

however, the board of directors should, for valid reasons, authorize the sale of a certain block of shares of a given issue for a certain consideration and at the same time authorize the issuance and sale of another block of shares of the same issue for a different consideration, it does not necessarily follow that the block which is sold for a lesser consideration is sold at a discount. Notwithstanding the fact that the two blocks of shares may be of the same issue, the action of the board in fixing the consideration for one block may not be so dependent upon the action of the board in fixing the consideration for the other as to result in a portion of the shares being sold at a discount. A consideration of the amount to be credited to capital account might be pertinent in determining this matter. Under such circumstances, there is no reason why such shares may not be qualified by registration under the provisions of the portion of Section 8624-6, which you quote in your communication.

Specifically answering your second question, it is my opinion that when a corporation has authority to issue and sell shares of the same issue for different amounts of consideration, such shares which are sold for a lesser consideration are not under all circumstances necessarily sold at a discount within the meaning of the word as used in Section 8624-6, General Code. It is believed that a more specific answer to your inquiry may not be given.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

2879.

WATERWORKS FUND—MUNICIPALLY OWNED WATERWORKS—REIMBURSEMENT OF GENERAL SINKING FUND FROM SURPLUS ARISING FROM OPERATION OF WATERWORKS PROHIBITED.

SYLLABUS:

*No part of the surplus in the waterworks fund of a municipally owned waterworks may be used to reimburse the general sinking fund of the municipality, notwithstanding the fact that waterworks bonds may have been paid from such fund prior to the time the waterworks became self-sustaining.*

COLUMBUS, OHIO, January 28, 1931.

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

GENTLEMEN:—Your letter of recent date is as follows:

“Section 3959 G. C., provides for the disposition of any surplus water works funds and authorizes the use thereof for the payment of interest on any loan, and for a sinking fund for the liquidation of the debt.

“The water works of the village of———was constructed and paid for by the issuance of bonds, and for several years the earnings were insufficient to provide a surplus for the payment of the interest and bonds in full. The difference was paid out of the general sinking fund of the village. The surplus in the water works fund at this date is in excess of the amount necessary to provide for the payment of the outstanding bonds and interest, and the village council desires to reimburse the general sinking fund out of such water

works surplus for the amount heretofore paid from such general sinking fund on account of the waterworks bonds and interest.

Question. May the water works surplus be used for such purpose?"

Section 3959, General Code, provides:

"After paying the expenses of conducting and managing the water works, any surplus therefrom may be applied to the repairs, enlargement or extension of the works or of the reservoirs, the payment of the interest on any loan made for their construction or for the creation of a sinking fund for the liquidation of the debt. The amount authorized to be levied and assessed for waterworks purposes shall be applied by the council to the creation of the sinking fund for the payment of the indebtedness incurred for the construction and extension of waterworks and for no other purpose whatever."

A question involving the foregoing section, in many respects similar to the one you present, was decided by the Supreme Court of Ohio in the case of *Cincinnati v. Roettinger*, 105 O. S. 145, the first branch of the syllabus being as follows:

"Section 3959, General Code, is constitutional and operates as a valid limitation upon the uses and purposes for which revenues derived from municipally owned waterworks may be applied. By virtue of the provisions of that section, surplus revenues derived from water rents may be applied only to repairs, enlargements or extension of the works, or of the reservoirs, and to the payment of the interest of any loan made for their construction, or for the creation of a sinking fund for the liquidation of the debt. The amount authorized to be levied and assessed for waterwork purposes shall be applied by the council to the creation of the sinking fund for the payment of the indebtedness incurred for the construction and extension of waterworks and for no other purpose whatever."

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In the opinion by Chief Justice Marshall, in speaking of the limitations of this section, it is said at p. 152:

"Unless the section holds the city strictly to the purposes therein named, and if the city authorities may add any other uses and purposes in expending the surplus, the question must arise whether any limitations are legally imposed upon the city in the employment of such surplus. Such a construction must necessarily lead to absurd results. Municipalities get their authority for levying taxes and raising revenues from the legislature, and the legislature must be held to have the power to place proper limitations thereon. It being provided that the surplus may be used for extensions, and for interest and

loans for waterworks construction, it will be presumed that the legislative intent has thereby been exhausted and that it was not intended that the city should have any power over the surplus beyond the terms of the power expressly granted. For the purpose of determining the legislative intent the maximum *expressio unius est exclusio alterius* has direct application. That maximum has peculiar application to any statute which in terms limits a thing to be done in a particular form, and in such case it necessarily implies that the thing shall not be done otherwise. That maxim finds its chief use as an aid in ascertaining the whole scope of a law."

The foregoing case was decided in 1922 prior to the time of the adoption of the Budget Law. I do not, however, find any provisions in the Budget Law which in my view may be said to render inapplicable the foregoing decision.

It should be remembered that when waterworks bonds are authorized, excepting of course mortgage bonds, provision must be made for the levy of a tax to meet their interest and principal requirements. Section II, Article 12, of the Constitution. Such tax is subject to reduction in any year to the extent that funds from the earnings are available for the requirements of such bonds. Obviously, after waterworks bonds have been paid, whether from the earnings of the plant or by general taxation, there is no remaining indebtedness. Therefore, under the exclusive portions of Section 3959, supra, your inquiry must be answered in the negative.

It is, accordingly, my opinion that no part of the surplus in the waterworks fund of a municipally owned waterworks may be used to reimburse the general sinking fund of the municipality, notwithstanding the fact that waterworks bonds may have been paid from such fund prior to the time the waterworks became self-sustaining.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

2880.

APPROVAL, ABSTRACT OF TITLE TO LAND OF ALLEN C. KOOP IN ST.  
MARYS TOWNSHIP, AUGLAIZE COUNTY, OHIO.

COLUMBUS, OHIO, January 29, 1931.

HON. I. S. GUTHERY, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a recent communication from your department, through the division of conservation, submitting for my examination and approval an abstract of title, warranty deed, encumbrance estimate and controlling board certificate relating to the proposed purchase by the state of Ohio of two certain tracts of land owned of record by one Allen C. Koop in St. Marys Township, Auglaize County, Ohio, which tracts of land are more particularly described as follows:

"Tract No. One: Beginning at an iron pipe on the section line between Sections 8 and 17, South 88 deg. and 27' West, 647.4' from the intersection of Sections 8, 17, 9 and 16, thence South 1 deg. and 30' East, 413.89 feet to an iron pipe; thence South 88 deg. and 9' West, 175' to an iron pipe; thence