

979.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND ROBERT S. HARSH AND ASSOCIATES, INC., COLUMBUS, OHIO, FOR REMODELING COTTAGES, OHIO SOLDIERS' & SAILORS' ORPHANS' HOME, XENIA, OHIO, AT AN EXPENDITURE OF \$2,683.25.

COLUMBUS, OHIO, October 3, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, and Robert S. Harsh and Associates, Inc., Columbus, Ohio. This contract covers architectural services in connection with remodeling cottages, Ohio Soldiers' and Sailors' Orphans' Home, Xenia, Ohio, and calls for an expenditure of two thousand six hundred and eighty-three and 25/100 dollars (\$2,683.25).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted a certificate from the Controlling Board, signed by the Secretary thereof, that the appropriation of \$52,000 for remodeling such cottages by force account, in accordance with Section 7 of House Bill 510, 88th General Assembly, was approved.

You have further submitted a certificate of authorization from the Board of Trustees of the Ohio Soldiers' and Sailors' Orphans' Home to enter into the contract.

Finding said contract in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

GILBERT BETTMAN,
Attorney General.

980.

BOND ISSUE—WHETHER USE OF WORD “IMPROVEMENT” ON FACE OF BONDS INDICATIVE OF PURPOSES TO WHICH PROCEEDS APPLIED—DETERMINING MAXIMUM MATURITY—FISCAL OFFICERS ESTIMATE OF USEFUL PERIOD OF IMPROVEMENT CONCLUSIVE.

SYLLABUS:

1. *Bonds showing upon their face that they are issued for the “improvement” of an existing building, sufficiently state the purpose thereof within the meaning of Section 2293-8, General Code, when the proceeds are to be used for enlarging or constructing an addition to such building. When, however, a portion of the proceeds are to be used for repairs of such building, such purpose should be specifically set forth.*

2. *In determining the maximum maturity for which such bonds may be issued, the amount proposed to be expended for the enlargement or construction of an addition to a building should be considered as an improvement of such building as a Class C or D improvement as defined in Section 2293-9, General Code, and the amount of the issue proposed to be expended for the repairs of such building should be considered as a Class H improvement as defined in this section; and the life or usefulness of re-*

pairs thereof should be taken under consideration by the fiscal officer in making his estimate under this classification.

3. *In the absence of a showing of gross abuse of discretion amounting to fraud, the estimate of the fiscal officer as to the period of usefulness of a Class H item, as defined in Section 2293-9, General Code, should be conclusive.*

COLUMBUS, OHIO, October 3, 1929.

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

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

“Section 2293-1, G. C., paragraph E, 112 O. L., p. 364, reads:

“‘Permanent improvement’ or ‘improvement’ shall mean any property, asset or improvement with an estimated life or usefulness of five (5) years or more, including land and interests therein, and including reconstructions, enlargements and extensions thereof having an estimated life or usefulness of five years or more. Reconstruction for highway purposes shall be held to include the resurfacing but not the ordinary repair of highways.’

Section 2293-2, G. C., 112 O. L. 365, requires the fiscal officer of the taxing district to certify an estimate of the life of the permanent improvement to the bond-issuing authority.

Section 2293-9, G. C., 112 O. L., p. 367, governs the maturity of bonds issued for the purpose of acquiring or constructing any permanent improvement.

Question 1. When bonds are issued for the enlargement and repair of, and the constructing of an addition to, an existing building, is the word ‘improvement’ on the face of such bonds sufficiently indicative of the purposes for which the proceeds of the sale of the bonds are to be used?

Question 2. Should the maximum maturity of such bonds be determined by considering the amounts for enlargement and extension as Class C or D items, and the amount for repairs as a Class H item?

Question 3. Should the life of the part repaired or the life of the building govern the certification of the fiscal officer?

Question 4. If the fiscal officer’s certification as to the life of the repairs is a Class H item, may repairs having a shorter life than that certified by the fiscal officer, but having an estimated life or usefulness of five years or more, be legally paid for from the proceeds of the sale of the bonds?”

Section 2293-8, General Code, provides that:

“Bonds or notes issued by any subdivision shall specify on their face the purpose for which they are issued and the resolution or ordinance under which they are issued.”

In the event bonds are issued for the enlargement and repair of an existing building and the construction of an addition thereto, the mere statement on the face of the bonds that they are issued for the “improvement” of such building does not, in my opinion, constitute a compliance with the above quoted provision of Section 2293-8. Although the extension of or addition to a building does, in my view, as will be hereinafter indicated, constitute an improvement of such a building, if bonds are issued for this purpose and also for the purpose of repairing such building, the bonds should specify on their face that they are issued for the purpose of the “improvement and the repair” of a specific building. The requirement of Section 2293-8,

General Code, quoted above, that bonds shall "specify" on their face the purpose for which they are issued, in addition to specifying the resolution or ordinance under which they are issued, is clearly indicative of a legislative intent that the bonds themselves must clearly indicate in reasonable detail such purpose.

Your remaining questions involve a consideration of Section 2293-9, General Code, which section provides in part as follows:

"The maturities of bonds, notes or other evidence of indebtedness issued by any subdivision shall not extend beyond the following limitations as specified in the following classifications, the period to be measured from a date twelve months prior to the date of the earliest maturity, if maturing in annual installments, or six months prior thereto, if maturing in semi-annual installments:

When issued for—

Class (A) * * *

Class (B) * * *

Class (C) The construction or improvement of fireproof buildings or other structures, widening, opening, extending or changing the line of roads, highways, streets or alleys, general waterworks improvements, sanitary and storm sewers, sewage disposal works, and bridges, twenty-five years;

Class (D) The construction or improvement of non-fireproof buildings or other structures, electric light equipment, police and fire alarm and telegraph systems, fifteen years;

Class (E) * * *

Class (F) * * *

Class (G) * * *

Class (H) Purposes not included in the foregoing classes, such number of years not less than five and not exceeding thirty as is the estimated period of usefulness, such estimate to be made by the fiscal officer;

Class (I) A single bond issue for a purpose which includes two or more of the foregoing classes, the average number of years of usefulness as measured by the weighted average of the amounts proposed to be expended for said several classes in accordance with above table of maturities; such estimating and calculation of average to be made by the fiscal officer."

The classification of bonds as to purpose as contained in this section was manifestly made with a view of determining, in so far as possible, the average life or period of usefulness of the various improvements for which bonds are customarily issued. The section was undoubtedly enacted to preclude a situation arising whereby taxes will be levied and collected to pay the cost of an improvement long after such improvement has ceased to be useful or even perhaps in existence. It would follow that the phrase "construction or improvement" of buildings, as used in the section under the headings, Class C and Class D, would necessarily include the enlargement or extension of a building, by the construction of an addition thereto.

Manifestly, the maximum period of usefulness of a fireproof extension or addition to a fireproof building should be computed under this section as twenty-five years, or, if such addition or extension were non-fireproof, although the building extended might be a fireproof building, I am of the view that bonds may not be issued therefor, bearing a greater maturity than fifteen years. It would follow that in the event a fireproof addition were constructed to a non-fireproof building, upon completion of such addition, the building itself, including the addition, would not be classed as a fireproof building, and accordingly, bonds should not be issued for such purpose having a greater maturity than fifteen years.

The question of repairs of a building involves a different consideration in connection with this section of the General Code, and I am of the opinion that bonds issued for the repair of a building cannot be said to be issued for either the construction or improvement of such building as in the case of an extension or addition, but rather are issued for the purpose of upkeep or maintenance. In order that bonds may be issued for this purpose, it is accordingly necessary that the repairs themselves have an estimated life or usefulness of five years or more. To illustrate, if, for instance, bonds are to be issued for the purpose of repairing a building by the installation of a new roof and gutters, such purpose should not be considered as an improvement of a building within the meaning of the term "improvement" as used in Class C and Class D of the section, but should rather fall under Class H and the fiscal officer should calculate the period of usefulness of such roof and gutters as not less than five nor more than thirty years, in accordance with the provisions relating to this classification, and certify such estimate to the bond issuing authority as provided by Section 2293-10, General Code. The determining consideration in this specific instance would be the kind of materials to be used in the installation of the particular repair.

Your fourth question is apparently predicated upon an erroneous certification of the fiscal officer, in estimating the period of usefulness of a Class H item. You do not submit any facts upon which your question is based. It is to be observed that it is provided that the estimate under this class is to be made by the fiscal officer. Conceivably, a gross abuse of discretion on the part of the fiscal officer amounting to fraud, in making such estimate, may result in bonds, which have been issued bearing maturities pursuant to the calculation of the fiscal officer, being attacked as to validity. On the other hand, in the absence of a showing of such gross abuse of discretion, mere slight differences of opinion as to the period of life or usefulness of a Class H item would not, in my opinion, be sufficient to invalidate such issue. It is specifically provided in Section 2293-2 that the estimate of the life of such permanent improvement "shall be made in any case by the fiscal officer of the subdivision * * * and shall be binding upon such authority."

Specifically answering your questions, I am of the opinion that:

1. Bonds showing upon their face that they are issued for the "improvement" of an existing building, sufficiently state the purpose thereof within the meaning of Section 2293-8, General Code, when the proceeds are to be used for enlarging or constructing an addition to such building. When, however, a portion of the proceeds are to be used for repairs of such building, such purpose should be specifically set forth.

2. In determining the maximum maturity for which such bonds may be issued, the amount proposed to be expended for the enlargement or construction of an addition to a building should be considered as an improvement of such building as a Class C or D improvement as defined in Section 2293-9, General Code, and the amount of the issue proposed to be expended for the repairs of such building should be considered as a Class H improvement as defined in this section; and the life or usefulness of repairs thereof should be taken under consideration by the fiscal officer in making his estimate under this classification.

3. In the absence of a showing of gross abuse of discretion amounting to fraud, the estimate of the fiscal officer as to the period of usefulness of a Class H item, as defined in Section 2293-9, General Code, should be conclusive.

Respectfully,

GILBERT BETTMAN,
Attorney General.