

3853.

APPROVAL, BONDS OF VILLAGE OF BEREA, CUYAHOGA COUNTY,
\$38,000.00.

COLUMBUS, OHIO, December 3, 1926.

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

3854.

DISAPPROVAL, BONDS OF CITY OF BUCYRUS, CRAWFORD COUNTY,
\$35,000.00.

COLUMBUS, OHIO, December 3, 1926.

Re: Bonds of City of Bucyrus, Crawford County, \$35,000.00.

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

GENTLEMEN:—The foregoing bonds in the sum of \$35,000.00 are part of an issue of \$60,000.00 of the City of Bucyrus for the purpose of acquiring a water works plant for said city.

The proceedings for the issuance of said bonds have been conducted under the authority of article XVIII, section 12 of the constitution of the State of Ohio, which is as follows:

“Any municipality which requires, 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.”

It will be observed from reading the foregoing provision of the constitution that the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality and shall be secured only upon the property and revenues of such public utility.

The ordinance passed by the council providing for the payment of this issue of bonds as found in section 11 thereof provides as follows:

“In order to secure the payment of the principal and interest on said bonds as the same shall become due and payable, the mayor and auditor are hereby authorized and directed in the name of and on behalf of the city of

Bucyrus to make, execute, acknowledge and deliver to the Toledo Trust Company, Trustee, and to its successor or successors in trust, for the purchaser or purchasers of said bonds, a good and sufficient first mortgage deed upon all of the property of said waterworks plant acquired from the proceeds of said bonds, together with the extensions, betterments, replacements and additions thereto at any time made or acquired by the city during the term of said bonds until the final payment thereof; consisting of the waterworks plant, the water mains, pumps, hydrants and meters, and all other property and in real property owned by said city in connection with its water supply. Said mortgage shall be in such form and shall contain such terms, covenants and conditions not inconsistent with this ordinance, as shall be approved by the solicitor of said city. Said mortgage shall contain a condition that in case the city of Bucyrus shall make default in the payment of any of said bonds or the interest thereon, or of any of the terms of said mortgage or this ordinance the owners or holders of 25 per cent in amount of said bonds remaining unpaid or the trustee for said bond holders on its own initiative, may elect to declare the entire amount of bonds forthwith due and payable, and that upon default in the payment thereof said mortgage may be foreclosed. Said mortgage shall also provide that the city shall carry full insurance against loss by fire, tornado and other casualties in a minimum amount of the full insurable value of the plant payable to the trustee thereof as its interest may appear."

Section 12 of said ordinance provides:

"In the event of the foreclosure of the mortgage provided for in the preceding section the purchaser or purchasers at such foreclosure sale shall be entitled to operate the water works in the city of Bucyrus under the terms of the following franchise, which is hereby ordained and established to take effect immediately upon the confirmation of such foreclosure."

It will therefore be observed that the only means provided for the payment of the maturing bonds and interest is from the receipts received from the operation of said plant, and in case of the default in payment of said maturing bonds and interest on account of the failure of such receipts, then by foreclosure of the mortgage on the property belonging to said plant.

These bonds are therefore not general obligation bonds of the city and no provision is made for the levying of a tax to meet the same as they fall due and they therefore cannot be approved as proper security for the payment of maturing bonds and interest. On account of the failure of said mortgage bonds to meet the requirements of general obligation bonds of the city, you are advised not to purchase the said bonds.

Respectfully,
C. C. CRABBE,
Attorney General.