

interest and sinking fund levies necessary for any specific bonded indebtedness. On the contrary, the language used indicates a legislative intent that the question if submitted at all must be submitted as to all bonds of the district whether issued and outstanding on January 20, 1920, or merely authorized prior to that date in the manner defined in the act."

Considering section 7908, General Code, and section 5649-6a, General Code, in the light of the above opinion, it is my opinion that the sinking fund levies for university purposes issued prior to January 20, 1920, are outside of all limitations and not subject to limitations as provided in section 7908 G. C., when the city has by a vote put all sinking fund levies outside of all limitations.

Respectfully,
C. C. CRABBE,
Attorney General.

1674.

BONDS—CITY OR VILLAGE IS NOT REQUIRED TO OFFER BONDS TO SINKING FUND TRUSTEES OF SCHOOL DISTRICT BEFORE ADVERTISING FOR BIDS FOR THE SALE THEREOF.

SYLLABUS:

A city or village is not required to offer its bonds to the sinking fund trustees of the city school district, as provided by section 3922, General Code, before advertising for bids for the sale thereof.

COLUMBUS, OHIO, August 7, 1924.

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

Gentlemen:—

I am in receipt of your communication in which you ask the following question:

"In view of the decision in the case of State ex rel. vs. Frazine, Director of Finance, must the city offer its bonds to the board of commissioners of the sinking fund of a city school district as provided by section 3922 G. C., before advertising for bids for the sale thereof?"

Sections 3922 and 3923, General Code, provide:

"Section 3922. When a municipal corporation issues its bonds, it shall first offer them at par and accrued interest to the trustees of the sinking fund, in their official capacity, or, in case there are no such trustees, to the officer or officers of such corporation having charge of its debts, in their official capacity. If such trustees or other officers of the sinking fund decline to take any or all of such bonds at par and accrued interest, the corporation shall offer to the board of commissioners of the sinking fund of the city school district such bonds or so many of them, at par and accrued interest and without competitive bidding as have not been taken by the trustees of the sinking fund, and the board of commissioners of the sinking fund of the city school district may take such bonds, or any part thereof."

"Section 3923. Only after the refusal of all such officers to take all or any of such bonds at par and interest, bona fide, for and to be held for the benefit of such corporation, sinking fund or debt, shall the bonds, or as many of them as remain, be advertised for public sale. In no case shall the bonds of the corporation be sold for less than their par value, nor shall such bonds when so held for the benefit of such sinking fund or debts, be sold, except when necessary to meet the requirements of such fund or debt."

The first question raised by your communication is whether such sections make it mandatory that municipal corporations offer all bond issues to the sinking fund trustees of the city school district, before advertising sale of same, at par and accrued interest.

This question is decisively answered by the first syllabus of the case of State ex rel. vs. Frazine, decided June 20, 1924, by the Supreme Court of Ohio, which is as follows:

"Section 1465-58, General Code, attempts to require municipalites before advertising a bond issue for sale to first offer the same to the Industrial Commission of Ohio at par and accrued interest."

This brings us to a consideration of the constitutionality of such a requirement. Section 4692, General Code, as far as pertinent, provides:

"The county board of education may transfer a part or all of the school district of the county school district to an adjoining district or districts of the county school district."

Section 4696, as far as pertinent, provides:

"A county board of education may transfer a part or all of a school district of the county school district to an adjoining exempted village school district or city school district or to another county school district upon the petition of a majority of the freeholders residing in the territory to be transferred."

It will thus be seen that it is possible that the boundary of a city or village school district may not be, and as a rule very seldom is, coterminus with the boundary of such municipality.

In the Frazine case, supra, the court held in the second syllabus:

"Section 1465-58, General Code, in so far as it attempts to require municipalities and other taxing districts before advertising a bond issue for sale to first offer the same to the Industrial Commission of Ohio at less than market value, is unconstitutional and void."

In the opinion by Judge Robinson is found the following as one of the reasons for such decision:

"Section 3932, General Code, provides:

'Premiums and accrued interest received by the corporation from a sale of its bonds shall be transferred to the trustees of the sinking fund to be by them applied on the bonded debt and interest account of the corporation, but the premiums and accrued interest upon bonds issued for special assessments shall be applied by the trustees of the sinking fund to the payment of the principal and interest of those bonds and no others.'

The premium belongs to the taxing district or the special assessment fund.

Since the fund for the payment of such bonds in excess of the premium received upon the sale is raised by taxation of the particular taxing district, and the amount to be so raised is decreased by the amount of the premium, the attempted authorization of the Commission to purchase without the payment of a premium amounts to a taxation of that particular district in excess of the taxation of any other district within the state in an amount equal to such premium, and violates the uniform rule provided in Section 2, Article XII."

Applying the reasoning of the above case, since the funds for the payment of such bonds in excess of the premium is raised by taxation in the municipal taxing district, and the amount to be raised is decreased by the amount of the premium, the attempted authorization of the sinking fund commissioners of a city school district to purchase without the payment of a premium amounts to a taxation of that particular district in an amount equal to such premium, which taxation is for the benefit of a separate political subdivision, to wit, the school district. As no other taxing district in the state is taxed for the benefit of this particular school district, it would violate Section 2, Article XII of the Constitution of Ohio that "Laws shall be passed, taxing by uniform rule, all moneys," * * * for the reason that it would tax property in municipalities for support of a school district which is not coterminus with the boundaries of the municipality, and would not tax the property situated in the school district outside of the municipality uniformly.

Reasoning analogically from the Frazine case, it is my opinion that a city is not required to offer its bonds to the sinking fund trustees of a city school district as provided by Section 3922, General Code, before advertising for bids for the sale thereof.

Respectfully,
C. C. CRABBE,
Attorney General.

1675.

SENTENCE—PERSONS SENTENCED TO REFORMATORY FOR WOMEN
—WHAT COMMITMENT PAPERS SHOULD SHOW.

SYLLABUS:

Persons sentenced to the Reformatory for Women at Marysville, for not less than a certain designated period, shall not serve an additional number of days until the fine and costs have been worked out at the rate of sixty cents per day unless the commitment papers show that the judgment of the court was that such fine and costs were to be paid by allowing a credit of sixty cents per day while confined at the reformatory.

COLUMBUS, OHIO, August 8, 1924.

HON. JOHN E. HARPER, *Director, Department of Public Welfare, Columbus, Ohio.*

Dear Sir:—

I am in receipt of your communication as follows: