city dated September 1, 1923. The transcript relative to this issue was approved by this office in an opinion rendered to the State Employes Retirement Board under date of November 17, 1938, being Opinion No. 3272.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

1175.

TAX—RATE—MUNICIPAL UNIVERSITY—SUBMISSION TO VOTERS—SECTIONS 5625-15, 7908, G. C.—VALUATION—RESOLUTION OF NECESSITY—ANALYSIS, PERIOD OF TIME AS TO OPERATION OF STATUTES—HOUSE BILLS 9 AND 260, 93RD GENERAL ASSEMBLY.

SYLLABUS:

1. The rate of additional tax for a municipal university that may be submitted to the voters of a taxing subdivision for approval in pursuance of a resolution of necessity therefor adopted by the taxing authority of the subdivision under and by authority of Section 5625-15, General Code, subsequent to July 29, 1939, may not exceed forty-five hundredths of a mill over and above the limitation of fifty-five hundredths of a mill as prescribed by Section 7908, of the General Code of Ohio.

2. A resolution of a taxing authority of a taxing subdivision adopted in pursuance of Section 5625-15, General Code, for the purpose of declaring a necessity for additional tax levies within the subdivision for any of the purposes enumerated in the statute if adopted between May 25, 1939, and July 29, 1939, should express the estimated average increased rate in dollars and cents for each one hundred dollars of valuation as well as in mills for each dollar of valuation. If adopted on or after July 29, 1939, it need not necessarily contain the said provision with respect to the estimated average increased tax rate.

3. The provisions of House Bill No. 260, of the 93rd General Assembly, wherein Section 5625-15, General Code, is amended, expressly repeals and supersedes and in effect nullifies the provisions of the said section as amended in House Bill No. 9, of the same General Assembly, as of July 29, 1939, and thereafter.

4. A resolution of necessity for additional tax levies adopted by the taxing authority of a taxing subdivision in pursuance of Section 5625-15, General Code, drawn as prescribed by the terms of that section as amended in House Bill No. 9 of the 93rd General Assembly containing an expression of the proposed estimated average increased rate in dollars and cents

for each one hundred dollars of valuation as well as in mills for each dollar of valuation, is valid, regardless of whether the resolution was adopted prior to the effective date of the repeal of Section 5625-15, General Code, as enacted in said House Bill No. 9 or afterwards.

COLUMBUS, OHIO, September 12, 1939.

HON. E. N. DIETRICH, *Director of Education, Columbus, Ohio.*

DEAR SIR: This is to acknowledge receipt of your request for my opinion, which reads as follows:

> "We desire your opinion on the effect of House Bill 9 approved on February 23, 1939, and House Bill 260 approved April 27, 1939. These measures amend Section 5625-15 of the General Code.
>
> H. B. 9 amends 5625-15 Section by inserting the following:
>
> * * *'expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation.' H. B. 260 amends subsection 5 of 5625-15 by inserting: * * * 'not to exceed forty-five hundredths of a mill over and above the limitation.'
>
> The legislature undoubtedly had separate and distinct intents in amending 5625-15.
>
> The problems, therefore, may be stated as follows:
>
> Does H. B. 260 nullify the amendment to 5625-15 expressed in H. B. 9?
>
> Should future resolutions declared pursuant to H. B. 9 be ruled to be valid or invalid?"

So far as is pertinent to your inquiry, House Bill No. 9, of the 93rd General Assembly, passed February 22, 1939, and effective May 25, 1939, amended Section 5625-15, of the General Code of Ohio. By the provisions of House Bill No. 260, of the said 93rd General Assembly, passed April 27, 1939, and effective July 29, 1939, Section 5625-15, General Code, was again amended.

Said Section 5625-15, General Code, relates to the submission to a vote of the people in taxing subdivisions of the question of whether or not tax levies for certain enumerated purposes over and above constitutional limitations on such levies without a vote of the people may be made within the subdivision.

When it is desired to submit such a question to the voters of a taxing subdivision, it is necessary under the provisions of Section 5625-15, General Code, that the taxing authority of the subdivision declare by resolution that the amount of taxes that may be raised within the ten mill limitation will be insufficient to provide an adequate amount for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for certain purposes enumerated in the statute among which is, as stated in subdivision 5 of such purposes as the same was enacted in House Bill No. 9, and as it existed prior thereto, the following:

> "For a municipal university but not to exceed fifty-five hundredths of a mill as prescribed in section 7908 of the General Code."

In amending said Section 5625-15, General Code, as was done in House Bill No. 260, said subdivision 5 of the purposes for which the proposition of making extra levies might be submitted to the voters was made to read as follows:

> "5. For a municipal university not to exceed forty-five hundredths of a mill over and above the limitation of fifty-five hundredths of a mill as prescribed in Section 7908 of the General Code."

In addition to the differences in said Section 5625-15, General Code, as enacted in the two bills mentioned with respect to a levy for municipal universities as noted above, the provisions concerning the content of the preliminary resolution of the taxing authority setting forth the necessity for a proposed additional levy contained different provisions. In House Bill No. 9, it is provided in said Section 5625-15, General Code, as therein enacted, with respect to said resolution, as follows:

> "Such resolution shall be confined to a single purpose, and shall specify the amount of increase in rate which it is necessary to levy, *expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation,* the purpose thereof and the number of years during which such increase shall be in effect which may or may not include a levy upon the duplicate of the current year." (Italics the writer's.)

In House Bill No. 260 the statute (§ 5625-15, General Code) does not contain corresponding words to those italicized above as contained in the statute as it was enacted in House Bill No. 9. As contained in

House Bill No. 260 the pertinent clause of Section 5625-15, General Code, as therein enacted, reads as follows:

> "Such resolution shall be confined to a single purpose, and shall specify the amount of increase in rate which it is necessary to levy, the purposes thereof and the number of years during which such increase shall be in effect which may or may not include a levy upon the duplicate of the current year."

In each of the said bills there is contained a provision by the terms of which the then existing Section 5625-15, General Code, is expressly repealed.

In Lewis' Sutherland Statutory Construction, 2d Edition, Section 175, it is stated:

> "Where a particular time for the commencement of a statute is appointed, it only begins to have effect and to speak from that time and will speak and operate from the beginning of that day. When the provisions of a revising statute contain a clause repealing the former statute upon the same subject, the repealing clause will not take effect until the other provisions come into operation."

As House Bill No. 9 became effective on May 25, 1939, its provisions were in effect until July 29, 1939, at which time Section 5625-15, General Code, then existing, was repealed and superseded by the terms of the said numbered section as enacted in House Bill No. 260, of the 93rd General Assembly, and as therein enacted it is now in force and has been in force since July 29, 1939—the provisions of the statute as enacted in House Bill No. 9 having been in force from May 25, 1939, to July 29, 1939.

It follows, therefore, that the rate of additional tax for a municipal university that may be submitted to the voters of a taxing subdivision for approval in pursuance of a resolution of necessity therefor adopted by the taxing authority of the subdivision under and by authority of Section 5625-15, General Code, subsequent to July 29, 1939, may not exceed forty-five hundredths of a mill over and above the limitation of fifty-five hundredths of a mill as prescribed by Section 7908 of the General Code of Ohio.

It also follows that a resolution of a taxing subdivision adopted in pursuance of Section 5625-15, General Code, for the purpose of declaring the necessity for additional tax levies within the subdivision for any of the purposes enumerated in the statute, if adopted between May 25, 1939, and July 29, 1939, should express the proposed estimated average increased rate in dollars and cents for each one hundred dollars of valuation

as well as in mills for each dollar of valuation. If adopted on July 29, 1939, or subsequent thereto, it need not necessarily contain such an expression as to rates, although if it does contain such a provision and all other necessary provisions in accordance with the statute it does no harm, and does not have the effect of rendering the resolution invalid or unlawful.

In reaching this conclusion, I am not unmindful of the holding of the Supreme Court in the case of State ex rel. Moore, 124 O. S., 256. In that case, two acts of the 89th General Assembly referred to as the Pringle Act and the Marshall Act were under consideration. The Pringle Act was passed by the General Assembly in the month of April, 1931, and was signed by the Governor, and in the ordinary course of events would have become effective July 31, 1931. The act was designed to amend certain sections of the General Code and supplement certain other sections.

After the Governor had signed the Pringle Act, but prior to the effective date of the act, the Marshall Bill was introduced and passed both houses of the legislature, was signed by the Governor, and in the ordinary course of events would have become effectiv October 14, 1931. As stated by the Court:

> "The purpose of the enactment of the Marshall Bill was to entirely repeal the provisions of the Pringle Bill and to re-enact the former sections of the General Code which were sought to be repealed by the Pringle Bill."

The Supreme Court took the view that the enactment of the Marshall Bill was simply a reconsideration of the Pringle Bill inasmuch as it was introduced in the legislature after the Governor had signed the Pringle Act and before ninety days had elapsed after its enactment and therefore after it became "an effective piece of legislation." With respect to this phase of the matter the Court said:

> "The Marshall Bill was enacted in all respects in compliance with the provisions of the Constitution and the rules of the General Assembly and thereby became an effective act of that body immediately upon its passage, though it could not be regarded as an effective piece of legislation until the expiration of ninety days. That act was complete before the effective date of the Pringle Bill. The situation is therefore exactly the same as if after the passage of the Pringle Act, and within the time limited therefor, a motion for reconsideration had been made and adopted. True, the Marshall Bill was not in form a motion to reconsider. The Marshall Bill was not introduced, as far as the record shows, until after the lapse of considerable time after the

Pringle Bill had been signed by the Governor and filed in the office of the secretary of state."

The situation existing with respect to the Pringle Act and the Marshaall Act as stated by the Court, is not parallel with the situation existing in the matter here under consideration. In the instant case House Bill No. 9, enacted February 22, 1939, signed by the Governor and filed in the office of the Secretary of State on February 23, 1939. On examination of the journal of the House it will be learned that House Bill No. 260 was introduced in the House February 2, 1939, twenty-one days prior to the date of the signing of House Bill No. 9 by the Governor, which fact materially distinguishes the situation from that existing with respect to the Pringle and Marshall Acts, as is definitely stated by the Court in its opinion in the Moore case, supra.

I do not feel justified in extending the doctrine of the Moore case involving the Pringle and Marshall Acts to the situation here which, as has been shown, is materially different.

In specific answer to the questions submitted I am of the opinion:

1. The provisions of House Bill No. 260, of the 93rd General Assembly, wherein Section 5625-15, General Code, is amended, expressly repeals and supersedes and in effect nullifies the provisions of the said section as amended in House Bill No. 9 of the same General Assembly, as of July 29, 1939, and thereafter.

2. A resolution of necessity for additional tax levies adopted by the taxing authority of a taxing subdivision in pursuance of Section 5625-15, General Code, drawn as prescribed by the terms of that section as amended in House Bill No. 9 of the 93rd General Assembly, containing an expression of the proposed estimated average increased rate in dollars and cents for each one hundred dollars of valuation as well as in mills for each dollar of valuation, is valid, regardless of whether the resolution was adopted prior to the effective date of the repeal of Section 5625-15, General Code, as enacted in said House Bill No. 9 or afterwards.

Respectfully,

THOMAS J. HERBERT,

Attorney General.