

and Trust Company, 124 O. S., 375, and *State ex rel Lattanner vs. Osborn Bank et al.*, 17 N. P. (n. s.), 236.

While, therefore, as has heretofore been stated, it is my conclusion that the right to issue preferred stock by banks organized under the laws of Ohio does not exist under present statutes, if the issuance of such preferred stock were authorized, such preferred stock so issued would be subject to the double liability imposed by Article XIII, Section 3, of the Constitution of Ohio, and Section 710-75 of the General Code of Ohio.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

711.

BOARD OF EDUCATION—MATURITY OF NOTES EVIDENCING MONEY BORROWED PRIOR TO TAX SETTLEMENT, NEED NOT BE ANTICIPATED FROM ADVANCE PAYMENT OF TAXES—COUNTY TREASURER NOT REQUIRED TO MAKE DEDUCTIONS FOR ANTICIPATORY INDEBTEDNESS IN MAKING ADVANCE PAYMENT TO BOARD OF EDUCATION.

SYLLABUS:

1. *When a board of education has borrowed money in anticipation of a tax settlement pursuant to the provisions of Section 2293-4, General Code, and thereafter, but before the maturity date of the notes issued in evidence of such borrowing and before the date of the semi-annual settlement between the county treasurer and the county auditor, the county makes an advance payment of taxes to such board of education which does not reduce the unpaid balance of anticipated receipts from the next semi-annual settlement of taxes below twice the aggregate amount of the anticipatory notes, debt charges and other advances, there is no mandatory duty on such board of education to anticipate the maturity of such notes from such advance payment.*

2. *In determining the amount of an advance payment to a board of education by the county treasurer pursuant to the provisions of Section 2692, General Code, under like circumstances, there is no duty on the county treasurer to make deductions therefrom for such anticipatory indebtedness created by such board of education.*

COLUMBUS, OHIO, April 24, 1933.

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

GENTLEMEN:—I am in receipt of your request for my opinion on questions of law from the following set of facts:

The P. City School District has borrowed in anticipation of the February, 1933 tax settlement the sum of \$77,000 and issued its promissory notes evidencing such fact. Such board of education's budget for the general fund payable in February, 1933, is \$239,000. Such board of education desires to procure an "advance draw" of \$33,000 and, in addition, borrow from the banks in anticipation of such settlement a further sum of \$9,000. It is contended that if moneys are advanced by the county treasurer to such board in anticipation of such settle-

ment such sums so advanced must be applied in payment of the \$77,000 loan which has already been procured in anticipation of the February settlement.

The authority of such board of education to borrow money and issue its notes in anticipation of the collection of current revenues as well as the authority for the repayment thereof is statutory. It is therefore necessary that such authority be found in some statute. Section 2293-4, General Code, which sets forth the rights of the taxing authority to borrow money in such manner, reads:

"In anticipation of the collection of current revenues in and for any fiscal year, the taxing authority of any subdivision may borrow money and issue notes therefor, but the aggregate of such loans shall not exceed one-half of the amount estimated to be received from the next ensuing semi-annual settlement of taxes for such fiscal year as estimated by the budget commission, other than taxes to be received for the payment of debt charges and all advances. *The sums so anticipated shall be deemed appropriated for the payment of such notes at maturity.* The notes shall not run for a longer period than six months and the proceeds therefrom shall be used only for the purposes for which the anticipated taxes were levied, collected and appropriated. No subdivision shall borrow money or issue certificates in anticipation of the February tax settlement before January first of the year of such tax settlement." (Italics the writer's.)

Section 2293-4, General Code, supra, in laying down the limitation of the aggregate amount of borrowing, places the following restrictions on such borrowing: It shall not exceed one-half of the amount estimated to be received at the next semi-annual settlement, less amounts levied for payment of debt charges and advances.

Thus, if the board of education in question had borrowed in anticipation of such tax settlement after the "advanced draw" had been received, the amount of such draw, or \$33,000, would have been deducted from the estimated receipts of \$239,000 for the purpose of determining the limit of such borrowing. Thus, assuming that no part of the \$239,000 was for the payment of debt charges (which assumption I have made throughout this opinion) the limit of such borrowing would be one-half (\$239,000—\$33,000) or \$103,000.

Section 2293-4, General Code, clearly lays down the rule that advance payments shall be considered in determining the aggregate amount which may be borrowed in anticipation of a semi-annual settlement of taxes. Since, after deducting the advance payment of \$33,000 from the anticipated receipts for the half year there would remain \$206,000 and the sums borrowed and to be borrowed by such board of education are not in excess of one-half of this amount, I am expressing no opinion on the question as to the applicability of an advance payment if by its receipt the remainder of the taxes estimated to be received at the next semi-annual settlement would be less than twice the amount of the borrowing in anticipation of such tax settlement. My opinion herein is specifically limited to the facts of your request, that is, to a state of facts where the receipt of the "advance draw" does no decrease the remaining tax funds estimated to be received at the next semi-annual settlement below a sum equal to twice the aggregate amount of such anticipatory borrowing.

An examination of the statutes of Ohio fails to disclose any provision which would require the advance payment in question to be applied to the payment of

outstanding anticipatory notes issued by the board of education. In the absence of such statutory requirement I am of the opinion that the "advance draw" in question may be used for purposes other than the payment of such notes if the board of education in the use of its discretion deems it to be advisable to use such funds for other purposes.

Section 2692, General Code, which authorizes the advancement of tax funds by the county treasurer to the taxing authorities, authorizes the county treasurer to withhold or retain "amounts that may be needed to make such payments of the obligation of the local political subdivision or taxing districts as are required by law to be paid directly by the county authorities."

It might be argued with considerable force, that Section 2293-4, General Code, is in pari materia with such Section 2692, General Code, and would prevent the county auditor and county treasurer from making an advance in such amount as will reduce the remaining tax funds to be accounted for to an amount less than twice the aggregate amount of such anticipatory borrowing; however, such question is not presented by the facts in your inquiry, and no opinion thereon is herein expressed. Assuming such method of construction to be correct, there would yet be no language in such sections which would authorize the county treasurer to withhold the \$33,000 in question, since such limit would not thereby be reached.

In specific answer to your inquiries it is my opinion that:

1. When a board of education has borrowed money in anticipation of a tax settlement pursuant to the provisions of Section 2293-4, General Code, and thereafter, but before the maturity date of the notes issued in evidence of such borrowing and before the date of the semi-annual settlement between the county treasurer and the county auditor, the county makes an advance payment of taxes to such board of education which does not reduce the unpaid balance of anticipated receipts from the next semi-annual settlement of taxes below twice the aggregate amount of the anticipatory notes, debt charges and other advances, there is no mandatory duty on such board of education to anticipate the maturity of such notes from such advance payment.

2. In determining the amount of an advance payment to a board of education by the county treasurer pursuant to the provisions of Section 2692, General Code, under like circumstances, there is no duty on the county treasurer to make deductions therefrom for such anticipatory indebtedness created by such board of education.

Respectfully,
JOHN W. BRICKER,
Attorney General.

712.

BANKS—DIVULGING INFORMATION REGARDING BANK OPERATING ON RESTRICTED BASIS TO PRIVATE INDIVIDUALS PROHIBITED WHEN—BANK OPERATING ON RESTRICTED BASIS AND LIQUIDATING BANK DISTINGUISHED—BAKER ACT DISCUSSED.

SYLLABUS:

The officers mentioned in section 710-35 of the General Code, are prohibited from divulging information concerning a bank operating upon a restricted basis, whether under the control of a conservator or not, to private individuals, other than