

as it is in Ohio, but otherwise the analogy seems close enough to justify the conclusion that the cases are in point.

See also: *In re: Harkness*, (Calif.) 169 Pac. 78.

In view of the express provisions of section 5339 above quoted the certification and payment of the tax would seem to be an immaterial fact. If too little has been paid, the final order of the probate court made after new trial may determine the tax correctly and give credit for the amount already paid without doing violence to any of the provisions of the statute. If too much has been paid section 5339, supra, provides for the case.

The procedure is as outlined in section 11580 by reference embodied in section 11631. That is to say, the application should be in the same form as the original application to determine the tax, like notice should be given and like proceedings had.

Though this opinion has been limited to the one set of facts, it is clear that in case of fraud practised by any party, or any of the other grounds expressly mentioned in section 11631 a like remedy is available, excepting that in such instances the proceedings to vacate must be by petition brought under section 11635 of the General Code.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1318.

MUNICIPAL CORPORATIONS—CITY MAY BY ITS CHARTER PROVISIONS REGULATE PUBLICATION OF ORDINANCES AUTHORIZING BOND ISSUES AND NOTICES OF BOND SALES—CONSTITUTIONAL PROVISIONS OF CHARTER CITIES AND GENERAL STATUTES GOVERNING PUBLICATION OF ORDINANCES AND BOND SALE NOTICES DISCUSSED.

The provisions of sections 3924 and 4228 G. C. relative to the duration of the publication of ordinances authorizing the issuance of municipal bonds and of notices for the public sale of such bonds do not constitute a limitation upon the powers of municipalities to incur debts within the meaning of Article XVIII, section 13 of the Ohio constitution.

A city may by the terms of its charter regulate the publication of ordinances authorizing the issuance of bonds and of notices of the sale of such bonds.

COLUMBUS, OHIO, June 8, 1920.

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

GENTLEMEN—I have your letter requesting my opinion as follows:

"In view of the provisions of Article XVIII, section 13, of the constitution of Ohio and sections 3924 and 4228 G. C., and the further view that the provisions of the charter of a city having legally adopted home rule are 'All ordinances and resolutions shall be published once in one newspaper.'

1. Do the provisions of the charter or the provisions of statutes govern in the ordinance authorizing issuance of bonds in such charter city?

2. Do the provisions of charter or the provisions of statutes govern in the publication of notice of sale of bonds, providing there is a difference in the two provisions?"

Article XVIII, section 13 of the constitution of Ohio to which you refer in your letter is as follows:

"Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books, and accounts of all municipal authorities, or of public undertakings conducted by such authorities."

Sections 3924 and 4228 G. C. are as follows:

"Section 3924. Sales of bonds, other than to the trustees of the sinking fund of the city or to the board of commissioners of the sinking fund of the city school district as herein authorized, by any municipal corporation, shall be to the highest and best bidder, after publishing notice thereof for four consecutive weeks in two newspapers printed and of general circulation in the county where such municipal corporation is situated, setting forth the nature, amount, rate of interest, and length of time the bonds have to run, with the time and place of sale. Additional notice may be published outside of such county by order of the council, but when such bonds have been once so advertised and offered for public sale, and they, or any part thereof, remain unsold, those unsold may be sold at private sale at not less than their par value, under the directions of the mayor and the officers and agents of the corporation by whom such bonds have been, or may be, prepared, advertised and offered at public sale."

"Section 4228. Unless otherwise specifically directed by statute, all municipal ordinances, resolutions, statements, orders, proclamations, notices and reports, required by law or ordinance to be published, shall be published as follows: In two English newspapers of opposite politics printed and of general circulation in such municipality, if there be such newspapers; if two English newspapers of opposite politics are not printed and of general circulation in such municipality, then in any English newspaper printed and of general circulation therein; if no English newspaper is printed and of general circulation in such municipality, then in any English newspaper of general circulation therein or by posting as provided in section forty-two hundred thirty-two of the General Code, at the option of council. Proof of the place of printing and required circulation of any newspaper used as a medium of publication hereunder shall be made by affidavit of the proprietor of either of such newspapers, and shall be filed with the clerk of council." (108. O. L., p. 43.)

The question presented by your letter is whether the constitutional provision above referred to providing that

"Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, * * *

confers upon the general assembly the power to prescribe the length of time which ordinances authorizing the issuance of bonds and notices of the public sale of bonds shall be published, or whether the municipality may, by the provisions of its charter properly adopted, otherwise regulate and prescribe the duration of such publication.

This in turn raises the question as to whether or not the method and duration of the publication of ordinances authorizing the issuance of bonds and of notices of the sale of such bonds constitutes a limitation upon the power of the municipality to incur debts for local purposes.

The legislature is undoubtedly authorized to prescribe by general laws limitations upon the debt incurring authority of municipalities. It was apparently the intent and purpose of the constitutional provision above quoted to authorize the general assembly to limit the amount of the debts which a municipal corporation may incur rather than the method of procedure to be followed in incurring such debts, and I am convinced that the mere matter of publishing ordinances authorizing the issuance of bonds and the publishing of notices of the public sale of such bonds do not constitute a limitation upon the debt incurring capacity of a municipality, but are merely regulations for the purpose of giving proper publicity to the proceedings of council, and as such are matters subject to the home rule powers of such municipalities as have by proper procedure adopted charters.

Specifically answering the two questions presented in your letter, I am of the opinion

First, that the provisions of the charter of the city referred to in your letter that "all ordinances and regulations shall be published once in one newspaper" supersede the provisions of the general law contained in section 4228 G. C., above quoted, and that a compliance by the officers of said city with the provisions of such charter in the matter of publication of ordinances and resolutions will be sufficient.

Second, that the provisions of the charter of the city referred to in your letter will also govern in the matter of publication of notices of the public sale of such bonds.

Respectfully,

JOHN G. PRICE,

Attorney-General.

1319.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN
FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, June 8, 1920.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*

1320.

DISAPPROVAL, BONDS OF WILLIAMS COUNTY, OHIO, IN AMOUNT OF
\$23,400 FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, June 8, 1920

Industrial Commission of Ohio, Columbus, Ohio.

RE: Bonds of Williams county, in the amount of \$23,400, for the improvement of Tile Factory Road No. 164, in St. Joseph township.

GENTLEMEN—I have examined the transcript of the proceedings of the county commissioners relative to the above bond issue, and decline to approve the validity of said bonds for the following reasons: