

Applying the principle announced in said opinion to the question propounded by you, of course, compels the same conclusion. Therefore, in specific answer to your inquiry you are advised that while it is the duty of the county treasurer to proceed in the same manner and at the same time to collect both general taxes and special assessments, it is not the duty of said treasurer to refuse to accept payment of the general taxes when tendered, even though at the same time there are due and payable special assessments, the payment of which is not tendered.

Respectfully,

EDWARD C. TURNER,

*Attorney General.*

2954.

MUNICIPALITY—BOND ISSUE FOR IMPROVEMENT OF STREETS—  
HOW PROCEEDS ARE EXPENDED—WHERE FUNDS EXHAUSTED,  
NEW LEGISLATION REQUIRED.

SYLLABUS:

1. *When the legislation providing for one bond issue for the improvement of city streets designates therein the streets which are to be improved without allotting a specific sum to any project, the city authorities may use their discretion as to the sum to be expended on any particular street among those enumerated. In the absence of abuse of such discretion, if the fund is exhausted before all the streets enumerated in said legislation are improved, such expenditures will be regarded as made for the purposes for which such fund was created.*

2. *When such legislation allots to each street enumerated a specific amount, no more than the amount so allotted to each street can be expended from the proceeds of the bond issue on such street; that is, the funds allotted to one street cannot be expended on another street.*

3. *Under no circumstances can the proceeds of such a bond issue be used to improve streets that are not enumerated in the legislation determining to issue such bonds.*

4. *In those instances where, for some reason, a street which was enumerated in the bond legislation has not been improved, and the funds, arising from the proceeds of the bond issue, issued for the purpose of providing funds to improve a number of streets, no specific amount being allotted to any one street, are entirely exhausted, such a street has the same status as though no bonds had been issued, and steps may be taken as provided by law to improve the same.*

COLUMBUS, OHIO, November 30, 1928.

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

GENTLEMEN:—This will acknowledge the receipt of your recent communication which reads:

“In many of the larger cities of the State one bond issue is authorized to pay the City’s portion of the cost of improving several streets. The streets are designated by name in the legislation, but no reference is made to the amount to be expended for each separate street improvement. The proceeds of the sale of the bonds are deposited in a fund designated ‘City’s

Portion Street Improvement Fund' and transfers are made therefrom to specific street improvement funds, designated in the legislation, as moneys are needed.

Frequently the proceeds of such issue are exhausted before all of the streets designated have been improved, in which event an additional bond issue is authorized.

QUESTION: In view of your Opinion No. 2384, dated July 23, 1928, is this practice permissible?"

In the opinion to which you refer, it was held as disclosed by the syllabus that:

"A municipal corporation may not legally issue bonds for the purpose of creating a fund from which to pay the city's portion of the cost of paving and improving streets, the streets and the amount of the municipality's portion for each to be determined thereafter."

As pointed out in said opinion, Section 3939 of the General Code, before amendment by the 87th General Assembly (112 O. L. 364), contained the general authority for the issuance of bonds by municipalities, and among other things specifically authorized the issuance of such bonds for the following purposes:

"For resurfacing, repairing or improving any existing street or streets as well as other public highways.

For opening, widening and extending any street or public highway.

For purchasing or condemning any land necessary for street or highway purposes, and for improving it or paying any portion of the cost of such improvement."

As was further pointed out in said opinion, said Section 3939, General Code, as amended, eliminated the power of municipalities to issue bonds, but reserved to such municipality the power, "to open, construct, widen, extend, improve, resurface or change the line of any street or public highway."

However, it will be noted that Section 2293-2, General Code, which is a part of the Uniform Bond Act (112 O. L. 364), authorizes the issuance of bonds for the purpose of acquiring or constructing permanent improvements, which any subdivision is authorized to acquire or construct within the limitations prescribed in said Uniform Bond Act, which are too numerous specifically to mention herein. However, it may be stated that within the limitations mentioned, Sections 2293-2 and 3939, General Code, as they now read, when construed together, authorize a municipality to issue bonds for the improvement of streets in a similar manner as was originally provided in Section 3939, supra.

In the former opinion to which you refer, it was clearly indicated that a municipality may issue bonds to pay for its share of specific street improvements, but it was further indicated that the streets to be so improved should be designated before the issuance of the bonds. Section 2293-20, General Code, which is a part of the said Uniform Bond Act, defines the meaning of "one purpose" to which bond issuing authorities are limited by said section in the resolution submitting the question to the electors of the issuance of any bonds. Among other things, said section defines "one purpose" to be:

"\* \* \* in the case of a municipality any number of streets, bridges, and viaducts, including the municipality's share in streets to be improved in part by assessment; \* \* \*"

The language last quoted clearly indicates that a number of streets may be included in the same resolution providing for a bond issue for their improvement. As heretofore mentioned, the streets to be improved must be designated before the issuance of the bonds.

In this connection, it may be well to consider the question as to whether the nature of the improvement and amount to be expended for a given project are required to be stated in the resolution determining to improve such streets and to issue bonds therefor.

In the case of *Heffner vs. The City of Toledo*, 75 O. S. 413, cited in my former opinion, there had been designated by council the character of the improvement that was to be made upon each of the streets enumerated and the amount to be expended for the same. It is believed that in some instances the practice is for council to indicate the character of the improvement and in many instances the amount to be expended for such improvement is indicated. However, it is probable that council may provide for the issuance of bonds to improve a certain number of designated streets, without indicating the character of the improvement or the amount to be expended upon any particular project. In the latter case it is apparent that much discretion must be reposed in the municipal authority as to the nature of the improvement of each street, and the amount to be expended therefor. It is obvious that the engineers' estimates would necessarily fluctuate, especially when a large number of streets are enumerated. It will therefore be seen that in many instances, when the type of the improvement has not been indicated, and a specified sum allotted for a particular improvement, the municipal authorities acting in good faith might be mistaken as to the cost of many specific improvements and find themselves with the proceeds of the bond issue completely exhausted, while some of the streets enumerated in the bond resolution remain unimproved.

While the proceeds of bond issues must be expended strictly in accordance with the purpose for which the issue was made, the laws relating thereto will not be construed so as to produce absurd results. The statute provides any number of streets to be within one purpose when bonds are issued by a vote of the electors, and it would seem logical to conclude that so long as the money is honestly expended upon any street enumerated, it is expended for the purpose for which it is obtained in those instances wherein, prior to the issuance of the bonds, the amount allotted to each particular street improvement has not been indicated.

There is no doubt that such funds may not be expended for the improvement of streets not included in those mentioned in the legislation determining to issue bonds. However, I am inclined to the view that, if there be nothing in the legislation specifying a certain sum for a particular street, the discretion of the municipal officials will permit them to determine what streets are to be first improved, and so long as that discretion is not abused, the action of the authorities cannot be legally challenged, even though there are instances wherein the funds become exhausted before all of the streets enumerated have been improved. If my reasoning as heretofore set forth be correct, then in a case such as you mention, in those instances wherein the amount to be expended on particular streets has not been designated, the proceeds of the bond issue will have been expended for the purpose for which they were obtained; and it follows that the unimproved streets will in all respects be in the same status as though no bonds had been issued. In those instances wherein the sum has been specifically allotted to particular streets, but expended for others, it is believed that a vigilant taxpayer may enjoin the illegal expenditure. However, in the absence of such a proceeding the streets that remain unimproved after the funds are exhausted are in the same situation as those streets which remain unimproved after the extinguishment of the fund, when no specific allotment was made.

Based upon the foregoing, you are specifically advised that:

1. When the legislation, providing for one bond issue for the improvement of city streets, designates therein the streets which are to be improved without allotting a specific sum to any project, the city authorities may use their discretion as to the sum to be expended on any particular street enumerated. In the absence of abuse of such discretion, if the fund is exhausted before all the streets enumerated in such legislation are improved, such expenditure will be regarded as made for the purposes for which such fund was created.

2. When such legislation allots to each street enumerated a specific amount, no more than the amount so allotted can be expended from the proceeds of the bond issue for each street.

3. Under no circumstances can the proceeds of such a bond issue be used to improve streets that are not enumerated in the legislation determining to issue such bonds.

4. In those instances where, for some reason, a street which was enumerated in the bond legislation has not been improved, and the funds, arising from the proceeds of the bond issue, issued for the purpose of providing funds to improve a number of streets, no specific amount being allotted to any one street, are entirely exhausted, such a street has the same status as though no bonds had been issued, and steps may be taken as provided by law to improve the same.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

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2955.

FIRE DEPARTMENT—TOWNSHIP TRUSTEES MAY PAY VILLAGE FOR  
FIRE PROTECTION OUTSIDE VILLAGE—METHOD DISCUSSED.

*SYLLABUS:*

*Township trustees may lawfully pay from township funds for the use of a fire department maintained by a neighboring political subdivision for the purpose of protecting the lives and property of citizens of the township against damages resulting from fires. Payment may be made therefor at an agreed price per year or per month, or for each fire as it occurs.*

COLUMBUS, OHIO, November 30, 1928.

HON. J. R. POLLOCK, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“Hicksville is an incorporated village in Defiance County and lies wholly within the confines of Hicksville Township. It is a village of sufficient size to maintain reasonable fire equipment. The past few years the fire department of said village has answered calls in the surrounding township and in neighboring townships and has saved several buildings from destruction by fire.