

Specifically answering your inquiry, I am of the opinion that the failure to post notices as required by the provisions of Section 13131, General Code, is not a proper defense to a prosecution for a violation of the provisions of this section.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

2952.

APPROVAL, BONDS OF BROWN TOWNSHIP RURAL SCHOOL DISTRICT, FRANKLIN COUNTY, OHIO—\$25,000.00.

COLUMBUS, OHIO, February 17, 1931.

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

2953.

JOINT COUNTY DITCH—PETITION FILED IN ONE COUNTY—PROPORTIONATE SHARE OF OTHER COUNTY MAY NOT BE PAID OUT OF GENERAL DITCH IMPROVEMENT FUND IN ANTICIPATION OF COLLECTION OF SPECIAL ASSESSMENTS.

SYLLABUS:

When a petition has been filed in a county for a joint county ditch improvement the cost of which is to be paid in part by assessments levied in another county, such other county may not pay to the county in which the petition was filed, out of available funds in its general ditch improvement fund in a lump sum, the amount to be collected by special assessments and then reimburse such general ditch improvement fund from the proceeds of such assessments as they are collected.

COLUMBUS, OHIO, February 17, 1931.

HON. WM. M. VANCE, *Prosecuting Attorney, Urbana, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your request for my opinion on the following query:

“When there is a surplus in the general ditch improvement fund of a county sufficient to pay such county’s full share of a joint county ditch improvement, the petition for which was filed in an adjoining county, may the county auditor draw his warrant on such fund for the full amount of such county’s share of the improvement, payable to the auditor of the other county, and replenish such general ditch improvement fund by receiving into it the assessments made under G. C. 6542, rather than turning over such assessments when collected to the general ditch improvement fund of the county in which the petition was filed?”

Sections 6442 to 6535-1, inclusive, comprise Chapter 1 of Title III of the General Code, which chapter relates to the subject of single county ditches. Sections 6536 to 6545, inclusive, General Code, comprise chapter 2 of this title and relate to joint county ditches.

Section 6492 provides for the establishment of a general ditch improvement fund. It is as follows:

"The commissioners of each county shall provide and establish a fund, to be known as the general ditch improvement fund, which shall be used as a sinking fund for all bonds issued under the provisions of this chapter (G. C. §§ 6442 to 6508). Said fund shall consist of all funds in any ditch fund at the time this act takes effect, that are not then specifically appropriated, of any taxes then or thereafter levied and collected for ditch and drainage purposes under county levies, not by law otherwise disposed of, the proceeds of all bonds issued and sold under this chapter, the collections from all special assessments for benefits to property, as provided in this chapter, and such other funds as by law are or may be provided to be paid therein."

The plan of financing which is proposed in your inquiry necessitates paying the proceeds of special assessments levied for a joint county ditch improvement, in a county other than the one in which the petition is filed, into the general ditch improvement fund. The foregoing section is accordingly directly pertinent to your inquiry, since it not only provides what specific funds shall be paid into the general ditch improvement fund but also provides the purposes for which it shall be established. The only proceeds of special assessments payable into this fund are those "for benefits to property, as provided in this chapter, and such other funds as by law are or may be provided to be paid therein." Special assessments for joint county ditches are not for benefits to property as provided in the chapter relating to single county ditches. It is, therefore, necessary to determine whether or not the proceeds of special assessments for joint county ditches are "other funds as by law are or may be provided to be paid therein."

Coming now to the chapter relative to joint county ditches, Section 6536, General Code, provides as follows:

"When the improvement as defined in chapter one (G. C. §§ 6442 to 6508) of this title is proposed to be located in or benefits or damages land in two or more counties, the proceeding shall be conducted by a joint board of county commissioners, consisting of the members of the boards of commissioners of the several counties in which land may be benefited or damaged by the proposed improvement, and in such case, the petition for the improvement may be filed with the auditor of any county in which is located land that will be affected by the proposed improvement."

Section 6537 provides that the proceedings for joint county ditch improvements shall, generally, be the same as for single county ditch improvements except as modified in this chapter relating to joint county ditches.

Section 6542 is pertinent to your inquiry and provides in part as follows:

"The auditor and treasurer of the county in which the petition is filed shall ex-officio become the fiscal agents of all the counties interested,

the auditor shall certify to the auditor of the other counties a schedule of the assessments to be levied for the cost of locating and constructing the improvement and the auditor of such other county shall proceed forthwith to place such assessment upon the duplicates; such assessments so certified for collection to an auditor of another county shall be a lien on the land within such county from the date such certificate is received by the auditor of such other county; the treasurer shall proceed to collect the same pursuant to the orders made in said proceedings; and such assessments when collected shall be paid to the county treasurer of the county in which the petition was filed; the auditor and the treasurer shall receive and account for such funds in the same manner as they receive and account for assessments collected for single county improvements. * * *"

There is here an express provision for the payment into the general ditch improvement fund of the county in which a petition is filed of the proceeds of special assessments levied for joint county ditch improvements in any other county since the auditor and treasurer of the county in which the petition is filed "shall receive and account for such funds in the same manner as they receive and account for assessments collected for single county improvements." There is no provision, however, for the payment of the proceeds of special assessments for joint county ditch improvements in a county other than the county in which the petition is filed into the general ditch improvement fund of such county. On the contrary "such assessments when collected shall be paid to the county treasurer of the county in which the petition was filed." It must inevitably follow that the proposed plan of financing outlined in your inquiry requires the disposition of the proceeds of special assessments, levied in a county other than the one in which the petition is filed, which is directly contrary to and violative of the express provisions of the statute.

A question in many respects similar to the one which you present was under consideration in an opinion of this office appearing in Opinions of the Attorney General for the year 1919, Vol. I, p. 600, the syllabus of which is as follows:

"Where, in pursuance of Sections 6536, 6540 and 6541, G. C., a ditch is constructed wholly in one county as to the cost of which contribution from an adjoining county is sought, the portion payable by such adjoining county becomes due upon the collection of assessments for said improvements against lands in such adjoining county, and not at the time of the agreement of the boards of commissioners apportioning the cost as between the two counties."

In that opinion, the Attorney General considered whether or not there was any authority either express or clearly implied in the county in which a petition had been filed to procure in a lump sum the entire funds which were ultimately to be paid by assessments in an adjoining county, and concluded that provision for such authority had not been made.

It is accordingly my opinion in specific answer to your question that when a petition has been filed in a county for a joint county ditch improvement the cost of which is to be paid in part by assessments levied in another county, such other county may not pay to the county in which the petition was filed, out of available funds in its general ditch improvement fund in a lump sum, the amount to be

collected by special assessments and then reimburse such general ditch improvement fund from the proceeds of such assessments as they are collected.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2954.

HIGH SCHOOL—TWO DISTRICTS UNITE TO CONSTRUCT A BUILDING—BOARDS OF EDUCATION OF UNITED DISTRICTS MAY NOT PROCEED AS JOINT BOARD—JOINT COMMITTEE APPOINTED BY AUTHORITY OF STATUTE LIMITED TO MANAGEMENT.

SYLLABUS:

1. *Where the boards of education of two adjoining school districts unite such districts for high school purposes by authority of Section 7669, General Code, and a high school committee is appointed, in accordance with the provisions of Section 7670, General Code, to manage said high school, there is no authority in the committee so chosen to purchase a site or let a contract for the erection of a building.*

2. *There is no authority for two or more boards of education to organize and function as a joint board for any purposes relating to the establishment or maintenance of a joint high school or the construction of a joint high school building when their districts are united for high school purposes by authority of Section 7669, General Code.*

3. *When, after two or more school districts become united for high school purposes and thereby a joint high school is established by authority of Section 7669, General Code, it becomes necessary to construct a high school building for the said high school, the contract for the same should be let and the building erected by the boards of education of the united districts acting concurrently rather than as a joint board.*

COLUMBUS, OHIO, February 17, 1931.

HON. ERNEST M. BOTKIN, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion with reference to the following:

“Where the boards of education of two adjoining school districts unite such districts for high school purposes as provided by Section 7669, General Code, and thereafter each district by vote of the electors, authorizes a bond issue for the purpose of building a joint high school for the use of said districts, are the proceedings with reference to the contract for the construction of such building and the disbursement of the proceeds derived from the sale of such bonds within the duties of the joint high school committee provided by Section 7670 of the General Code, or should such proceedings be taken care of by the two boards acting as a joint board?”

Sections 7669 and 7670, General Code, read as follows:

Sec. 7669. “The boards of education of two or more adjoining school districts, by a majority vote of the full membership of each board,