

2307.

APPROVAL, BONDS OF VILLAGE OF WICKLIFFE IN AMOUNT OF  
\$4,500 FOR CONSTRUCTION OF WATER MAINS.

COLUMBUS, OHIO, August 9, 1921.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

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2308.

APPROVAL, BONDS OF VILLAGE OF WICKLIFFE IN AMOUNT OF  
\$4,500 FOR CONSTRUCTION OF WATER MAINS.

COLUMBUS, OHIO, August 9, 1921.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

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2309.

APPROVAL, BONDS OF VILLAGE OF WICKLIFFE IN AMOUNT OF  
\$3,500 FOR CONSTRUCTION OF WATER MAINS.

COLUMBUS, OHIO, August 9, 1921.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

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2310.

DISAPPROVAL, BONDS OF CITY OF LORAIN, OHIO, IN AMOUNT OF  
\$265,000, FOR REFUNDING CERTAIN ESTIMATED DEFICIENCIES IN  
SAFETY, SERVICE AND HEALTH FUNDS.

COLUMBUS, OHIO, August 10, 1921.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

Re: Bonds of the city of Lorain, Ohio, in the sum of \$265,000 for the purpose of funding certain estimated deficiencies in the safety, service and health funds of said city pursuant to H. B. No. 4, passed February 15, 1921.

GENTLEMEN:—As above noted this issue of bonds is one provided by ordinance of the council of the city of Lorain, Ohio, for the purpose of funding deficiencies in the safety, service and health funds of said city pursuant to

the authority of House Bill No. 4, passed by the legislature as an emergency measure February 15, 1921.

An examination of the transcript discloses certain defects in said ordinance which require me to disapprove this issue of bonds.

In the first place this ordinance provides for an issue of bonds in excess of the deficiency shown by the statement of the city auditor to said council. The council by resolution adopted pursuant to the authority of said act found and determined an estimated deficiency in the safety fund of said city in the sum of \$150,000, an estimated deficiency in the service fund of \$100,000 and an estimated deficiency in the health fund of \$15,000. The finding and determination of council with respect to the estimated deficiencies in the safety and service funds of said city are in accordance with the statement made by the city auditor. With respect to the health fund of said city, however, said statement of the city auditor shows an estimated deficiency of \$14,000, making the aggregate of estimated deficiencies in said three funds the sum of \$264,000 instead of the sum of \$265,000 as found and determined by said council and which is the amount of the proposed bond issue.

I know of nothing in the provisions of said House Bill No. 4 which authorizes the council of a municipality to issue bonds for more than an actual deficiency, and inasmuch as the finding and determination of the council with respect to the amount of the aggregate deficiency is based wholly on the financial statement made by the city auditor, I can come to no conclusion other than that the aggregate of said deficiencies so found and determined by council was an error invalidating this bond issue to the extent of \$1,000 thereof.

So far as this particular objection is concerned, said bond issue is perhaps valid to the extent of bonds in the sum of \$264,000, but inasmuch as you have not in your resolution providing for the purchase of this issue indicated any intention of purchasing any part of this proposed issue less than the whole thereof, I do not feel that I have any discretion to do otherwise than to disapprove said issue on this ground.

In the second place, the provisions of said ordinance with respect to tax levies to pay the principal and interest of the bonds covering this issue do not comply with the requirements of the constitutional provision applicable to legislation providing for the issue of municipal bonds.

The ordinance in question provides that \$50,000 of the bonds covering this issue shall be due and payable September 15, 1927, and that bonds in the amount of \$50,000 shall become due and payable on the 15th day of September of each year thereafter up to and including the year 1930, and that bonds in the amount of \$65,000 shall become due and payable September 15, 1931. Section 7 of said ordinance provides as follows:

"That to pay the interest on these bonds and to create a sinking fund sufficient to pay the principal thereof at maturity, there shall be and there is hereby levied on all the taxable property in the city of Lorain, Ohio, a tax sufficient to produce the necessary interest and principal as the same accrues for the years 1921 to 1931, both years inclusive, which levy shall not be subject to any limitations relating to tax levies and shall be in addition to all other taxes for the purposes of such city under authority of House Bill No. four, passed February 15, 1921.

Said tax shall be and is hereby ordered certified, levied and extended, on the tax duplicate and collected by the same officials in the same manner and at the same time that the taxes for general pur-

poses in each of said years are certified, extended and collected; that the funds derived from said taxes shall be placed in a separate and distinct fund, which together with all interest collected on the same, shall be irrevocably pledged to the payment of interest and principal of said bonds when same become due and payable."

These provisions of said ordinance do not require the taxing authorities of said city to make any levies for the purpose of paying the principal of the bonds provided for therein until the first of said bonds becomes due and payable in 1927 and do not conform to the requirements of section 11 of Article XII of the state constitution which 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."

The plain language of this constitutional provision required provision to be made in this ordinance or other legislation of said council for an annual levy of taxes for both interest and sinking fund purposes and though it is not the intent of said constitutional provision to require that bonds issued should be redeemable in annual installments, the intent thereof is that a certain sum should be raised annually in anticipation of the payment of said bonds; and whether paid out in redemption of the bonds annually, or into a sinking fund for their payment at the expiration of a term of years, the constitutional provision is complied with, but not otherwise.

See Dillon, *Municipal Corporations*, (5th Ed.) Vol. II, sec. 211.  
 Wilkins vs. Waynesboro, 116 Ga. 359.  
 Bruce vs. Pittsburgh, 166 Pa. St. 152.  
 Link vs. Karb, Mayor, 89 O. S. 326.

The constitutional provision above noted is obviously mandatory and inasmuch as the provisions of section 7 do not comply therewith, I am required to disapprove the issue of bonds provided for by this ordinance.

My conclusions on this question are in accord with former opinions of the Attorney-General construing and applying the provisions of section 11 of Article XII of the state constitution.

See Opinions of the Attorney-General for 1914, Vol. II, p. 1224.  
 Opinions of the Attorney-General for 1918, Vol. I, p. 635.  
 Opinions of the Attorney-General for 1918, Vol. I, p. 873.  
 Opinions of the Attorney-General for 1918, Vol. II, p. 1639.

As the third objection to this issue of bonds I note that of the bonds covering said issue bonds in the sum of \$65,000 become due September 15, 1931, and inasmuch as it is provided in said ordinance that said bonds shall be dated August 15, 1921, it follows that said bonds maturing September 15, 1931 will run for a period in excess of the ten year limitation provided in section 4 of the act under authority of which these bonds were issued. This objection probably affects only the bonds exceeding said limitation, but again inasmuch as you have indicated no intention of purchasing any part

of this issue less than the whole amount, I feel that I am required to disapprove the whole issue on this ground as well as on those before mentioned.

For the reasons above mentioned I am of the opinion that you should decline to purchase the above issue of bonds.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

2311.

APPROVAL, BONDS OF DILLONVALE VILLAGE SCHOOL DISTRICT IN AMOUNT OF \$30,000.

COLUMBUS, OHIO, August 10, 1921.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

2312.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS, VINTON COUNTY, OHIO.

COLUMBUS, OHIO, August 10, 1921.

*Department of Highways and Public Works, Division of Highways, Columbus, Ohio.*

2313.

TAX COMMISSION—WITHOUT AUTHORITY TO ENTERTAIN MOTION FOR REVIEW AND CORRECTION OF ITS DETERMINATION RESPECTING VALUE OF PUBLIC UTILITY PROPERTY AFTER SUCH DETERMINATION CERTIFIED TO COUNTY AUDITOR—SEE SECTION 5517 G. C.—TIME OF CERTIFYING, DIRECTORY—WHEN COMMISSION MAY ENTERTIAN APPLICATION FOR CORRECTION OF INITIAL VALUATION.

1. *The Tax Commission of Ohio no longer has authority under section 5517 of the General Code to entertain a motion for review and correction of its determination respecting the value of public utility property, after such determination has been certified to the county auditor.*

2. *The statutory provisions respecting the time of certifying such determinations to the county auditor are directory merely.*

3. *The commission may entertain an application for correction of the initial*