

vote for candidates appearing in more than one group, such elector should not place a cross mark in the circle above any one group but should only place cross marks before the names of those candidates for whom he desires to vote.

2. If such an elector does place a cross mark in the circle over one group of candidates and also places a cross mark before one or more names of candidates appearing in another group and does not cross out the names of the same number of candidates in the group under the cross-marked circle that he does not desire to vote for, or does not place marks before the names of the candidates in that group for whom he desires to vote, so that it is impossible to determine his choice as to the candidates in that group, his vote should be counted only for those candidates which have the mark or marks before his or their names.

3. Where such elector places a cross mark in the circle over one group of candidates and also places a cross mark before one or more names of candidates appearing only in that same group, such cross marks should be treated as surplusage and his vote should be counted for all the candidates in that group.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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1790.

BONDS—UNDER HOUSE BILL NO. 7 EARLIEST DATE OF ISSUE WAS  
SEPTEMBER 1, 1933.

**SYLLABUS:**

*The earliest date on which bonds could be issued under the provisions of House Bill No. 7, passed August 23, 1933, by the special session of the 90th General Assembly, was September 1, 1933.*

COLUMBUS, OHIO, October 31, 1933.

*State Relief Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—I acknowledge receipt of your communication, which reads as follows:

“An opinion is requested as to the earliest date on which bonds may be issued by a county, under the provisions of House Bill No. 7, enacted by the 90th General Assembly, in special session, August 23, 1933, and approved by the Governor, August 25, 1933.”

Section 1 of this act reads in part as follows:

“That sections 1, 2, 5 and 7 of the act entitled ‘An act to authorize the issue of bonds by counties and cities and the expenditure of public money for the relief of the poor and unemployed, and the investment of public funds in such bonds to levy an excise tax on certain public utilities and to declare an emergency,’ passed March 31, 1932, and approved April 5, 1932, known as Amended Senate Bill No. 4, as said section 7 is amended by the act passed February 14, 1933, and approved February

28, 1933, known as Senate Bill No. 63, and sections 5443-1, 5443-2, 5443-3, 5443-4, 5443-5, 5443-7, 5443-8, 5443-10, 5443-12, 5443-14, 5443-15, 5443-20, 5544-2, 5544-3, 5544-5, 5544-13, 5544-17 and 5544-18 of the General Code are hereby amended to read as follows: \* \*.”

Then follow the amendments, all of which are part of section 1 of the act. Said Amended Senate Bill No. 4, passed at the first special session of the 89th General Assembly, which was amended by Senate Bill No. 63 of the 90th General Assembly, authorized the issue of bonds for poor relief by counties and cities and the investment of public funds in such bonds and levied an excise tax on certain public utilities. The sections thereof which are amended by this act do not levy taxes, and section 7 thereof is the only section amended which authorizes the issue of bonds. Section 5443-2 of the General Code, as amended by section 1 of this act, levies taxes on the sale of cosmetics or toilet preparations, and section 5544-2 of the General Code, as amended by section 1 of this act, levies taxes on certain admissions and club membership dues.

Section 4 of this act reads as follows:

“This act shall take effect as an emergency law, pursuant to section 5 hereof, on the first day of September, 1933, and the tax hereby newly imposed upon admissions shall apply to sales made on and after said date. The amendment of section 5443-5 made by this act shall take effect at the time application is made for license for the year commencing on the fourth Monday of May, 1934, and not theretofore. Persons not heretofore licensed to engage in the wholesale or retail business of trafficking in cosmetics or toilet preparations within this state shall, before engaging in such business on or after the first day of September, 1933, apply as provided in said section 5443-5 for license which shall be issued to such applicant on the payment of a license fee in the sum of one dollar, regardless of the number of places in the county at which the applicant proposes to engage in business.”

Section 5 of the act appropriates money for the purpose of administering the law imposing the tax on the sale of cosmetics or toilet preparations.

The answer to your questions depends upon the effective date of the amendment by this act of section 7 of Amended Senate Bill No. 4, passed at the first special session of the 89th General Assembly, as amended by Senate Bill No. 63 of the 90th General Assembly, for bonds may be issued under its provisions on and after its effective date.

Said House Bill No. 7 was passed August 23 and approved by the Governor August 25, 1933. It could not go into effect September 1, 1933, by reason of its being an emergency law necessary for the immediate preservation of the public peace, health and safety, because the provision of section 1d of article II of the Constitution that the reasons for such necessity shall be set forth in one section of the law, was not complied with. If said law went into effect September 1, 1933, it could only do so on the theory that it is a law providing for tax levies. As has been observed, portions of section 1 of this act do provide for tax levies while other portions of said section do not.

Section 7 of said House Bill No. 4, as amended by section 1 of this act, authorizes the issue of poor relief bonds and does not provide for any tax levies and ordinarily would be subject to a referendum, but it is a part of the same

section of the law in which other amendments appear that are not subject to a referendum.

Section 1c of article II of the Constitution provides in part as follows:

"\* \* \* When a petition, signed by six per centum of the electors of the state and verified as herein provided, shall have been filed with the secretary of state within ninety days after any law shall have been filed by the governor in the office of the secretary of state, ordering that such law, section of such law or any item in such law appropriating money be submitted to the electors of the state for their approval or rejection, the secretary of state shall submit to the electors of the state for their approval or rejection such law, section or item, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to sixty days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. \* \* \*"

The following language appears in the opinion of the case of *State, ex rel., vs. Forney*, 108 O. S. 463, at page 471:

"Something has been said that certain sections of the act are admittedly subject to the referendum, but that the act as a whole is not subject to the referendum, because certain sections do 'provide for tax levies,' and those sections save the entire act from being submitted as a whole to a referendum.

If there were any sections of the Taft Act actually 'providing for a tax levy,' then we would agree with this contention; \* \* \*."

Since in that case the court held that said Taft Act did not provide for tax levies, it was unnecessary to decide this question. On the other hand, the second branch of the syllabus of the case of *State, ex rel., vs. Roose*, 90 O. S. 345, holds as follows:

"Section 1c of Article II of the Constitution of Ohio expressly provides for a referendum not only upon any law but any section of a law. All sections of a law not subject to the referendum provisions of this section of the constitution go into immediate effect when approved and signed by the governor."

Whether or not this particular section could be subject to a referendum since it is only a part of section 1 of said act, I am of the view that the levying portions of said section 1 are so inseparably bound together with the portion of said section which authorizes bonds to be issued in anticipation of the taxes therein levied that the entire section went into effect on September 1, 1933, in accordance with Section 4 of said act. See Opinions of the Attorney General for 1927, Vol. II, page 1234.

Consequently, it is my opinion that the earliest date on which bonds could be issued under the provisions of House Bill No. 7, passed August 23, 1933, by the special session of the 90th General Assembly, was September 1, 1933.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*