

duty of such corporation to report the names and addresses of its officers and directors within the county and, in case there are less than two thereof, the names and addresses of statutory agents, together with written consent to the service of process upon such officers, directors or agents. Failure of the corporation to select or appoint such officers, directors or agents or to make a report, upon written request therefor, subjects the corporation to a penalty.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2243.

APPROVAL, BONDS OF LOGAN COUNTY (ASPINALL DITCH No. 511)—
\$2,400.00.

COLUMBUS, OHIO, June 18, 1928.

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

2244.

STREETS—PETITION FOR IMPROVEMENT—SECTION 3836, GENERAL
CODE, DISCUSSED.

SYLLABUS:

A petition may now be filed under Section 3836 of the Code for the improvement of a street and the assessment of the entire cost thereof by three-fourths in number of the owners of property to be assessed, and such petition will confer jurisdiction upon council to proceed as authorized by such section.

COLUMBUS, OHIO, June 18, 1928.

HON. D. A. BAIRD, *Prosecuting Attorney, Elyria, Ohio.*

DEAR SIR:—This will acknowledge your recent communication as follows:

“On account of the joining of the county commissioners with municipalities for the improvement of roads and streets in such municipalities, the question has arisen as to the proper interpretation of Section 3836 of the General Code as amended in 112 Ohio Laws, page 206.

The particular question is, what is meant by the language used in said Section 3836 (112 Ohio Laws, page 206), as follows: ‘Three-fourths in interest of the owners * * * of property abutting upon a street, alley, etc.’

Prior to the amendment referred to, Section 3836 read as follows:

'When a petition subscribed by three-fourths in interest of the owners of property abutting upon a street or highway of any description, between designated points, in a municipal corporation, is regularly presented, etc. * * *' Since the amendment said Section 3836 reads: 'When a petition subscribed by three-fourths in interest of the owners, *or the owners of sixty per cent of the foot frontage* of property abutting upon a street, alley or highway of any description between designated points in a municipal corporation is regularly presented, etc. * * *'

Prior to the amendment the courts have construed the statute to mean that the three-fourths in interest referred to was computed upon the foot frontage basis, but now the added language provides that sixty per cent of the foot frontage can petition for the improvement.

Therefore, as stated above, what is meant by the language, 'Three-fourths in interest' when read in conjunction with the amendment as above quoted?"

While you have pointed out the changes in Section 3836 of the Code particularly pertinent to your inquiry, it is perhaps advisable to quote the section as it was amended by the last Legislature and as it existed theretofore. The section now reads as follows:

"When a petition subscribed by three-fourths in interest of the owners, *or the owners of sixty per cent of the foot frontage* of property abutting upon a street, alley, or highway of any description between designated points in a municipal corporation, is regularly presented to the council for that purpose, the entire cost of any improvement of such street, alley, or highway, *including the cost of intersections and regardless of the limitations of Section 3820 of the General Code* and without reference to the value of the lands of those who subscribed such petition, may be assessed and collected in equal annual installments, proportioned to the whole assessment, in a manner which may be fixed by the council. The interest on any bonds issued by the corporation, together with the annual installments herein provided for, and the costs of such proceedings and assessments, shall be assessed upon the property so improved. When the lot or land of one who did not subscribe the petition is assessed, such assessment shall not exceed thirty-three and one-third per cent of the actual value of his lot or land after improvement is made. The guardian of infants or insane persons may sign such petition on behalf of their wards only when expressly authorized by the probate court on good cause shown." (Italics the writer's.)

The portion of the section which has been italicized was added by the last Legislature and certain omissions from the reading of the section as it existed before, were made. The section formerly read as follows:

"When a petition subscribed by three-fourths in interest of the owners of property abutting upon a street or highway of any description between designated points, in a municipal corporation, is regularly presented to the council for that purpose, the entire cost of any improvement of such street or highway, without reference to the value of the lands of those who subscribed such petition may be assessed and collected in equal annual installments, proportioned to the whole assessment, in a manner to be indicated in the petition, or if not so indicated, then in the manner which may be fixed

by the council. The interest on any bonds issued by the corporation, together with the annual installments herein provided for, and the costs of such proceedings and assessments, shall be assessed upon the property so improved. When the lot or land of one who did not subscribe the petition is assessed, such assessment shall not exceed thirty-three and one-third per cent of the actual value of his lot or land after improvement is made. The guardian of infants or insane persons may sign such petition on behalf of their wards only when expressly authorized by the probate court on good cause shown."

You will observe that the section now omits the authority theretofore existing to indicate in the petition the manner in which the assessment is to be made. Accordingly, council may now fix the method of assessment, which may, of course, be done in any one of the three methods described by Section 3812 of the Code, which are:

"First: By a percentage of the tax value of the property assessed.

Second: In proportion to the benefits which may result from the improvement, or

Third: By the foot front of the property bounding and abutting upon the improvement."

I am in accord with your statement that prior to the amendment of this section the uniform construction placed upon the language, "three-fourths in interest of the owners" was that the foot frontage of the signers should be computed, and that the owners of three-fourths of the foot frontage of the portion of the street or highway to be improved must sign before proceedings could be had in accordance with Section 3836 of the Code. This section was formerly Bates' Revised Statutes, Paragraph 1536-222, and was a part of the Municipal Code adopted in 1902. At the time of the adoption of the Municipal Code an analogous section, known as Section 2272, Revised Statutes, was repealed. That section was as follows:

"In cities of the first grade of the first class when a petition subscribed by any owner or owners of property abutting upon any street or highway, of any description, between designated points, is presented to the board of administration for the purpose, and in other cities of the first class or in corporations in counties containing a city of the first or the second grade of the first class, when a petition subscribed by three-fourths in interest of the owners of property abutting upon any street or highway of any description between designated points, is regularly presented to the council for the purpose, the cost of any improvement of such street or highway may be assessed and collected in equal annual installments, proportioned to the whole assessment, in a manner to be indicated in the petition, or if not so indicated, then in the manner which may be fixed by council; and the interest on any bonds issued by the corporation for the improvements, together with the annual installments herein provided for, shall be assessed upon the property so improved; but when the lot or land of one who did not subscribe the petition is assessed, such assessment shall not exceed twenty-five per centum of the value of his lot or land after the improvement is made; provided, that whenever in this title the petition of the owners of property is required, a married woman shall have the same authority to sign that she would have if unmarried; and the guardians of infants or insane persons may sign such petition on behalf of their wards only when expressly authorized by the pro-

bate court on good cause shown. Provided, that in cities of the third grade of the first class when a petition has been regularly presented to the council, asking for the improvement of a street or alley, and the lot or land of one who subscribed said petition is assessed, said assessment shall be a valid lien against said lot or land for the full amount of said assessment, although it may exceed said twenty-five per centum of the value thereof."

This section used, as you will observe, the words, "petition subscribed by three-fourths in interest of the owners of property" etc., and it is this language which has received the construction by the Supreme Court in the manner which you indicate. Thus, in the case of *Cincinnati vs. Manss*, 54 O. S., p. 257, there was involved the question of whether one who had signed a petition under Section 2272, Revised Statutes, in which he represented the length of his property on the improvement to be 417 feet, could subsequently resist an assessment on that basis and claim that the assessment should only be for 243½ feet. The particular property involved was a corner lot, and it was contended, because of the fact that the property fronted on another street, the assessment should be limited to the lesser amount. In the course of the opinion, on page 263, the court said as follows:

"* * * The language, 'three-fourths in interest,' as used in the statute, necessarily refers to the interest the petitioners have in the cost of the improvement. It represents three-fourths of the total number of feet on which the costs of the improvement are to be assessed. If it referred to the benefits of the improvement, or the value of the lots of the petitioners, it would place it in the power of those having the least to pay to compel an improvement largely at the expense of those deriving a much less benefit from it. If the number of feet a petitioner represents himself as having on the improvement, is not the number on which he is to be assessed, in case the improvement is ordered, then there is no mode by which it can be determined from the petition, whether the requisite number have asked for the improvement. It is certainly not the business of the council or of the board of improvements, to ascertain for themselves, *aliunde* the petition, whether a petitioner has the number of feet subject to assessment, represented by him in the petition. What he represents in the petition must, as against him, be taken as true. He is estopped to say otherwise. For it must be remembered that the very purpose of stating in a petition the number of feet each petitioner has, is to enable the council to determine, whether the petitioners, in the aggregate, represent three-fourths in interest of the property owners to be assessed for the improvement. And every one who signs a petition of this kind must be held to know the purpose and effect of it. There is nothing in the case of *Tone vs. The City of Columbus*, 39 Ohio St., 281, in conflict with what is here held. It was there held that Tone, by having signed the petition for the improvement, was not estopped from averring and proving that the petition had not been signed by the requisite two-thirds in interest, required by the statute under which the proceeding was had. But that is not this case. * * *

Other cases might be cited to the same effect, but I deem it sufficient to observe that the uniform construction of this language, as found in Section 2272, Revised Statutes, has been as indicated above.

Since the same words occur in Section 3836, General Code, it is reasonable to assume that the same construction has been applied. In fact, by reference to Section

3836, as found in Ellis' Ohio Municipal Code, it will be found that the authorities cited thereunder sustain the proposition that three-fourths in interest of the owners should be computed upon the foot frontage basis, and the form given by the author is indicative of the fact that he holds this to be the proper interpretation. If, however, the language found in Section 3836, as amended, be also so construed, an absurdity results, since, as so interpreted, the provisions of the section would state that when a petition subscribed by the owners of three-fourths of the foot frontage of the owners of sixty per cent of the foot frontage were filed, etc. Obviously, any interpretation of the statute which leads to such an absurdity must be avoided, if possible. The words, "three-fourths in interest of the owners" must accordingly, of necessity, be given a different interpretation than has heretofore been applied to them. In no other way can any effect be given to the amendment of the section, since it is obvious that the Legislature must have had in mind some different rule of construction when it incorporated the language "or the owners of sixty per cent of the foot frontage."

In my opinion, the only satisfactory solution of the difficulty presented is to hold that three-fourths in interest of the owners means three-fourths of the owners interested in the improvement. That is to say, if there are twenty owners of property abutting upon the portion of the street to be improved, a petition signed by fifteen of them is sufficient to give jurisdiction to the council to act under Section 3836, although the aggregate of the foot frontage of their properties will be less than sixty per cent of the total. It may often happen that one property owner owns a very substantial proportion of the property to be assessed, whereas the remaining and minor portion is divided among several property owners. However minor in character, as compared to the total foot frontage, this interest may be, if three-fourths of the owners in number sign a petition, it is within the authority of the section in its present form.

On the other hand, the owner of a substantial portion of the foot frontage may impose his wishes upon the remaining property owners in the event that he owns sixty per cent of the foot frontage.

It is perhaps well to observe that the statute now specifically authorizes the inclusion in the entire cost of the improvement the cost of intersections, which formerly was generally held as not being authorized, even though a petition in the ordinary form was filed under Section 3836 by the owners of three-fourths in interest of the property abutting upon the street. It perhaps should further be noticed that the 33 1/3% limitation prescribed by Section 3819 of the Code is only waived as to those property owners who signed the petition. In this respect the section remains unchanged.

While I am aware that the construction which I have placed upon the language "three-fourths in interest of the owners" is somewhat forced, and perhaps not as logical as that which has heretofore been placed upon similar language by the courts of the state and administrative officers generally, it seems to me that the amendment of the section has clearly evinced the intention of the Legislature to have such language so construed.

I am accordingly of the opinion that a petition may now be filed under Section 3836 of the Code for the improvement of a street and the assessment of the entire cost thereof by three-fourths in number of the owners of property to be assessed, and such petition will confer jurisdiction upon council to proceed as authorized by such section.

Respectfully,
EDWARD C. TURNER,
Attorney General.