

judges that their terms of office shall be four years. The acts in question, however, contain no reference to the other municipal court acts heretofore adopted by the General Assembly, but only adopt the statutes relating to judges of courts of common pleas by general reference. Upon the construction to be given a law adopting another law by general reference, Lord Denman, C. J., said in *Reg. v. Badcock*, 6 Q. B. 787 at p. 797:

"It is a sound rule of construction, applicable to modern as well as ancient statutes, perhaps even more so from necessity in consequence of the looseness of expression which now prevails, that 'in construction of general reference in acts of Parliament, such reference must be made as will stand with reason and right.'"

Since the courts are uniformly reluctant to construe an act void for uncertainty, even when it is susceptible of different interpretations, I believe the courts would hold these acts valid. Because of the fact that the only statutes which are adopted by the act, are the statutes with respect to the election of judges of the courts of common pleas, I am inclined to the view that if the acts are to be held valid, the words of reference to the law regulating the election of common pleas judges may be given a sufficiently broad construction to include the provisions with respect to the term of office of common pleas judges.

The same conclusion might be reached by a consideration of Article XVII, Section 2 of the Constitution, to which you refer. It may well be argued that, the legislature not having limited the term of these judges, they are entitled to the maximum term permitted by the Constitution, which is six years.

In a supplemental communication attached to your request for my opinion, which has just been received, you express the desire that the opinion be rendered so that it may be in your hands on May 25. You have, therefore, not afforded the opportunity to make as thorough a search of adjudicated cases touching the question you present which its importance deserves.

In specific answer to your question, I am inclined to the opinion that the courts would construe House Bills Nos 91 and 92 as valid enactments of the 89th General Assembly and that the judges elected thereunder shall hold office for six years. The matter should, however, be clarified by the legislature.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3254.

APPROVAL, CONTRACTS FOR ROAD IMPROVEMENTS IN FAIRFIELD,
MONTGOMERY AND RICHLAND COUNTIES.

COLUMBUS, OHIO, May 25, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

3255.

DELINQUENT TAXES—MAY BE COLLECTED BY COUNTY TREASURER IN MANNER PROVIDED BY SECTIONS 2667 ET SEQ., GENERAL CODE, ALTHOUGH SUCH TAXES NOT DELINQUENT FOR FOUR YEARS—FIRST SYLLABUS OF OPINION REPORTED IN OPINIONS OF ATTORNEY GENERAL FOR 1927, VOL. II, p. 891, UPHELD.

SYLLABUS:

Under the provisions of section 2667, General Code, the county treasurer of a county may collect delinquent taxes and assessments on real property in such county by enforcing the lien thereof in the manner provided by said section and by sections 2670 to 2671 inclusive of the General Code.

Proceedings by the county treasurer to enforce the lien of taxes and assessments under the provisions of sections 2667, et seq., General Code, are not limited by the provisions of sections 5713, 5717 and 5718 of the General Code requiring unpaid taxes or assessments to be certified as delinquent for four consecutive years before foreclosure proceedings can be instituted to collect the same under the chapter of the General Code relating to delinquent lands.

COLUMBUS, OHIO, May 26, 1931.

HON. CALVIN CRAWFORD, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication in which you ask my opinion as to whether or not there is any reason at the present time to modify the first syllabus of the opinion of the Attorney General appearing at page 891 of the second volume of the Opinions of the Attorney General for the year 1927. In your communication it is further stated that my opinion in this matter is requested for the benefit of some of the other county officials of Montgomery County who, you say, do not for some reason see fit to fall in line on a program of prompt collection of all delinquent taxes.

The syllabus of the opinion of the Attorney General, above referred to, is as follows:

“An action to enforce a lien for delinquent taxes or assessments, by the county treasurer, under the provisions of Section 2667, General Code, may be maintained, although the assessments at the time of the filing of the action have not been delinquent for four years.”

Section 2667, General Code, referred to in the former opinion of the Attorney General, provides as follows:

“When taxes or assessments charged against lands or lots or parcels thereof upon the tax duplicate, authorized by law, or any part thereof, are not paid within the time prescribed by law, the county treasurer in addition to other remedies provided by law may, and when requested by the auditor of state, shall enforce the lien of such taxes and assessments, or either, and any penalty thereon, by civil action in his name as county treasurer, for the sale of such premises, in the court of common pleas of the county, without regard to the amount claimed, in the same way mortgage liens are enforced.”

The former opinion of the Attorney General, above noted, was directed more particularly to certain questions with respect to the collection of delinquent assessments levied on lands to pay the cost and expense of public improvements; but it is obvious that the conclusion reached by the former Attorney General upon a construction of the provisions of section 2667, General Code, is quite as applicable with respect to the collection of delinquent taxes on lands.

The question presented to the Attorney General in said opinion arose by reason of certain provisions in the act of March 21, 1917, providing for the certification and foreclosure of delinquent taxes and assessments on lands. One of

the sections of said act, which is now section 5717, General Code, provided that no proceedings in foreclosure, under said act, shall be instituted on delinquent lands unless the taxes, assessments, penalties and interest thereon have not been paid for four consecutive years. See also sections 5713 and 5718, General Code. The question presented to the Attorney General for his opinion was whether the limitation provided for in section 5717, General Code, and in other sections of said act above mentioned applied to the collection of delinquent taxes and assessments on lands in proceedings instituted by the county treasurer for the purpose, under the provisions of sections 2667, et seq., General Code.

As above noted, the Attorney General in the opinion above referred to, answered this question in the negative and held that the county treasurer can maintain an action to enforce and foreclose the lien for taxes and assessments under the provisions of section 2667, General Code, although such taxes and assessments may not at the time have been delinquent for a period of four consecutive years.

By reason of the discussion of this question in the former opinion of this office, referred to in your communication, with which you are familiar, as well as by reason of the elementary nature of the question involved, I do not deem it necessary to enter upon any extended discussion of the question as the same is presented in your communication.

It appears from the terms of section 2667, General Code, above quoted, that the remedy provided by this section and those immediately following, are "in addition to other remedies provided by law." Besides the remedy of distraint provided for by section 2658, General Code, which has been held to apply to the collection of taxes on real property as well as to the collection of personal property taxes (*Robinson, Executor, v. Bowler*, 18 C. C. (N. S.) 372), other remedies provided for the collection of delinquent taxes on real property are those afforded by the provisions of the act of March 21, 1917, above referred to, which as amended from time to time, have been carried into the General Code as sections 5704 to 5726, inclusive, and that provided for the sale of lands which have been forfeited to the State of Ohio by reason of the inability of the county treasurer to effect a sale of the same by proceedings in foreclosure under the provisions of sections 5718, et seq., General Code, relating to the foreclosure of delinquent lands. The special remedies afforded for the foreclosure and sale of delinquent lands under the provisions of sections 5718, et seq., General Code, and for the sale of forfeited lands under section 5748 are remedies concurrent with that afforded by the provisions of sections 2667, et seq., for the collection of delinquent taxes and assessments on real property, and there is not the remotest suggestion in the statutory provisions providing for such concurrent remedies that any of the limitations therein can in any wise affect the independent remedy given by section 2667, General Code, for the collection of delinquent taxes and assessments.

By reason of the foregoing, and by way of specific answer to the question presented in your communication, I am of the opinion that there is no reason whatever to modify the conclusion reached by the Attorney General in the former opinion referred to in your communication with respect to the collection of delinquent taxes or assessments.

In this connection, it may not be amiss to call your attention to the fact that in a proceeding by the county treasurer to collect delinquent taxes and assessments under the provisions of sections 2667, et seq., General Code, the county treasurer has no authority to employ an attorney other than the prosecuting attorney of the

county or a person appointed as special assistant to the prosecuting attorney under the provisions of section 2412, General Code. See Annual Report of the Attorney General for the year 1914, Vol. II, page 1415.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3256.

VILLAGE SCHOOL DISTRICT—WHEN UNAUTHORIZED TO REPLENISH GENERAL FUND OF COUNTY WITH PROCEEDS OF BOND ISSUE FOR CONSTRUCTION OF PERMANENT IMPROVEMENT—NOTES NOT ISSUED IN ANTICIPATION OF BOND ISSUE ILLEGAL—EXCEPTION—WHEN BONDS ISSUABLE WITHOUT VOTE OF PEOPLE.

SYLLABUS:

1. *In the event moneys from the general fund have been expended for the purpose of acquiring or constructing a permanent improvement, the proceeds of a bond issue authorized for the purpose of acquiring or constructing such improvement may not be used to replenish the general fund which has been so depleted.*

2. *Except as provided in Section 2293-7, General Code, a school district may not issue notes for the acquisition or construction of a permanent improvement which notes are not issued in anticipation of the issuance of bonds.*

3. *A school district may issue bonds without a vote of the people within the limitations of Section 2293-15, General Code, to run for a period of one year, providing such district has a sufficiently large tax duplicate to retire such bonds in such period of time by a levy within the fifteen mill limitation.*

COLUMBUS, OHIO, May 26, 1931.

HON. JAMES M. AUNGST, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“We have a peculiar situation in one of our school districts and I would greatly appreciate your opinion in the matter. The facts are as follows:

The North Canton Village School District issued and sold \$95,000 of bonds for the building of a fireproof school building. The final cost of the building was \$120,000, or \$25,000 above the amount of bonds sold. At the present time the school board is short on funds. They would like to issue notes or bonds for the sum of \$10,000 without a vote of the people. There has been no net indebtedness incurred without a vote of the people on the property in the school district so that under Section 2293-15 they might have the right to raise the \$10,000. However, the money that they wish to raise by the sale of the note or bonds is to be put back into the general fund to replace moneys spent on the school building out of the general fund.

I am not certain whether this could be done at all. Could they proceed to issue a note for \$10,000, for the purpose of paying on a fireproof