

1700.

APPROVAL, BONDS OF VILLAGE OF NORTH OLMSTED, CUYAHOGA COUNTY—\$3,770.93.

COLUMBUS, OHIO, March 29, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1701.

APPROVAL, BONDS OF BELMONT COUNTY—\$190,577.02.

COLUMBUS, OHIO, March 29, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1702.

APPROVAL, BONDS OF HIGHLAND COUNTY—\$17,678.00.

COLUMBUS, OHIO, March 29, 1930.

Industrial Commission of Ohio, Columbus, Ohio.

1703.

DISAPPROVAL, BONDS OF VILLAGE OF NORTH OLMSTED, CUYAHOGA COUNTY—\$9,986.08.

Re: Bonds of Village of North Olmsted, Cuyahoga County, Ohio, \$9,986.08.

COLUMBUS, OHIO, March 29, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

GENTLEMEN:—The transcript relative to the above issue of bonds discloses that these bonds have been authorized in anticipation of the collection of assessments to pay the cost of improving Grace Road from Mastick Road to Elm Road in the village of North Olmsted, by grading, draining and constructing a slag road bed therein. The transcript shows that Ordinance No. 289 was duly passed July 16, 1929, which ordinance levied assessments for this improvement at the rate

of \$2,681 per front foot upon benefited property and in the aggregate amount of \$9,986.08. The transcript further discloses that Ordinance No. 302 was passed September 17, 1929, authorizing bonds in the above amount. This ordinance specifically provides that the issue of bonds is in anticipation of the collection of special assessments. It levies a tax upon all the taxable property of the village only in an amount sufficient to provide for any deficiency in the levy, payment or collection of the assessments as the same fall due. There is also included in this transcript a certificate to the effect that the property owners' portion of the cost of this improvement is in fact \$10,251.22 and that the rate of assessment is \$2.725 per front foot. Ordinance No. 343 appears to have been passed March 18, 1930, which ordinance amends Ordinance No. 302 by increasing the amount of bonds authorized to \$10,251.22. The transcript discloses that there has been no notice of an intention to levy assessments in excess of \$9,986.08, the amount which was apparently levied July 16, 1929, nor is there any indication of assessments having been levied in this increased amount.

Section 3909, General Code, provides as follows:

"If an assessment proves insufficient to pay for the improvement and expenses incident thereto, the council may, under the limitation prescribed for such assessment, make an additional pro rata assessment to supply the deficiency. In case a larger amount is collected than is necessary, it shall be returned to the persons from whom it was collected, in proportion to the amounts collected from such persons respectively. This section shall be subject to the limitations contained in other sections of this chapter."

This section was under consideration in the case of *Maple Heights vs. Holtz*, 100 O. S. 264. In this case the cost of an improvement exceeded the estimated cost, whereupon an ordinance was adopted levying an additional pro rata assessment without notice of the additional assessment having been given to the property owners to be assessed. Section 3895, General Code, provides for the publication of such notice. Section 3847 provides for the appointment of three disinterested freeholders for the purpose of apportioning such assessments. Upon this statement of facts, the Supreme Court in a per curiam opinion said at p. 266, 267:

"The question here is whether before adopting the additional assessment the council must again comply with Sections 3847 and 3895.

All three sections are in the same chapter and the fact that their relative positions in the chapter have not always been the same does not seem to us significant in view of the fact that both Section 3895 and Section 3909 expressly declare their applicability to the chapter.

Certainly the same reason that would impel the Legislature to require a notice to be published before a first assessment is made would with equal force apply to a second and additional assessment, for it is a matter of common knowledge that it is the additional burden that often makes the original burden unbearable, and the owner of the land assessed might acquiesce in one assessment which he believed represented the full measure of his benefit but strenuously object to an additional assessment which he believed exceeded his benefit by the exact amount of the additional assessment."

In view of the foregoing, I am of the opinion that in so far as the transcript discloses the proceedings of council, the attempt to collect assessments for the

improvement in question in the amount of \$10,251.22 will be without authority of law, and it follows that bonds issued in this last named amount in anticipation of the collection of such assessments would not be a legal and valid obligation of this municipality. I, accordingly, advise you not to purchase these bonds.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1704.

APPROVAL, BONDS OF STARK COUNTY—\$63,000.00.

COLUMBUS, OHIO, March 29, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1705.

APPROVAL, BONDS OF CITY OF BUCYRUS, CRAWFORD COUNTY—
\$21,000.00.

COLUMBUS, OHIO, March 31, 1930.

Industrial Commission of Ohio, Columbus, Ohio.

1706.

APPROVAL, BONDS OF FRANKLIN COUNTY—\$138,971.00.

COLUMBUS, OHIO, March 31, 1930.

Industrial Commission of Ohio, Columbus, Ohio.