

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said county.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

560.

BONDS—PUBLIC REVENUES—SELLING AT LESS THAN PAR
CAPITALIZATION OF INTEREST—PROCEEDS NOT IN
EXCESS OF 6%.

SYLLABUS:

Under Section 3619-2, General Code, it is legal to capitalize interest provided that bonds are sold at less than par and provided further that the selling price is such, when computed by standard tables of bond values, that the interest cost to the municipality of the funds representing the proceeds of said bonds shall not exceed 6% per annum.

COLUMBUS, OHIO, May 5, 1937.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.
GENTLEMEN:

I am in receipt of your letter of recent date requesting my opinion which reads as follows:

“We are attaching hereto that portion of the report of our State Examiner on the Village of Mechanicsburg, Ohio, that pertains to the purchase of the waterworks plant and distributing system from The Peoples State Bank of Indianapolis, Indiana. May we call your attention to the several exhibits in said report marked Exhibits ‘A’ to ‘O’ inclusive.

Exhibit ‘A’ is a copy of the contract in which the village agrees to pay to the bank the principal sum of \$65,000 in full payment for said waterworks plant and distributing system.

Exhibit ‘O’ is an affidavit of The Peoples State Bank by its Vice-president, Clarence R. Weaver, that shows the said Bank received in payment for said waterworks plant and distribution system, from said village of Mechanicsburg, Ohio, the sum of \$8000 in cash and \$65,000 in Mortgage Revenue Bonds leaving interest at the rate of four percent.

Investigation by our Examiner in connection with this purchase and sale of plant, disposal of bonds, etc., disclosed, among other things, that the first issue of \$8000 general obligation bonds were sold by the said village to the State Teachers Retirement System for cash and that the proceeds thereof, less accrued interest, were paid in cash upon warrant of the village clerk to the said The Peoples State Bank.

The investigation disclosed further that no financial record of the village showed the recording of the mortgage revenue bonds in any amount, nor the receipt of any proceeds of sale nor the payment of any money to the said The Peoples State Bank, by warrant of the clerk.

The investigation showed further, that according to the printer of the bonds, denominations aggregating \$65,000 principal with coupons attached at the rate of four percent interest, were furnished to the village by said surety and that said bonds had been turned over to The Peoples State Bank as part payment for the waterworks plant and system.

This investigation showed further that the bonds were offered for sale prior to the time when the same were delivered to said bank; that they were purchased by Magnus & Company of Cincinnati, Ohio, and later rejected by said purchaser because of an unfavorable opinion of the firm of Squire, Sanders & Dempsey, who rejected the issue because of insufficient funds to service the bonds.

With this information, together with the attached tentative report, may we request that you examine the several exhibits and advise us, as follows:

Question: Was it legal for the Village of Mechanicsburg, Ohio, to remit to The Peoples State Bank of Indianapolis, Indiana, the sum of \$8000 in cash by warrant of the duly elected village clerk and mortgage revenue bonds in the principal amount of \$65,000, in order to satisfy the contractual provisions that call for a payment of \$65,000 for the waterworks plant and distribution system in said village of Mechanicsburg, Ohio?

If the answer to this question should be in the negative, would our Examiner be authorized or required to render a finding for recovery against The Peoples State Bank of Indianapolis, Indiana, for overpayment of the contract in the amount of \$8000?"

To better understand the problem herein to be considered, it will

be well to first outline the step by step procedure whereby the waterworks plant was purchased by the Village of Mechanicsburg.

On the 2nd day of March, 1936, a proposal was submitted to the village council by the trustees for the Mechanicsburg Water Company wherein said trustees agreed to accept \$65,000 net as a cash consideration for the plant. Acting upon this proposal, the village council passed a resolution accepting the submitted proposal and on the 2nd day of March, 1936, the proper village officers and the proper trustees of the waterworks company entered into a contract of sale wherein the village was to pay the net sum of \$65,000 as purchase price. In this contract it was also recited that \$8,000 of general obligation bonds were to be issued and \$57,000 of mortgage and income bonds, commonly known as mortgage revenue bonds, and hereafter to be known by that term, were to be issued; so that a method of financing the purchase price was outlined. It would be well to note at this point that no interest rate on these mortgage revenue bonds was specified or set forth. The contract further recited that the approval of the same be submitted to the electors at an election to be held on the 12th day of May, 1936.

On the 12th day of May, 1936, the following ballot was placed before the electors for their consideration:

“Shall the acts of the Council of the Village of Mechanicsburg in purchasing from The Peoples State Bank of Indianapolis, Corporate Trustee for the Mechanicsburg Water Company, all the right, title, and interest, of the Mechanicsburg Water Company and The Peoples State Bank, in the real estate, franchise, water mains, water connections, taps, fire plugs, service lines, machinery, supplies, equipment, contracts, accounts, and all other property and rights of the Mechanicsburg Water Company, for the sum of \$65,000.00 for said property, and the cancellation and annulment of all indebtedness for hydrant rentals, now due or to become due, to the Mechanicsburg Water Company, be approved?”

The result of the election was favorable in that 332 votes were cast in the affirmative as to 177 in the negative.

At this point, I wish to say that under the seventh paragraph of Section 3939, General Code, a municipality has power to construct or acquire waterworks for supplying water to the corporation and the inhabitants thereof and to extend the waterworks system outside of the corporate limits, so that in the instant case the village council as the governing body of the subdivision had authority to purchase said plant. However, the method of financing the payment is another point to be

discussed later in this opinion. The ballot submitted to the electors did not submit the question of any bond issue, nor did it contain any proposal for a tax levy, nor did it authorize the village council to do any act that they did not already have power to do. To my mind, this ballot and the question submitted to the electors was merely surplusage. The only value of this ballot was to secure from the electors a ratification of the acts of the village council in purchasing this water plant for \$65,000.

The village council was now faced with the question of paying the purchase price and inasmuch as the method had already been set forth in the contract between the interested parties, the village council proceeded to issue \$8,000 general obligation bonds without a vote of the people. This issue, of course, would be pursuant to and in full compliance with the Uniform Bond Act and the limitations contained therein would necessarily govern. Assuming that the taxing authority, namely the council, had legal authority to issue these \$8,000 general obligation bonds, and assuming that they were legal, it will be well to note that the village council had power to so issue these bonds without need of any consent or acquiescence on the part of the electors.

These bonds were sold, the money received and payment was made to the trustees of the waterworks company as part of the purchase price.

The village council was now faced with the task of financing the balance of the net purchase price, namely \$57,000. To accomplish this, they proceeded to issue mortgage revenue bonds to secure the balance of the net purchase price. Article XVIII, Section 12 of the Ohio Constitution empowers any municipality which acquires, constructs or extends any public utility and desires to raise money for such purposes to issue mortgage bonds therefor beyond the general limit of the bonded indebtedness prescribed by law; provided that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality but shall be secured only from the property and revenues of such public utility. The village council, being so empowered to issue mortgage revenue bonds, proceeded to issue \$57,000 of such bonds at 5% but the same were not marketable. However, a proposal was submitted that if \$65,000 of such bonds were issued bearing the rate of 4%, the same would be marketable and accepted. On the 19th day of October, 1936, the village council passed Ordinance No. 270, authorizing an issue of \$65,000 mortgage revenue bonds bearing interest at the rate of 4%. This was all in accordance with Section 3619-2 of the General Code, which reads as follows:

“Mortgage bonds for waterworks plants and systems, issued under the provisions of Section 12, of Article XVIII of the Constitution of Ohio, shall bear interest at a rate of not

exceeding six per centum per annum, payable semi-annually, and shall be sold in such manner, at such times and upon such terms as the governing authority of any such municipality shall deem for the best interests of said municipality, provided, however, that bonds bearing interest at the rate of six per centum per annum shall not be sold for less than par and accrued interest. If, however, bonds are issued bearing less than six per centum interest, they may be sold at less than par provided the selling price is such when computed by standard tables of bond values that the interest cost to the municipality of the funds representing the proceeds of said bonds shall not exceed six per centum per annum."

It has been advanced by the village council, being the governing body, that the issuance of \$65,000 of 4% mortgage revenue bonds was more advantageous than the issuance of \$57,000 of 5% bonds before contemplated, for the reason that the issuance of \$65,000 4% bonds would be less costly than the issuance of the \$57,000 aggregate at 5%.

I have made a factual determination of this question, bearing in mind that the interest cost to the municipality of the funds representing the proceeds of said bonds shall not exceed 6% per annum, and herewith insert the conclusion reached:

The actual amount issued was \$65,000 with an interest cost of 4%, the maturities running:

\$500 each April and October 1938 to 1950, inclusive.
 \$1000 each April and October 1951 to 1963, inclusive.
 \$1500 each April and October, 1964, to April, 1971.
 \$3,000 October, 1971.

I figure that an interest cost of 6% on the total authorized amount of \$57,000 would show an interest cost to the village, over the life of the bonds, of about \$73,530.00.

I figure the interest cost to the village on the amount issued, \$65,000, at 4% over the life of the bonds to be about \$55,900.

The village has issued \$8,000 more bonds than authorized, although we believe it would have been possible for them to issue at least one more thousand, for the reason that the issuance of, say \$66,000 at 4% would, in effect, be no more than issuing \$57,000 at 6%, or in other words the village has capitalized the interest cost in the original issuance of the \$65,000 bonds. It must be borne in mind that the proceeds of said

bonds was actually \$57,000 net; that is to say, that these bonds were sold at less than par and a bid of \$57,000 net was received and accepted by the village.

In answer to your specific question, I am therefore of the opinion, in light of the sections herein cited, that it was not unlawful for the Village of Mechanicsburg, Ohio, to issue \$8,000 in general obligation bonds and \$65,000 in mortgage revenue bonds bearing interest at the rate of 4% so that the net \$65,000 purchase price could be properly financed and paid.

For the reason that I have held the procedure legal in the instant case, it will be unnecessary to answer your second question.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

561.

APPROVAL—GRANT OF EASEMENT EXECUTED TO THE STATE OF OHIO BY THE MUSKINGUM WATERSHED CONSERVANCY DISTRICT, NEW PHILADELPHIA, OHIO, FOR USE AS A PUBLIC FISHING GROUNDS.

COLUMBUS, OHIO, May 5, 1937.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain grant of easement executed to the State of Ohio by The Muskingum Watershed Conservancy District, New Philadelphia, Ohio, over the signatures of its President and Secretary, conveying to the State of Ohio, for the purposes therein stated, a certain tract of land in Mifflin Township, Richland County, Ohio. This is easement No. 768.

By the above grant there is conveyed to the State of Ohio, certain lands described therein, for the sole purpose of using said lands for public fishing grounds, and to that end to improve the waters or water courses passing through and over said lands.

Upon examination of the above instrument, I find that the same has been executed and acknowledged by the grantor in the manner provided by law and am accordingly approving the same as to legality