

In view of the above discussion, I am of the opinion that the claim of Jacob Lang, presented to your board, should now be submitted to the Sundry Claims Board to be disposed of in such manner as said board sees fit.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4156.

POLITICAL SUBDIVISION—SALE OF PERMANENT IMPROVEMENT, OTHER THAN PUBLIC UTILITY, ON WHICH BONDS ARE OUTSTANDING—PROCEEDS MAY BE USED TO CONSTRUCT PERMANENT IMPROVEMENT.

SYLLABUS:

When a subdivision, as defined by section 5625-1, General Code, sells a permanent improvement, not a public utility, for the construction or acquisition of which improvement bonds have been issued and are unpaid, the proceeds of such sale may be used for the construction or acquisition of a permanent improvement or improvements.

COLUMBUS, OHIO, March 16, 1932.

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

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

“Section 3704 G. C., providing that the proceeds from the sale of property shall be paid to the sinking fund when such property was acquired by an issue of bonds and any amount of said bonds are still outstanding, was repealed in 113 O. L. 670, and section 5625-10 G. C., amended to read in part as follows:

‘If a permanent improvement of the subdivision is sold the amount received for the same shall be paid into the sinking fund or the bond retirement fund of the subdivision or into a special fund for the construction or acquisition of a permanent improvement or improvements; provided that the proceeds from the sale of a public utility shall be paid into the sinking fund or bond retirement fund to the extent necessary to provide for the retirement of the outstanding indebtedness incurred in the construction or acquisition of such utility. * * *

In your Opinion No. 2704, page 1836 of the 1930 Opinions, branches two and three of the syllabus read as follows:

2. ‘A board of county commissioners may sell any tract of real estate belonging to the county and not needed for public use in parcels in the event it should appear to the best interests of the county so to do.

3. The proceeds of such sale should be paid into the sinking fund the bond retirement fund or into a special fund for the construction or acquisition of a permanent improvement or improvements.’

We are quoting further from this opinion at page 1838:

'As to the disposition of the proceeds of the sale of old hospital property, I assume that there are no bonds now outstanding which were issued for the acquisition, construction or improvement of this old hospital.'

In order that we may be properly guided in our instructions to State Examiners and to public officials, in the matter of the use of proceeds from the sale of permanent improvements other than public utilities, will you kindly favor us with a written opinion on the following question:

When a taxing subdivision sells a permanent improvement for which bonds were issued and remain unpaid, may the proceeds of such sale be used for the acquisition or construction of a permanent improvement?"

When section 5625-10, General Code, was originally enacted, section 3704, General Code, referring to municipal corporations, was not expressly repealed, and the former section did not contain the provision with reference to the proceeds from the sale of a public utility. At that time you asked this question, as appears in Opinions of the Attorney General for 1927, Vol. III, page 2234: "May the proceeds of the sale of a public improvement which was acquired by an issue of bonds, which bonds are still outstanding and unpaid, be placed in a special fund for the acquisition of a permanent improvement?"

In that opinion it was held that section 3704, General Code, was a special act, and, although an earlier enactment, it limited the provisions of section 5625-10, and therefore the proceeds of a sale of a permanent improvement must first be applied to the payment of such outstanding bonds, as provided in section 3704. However, as to section 5625-10, the opinion said:

"Section 5625-10, General Code, *supra*, apparently makes optional the payment of the proceeds of the sale of a permanent improvement into the sinking fund or the bond retirement fund of the subdivision or into a special fund for the construction or acquisition of a permanent improvement or improvements. In so providing, Section 5625-10, General Code, is in conflict with Section 3704, General Code, *supra*, which makes mandatory the payment of such proceeds where the property was acquired by an issue of bonds, the whole or part of which is still outstanding, into the hands of the trustees of the sinking fund, to be applied in the payment of the principal of the bond issue."

Thereafter, section 3704 was expressly repealed. 113 O. L. 675.

It is apparent, therefore, that under section 5625-10, a subdivision has the option of paying such proceeds into the sinking fund or the bond retirement fund, or of paying them into a special fund for the construction of a permanent improvement or improvements. This is more apparent by the amendment of the section requiring the proceeds from the sale of a public utility to be paid into the sinking fund or bond retirement fund to the extent necessary to provide for the retirement of the outstanding indebtedness incurred in the construction or acquisition of such utility, thus showing the intention to make this requirement apply to public utilities only.

I am of the opinion, therefore, that when a subdivision, as defined by section 5625-1, General Code, sells a permanent improvement, not a public utility, for the construction or acquisition of which improvement bonds have been issued and are

unpaid, the proceeds of such sale may be used for the construction or acquisition of a permanent improvement or improvements.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4157.

JOINT HIGH SCHOOL—COMMITTEE—MAY EMPLOY A CLERK—MEMBER OF COMMITTEE MAY BE SELECTED AND RECEIVE COMPENSATION.

SYLLABUS:

1. *When a joint high school committee has been appointed by authority of section 7670, General Code, to manage a joint high school that committee should provide itself with a clerk or secretary to keep its minutes and perform such other clerical duties as may be necessary in the transportation of its business.*

2. *Such clerk or secretary may lawfully be selected from the members of the committee, or the committee may, in its discretion, appoint or employ some other person to perform the duties of secretary or clerk to the committee.*

3. *The clerk of a board of education for the school district in which a joint high school is located is not, by virtue of his office, the clerk of a joint high school committee appointed to manage the said joint high school and is not required by law to act as such clerk, but may lawfully be employed by the committee to perform those services.*

4. *Where the services to be performed by a clerk or secretary of a joint high school committee are such as to justify the payment of compensation therefor, the clerk may be compensated for his services, whether the said clerk is a member of the committee or not.*

5. *Compensation provided for a clerk or secretary of a joint high school committee, should be paid from funds appropriated to said committee for its use in the maintenance of the joint high school, and charged as legitimate expense of the maintenance of the high school.*

COLUMBUS, OHIO, March 16, 1932.

HON. ROBERT N. GORMAN, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—This will acknowledge receipt from you of the following communication:

"1. Does a union high school district created under Sections 7669 et seq. General Code, have a clerk?

2. If the answer to the first question is yes, does any member or officer of the boards of education composing the union high school district hold such office ex officio, or must one be selected?

The statutes are quiet on the above mentioned subjects.

Section 7671-1, General Code, indicates that a treasurer shall be selected by the joint high school committee from its membership. No doubt