

Accordingly, I am of the opinion that where the issuance of bonds is authorized for the purpose of constructing a park or installing or purchasing a swimming pool, the proceeds of the bonds may be devoted to the acquisition of the interests of a group of citizens who have contributed to the construction of a swimming pool upon the land proposed to be acquired for park purposes.

Respectfully,

EDWARD C. TURNER,
Attorney General.

3004.

CERTIFICATE OF FUNDS IN TREASURY—NOT REQUIRED FOR EMPLOYMENT OF COUNTY ENGINEER.

SYLLABUS:

The provisions of Section 5625-33, General Code, requiring a certificate as to the existence of moneys available, etc., do not apply to contracts of employment of an engineer by the county commissioners under Section 2411 of the General Code, for the reason that Section 2413, General Code, especially provides that no certificate is required in such contracts.

COLUMBUS, OHIO, December 10, 1928.

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

GENTLEMEN:—I am in receipt of your recent communication which reads:

"You are respectfully requested to furnish this department your written opinion upon the following:

Section 2411, G. C., authorizes the employment of an engineer by the county commissioners. Section 2413, G. C., provides that the county commissioners shall fix the compensation of the employees under the provisions of the preceding section and that no provision of law requiring a certificate that money therefor is in the treasury shall apply to the appointment or employment of such persons.

Question: In view of the provisions of Section 5625-33, G. C., may an engineer be legally employed under this section without a certification by the county auditor that funds have been appropriated and are in the treasury or in process of collection to pay the compensation?

In connection with this question, we are submitting a statement of facts as to the employment of an engineer in any of the counties of this state."

Section 2411, General Code, to which you refer, reads:

"When the services of an engineer are required with respect to roads, turnpikes, ditches or bridges, or with respect to any other matter, and when, on account of the amount of work to be performed, the board deems it necessary, upon the written request of the county surveyor, the board may employ

a competent engineer and as many assistant engineers, rodmen and inspectors as may be needed, and shall furnish suitable offices, necessary books, stationery, instruments and implements for the proper performance of the duties imposed on them by such board."

Section 2412, General Code, which is a part of the same chapter in which the section above quoted is included, provides:

"The board of county commissioners shall fix the compensation of all persons appointed or employed under the provisions of the preceding sections, which, with their reasonable expenses shall be paid from the county treasury upon the allowance of the board. No provisions of law requiring a certificate that the money therefor is in the treasury shall apply to the appointment or employment of such persons."

In my Opinion No. 1658, issued February 24, 1928, the provisions of House Bill No. 80 (112 v. 364), which includes, among others, Section 5625-33, were considered in connection with the employment of legal counsel by a village under Section 4220, General Code. The first paragraph of the syllabus of said opinion reads:

"1. A contract entered into by a village for the employment of legal counsel at a definite amount per year for all services, requires a certificate of the fiscal officer that funds are in the treasury or in process of collection and properly appropriated for the purpose."

The character of the power granted to the village in Section 4220, *supra*, to employ legal counsel is very similar to the power granted to commissioners in Section 2411, *supra*, to employ engineers.

In my Opinion No. 1658, hereinbefore mentioned, it was pointed out that House Bill No. 80, *supra*, repealed Section 3809, General Code, which section expressly provided that the certificate was not required to the effect that money was available in contracts for the employment of legal counsel by a village.

Section 5625-33, General Code, undoubtedly will apply to a contract of employment of an engineer such as you mention unless the express exceptions in Section 2413, General Code, are applicable. While the so-called Budget Law (House Bill No. 80), is general in its nature and purports to apply to contracts of all subdivisions, it must be kept in mind that a special act will control over a general act when there is a conflict between such enactments. *State ex rel. vs. Industrial Commission*, 105 O. S. 103.

Unless it is held that the Budget Law repealed Section 2413, *supra*, it must be said that the latter is in force and applies to the case presented. Inasmuch as repeals by implication are not favored, and the Legislature expressly repealed a similar section (3809), the conclusion is justified, that it was not the intent of the Legislature to repeal Section 2413, General Code.

You are therefore specifically advised that the provisions of Section 5625-33, General Code, requiring a certificate as to the existence of moneys available, etc., do not apply to contracts of employment of an engineer by the county commissioners under Section 2411 of the General Code, for the reason that Section 2413, General Code, especially provides that no certificate is required in such contracts.

Respectfully,
EDWARD C. TURNER,
Attorney General.