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GRISWOLD ACT—BOND ISSUE—UNDER SECTION 3845 G. C. BONDS MAY BE ISSUED IN ANTICIPATION OF COLLECTION OF STREET SPRINKLING AND CLEANING ASSESSMENTS—SAID BONDS NOT SUBJECT TO REQUIREMENTS OF SECTIONS 6 AND 14 OF GRISWOLD ACT (109 O. L. 336).

Under General Code, section 3845, a city may issue bonds in anticipation of the collection of street sprinkling and cleaning assessments.

Bonds issued by a city in anticipation of the collection of special assessments for street sprinkling and cleaning are not subject to the requirements of sections 6 and 14 of the Griswold act.

COLUMBUS, OHIO, March 28, 1922.

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

GENTLEMEN:—Your communication of recent date received in which you request the opinion of this department on the letter forwarded to you by Hon. Charles A. Leach, city attorney, Columbus, Ohio, which letter is as follows:

“I respectfully request an opinion of your department and, if necessary, of the Attorney-General’s Department, on the following question:

Section 3845 G. C. authorizes the issue of bonds in anticipation of the collection of special assessments for the sprinkling, sweeping and cleaning of streets.

Section 2 of the Griswold act provides that bonds shall not be issued for operating expense and that the acquisition or construction of any property, asset or improvement with an estimated life or usefulness of less than five years shall be deemed current expense, and provides that said prohibition shall not apply to borrowing as provided by law in anticipation of collection of special assessments.

Section 3914 G. C. as amended by section 9 of the Griswold act, authorizes municipal corporations to issue bonds in anticipation of the levy of special assessments or of the collection thereof and further provides that said bonds may be in sufficient amount to pay that portion of the estimated cost of improvement or *servicc* for which assessments are levied.

Said section 3845 is not directly repealed by the Griswold act and said sections of the General Code just quoted very clearly recognize the intention of the legislature to continue the legal authority for the issuing of such assessment bonds, inasmuch as the word ‘service’ as used in amended section 3914, can only apply in practice at least, to street cleaning bonds. However section 6 of the Griswold act provides that the maturities of bonds shall not extend beyond such number of years as is the estimated period of useful-

ness of the asset, improvement or other purpose. In the case of street sprinkling and sweeping the asset or purpose for which such work is done very clearly cannot extend beyond the calendar year. This section seems to conflict with section 14 of the act which provides that the earliest maturity of all bonds hereafter issued will not be earlier than the date fixed by law for the final tax settlement between the county treasurer and political subdivision or taxing district next following the inclusion of a tax for such issue in the annual budget by the county auditor as provided by law and not later than eleven months thereafter.

If the city of Columbus were now to issue bonds, the earliest final tax settlement following the inclusion of a tax for such issue, would be August, 1923. Therefore, according to section 14, said bonds must necessarily run until at least August, 1923, while under section 6, before quoted, they cannot run for longer than the current year 1922.

Heretofore the practice of the city has been to make such bonds come due shortly after the collection of the street cleaning assessments which collections close early in the year following the performance of the work. If it is necessary for such bonds to run for an additional period up until August, 1923, this means that the city will be paying an additional and useless amount of interest in the sum of about \$5,000 per year.

The general situation outlined above presents two questions:

1. Is it possible for the city to issue bonds in anticipation of the collection of street sprinkling and cleaning assessments?
2. If such bonds may be issued, are they subject to the provisions of section 6 of the act?
3. If such bonds may be issued, are they subject to the provisions of section 14 of the act?
4. Do sections 6 and 14, inasmuch as they are in conflict, in effect cancel each other or, putting it in another way, are both sections inapplicable to street cleaning bonds, it being clearly the intent and purpose of the act to permit the issuing of such bonds?

In other words, can the act be so construed as to effect its evident intent and purpose to permit such bonds to be issued and can it be properly held that neither section 6 nor 14 apply to this particular class of bonds for the reason that, in practice, both sections must be inapplicable to such bonds, as the same are not serial bonds."

General Code, section 3845, is as follows:

"Bonds, notes or certificates of indebtedness may be issued and sold before or after doing such work in anticipation of the levy or collection of such assessments, and may be authorized and provided for in the assessing ordinance, or in a separate ordinance, but no publication of such assessing ordinance or of the ordinance authorizing and providing for such notes, bonds and certificates of indebtedness shall in any case be required."

General Code, section 3914, is as follows:

"Municipal corporations may issue bonds or notes in anticipation of

the levy of special assessments or of the collection thereof. Such bonds or notes may be in sufficient amount to pay that portion of the estimated cost of the improvement or service for which the assessments are levied. In the issuance and sale of such bonds or notes the municipality shall be governed by all restrictions and limitations with respect to the issuance and sale of other bonds or notes, and the assessments as paid shall be applied to the liquidation of such bonds or notes. Council ordinances and proceedings relating to the issuance of such bonds or notes shall not require publication."

General Code, section 3914-1 is as follows:

"Bonds or notes issued in anticipation of the levy of special assessments or the collection thereof shall be full, general obligations of the issuing municipal corporation, and for the payment of the principal and interest of the same, the full faith, credit and revenues of such municipal corporation shall be pledged. To provide for any deficiency in the levy, payment or collection of said assessments as the same fall due, the council of the issuing municipal corporation shall, prior to the issuance of the bonds or notes above mentioned, provide for the levy of a tax upon all the taxable property of said corporation."

General Code, section 2295-7, is as follows:

"No county, school district, township, municipality, including charter municipalities, or other political subdivision shall, with the exceptions hereinafter named, create or incur any indebtedness for current operating expense. The acquisition or construction of any property, asset or improvement with an estimated life or usefulness of less than five years shall be deemed current expense. This prohibition shall not apply to borrowing as provided by law in anticipation of collection of special assessments * *"

Before discussing the above quoted statutes, it is to be understood that a special assessment is not a tax levy. In the case of *Lima vs. Cemetery Association*, 42 O. S., 128, 130, Judge Okey, speaking for the court, refers to *Hill vs. Higdon*, 5 Ohio St. 243, and quotes Judge Ranney, as follows:

"This power had for many years been in constant and active exercise in every part of the state, and was perfectly understood by every member of the convention. The popular as well as legal signification of this term had always indicated those special and local impositions upon property in the immediate vicinity of an improved street, which were necessary to pay for the improvement, and laid with reference to the special benefit which such property derived from the expenditure of the money. They had always differed widely from the ordinary levies made for the purposes of general revenue."

The court further says:

"But applying the well settled rule for the construction of provisions exempting property from such burdens, that is, that they are to be strictly construed (*Cincinnati College vs. State*, 19 Ohio, 110; *State vs. Mills*, 34 N. J. L. 177), we are required by the clear weight of authority to hold, that the exemption in our statutes of burying grounds for taxation (Rev. Stats. sections 2732, 3571, 3578), has relation to taxation for revenue pur-

poses, and does not extend to an assessment for a local improvement like that in question here."

After clothing municipal corporations with power to sprinkle streets, General Code, section 3842, and to levy an assessment to pay for such service, General Code, section 3844, the General Assembly provided a means of immediately raising the money to pay therefor prior to the collection of such assessment in General Code, section 3845, above quoted. The bonds so sold are issued in anticipation of a special assessment and are not based on a tax levy. Under General Code, section 3914-1, above quoted, a tax levy is necessary only for a deficiency, should such exist.

In answer to your first question you are therefore advised that a city may issue bonds in anticipation of the collection of special assessments.

As to the application of section 6 of the Griswold act, it is apparent that said section applies to the acquisition of property or the permanent improvement thereof. In the paragraph of said section entitled "Class (f)" the words "or other purpose" are used. These words mean purposes similar to those purposes mentioned.

In the case of *United States vs. Garretson*, 42 Fed. 22, 23, it is said:

"'Other purposes,' as used in Rev. St. Sec. 5388 (U. S. Comp. St. 1901, p. 3649), providing for the punishment of every person who unlawfully cuts or wantonly destroys any timber standing on the land of the United States, which in pursuance of law may be reserved or purchased for military or other purposes, must be construed as extending only to purposes ejusdem generis with military purposes; that is, governmental or public purposes. A military purpose is a public purpose."

Therefore, in answer to your second question, you are advised that section 6 of the Griswold act is not applicable in the instant case.

Section 14 of the Griswold act in itself would apparently apply to sprinkling bonds, but that section must be read in connection with section 15 of the Griswold act.

Sections 14 and 15 of the Griswold act are as follows:

"Section 14. All bonds hereafter issued by any county, municipality, including charter municipalities, school district, township or other political subdivision, shall be serial bonds maturing in substantially equal annual installments beginning not earlier than the date fixed by law for the final tax settlement between the county treasurer and the political subdivision or taxing district next following the inclusion of a tax for such issue in the annual budget by the county auditor as provided by law and not later than eleven months thereafter."

"Section 15. The resolution, ordinance or other measure under which bonds are issued or authorized shall contain a levy of taxes sufficient to pay the interest and principal of the bonds as they mature and every such resolution, ordinance or measure shall be certified by the fiscal officer of the political subdivision to the county auditor of the county in which the subdivision is located. Thereafter, the county auditor, without further action by the tax-levying authority of the subdivision, shall include said annual levies in the appropriate annual budgets submitted by him to the budget commissioners as provided in section 5649-3c of the General Code, including

the county budgets; provided, however, that the county commissioners of any county, board of education of any school district, trustees of any township or council or chief legislative body of any municipality or other political subdivision may in any year appropriate for the purpose of paying any part of the annual interest or principal of such bonds of the political subdivision any surplus in the sinking fund or other bond retirement fund of the political subdivision not required for the purpose for which the said sinking or other bond retirement fund was raised and certify such appropriation to the county auditor, and thereupon the tax levy of the subdivision for the current year for the interest and principal of said bonds and the sum submitted by the auditor to the budget commissioners for said purpose shall be reduced by the amount so certified, and the sum appropriated as aforesaid shall not be used or expended for any purpose other than the payment of the interest and principal for which appropriated until and unless said interest and principal be otherwise fully paid or liquidated; provided that no such appropriation shall be made from the sinking fund without the approval of the sinking fund trustees or commissioners. The sum thus included in any budget submitted to the budget commissioners shall not be reduced by said commissioners and shall be given by said auditor and commissioners and other taxing authorities all the precedence and priorities provided by law for interest and sinking fund levies."

The tax provided in sections 14 and 15 of the Griswold act is not levied in the case of sprinkling bonds, as will be seen by reading section 3914-1, above quoted. The only tax levied in the case of sprinkling bonds wherein a special assessment is levied is a deficiency tax. It would appear that the tax as contemplated by sections 14 and 15 of the Griswold act was not the tax provided by General Code, section 3914-1. One is a tax for the full amount of the bonds and interest thereon, while the other is a levy for the deficiency only. The latter, to that extent, is distinguishable from the former, and the levy under General Code, section 3914-1 is perhaps not included in section 14 of the Griswold act.

However, the Griswold act was passed in the light of article XII, section 11, of the Constitution of Ohio, which is as follows:

"No bonded indebtedness of the state, or any political subdivisions thereof, shall be incurred or renewed, unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity."

This constitutional reference throws some doubt on the result herein arrived at.

It may be suggested that the time will come when, under the Griswold act, no sinking funds will exist. It is understood that the assessments on which your inquiry is based are in the majority of cases not paid until the same are certified to the county auditor and by him placed on the general tax duplicate to be collected at the regular tax paying period. This of necessity requires the borrowing of money for the payment of the bonds issued. This money is perhaps supplied from the sinking fund and that fund replenished at the time the assessment is collected at the regular tax paying period. This will be impossible when such sinking fund ceases to exist.

It is believed the issuing of notes in anticipation of such special assessment might well be considered as a means of relieving the situation herein.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

2949.

SCHOOLS—TRANSPORTATION OF PUPILS TO ELEMENTARY AND HIGH SCHOOLS CONSIDERED—WHEN IT IS OPTIONAL AND ALSO WHEN IT IS MANDATORY FOR BOARD OF EDUCATION TO FURNISH TRANSPORTATION.

1. *Except in a centralized school district (7749 G. C.) the transportation of an elementary pupil to school by a board of education is optional (7731 G. C.) unless such pupil has been assigned to a school "without the district" distant more than two miles from the residence of the child (7764 G. C.).*
2. *Where a local board of education decides in its discretion that the transportation of an elementary pupil residing more than two miles from a school within the district is "unnecessary," such judgment of the local board must be confirmed by the county board of education, or the probate court, as the case may be; and if not so confirmed the transportation of an elementary pupil resident more than two miles from school is mandatory (7731 G. C.).*
3. *The transportation of elementary pupils residing two miles or less from school is optional with a board of education (7731) except in a centralized school district (7749).*
4. *The transportation of a pupil eligible to high school by a board of education is optional (7731 G. C.) unless (a) the pupil resides in a district as described in 7749 G. C., or (b) has been assigned to a high school "without the district" and distant more than four miles from the residence of the pupil (7764 G. C.).*
5. *Every board of education must provide "work in high school branches" at some school within four miles of the residence of any pupil eligible to high school (7764-1 G. C.); but if the local board rather than furnish such work in its local district desired (a) to provide transportation to any recognized high school, or (b) pay for transportation under 7731-4 G. C., instead of directly providing it, or (c) pay for the pupil's room and board, or part of same, in an amount less than it would cost, as provided in 7749-2 the local board has the privilege or option of thus furnishing "high school work."*

COLUMBUS, OHIO, March 28, 1922.

HON. C. A. RADCLIFFE, *Prosecuting Attorney, Lancaster, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following questions:

- "1. In a rural school in the county school district of a given township an elementary school pupil of compulsory school age lives slightly more than two miles from the school to which such child is assigned. Transpor-