

3089.

APPROVAL, BONDS OF VILLAGE OF WADSWORTH, MEDINA COUNTY,
\$14,000.00.

COLUMBUS, OHIO, January 21, 1926.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.

3090.

ALL OBLIGATIONS PAYABLE FROM THE EARNINGS OF A PUBLICLY OPERATED PUBLIC UTILITY, SUCH AS SALARIES, WAGES, SUPPLIES PURCHASED, ETC., ARE TO BE CONSIDERED CONTRACTS WITHIN THE MEANING OF THE TERM AS USED IN THE LAST PARAGRAPH OF SECTION 5660 OF THE GENERAL CODE.

SYLLABUS:

All obligations payable from the earnings of a publicly operated public utility, such as salaries, wages, supplies purchased, etc., are to be considered contracts within the meaning of the term as used in the last paragraph of section 5660 of the General Code.

COLUMBUS, OHIO, January 25, 1926.

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

GENTLEMEN:—I am in receipt of your communication as follows:

"The concluding paragraph of section 5660 (111 O. L. 376) reads:

"The above-mentioned certificate as to money in the treasury shall not be required for the making of contracts on which payments are to be made from the earnings of a publicly operated public utility; but in the case of any such contract made, without such certification of the auditor or other fiscal officer, but no payment shall be made on account thereof, and no claim or demand thereon shall be recoverable except out of said earnings."

"The second sentence of section 5660 G. C. reads in part:

"No contract, agreement or other obligation calling for or requiring for its performance the expenditure of public funds * * *, shall be made or assumed * * *, unless the auditor or chief fiscal officer thereof, first certifies that the money * * * is in the treasury or in process of collection, etc.

"It will be noted that the certificate of the fiscal officer is required before any contract, agreement or other obligation is made or entered into except that contracts payable from the earnings of public utilities, do not require such certificate.

"Question: Are all obligations payable from the earnings of a publicly

operated public utility such as salaries, wages, supplies purchased, etc., to be considered contracts within the meaning of the term as used in the last paragraph of Sec. 5660 G. C.?"

Section 5660 as amended in 111 Ohio Laws, page 376, in part provides as follows:

"No expenditure, excepting from the proceeds of bonds, shall be made unless authorized by appropriation both as regards purpose and amount, nor shall any expenditure be made from the proceeds of bonds unless duly authorized or directed. No contract, agreement or other obligation calling for or requiring for its performance the expenditure of public funds from whatsoever source derived, shall be made or assumed by any authority, officer, or employee of any county or political subdivision or taxing district, nor shall any order for the payment or expenditure of money be approved by the county commissioners, council or by any body, board, officer or employee of any such subdivision or taxing district, unless the auditor or chief fiscal officer thereof first certifies that the money required to meet such contract, agreement or other obligation or to make such payment or expenditure has been lawfully appropriated or authorized or directed for such purpose and is in the treasury or in process of collection to the credit of the appropriate fund free from any previous and then outstanding obligation or certification which certificate shall be filed with such authority, officer, employee, commissioner, council, body or board, or the chief clerk thereof. The sum so certified shall not thereafter be considered unencumbered until the county, sub-division or district is discharged from the contract, agreement, or obligation or so long as the order is in force. Taxes and other revenues in process of collection or the proceeds to be derived from lawfully authorized bonds, notes or certificates of indebtedness sold and in process of delivery shall, for the purposes of this section, be deemed in the treasury or in process of collection and in the appropriate fund. * * *"

"The above-mentioned certificate as to money in the treasury shall not be required for the making of contracts on which payments are to be made from the earnings of a publicly operated public utility; but in the case of any such contract made without such certification of the auditor or other fiscal officer, no payment shall be made on account thereof, and no claim or demand thereon shall be recoverable except out of the said earnings."

It will be noted that in the forepart of the above quoted section, the following words are used, "no contract, agreement or other obligation * * *" and that in the last paragraph of such section the word "contracts" alone is used, no mention being made of agreements or other obligations.

Section 5649-3g of the General Code provides in part as follows:

"At the beginning of each fiscal year, the county commissioners of every county, the board of education of every school district, including county school districts, the council of or other legislative authority of every municipal corporation, including charter municipalities, the trustees of every township, and the governing board or body of every other type of political subdivision or taxing district authorized by law to levy taxes or expend public funds, shall make appropriations classified for the several purposes for which expenditures are to be made for and during the said fiscal year, from the funds of such county, school district, municipal corporation, township, or other political subdivision or taxing district."

It will be noted that the appropriation therein mentioned is to be made at the beginning of each fiscal year. In the case of earnings of a publicly operated public utility the earnings of such public utility are not ascertainable at the beginning of the fiscal year. In some cases the earnings of the public utility cannot even be approximated at the time when such appropriations should be made. The funds from which the operating expenses of the public utility are paid are raised by the charges made against the user of the product of the public utility.

There seems to be no apparent reason why contracts as distinguished from any agreement or other obligation, should not require a certificate that the funds have been appropriated and are in the treasury or in the process of collection. Contracts are usually such as are made for an expenditure involving a large amount and it would seem ridiculous to say that it would not be necessary to have the certificate when entering into a contract for the expenditure of a large amount of money and at the same time require a certificate for the expenditure of some trivial sum for the purchase of supplies.

It is therefore my opinion that all obligations payable from the earnings of a publicly operated public utility, such as salaries, wages, supplies purchased, etc., are to be considered contracts within the meaning of the term as used in the last paragraph of section 5660 of the General Code.

Respectfully,
C. C. CRABBE,
Attorney General.

3091.

THE CONSENT REQUIRED UNDER SECTION 9662 OF THE GENERAL CODE IS NECESSARY TO BE OBTAINED IN CONNECTION WITH THE PLEDGING OR ASSIGNING OF INTEREST BEARING OBLIGATIONS OF BUILDING AND LOAN ASSOCIATIONS AS COLLATERAL SECURITY.

SYLLABUS:

The consent required under section 9662 of the General Code is necessary to be obtained in connection with the pledging or assigning of interest bearing obligations of building and loan associations as collateral security.

COLUMBUS, OHIO, January 25, 1926.

HON. J. W. TANNEHILL, *Supt. Division of Building and Loan Associations, Department of Commerce, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication as follows:

“Section 9662 of the General Code authorizes building and loan associations

“To buy but not to sell except with the written consent previously granted by the superintendent of building and loan associations interest bearing obligations secured by real estate mortgages, which shall in all respects comply with, and be within the rules adopted for making mortgage loans by the corporation making such investments.” * * *

“Section 9656 authorizes such an association