

53.

MUNICIPALITY—MORTGAGE BONDS ISSUED FOR PUBLIC UTILITY—
REFUNDING BONDS—HOW SECURED.

SYLLABUS:

Mortgage bonds of a municipality issued for the acquisition, construction or extension of a public utility, under authority of Section 12 of Article XVIII of the Constitution of Ohio, may be refunded as provided in Section 2293-5 of the General Code; but such refunding bonds shall not pledge the general credit of the municipality, and the principal and interest shall be secured only by the pledge of the property and revenues of such utility.

COLUMBUS, OHIO, February 4, 1929.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication, as follows:

“In the year 1920 the city of _____ purchased a waterworks for the sum of \$205,000, paying therefor in cash \$80,000, the proceeds of the sale of mortgage bonds, issued under authority of Section 12, Article XVIII of the Constitution of Ohio, and assuming a bonded indebtedness on the property of \$125,000.

The bonds assumed and those issued by the city all mature on the 1st day of March, 1929, and the city will be without waterworks funds to meet the obligation.

Section 2293-5, General Code, 112 O. L. 366, provides a method of refunding any outstanding bonds, which are about to mature, etc.

Question 1. May the bonds in question, which are not serial bonds, be refunded with the approval of the Tax Commission of Ohio?

Question 2. Would the interest on such refunding bonds be payable exclusively from waterworks earnings?”

Section 12 of Article XVIII of the Constitution of Ohio, to which you refer, is as follows:

“Any municipality which acquires, constructs or extends any public utility and desires to raise money for such purposes may issue mortgage bonds therefor beyond the general limit of 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 upon the property and revenues of such public utility, including a franchise stating the terms upon which in case of foreclosure the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure.”

The Uniform Bond Act, in subdivision 7 of Section 3939 of the General Code, confers upon municipal corporations the express 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 corporation limits.” It is further set forth in Section 2293-2 of the General Code that “the taxing authority of any sub-

division shall have power to issue the bonds of such subdivision for the purpose of acquiring or constructing any permanent improvement which such subdivision is authorized to acquire or construct."

In the case of *State ex rel. vs. Weiler, et al.*, 101 O. S. 123, the first branch of the syllabus reads as follows:

"Municipalities of the state are empowered by constitutional provision to acquire any public utility, the product or service of which is to be supplied to the municipality or its inhabitants, and they may issue bonds to raise money for such purpose, pledging the general credit of the municipality to their payment."

It would seem, in view of the foregoing, that in the acquisition, construction or extension of a waterworks, a municipality may provide funds for such purpose or purposes, either by the issuance of mortgage bonds, as contemplated in Section 12, Article XVIII of the Constitution, supra, or by the issuance of general tax bonds within the general limit of bonded indebtedness prescribed by law. It was stated by this department, in Opinions of the Attorney General for 1918, p. 1505, that:

"The reference in Section 12 to the authority of any municipality to issue mortgage bonds is clearly not intended to exclude the issuance of general tax bonds as a means of acquiring, constructing or extending a public utility. On the contrary, it is clearly intimated in Section 12 that the mortgage bonds may be in addition to bonds which are subject to the 'general limit of bonded indebtedness prescribed by law.'"

The refunding of bonds of a municipality is provided for in the Uniform Bond Act, being found specifically in Section 2293-5 of the General Code, which you mention and which is as follows:

"With the approval of the tax commission of Ohio, the taxing authority of any subdivision may refund any outstanding bonds of the subdivision which are about to mature, except serial bonds, and may refund serial bonds issued in anticipation of the collection of special assessments, when for any reason, and to the extent that such collection cannot be made. The tax commission of Ohio shall approve such issue only when it finds and to the extent it finds that no other method of payment in whole or part exists. In its order approving such issue, it shall fix the maturities of the bonds to be issued, subject to the provisions of Sections 2293-9 and 2293-12 of the General Code, and no such bonds shall mature more than fifteen years after their date of issue. The interest and retirement levies thereon shall have the same status with respect to the fifteen mill limitation as the interest, sinking fund and retirement levies of the indebtedness which is refunded."

The question here is whether or not mortgage bonds may be refunded under this section of the Code. At the outset this section provides for any outstanding non-serial bonds, and even serial bonds issued in anticipation of the collection of special assessments. There is one qualification, however, imposed on refunding bonds of every nature under this section as set forth in unambiguous terms, as follows:

"* * * The interest and retirement levies thereon shall have the same status with respect to the fifteen mill limitation as the interest, sinking fund and retirement levies of the indebtedness which is refunded."

In view of the fact that the Legislature has placed this limitation upon all refunding bonds under this section, clearly there is no authority for the issuance of general tax bonds as refunding bonds when the issue sought to be refunded is one of mortgage bonds.

It is my opinion, therefore, in answer to your first question, that mortgage bonds may be refunded under the provisions of Section 2293-5 of the General Code, but such bonds may only be refunded by mortgage bonds.

In answer to your second question, it follows that the principal and interest on such refunding bonds may be secured only by the pledge of the revenues and property of such utility.

Respectfully,
GILBERT BETTMAN,
Attorney General.

54.

BANKS—UNINCORPORATED—MAY BE DEPOSITARIES OF COUNTY FUNDS.

SYLLABUS:

By virtue of the provisions of Sections 710-84 and 2715 of the General Code, unincorporated banks are eligible to bid for, and be designated as depositaries of, county funds.

COLUMBUS, OHIO, February 4, 1929.

HON. HAROLD A. PREDMORE, *Prosecuting Attorney, Hillsboro, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of January 17th, 1929, reading as follows:

“The question has arisen here as to who has the right to bid on the active and inactive deposits of county funds, and I would like to have your opinion on that question, based on the statutes, as they now seem to be somewhat contradictory.

Section 2715, G. C., which deals exclusively with depositaries for county funds, provides:

‘The commissioners in each county shall designate in the manner hereinafter provided a bank or banks or trust companies, situated in the county and *duly incorporated under the laws of this state, or organized under the laws of the United States*, as inactive depositaries, and one or more of *such* banks or trust companies, located in the county, at least one of which shall be located at the county seat as active depositaries of the money of the county. In a county where such bank or trust company does not exist or fails to bid as provided herein, or to comply with the conditions of this chapter relating to county depositaries, the commissioners shall designate a private bank or banks located in the county as such inactive depositaries, and if in such county no such private bank exists, or fails to bid as provided herein, or to comply with the conditions of this chapter relating to county depositaries, then the commissioners shall designate any other bank or banks incorporated under