

I am therefore of the opinion that in city school districts, the board of education is limited in the amount that it may allow to its members or the official representatives of the board, for expenses when sent out of the district for the purpose of promoting the welfare of the schools under the charge of the board, to the amount of the service fund established in pursuance of Section 7704 of the General Code of Ohio.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

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4314.

CONSTITUTIONAL PROVISION—H. B. #227, 91ST GENERAL ASSEMBLY DISCUSSED.

SYLLABUS:

*Constitutionality of House Bill No. 227 of 91st General Assembly discussed.*

COLUMBUS, OHIO, June 3, 1935.

HON. MARTIN L. DAVEY, *Governor of Ohio, Columbus, Ohio.*

MY DEAR GOVERNOR:—I acknowledge receipt of your communication in which you ask for my opinion as to the constitutionality of House Bill No. 227 passed by the 91st General Assembly. This is an act "To provide for the acquisition, improvement, operation and maintenance of bridges; to pay the cost of such bridges and improvements thereon by the issuance of bridge revenue bonds; providing for the collection of bridge tolls for the payment of such bonds and creating bridge commissions."

Section 1 of the act reads as follows:

"The state of Ohio and any county and city in the state is hereby authorized and empowered to acquire by purchase or condemnation and to improve, operate and maintain bridges over rivers and navigable waters which are within the state, or within such county or city, or which form a boundary of such county or city, notwithstanding the waters of such navigable water may not at all times extend to or reach said boundary line, whenever the bridge or any part thereof or the approaches thereto will extend within the boundary of such county or city, and, to pay the costs of such acquisition and of such improvement, to issue bridge revenue bonds of the state, or of such county or city, as hereinafter provided."

Section 2 contains certain definitions. Section 3 creates a state bridge commission of three members, provides for the terms of the members, their qualifications, etc. Section 4 reads as follows:

"The county commissioners of any county, or the legislative authority of any city, desiring to take advantage of the provisions of this act, shall first pass a resolution declaring that the acquisition of such bridge, or the partial acquisition and partial construction, together with adequate repairs and rehabilitation if such bridge is already completed, or adequate completion of con-

struction if such bridge is in process of construction, will be a convenience, a necessity and a benefit to such county or city."

Section 5 provides that upon passage of such resolution the county commissioners of such county or the legislative authority of such city shall appoint a bridge commission of such county or city, and prescribes the terms and qualifications of the members of such commission. Section 6 defines certain powers of such commissions. Section 8 and 9 relate to the power of eminent domain which is conferred upon such commissions. Sections 10, 11, 12, 13 and 14 read as follows:

"SECTION 10. The state bridge commission and the bridge commission of any county or city is hereby authorized to provide by resolution for the issuance of bridge revenue bonds of the state or of such county or city for the purpose of paying the cost as hereinabove defined of any one or more such bridges, which resolution shall recite an estimate of such cost, the principal and interest of which bonds shall be payable solely from the special fund herein provided for such payment. Such bonds shall bear interest at not more than six per centum per annum, payable semi-annually, and shall mature at such time or times not more than thirty years from their date or dates as may be determined by such commission, and may be made redeemable before maturity at the option of the state or such county or city, to be exercised by such commission, at such price or prices and under such terms and conditions as may be fixed by such commission prior to the issuance of the bonds. The principal and interest of such bonds may be made payable in any lawful medium. The commission shall determine the form of the bonds, including the interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company within or without the state.

Bonds issued by the state bridge commission shall be signed by the governor and the chairman of the commission, under the great seal of the state of Ohio, and attested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of said chairman of the commission. Bonds issued by the bridge commission of any county or city shall be executed in the manner provided by such commission. All bonds issued under this act shall contain a statement on their face that the state or such county or city shall not be obligated to pay the same or the interest thereon except from the revenue of such bridge or bridges. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signature shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. All such bonds shall be, and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the state, and such bonds shall be exempt from all taxation, state and municipal. Such bonds shall be lawful investments of banks, savings banks, trust companies, trustees and of the trustees of the sinking funds of municipalities and counties, and shall be acceptable as security for the deposit of public moneys in the same manner and to the same extent as other bonds of the county or city issuing such revenue bonds.

Such bonds of counties and cities may be issued beyond the general limit of bonded indebtedness prescribed by law, and shall not be considered in ascer-

taining the limitations of the net indebtedness created or incurred by the county or city without a vote of the electors. Provision may be made for the registration of any of the bonds in the name of the owner as to principal alone. The commission issuing such bonds may sell the bonds in such manner and for such price as it may determine to be for the best interest of the state or of such county or city, taking into consideration the financial responsibility of the purchaser and the terms and conditions of the purchase and especially the availability of the proceeds of the bonds when required for payment of the cost of the bridges, such sale to be made at such a price not lower than a price which, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, will show a net return of six per centum per annum to the purchaser upon the amount paid therefor. It shall not be necessary to offer the bonds for sale to the trustee or commissioners or other officers in charge of sinking funds, and the bonds may be sold at private sale without advertisement. The proceeds of such bonds shall be used solely for the payment of the cost of the bridges and shall be checked out by the chairman of the commission and the secretary-treasurer thereof and under such restrictions, if any, as such commission may provide. If the proceeds of such bonds, by error of calculation or otherwise, shall be less than the cost of the bridge or bridges, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the trust indenture hereinafter mentioned, shall be deemed to be of the same issue and shall be entitled to payments from the same fund without preference or priority of the bonds first issued for the same bridge or bridges. If the proceeds of bonds issued for any bridge or bridges shall exceed the cost thereof, the surplus shall be paid into the fund hereinafter provided for the payment of principal and interest of said bonds. Prior to the preparation of definitive bonds, such commission may under like restrictions issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. Such revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified and required by this act or by the constitution of the state.

SECTION 11. All moneys received from any bonds issued pursuant to this act shall be applied solely to the payment of the cost of the bridges or to the appurtenant sinking fund and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of holders of such bonds or the trustee hereinafter provided for in respect of such bonds.

SECTION 12. In the discretion of the state bridge commission or the bridge commission of any such county or city, such bonds may be secured by a trust indenture, by and between the state or such county or city and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state, but no such trust indenture shall convey or mortgage any bridge or any part thereof. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the state and the state bridge commission, or the duties of the county or city and the bridge commission of such county or city, in relation to the acquisition, improvement, maintenance, operation, repair and insurance of the bridge or bridges, the custody, safeguarding and application of all moneys, and may provide that the bridge or bridges shall be acquired, or partly acquired and partly constructed, and paid for un-

der the supervision and approval of consulting engineers employed or designated by such commission and satisfactory to the original purchaser of the bonds issued therefor, their successors, assigns or nominees, who may be given the right to require that the security given by contractors and by any depository of the proceeds of the bonds or revenues of the bridge or bridges or other moneys pertaining thereto be satisfactory to such purchaser, successors, assigns or nominees. Such indenture may set forth the rights and remedies of the bondholders and trustee, restricting the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations.

Except as in this act otherwise provided, such commission may provide by resolution or by such trust indenture for the payment of the proceeds of the sale of the bonds and the revenues of the bridge or bridges to such officer, board or depository as it may determine for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation and repairs of the bridge or bridges affected by such indenture.

SECTION 13. Tolls shall be fixed, charged and collected for transit over such bridge or bridges and shall be so fixed and adjusted, in respect of the aggregate of tolls from the bridge or bridges for which a single issue of bonds is issued, as to provide a fund sufficient to pay such issue of bonds and the interest thereon and to provide an additional fund to pay the cost of maintaining, repairing and operating such bridge or bridges, subject, however, to any applicable law or regulation of the United States of America or the public utility commission of the state of Ohio now in force or hereafter to be enacted or made. The tolls from the bridge or bridges for which a single issue of bonds is issued, except such part thereof as may be necessary to pay such cost of maintaining, repairing and operating during any period in which such cost is not otherwise provided for (during which period the tolls may be reduced accordingly), shall be set aside each month in a sinking fund which is hereby pledged to and charged with the payment of (a) the interest upon such bonds as such interest shall fall due and (b) the necessary fiscal agency charges for paying bonds and interest and (c) the payment of such bonds, such sinking fund to be a fund for all such bonds without distinction or priority of one over another. Prior to the issuance of the bonds the commission may provide by resolution or by such trust indenture for using the sinking fund or any part thereof in the purchase of any of the outstanding bonds payable therefrom at the market price thereof, but not exceeding the price, if any, at which the same shall at the next interest date be payable or redeemable, and all bonds redeemed or purchased shall forthwith be cancelled and shall not again be issued. The moneys in the sinking fund less a reserve for payment of not exceeding one year's interest on the bonds, if not used within a reasonable time for the purchase of bonds for a cancellation as above provided, shall be applied to the redemption of bonds by lot at the redemption price then applicable.

SECTION 14. When the particular bonds issued for any bridge or bridges and the interest thereon shall have been paid or a sufficient amount shall have been provided for their payment and shall continue to be held for that purpose, tolls for the use of such bridge or bridges shall cease except for the cost of maintaining, repairing and operating such bridge or bridges. Thereafter and as long as the cost of maintaining, repairing and operating such

bridge or bridges shall be provided for through means other than tolls, no tolls shall be charged for transit thereover and such bridge or bridges shall be free."

It may be here noted that Section 6 gives each such commission the power to employ engineering, architectural and construction experts and inspectors and attorneys and such other employes as may be necessary. If this provision should be construed to empower the state bridge commission to employ attorneys to represent such commission in litigation or to render other legal services for the commission, said provision would be unconstitutional under the authority of the case of *Fergus vs. Russell*, 270 Ill. 304. However, this proposed act does not state in what capacity such attorneys are to be employed and in view of the rule of construction that statutes are to be construed in such a manner as to be constitutional if possible, I am of the view that a court would construe this provision to confine the powers of the state bridge commission to employing attorneys for services other than legal services.

The only other question which I see may be raised with reference to the constitutionality of this act relates to the provisions contained therein with reference to the issuance of bonds, which resolves itself into the question of whether Sections 1, 2 and 3 of Article VIII and Sections 6 and 11 of Article XII will be violated if this act becomes a law. Section 1 of Article VIII reads as follows:

"The state may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct and contingent, whether contracted by virtue of one or more acts of the general assembly, or at different periods of time, shall never exceed seven hundred and fifty thousand dollars; and the money, arising from the creation of such debts, shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever."

Section 2 authorizes the contracting of indebtedness to be payable in case of invasion, to suppress insurrection, defend the state in war, or to redeem the present outstanding indebtedness of the state. Section 3 of Article VIII reads as follows:

"Except the debts above specified in sections one and two of this article, no debt whatever shall hereafter be created by or on behalf of the state."

Section 6 of Article XII provides that:

"Except as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvement."

Section 11 of Article XII reads 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."

It has been held that a duty lies to levy taxes for the payment of bonds, even though such bonds may be payable from sources other than taxation, but these cases are based on the proposition that the bonds in question are obligations of the subdivision issuing them. *State, ex rel. vs. County Commissioners*, 6 O. S. 280; *State vs. County Commissioners*, 37 O. S. 526; *State, ex rel. vs. Brooklyn*, 126 O. S. 459.

In the case of *State vs. County Commissioners*, 37 O. S. 526, the court, in referring to the contention that inasmuch as the bonds there should be paid from assessments no other mode or manner of taxation could be resorted to for the purpose of paying the bonds, says:

“However plausible this contention may be, we think it cannot be maintained. That the legislature might have so provided, we do not deny, but if such was the intention, it should have been expressed in very clear and unmistakable terms. Such terms were not used, nor is such inference clear.”

In the house bill under consideration, the legislature has expressed in clear and unmistakable terms that the bonds for the purpose of paying the cost of the improvements authorized therefor are not to be paid by taxation, are not obligations of the state or the county or city issuing them and are payable solely from the revenue to be derived from the charging of tolls. Section 6 of said house bill provides that “no such commission shall proceed to exercise or carry out any authority or power herein given it to bind such commission beyond the extent to which money has been or may be provided under the authority of this act.” Section 9 of the act provides that “The state or such county or city shall be under no obligation to accept and pay for any property condemned and shall in no event pay for the same except from the funds provided by this act”. Section 10 provides that the principal and interest of the bonds authorized by said house bill “shall be payable solely from the special fund herein provided for such payment.” Said section also says: “All bonds issued under this act shall contain a statement on their face that the state or such county or city shall not be obligated to pay the same or the interest thereon except from the revenue of such bridge or bridges.”

This house bill is very similar, so far as it relates to the issuance of bonds, to the provisions of Sections 412-1, et seq., General Code, authorizing the construction of improvements for the purpose of conserving surplus, flood and other waters of the state. In the case of *Kasch vs. Miller, Superintendent*, 104 O. S. 281, it was contended that said act violated Sections 1, 2, 3, 4 and 7 of Article VIII and Sections 6 and 11 of Article XII of the Constitution. The court held as follows:

“1. The act authorizing the initiation and construction of a proposed improvement under the supervision of the state superintendent of public works, with a view to the conservation of surplus, flood and other waters of the state, is valid. Where the entire improvement is to be paid for by the issue and sale of bonds in the name of the state, and the principal and interest are to be paid entirely out of the revenues derived from the improvement or from the sale of the corpus in case of default, a state debt is not thereby incurred within the purview of the state constitution; nor do the bonds so issued become an obligation or pledge the credit of the state under the express provisions of Section 412-2, General Code.

2. Section 412-1 et seq., General Code (108 O. L., pt. 1, 219), authorizing the construction of such improvement and the issue and sale of bonds therefor, under the facts stated, do not violate Section 3, Article VIII, or any other

provision, of the constitution, prohibiting the incurring of debts or obligations by the state."

Consequently, I am of the opinion that said House Bill No. 227, will not, if it becomes a law, be violative of the Constitution.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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4315.

APPROVAL, ADDENDUM TO RESERVOIR LAND LEASE TO LAND AT BUCKEYE LAKE, OWNED BY R. WILKE, COLUMBUS, OHIO.

COLUMBUS, OHIO, June 4, 1935.

HON. EARL H. HANEFELD, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a recent communication over the signature of the Chief of the Bureau of Inland Lakes and Parks in the Division of Conservation submitting for my examination and approval an addendum to a reservoir land lease which was heretofore on February 10, 1932, executed and delivered to one Eugene Mueller of Columbus, Ohio, and which lease was thereafter on April 8, 1933, transferred and signed by Eugene Mueller to one R. Wilke of Columbus, Ohio, who is now the owner and holder of said lease.

The addendum to said lease which is the subject of the present consideration is in the form of an agreement between the state of Ohio, acting by the Conservation Commissioner, and R. Wilke, the present owner and holder of the lease by which the Department of Liquor Control of the state of Ohio is permitted to install and operate a state liquor store or agency for the sale of spirituous liquor in the storeroom of R. Wilke on the premises described in the lease, which premises are the outer slope and borrow pit in the rear of the West-half of Embankment Lot No. 57 of lots east of Sayre's boathouse at Buckeye Lake as laid out by the Ohio Canal Commission in 1905. By the further provisions of this addendum R. Wilke, as the agent and employe of the Department of Liquor Control in the operation and management of said liquor store or agency and not otherwise, is permitted to sell spirituous liquor in his storeroom on said premises in strict conformity with the provisions of sections 6054-8 and other sections of the General Code relating to the sale of spirituous liquors at state liquor stores. This addendum effects a modification of the original provisions of the lease which in terms prohibited the sale of spirituous and intoxicating liquors on said premises; and by said addendum it is provided that the terms of the lease prohibiting the sale on said premises of spirituous and intoxicating liquors are modified insofar as the same are inconsistent with the provisions of the addendum, but that otherwise the provisions of the original lease are to remain in full force and effect.

The first question suggested by this addendum is that with respect to the authority of the parties to this lease to change or modify the same during its term. As to this it is to be observed that the state owns and holds the reservoir land covered by this lease in a proprietary capacity and that acting pursuant to statutory authority the Conservation Commissioner was authorized to execute this lease to the original lessee