

1712.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS, IN
RICHLAND, MAHONING AND WYANDOT COUNTIES, OHIO.

COLUMBUS, OHIO, December 16, 1920.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*

1713.

DITCHES—IMPROVEMENT MADE UNDER FORMER SECTION 6603 ET
SEQ. G. C.—COST CERTIFIED TO COUNTY AUDITOR—PAYABLE IN
TWO INSTALLMENTS AS SET OUT IN SECTION 2653 G. C.

Where ditch improvement work has been done under former sections 6603 et seq. G. C., the cost certified to the county auditor as authorized under former sections 6639 is payable in two installments as set out in section 2653 G. C.

COLUMBUS, OHIO, December 16, 1920.

HON. CHARLES L. FLORY, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—Your letter of recent date has been received, reading as follows:

“Proceedings for the construction of a township ditch were carried on before the trustees of Bennington township, Licking county, Ohio. It was necessary for the trustees to let a contract for one section of the ditch, and to assess the cost of the work against the land of the owner whose section the trustees were compelled to have constructed. The trustees certified the assessment, amounting to approximately \$940.00, to the county auditor, to be placed upon the duplicate as provided by former section 6639 General Code. All the proceedings were carried on under the ditch law as it was before the revision of such law as it appears in Vol. 108, Ohio Laws.

I shall be pleased to have your opinion as to whether the assessment should be placed upon the duplicate for collection in one amount, or in two semi-annual installments as other taxes are collected under favor of section 2653 General Code, or in a greater number of installments in likeness to municipal assessments.”

In view of your reference to section 6639 G. C. and of the general tenor of your inquiry, it is assumed that the section of township ditch in question was constructed under virtue of the chapter entitled “Township Ditches,” and embracing sections 6603 to 6652 G. C. Those sections have been repealed in their entirety by the so-called New Ditch Code (108 O. L. 926 et seq.). This department has had occasion to consider the effect of the repeal of previously-existing sections by the passage of said code; and in that connection your attention is called to Opinion No. 766 of date November 8, 1919, now appearing in Opinions of Attorney General for 1919, Vol. II at page 1416, and directed to Hon. Edward Gnudern, prosecuting attorney, Bryan, Ohio, and to Opinion No. 1295 of date May 28, 1920, directed to Hon. Lewis H. Capelle, prosecuting attorney, Cincinnati, Ohio, copy of which is

enclosed. Applying the conclusions of said two opinions to the situation described in your inquiry, the result is that as the proceedings were pending proceedings when the New Ditch Code took effect, said proceedings are to be carried to a conclusion under the statutes applicable thereto when the proceeding was begun.

We are thus brought to a consideration of the section to which you refer in particular, namely, former section 6639 G. C. It reads:

“When the work is completed in conformity with the sale, and to the satisfaction of the trustees, they shall forthwith certify to the auditor of the county the amount for which each section sold, adding the proportionate amount of costs and expenses of such sale, with a correct description of each piece of land upon which it is assessed. The auditor shall place such amounts upon the duplicate, to be collected as other state and county taxes are collected, and the trustees, at the same time, shall certify the amount due to each person, and the auditor shall draw orders for the payment thereof out of the county treasury. A person interested may pay the amount of the purchase money and proportionate share of such costs and expenses to the trustees before it is charged on the duplicate, to be paid by the trustees to the purchaser of such section.”

It is to be noted that the section does not vest in the township trustees any discretion in the matter of fixing a time for payment of the assessment or installment thereof; nor is provision for such discretion found in related sections. We thus have a marked contrast as between section 6639 and such sections as 6489 authorizing county commissioners in relation to single county ditches to determine at what time and in what number of assessments they will require the cost of the improvement to be paid; section 3815 (Am. 107 O. L. 151) providing that as to certain municipal improvements assessments “may be payable in one to twenty installments at such time as council prescribes”; and sections 1216 and 6923 of the highway laws providing for payment of installments of assessments extending over a period of not more than ten years as determined by the county commissioners.

We are accordingly reverted to the terms of section 6639 itself and its immediately related sections for answer to your inquiry.

The series of sections of which section 6639 was a part provides among other things for the filing with the township clerk of a petition by land-owners for a ditch, and a hearing thereon by the township trustees. Section 6613 reads:

“The trustees at such hearing, shall examine into and determine all applications made to them for compensation, and specify the several amounts, by whom and to whom to be paid, and the time of payment. No order for the opening or sale of a ditch, or part thereof, located and established under this chapter, shall be made until the full amount of compensation for land appropriated has been paid. The trustees shall pay such compensation out of the general township fund and apportion the aggregate amount thereof equitably upon the lands benefited by said ditch, and it shall be a lien on said lands, as other taxes. Said apportionment shall be certified by the clerk to the county auditor within forty days from such payment, and placed upon the duplicate against the lands so assessed, and collected in the manner as taxes are collected, and when collected shall be paid over to the township entitled thereto, to reimburse said general township fund. A landowner may pay the amount assessed against his lands to the township treasurer before it is certified to the county auditor.”

Section 6635 reads:

"As soon as an appeal is perfected from the decision of the township trustees, further proceedings before them on the petition shall be stayed. If no appeal is taken, the trustees, upon the expiration of the time specified by them for the opening of the ditch, shall forthwith inspect it, and if a section or part thereof has not been completed, they shall accept a bond with sufficient surety from the person having such unfinished work to perform, conditioned for the faithful completion of such work within the time they specify therein. If such person fails or refuses to give bond for the completion of the work the trustees shall forthwith sell the unfinished work by sections to the lowest bidders, by posting notices of the sale in at least three of the most public places in the township, for at least ten days before the day of sale, specifying the time when the work shall be completed. The trustees shall take such bond or other security for the performance of the work as they deem proper."

Section 6636 reads:

"Before the work of constructing such ditch is sold by the trustees, they shall make a fair and impartial estimate of the cost thereof, which shall be entered upon the ditch journal, and it shall not be sold for a sum exceeding such estimate. The fees and allowances in all proceedings, and the apportioning and assessing of costs and expenses, shall be as in the original location and establishment of the ditch, and be paid by the person whose section of the ditch is sold, and collected and paid out as provided in section sixty-four hundred and forty-one."

Section 6641 reads:

"If a person fails or refuses to pay his apportionment of costs of locating and establishing the ditch, or of the cleaning, deepening, widening, or repairing thereof, by the time specified by the trustees for the payment of such costs, the trustees shall certify it to the auditor of the county, giving a correct description of each piece of land upon which such cost is assessed, and the auditor shall place it on the tax duplicate to be collected as other state and county taxes are collected. The county treasurer shall pay such amount to the township treasurer as other township funds, specifying the purpose thereof, and the trustees shall pay it out in conformity with the record on the ditch journal."

It will thus be observed that two sections of the series other than section 6639, namely, sections 6613 and 6641, contain provision for collecting expense "as other taxes are collected." In view of this fact, and of the fact, as already pointed out, that the trustees are without power to fix the time of payment, the conclusion clearly follows that section 2653 must be resorted to as determining the time of payment. Said section reads:

"Sec. 2653. Each person charged with taxes on a tax duplicate in the hands of a county treasurer may pay the full amount thereof 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."

Since the lien of the assessment attaches at the time the trustees certify the

amount thereof to the county auditor (see *Cattell vs. Putnam*, 73 O. S. 147), it necessarily follows that in order to give effect to section 2653, the payment becomes due one-half in the December next following the certification, and the remaining half six months after the coming due of the first half.

It is difficult to perceive how any valid argument may be advanced as tending to show that the assessment is collectible in one payment; for such a theory is not only at variance with the express terms of section 6639, but is also inconsistent with the provisions of section 6635 that the owner may do the work himself; and the provisions of section 6639 giving the owner the *option* of making a lump sum payment of the assessable amount before it is charged on the duplicate.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1714.

OUTSIDE RELIEF—PERMANENT PARTIAL OUTSIDE RELIEF TO INDIGENT PERSONS SHOULD BE AFFORDED BY TOWNSHIP OR CITY RATHER THAN BY COUNTY—EXCEPTION—SEE SECTION 3476 G. C. (108 O. L. 272).

Permanent partial outside relief to indigent persons should be afforded by the township or city, rather than by the county, unless the applicants for such relief are persons "whose peculiar condition is such they cannot be satisfactorily cared for except under county control." (See section 3476 G. C., 108 O. L., Part I, p. 272).

COLUMBUS, OHIO, December 16, 1920.

HON. JOHN L. CABLE, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR:—In recent letters to this office you present a state of facts which may be put thus:

"S. and his wife are aged paupers, legally settled in B. township, Allen county. Both are physically unable to work. Their friends assist them to some extent, but Allen county has been paying a grocery bill for them of approximately five dollars per week."

You ask whether Allen county has authority to do this, or putting the question another way, you ask whether a county has authority to render *partial, permanent outside relief*.

It is a matter of common knowledge that in the past considerable difficulty has been experienced by boards of county commissioners, county infirmary superintendents, and boards of township trustees in ascertaining what was the power and duty of the county on the one hand, and the township or city on the other, in the matter of furnishing poor relief. Another difficulty encountered was that which the county authorities had in determining when it was and was not proper to afford "outside relief"—that is, relief to persons in their homes and outside of the county infirmary. Being no doubt cognizant of these facts, the last legislature undertook to amend, in H. B. 150, found in 108 O. L. Part I, p. 266, certain sections of the General Code relating to county infirmaries and poor relief.

Of the amended sections, one of the most important, because it furnishes a direct statement of the legislative intent, is section 3476 G. C., which says: