

“A person who has been imprisoned in the penitentiary of any other state of the United States under sentence for the commission of a crime punishable by the laws of this state by imprisonment in the penitentiary is incompetent to be an elector or juror, or to hold an office of honor, trust or profit within this state, unless he has received a general pardon from the governor of the state in which he was imprisoned.”

The legislative history of Section 12390 and the plain import of its terms, and the fact that by Section 12391 the legislature has made provision for the disfranchisement of persons convicted of felonies in sister states where such felony is punishable by imprisonment in the penitentiary by the laws of this state, clearly shows that Section 12390 applies only to persons convicted in the courts of Ohio for a felony denounced by the laws of Ohio.

By its terms Section 12391 applies to persons who have been imprisoned in sister states and makes provision for the disfranchisement of such persons when the crime of which they were convicted is a “crime punishable by the laws of this state by imprisonment in the penitentiary.” No provision whatever is made with reference to persons who have been imprisoned in Federal penitentiaries for crimes denounced by the laws of the United States, and this statute, being penal in its nature, the application thereof can not be extended beyond the plain language used therein.

While under the laws of some of the other states (see *Cowan v. Prowse*, 93 Ky. 156; *Jones v. Board of Registrars*, 56 Miss. 76) it has been held that conviction in a Federal court for a crime against the United States carries with it forfeiture of civil rights in the particular state, yet I am of the opinion that under the laws of Ohio, imprisonment in a Federal penitentiary for the crime to which your letter refers does not carry with it the forfeiture of any rights of citizenship in Ohio. This is a matter which you may want to call to the attention of the legislature.

I am enclosing herewith a copy of Opinion No. 242, this day issued to Honorable L. E. Harvey, Prosecuting Attorney, Troy, Ohio, which refers to another phase of your question.

Respectfully,
EDWARD C. TURNER,
Attorney General.

245.

SPECIAL ASSESSMENTS—MONEY MAY BE BORROWED AND CERTIFICATES OF INDEBTEDNESS ISSUED IN ANTICIPATION OF COLLECTION.

SYLLABUS:

By virtue of the provisions of Section 5655 of the General Code money may be borrowed and certificates of indebtedness issued in anticipation of the collection of special assessments subject to the limitations contained in the statute.

COLUMBUS, OHIO, March 28, 1927.

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

GENTLEMEN:—I am in receipt of your recent communication, which is as follows:

“We respectfully request your written opinion upon the following question.

Under the provisions of Section 5655 of the General Code may county commissioners anticipate the collection of special assessments?

This question has specific reference to the following situation. In Allen county the commissioners have issued a large amount of certificates of indebtedness under the provisions of Section 6602-1 et seq., relating to the construction of sanitary sewers. Assessments have been properly levied but owing to the failure up to this time to place the tax duplicates in the hands of the county treasurer for the collection of taxes and assessments there will be no money on hand to pay the interest on such certificates of indebtedness due April 1, 1927. The commissioners desire to know whether they may legally anticipate the collection of the assessments by issuing certificates of indebtedness to pay this interest."

Section 5655 of the General Code reads as follows:

"In anticipation of the collection of current revenues in any fiscal year, the county commissioners of any county, the board of education of any school district or the township trustees of any township may borrow money and issue certificates of indebtedness therefor, but no loans shall be made to exceed the amount estimated to be actually received from taxes and other current revenues for such fiscal year, after deducting all advances. The sums so anticipated shall be deemed appropriated for the payment of such certificates at maturity. The certificates shall not run for a longer period than six months nor bear a greater rate of interest than six per cent and shall not be sold for less than par with accrued interest. The proceeds of any such certificates shall be used only for the purpose for which the anticipated revenues or taxes were raised, collected or appropriated. No political subdivision or taxing district shall borrow money or issue certificates in anticipation of the February tax settlement before January 1 of the year of such tax settlement."

The authority given to the county commissioners to issue certificates of indebtedness in anticipation of special assessments for the building of sewers is that given by virtue of Section 6602-4 of the General Code which provides in part as follows:

"For the purpose of paying a part or the whole of the cost of construction, maintenance, repair or operation of any improvement provided for in this act or for paying the sanitary engineer provided for under the provisions of this act, and for paying for his assistants and all his other necessary expenses, the board of county commissioners may borrow money at a rate of not exceeding six (6%) per cent per annum on certificates of indebtedness to be signed by its president and clerk; such certificates of indebtedness shall be made payable at a time not more than five years from their date; or, for such purposes, the board of county commissioners may issue bonds as herein provided, or may appropriate money from any funds in the county treasury available. After the adoption of the improvement resolution, to provide means to pay the cost of any such improvement, the board of county commissioners shall, by resolution of said board appropriate any funds in the county treasury available for that purpose, authorize the issuance of certificates of indebtedness, or authorize the issue of bonds of the county, in an amount not exceeding the estimated cost thereof by more than ten (10%) per cent, plus such amount as shall be necessary to pay the installments of interest on such bonds or on certificates of indebtedness to accrue before the first installment of taxes and assessments hereinafter provided for shall be collected."

Other sections of the General Code provide for the levying of assessments by county commissioners for the building of sanitary sewers and it is clear from the various provisions of the law with reference thereto, being Sections 6602-1, et seq., of the General Code that county commissioners have ample authority to build sanitary sewers and provide funds for the same by issuing certificates of indebtedness therefor as the county commissioners of Allen county have evidently done in the situation referred to in your letter. The difficulty at this time is that installments of interest on such certificates of indebtedness will become due before assessments to pay the same can be collected by reason of the delay in the filing of the tax duplicate with the county treasurer. It is believed that if the assessment which will be collected at this present March collection of taxes is the first installment of assessments for this particular improvement, that certificates of indebtedness might be issued to raise money for the payment of the interest on certificates of indebtedness which had been issued, by virtue of Section 6602-4 which I have above quoted. However, it is not stated in your inquiry whether this is the first collection of assessments or whether there had been some installment of the assessment collected before.

By virtue of Section 5655 supra, county commissioners are authorized to borrow money and issue certificates of indebtedness in any fiscal year in anticipation of the collection of current revenues. There is no limitation in the statute as to what this money may be borrowed for except that the proceeds of any such certificates shall be used only for the purpose for which the anticipated revenues or taxes were raised, collected or appropriated. For that reason, it is clear that the money may be borrowed for any lawful purpose, so that our question here, is whether or not the term current revenues includes special assessments. If so, your question is answered, and it would seem clear that if the term current revenues includes special assessments the statute does authorize the borrowing of money and issuing of certificates of indebtedness therefor for all purposes, including the purpose for which the county commissioners of Allen county desire to borrow the money and in anticipation of special assessments and your question should be answered in the affirmative.

If, however, the term current revenues does not include special assessments, then your answer should be in the negative.

We get very little assistance from the terms of the statute itself in determining what the term current revenues is meant to include, nor are the definitions given in the law lexicons at all determinative of the matter.

This statute, Section 5655 as passed March 9, 1923 (110 O. L., page 458) reads in part as follows:

"In anticipation of the collection of current revenues in and for any fiscal year, (excepting taxes and assessments to be received for the payment of interest or principal of bonds, notes or other indebtedness), the county commissioners of any county, the board of education of any school district or the township trustees of any township may borrow money and issue certificates of indebtedness therefor, but no loans shall be made to exceed the amount estimated to be actually received from such taxes and other current revenues for such fiscal year, after deducting all advances. * * *"

It was later amended to read as it now reads, thus eliminating the clause included in parenthesis.

It is evident from the provision in parenthesis that the framers of the statute considered the term current revenues as including special assessments.

There being no exception in the statute as it now stands as to what current revenues may be anticipated we must conclude that it means all current revenues including special assessments.

In considering the questions discussed in this opinion, I have assumed that the

original assessments made by the county commissioners of Allen county in anticipation of which it is proposed to issue certificates of indebtedness were valid assessments and that no objections have been filed thereto, and that sufficient time has elapsed since the assessments were levied that no valid objections can now be filed.

I am therefore of the opinion that county commissioners may, subject to the limitations contained in Section 5655 of the General Code of Ohio, issue certificates of indebtedness when necessary to meet interest payments on other certificates of indebtedness issued in anticipation of the collection of special assessments levied for the building of sanitary sewers, provided of course the original assessments were valid and no valid objection was made thereto.

Respectfully,
EDWARD C. TURNER,
Attorney General.

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DISAPPROVAL, ABSTRACT OF TITLE TO LAND IN FRANKLIN COUNTY.

COLUMBUS, OHIO, March 28, 1927.

HON. CARL E. STEEB, *Secretary, Board of Trustees, Ohio State University, Columbus, O.*

DEAR SIR:—I have examined the deed, abstract of title, and encumbrance estimate submitted by you covering the following described property:

Situated in the county of Franklin, state of Ohio and in the township of Franklin, and being part of the Third Section of the First Township and 18th Range, U. S. Military Lands, and bounded and described as follows:

Beginning at the northeast corner of James Mitchell's tract of land, at a large stone; thence West fifty-eight (58) poles to the corner of Slyh's tract; thence thirty (30) poles north to a large stone; thence east forty-four (44) poles to the corner, to a stone in the road; thence along the road with the same, south thirty (30) poles to the point of beginning, containing nine and one-half (9½) acres and ten (10) square rods of land.

I. I find the deed to be a general warranty deed in proper form and to have been duly executed according to law, and that upon delivery such deed will be sufficient to convey the title to said premises to the state of Ohio.

I note, however, that the habendum of said deed reads:

"To have and to hold said premises, with all the privileges and appurtenances thereunto belonging, to the said The State of Ohio, *for the use of The Ohio State University*, its successors and assigns forever."

Section 7952, General Code, reads as follows:

"The title for all lands for the use of the university shall be made in fee simple to the state of Ohio, with covenants of seizin and warranty, and no title shall be taken to the state for the purposes aforesaid until the attorney general is satisfied that it is free from all defects and incumbrances."

In view of the provisions of this statute, it is my opinion that the habendum of the deed in question should read: