:

"The first branch of the syllabus of Opinion No. 874, to be found at page 2380, Volume 3, Opinions of 1917, reads:

'When special assessments are made for municipal street improvement, etc., and bonds, notes or certificates of indebtedness are issued in anticipation of the collection thereof, the several installments of such assessments, if not paid when due, bear interest until the payment thereof at the same rate as the bonds, and when such assessments are certified to the county auditor for collection by the county treasurer on the tax duplicate, such installments, if not paid when due, are subject to a penalty of ten per cent thereof.'

QUESTION: When bonds have been issued in anticipation of the collection of special assessments, and the payment of such bonds, and interest, is under the control of a board of sinking fund trustees, may penalties collected on delinquent assessments be deposited in the general fund of a municipality, and be used for general purposes; the assessments and interest being deposited in the sinking fund?"

Your question is answered by the provisions of Section 3892 of the General Code, as amended by the last Legislature and found in 112 O. L. at page 61. That section provides 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."

You will note that the assessment, interest and penalties are payable to the treasurer of the municipal corporation to be applied solely to the payment of the bonds, notes and certificates and interest thereon. This categorical provision is mandatory and requires that the penalties be paid either to the bond retirement fund or the sinking fund, as the case may be.

Accordingly, in specific answer to your inquiry, I am of the opinion that, where bonds have been issued in anticipation of the collection of special assessments, penalties collected on delinquent assessments must be paid to the sinking fund or the bond retirement fund, as the case may be, and such penalties cannot be placed in the general fund or used for general purposes.

Respectfully,

EDWARD C. TURNER,
Attorney General.