1502.

MUNICIPAL CORPORATIONS—CANNOT LEGALLY PAY INTEREST IN ADVANCE ON LOANS RECEIVED.

Municipalities cannot legally pay interest in advance on loans received under section 3913 G. C.

COLUMBUS, OHIO, August 19, 1920.

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

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

"On June 1, 1920, the City of A borrows $10,000.00 from a local bank on certificate of indebtedness under section 3913 G. C., issued for a period of six months, the bank placing the $10,000.00 to the credit of the city. On the same day the city draws its check for $300.00, six months interest on the loan at 6 per cent.

Question 1: Is such interest legally payable in advance?

Question 2: If not, can the city recover the amount of interest on the advance payment?

We respectfully request your written opinion on the above."

Section 3913, to which you refer, provides:

"Sec. 3913. In anticipation of the general revenue fund in any fiscal year, such corporations may borrow money and issue certificates of indebtedness therefor, signed as municipal bonds are signed, but no loans shall be made to exceed the amount estimated to be received from taxes and revenues at the next semi-annual settlement of tax collections for such fund, 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."

It is believed that the provision of the statute above quoted, that the certificate of indebtedness "shall not be sold for less than par with accrued interest," is material in connection with your inquiry. It is apparent that the effect of paying the interest in advance as described in your statement of facts is to discount the certificate of indebtedness. If the $300.00 paid in advance had remained in the municipality's depository until the expiration of six months and earned three per cent interest per annum therein, the municipality has lost four dollars and fifty cents ($4.50) in the transaction.

While it will not be denied that there is a custom in somewhat general use by reason of which interest on short time loans is collected in advance, and while there in some dispute as to the legality of this procedure in view of the usury statutes where the maximum rate is charged, there are a number of decisions indicating that such a practice is not usurious, i. e., there are decisions to the effect that individuals may contract to pay interest at the maximum rate, payable in advance, on short time loans, without the contravention of the usury statute. Without attempting to decide the legality of this practice as between individuals, it is believed that in view of the discount resulting from the transaction described in your statement of facts it is in contravention of section 3913 requiring that certificates of indebtedness shall

not be sold for less than par with *accrued* interest. It will be further observed that the interest could not accrue in advance. "Interest is money paid for the use of money," and in the absence of any specific provision the interest on the indebtedness which you describe would be due at the expiration of six months and there is no express authority to pay said interest at any other time. On the other hand, there is an express inhibition against the discounting of the certificates of indebtedness, and the payment of interest in advance, as heretofore stated, constitutes discounting.

It will be further noted that this statute clearly contemplates the payment of the obligations arising on account of the issuance of such certificates of indebtedness out of future collections. Section 3913 appropriates the funds to be collected for such purpose and the entire procedure is taken in anticipation of future collections. It would seem untenable that said interest could be paid before it is earned and before the proper funds have become available for said purpose.

In the case of State ex rel., vs. Pierce, 96 O. S. 44, it is held:

> "In case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power."

In view of the foregoing, in specific reply to your first inquiry, I am compelled to the conclusion that upon the state of facts given by you it was not legal to pay the interest in advance.

In reply to your second inquiry, you are referred to Section 286 of the General Code of Ohio, as amended in 108 O. L. (Pt. 2), page 1115, which, it is believed, in itself furnishes an affirmative answer to your question.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1503.

DISTRICT BOARD OF HEALTH—HAS AUTHORITY TO ADOPT AND ENFORCE ORDERS AND REGULATIONS TO SAME EXTENT AS FORMER MUNICIPAL BOARDS OF HEALTH—SECTIONS 12600-137 TO 12600-273 G. C. (SANITATION BUILDING CODE) APPLICABLE OUTSIDE OF CITIES—WHEN HEALTH DISTRICT MAY ADOPT SAME—ADVERTISEMENT OF SUCH ORDERS MAY NOT BE ADOPTED BY REFERENCE TO SECTIONAL NUMBERS OF GENRAL CODE.

1. *General health district boards have authority to adopt and enforce the orders and regulations stated in section* 4420 *to the same extent as former municipal boards of health may have done.*

2. *Insofar as sections* 12600-137 *to* 12600-273 (*Sanitation Building Code*) *are applicable outside of cities and to the extent that they have reasonable reference to health conditions there existent, such sections may be adopted by a general health district board as its general orders and regulations.*

3. *If such sections are adopted, the advertisement of such orders and regulations may not be by reference merely to their sectional numbers in the General Code of Ohio.*

COLUMBUS, OHIO, August 19, 1920.

State Department of Health, Columbus, Ohio.

GENTLEMEN;—Acknowledgment is made of the receipt of your request for the opinion of this department as follows: