

3135.

APPROVAL, CONTRACT OF STATE OF OHIO WITH JAS. MEINHART CONTRACTING COMPANY, MASSILLON, OHIO, FOR COMBINED GENERAL, ELECTRIC WIRING, PLUMBING AND HEATING INDUSTRIAL BUILDING AT MASSILLON STATE HOSPITAL, AT A COST OF \$14,633—BOND EXECUTED BY AMERICAN SURETY COMPANY OF NEW YORK.

COLUMBUS, OHIO, May 24, 1922.

HON. LEON C. HERRICK, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted to me for approval a contract (five copies) between The State of Ohio, acting by The Department of Highways and Public Works, and Jas. Meinhardt, doing business as Jas. Meinart Contracting Company, of Massillon, Ohio. This contract is for combined general, electric wiring, plumbing and heating contracts for the Industrial Building at the Massillon State Hospital, Massillon, Ohio, and calls for an expenditure of fourteen thousand, six hundred and thirty-three (\$14,633.00) dollars.

Accompanying said contract is a bond to insure faithful performance, executed by American Surety Company of New York.

I have before me the certificate of the director of finance that there is an unencumbered balance legally appropriated sufficient to cover the obligations of this contract.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon, and return same to you herewith, together with all other data submitted to me in this connection.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3136.

APPROVAL, BONDS OF PERRY COUNTY IN AMOUNT OF \$18,000, FOR CONSTRUCTION OF BRIDGES.

COLUMBUS, OHIO, May 24, 1922.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

3137.

GRISWOLD ACT—SECTIONS 2295-9 and 2295-10 G. C. LIMITING MATURITIES OF BONDS MUST BE COMPLIED WITH AS TO ALL BONDS ISSUED AFTER JANUARY 1, 1922, THOUGH LEGISLATION AUTHORIZING THEIR ISSUE MAY HAVE BEEN FULLY ADOPTED PRIOR TO THAT DATE.

The provisions of sections 2295-9 and 2295-10 of the General Code limiting the maturities of bonds issued for particular purposes by subdivisions of the state must

be complied with as to all bonds issued after January 1, 1922, though legislation authorizing their issuance may have been fully adopted prior to that date.

COLUMBUS, OHIO, May 25, 1922.

HON. LOUIS H. CAPELLE, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—You recently submitted to this department for opinion the following question:

“A board of education proceeds under section 7625 to submit to the electors of its school district the question of issuing bonds in the amount of one hundred thousand dollars for the purpose of purchasing a site for, and erecting and equipping a common and high school building thereon. This proposition carried by a vote of two to one. Thereafter the board of education passed resolutions issuing bonds in the amount of one hundred thousand dollars, offered the same to The Industrial Commission of Ohio, who rejected them, and then advertised the bonds for sale. No bids were received for said bonds. The board thereupon passed a resolution repealing the rate of interest in the previous resolution and increasing the rate of interest from 5½ per cent to 6 per cent. The bonds were again offered to The Industrial Commission of Ohio and refused but the board did not advertise the 6 per cent bonds for sale. These proceedings were taken under section 7625 et seq. of the General Code. Under and by virtue of section 7627, the board was required to make these bonds payable within at least forty years from the date thereof. House Bill No. 33, passed April 29, 1921, and approved May 14, 1921, includes section 2295-9, which limits the period of time during which bond issues may extend. Under this section, bond issues for the acquisition of real estate are limited to thirty years; for fireproof buildings, to twenty-five years. Section 23 of House Bill No. 33 provides:

‘This act shall take effect from and after January 1st, 1922, and its provisions shall govern and apply to all ordinances, resolutions, measures and proceedings pending on that date.’

All of the proceedings heretofore referred to were taken prior to January 1st, 1922. The question the board desires to be put to you is as follows:

‘Can they proceed to sell the 6 per cent bonds extending over a period of forty years or are they limited to the period provided for in section 2295-9?’”

Certain principles applicable to this question will be found stated and discussed in Opinions Nos. 2923 and 3031, of this department, copies of which are enclosed herewith. These opinions, it will be observed, relate primarily to the interpretation of section 2295-12 of the General Code, which uses the words “hereafter issued”. They do not entirely dispose of the question which you raise. The question requires consideration of sections 2295-9 and 2295-10 of the General Code, which provide in part as follows:

“2295-9. That the maturities of bonds issued by counties and other political subdivisions * * * shall not extend beyond the following limitations as specified in the following classification, the period to be measured from the date of the bonds,

Bonds issued for—

* * * * *

Class (b)—The construction or improvement of fireproof buildings
* * * twenty-five years; * * *

“Sec. 2295-10. Before any resolution, ordinance or other measure providing for the issuance of bonds or incurring of indebtedness of any county, or other political subdivision * * * is passed or adopted, the fiscal officer thereof shall certify to the bond-issuing authority the maximum maturity of such bonds or indebtedness, calculated in accordance with the provisions of the foregoing section, and no such bonds shall be authorized or issued or indebtedness incurred with maturities extending beyond the maturities as thus certified by such fiscal officer. * * *”

The real question is as to whether section 2295-9 applies to all bonds “hereafter issued” in the sense in which the phrase as occurring in section 2295-12 of the General Code is interpreted in the enclosed opinions; or whether on the other hand, taking section 2295-9 in connection with section 2295-10 the real meaning of the former is such as to make it apply to bonds hereafter issued under resolutions, ordinances or other measures providing for their issue which are hereafter passed. This question did not arise in the other opinions because of the explicit language of section 2295-12; it arises here because the word “hereafter” is not found in section 2295-9. It is true that in one of the other opinions it is assumed that the word is to be read into section 2295-9, but this is a mere passing remark not necessary to the reasoning supporting the conclusion reached in that opinion.

There is another and intermediate view which may be stated thus: That while section 2295-9 applies to and governs maturities of bonds “hereafter issued”, i. e. after January 1, 1922, yet where the resolution or other measure providing for their issuance was fully effective prior to January 1, 1922, the certificate of the fiscal officer is not required; that is to say, while the maturities must come within the bounds provided by section 2295-9, the fiscal officer’s certificate need not be made in such cases. This hypothesis, however, is unworkable, because the limitations imposed upon classes (f) and (g) by section 2295-9 can only be ascertained by the estimate and calculation of the fiscal officer, which estimate and calculation is provided for by section 2295-10; so that the two sections must be read together, and it is impossible to suppose that one of these clauses applies to a bond issue and the other one cannot apply to the same issue. Therefore, this intermediate position must be ignored and choice must be made between that interpretation of the two sections read together, which will require them both to be complied with where the bonds have not been “issued” prior of January 1, 1922, on the one hand, and that interpretation which will require the two sections to be complied with only when the resolution, ordinance or other measure providing for their issuance has not been passed prior to January 1, 1922.

As previously stated, the situation is different here from that which obtains with respect to the relation between sections 2295-12 and 5649-1b of the General Code; because in the latter case, as previously stated herein, the word “hereafter” in section 2295-12 made it very apparent that the intent of the legislature was that the maturities of any bonds thereafter put out should be accommodated to the requirements of that section.

There is at least a reasonable presumption that the whole act known as the Griswold Law is to apply to the legislation under which bonds are issued if any part of it must be made so to apply; that is, that in putting the act into effect the General Assembly did not intend that any part of it should apply to a given issue

of bonds unless all of it should so apply. The provision of the schedule of the act referred to in the first of the enclosed opinions is indicative of such an intention. This presumption applied to the present question would force the conclusion that the paramount legislative idea for the purpose of determining the manner in which the act shall take effect is found in section 2295-9 of the General Code rather than in section 2295-10. If this presumption be ignored, however, it is arguable that inasmuch as section 2295-9 can only be procedurally applied or enforced by means of the machinery provided for in sections 2295-10, and inasmuch as that procedure must take place "before any resolution, ordinance or other measure providing for the issuance of bonds or incurring of indebtedness * * * is passed or adopted", therefore, where such resolution, ordinance or other measure was passed or adopted prior to January 1, 1922, these sections can have no application.

Yet even this argument would not be conclusive in the absence of the presumption referred to, for if there were no other law to apply excepting sections 2295-9 and 2295-10 of the General Code, we would still have to determine whether the legislature intended that all bonds issued after these sections became effective should be limited in their maturities by the application of these sections, or whether the policy of the legislature extended only to limiting the maturities of bonds authorized after the sections went into effect. This question is at least doubtful, and in the opinion of this department, the presumption above referred to is sufficient to determine the doubt. It follows that where the bonds had not yet been issued on January 1, 1922, they could not be issued without complying with these two sections.

Accordingly, it is the opinion of this department that the maturities of the bonds referred to in your letter must be limited to twenty-five years for the building and thirty years for the site, and that if these bonds are issued, the legislation providing for their issuance must be reformed and section 2295-10 complied with. It is, of course, regrettable, if true, that this conclusion may make it impracticable to proceed with the project in view.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3138.

COUNTY BOARD OF EDUCATION—COUNTY SUPERINTENDENT—
 COMPENSATION FIXED AT TIME OF EMPLOYMENT—CANNOT BE
 CHANGED DURING TERM FOR WHICH APPOINTED—EMPLOYED
 FOR TWO YEARS—FIX CERTAIN AMOUNT FOR FIRST YEAR—AT
 END OF FIRST YEAR FIX GREATER AMOUNT FOR SECOND
 YEAR—ILLEGAL.

The county board of education should fix the compensation of the county superintendent at the time of employment and such compensation cannot thereafter be changed during the term for which appointed, and a county board of education may not employ a county superintendent for a period of two years and fix his compensation at a certain amount for the first year, and at the end of the first year fix a greater amount as compensation for the second year.

COLUMBUS, OHIO, May 25, 1922.

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

GENTLEMEN:—Acknowledgement is made of the receipt of your request for the opinion of this department upon the following: