

of such vehicle is merely incidental and secondary to his employment for other purposes. The driving of such motor vehicle on behalf of his employer merely as incidental to the performance of the duties of his regular employment does not make such employe a "chauffeur."

2. A salesman who solicits orders, as well as delivers the products which he himself sells, such as a bread or milk salesman, is not a "chauffeur" within the contemplation of Section 6290 of the General Code merely because incidental to such employment he operates a motor vehicle owned by his employer.

3. An employe, hired by a gas company to read gas meters and whose regular duties consist of reading such, is not a "chauffeur" within the contemplation of Section 6290 of the General Code merely because he operates a motor vehicle owned by his employer in the performance of such duties.

4. A person employed by a telephone or electric light company as repairman or "trouble shooter," merely because he operates a motor vehicle owned by his employer in the performance of such duties, is not a "chauffeur" within the contemplation of Section 6290 of the General Code.

5. A person whose primary and regular employment is that of a farm hand is not a "chauffeur" within the contemplation of Section 6290 of the General Code merely because occasionally he drives his employer's truck to and from market carrying farm products.

6. Operators of state, county or city owned motor vehicles employed primarily to drive motor vehicles are "chauffeurs" within the contemplation of Section 6290 of the General Code, even though they are classified on the payrolls as "laborers" or otherwise.

7. A regular school bus driver, or a substitute school bus driver is a "chauffeur" within the contemplation of Section 6290 of the General Code, regardless of the ownership of the school bus.

8. A taxicab operator, operating solely within the city limits, does not require a state chauffeur's license if the municipality by ordinance has imposed a local "driver's" license.

9. An operator of a motor vehicle used to deliver mail who is employed by the Post Office Department and uses a government owned motor truck, is not a "chauffeur" within the contemplation of Section 6290, General Code.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2313.

NOTES—COUNTY COMMISSIONERS UNAUTHORIZED TO INCREASE RATE OF INTEREST ON NOTES OR ISSUE RENEWAL NOTES WHEN—

SYLLABUS:

1. *Where a board of county commissioners has issued and sold notes in anticipation of a bond issue and fails to provide for the issuance of such bonds when the notes mature, such board has no authority to issue renewal notes or to extend the time of payment of the original notes by agreeing to pay a higher rate of interest than that specified in such notes. However, if such notes are not paid upon presentation at maturity, they continue to bear interest at the rate specified therein until they are paid.*

2. Where such county commissioners have paid a higher rate of interest than that specified in such notes, either in the extension of the time of payment thereof or in the issuance of renewal notes bearing a higher rate of interest, such increase may be recovered from the persons to whom it was paid, upon a finding by the Bureau of Inspection and Supervision of Public Offices.

3. Where bonds are authorized to pay notes issued in anticipation thereof and are advertised for sale as required by law and still remain unsold at private sale after a period of ten days, and such notes are then renewed, the renewal notes may bear a higher rate of interest than that borne by the notes renewed, not, however, exceeding six per cent per annum.

COLUMBUS, OHIO, February 24, 1934.

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

GENTLEMEN:—I acknowledge receipt of your communication in which you ask the following questions:

“Question 1: When a board of county commissioners sells notes at a specified rate of interest in anticipation of the issuance of bonds, and such notes are not paid when due, may such board of county commissioners allow and pay a higher rate of interest than that provided for in the notes for the period from the due date of the notes to the date of payment thereof?”

“Question 2: At the maturity date of such notes, may the board of county commissioners legally issue new notes to take up the old notes, and provide a greater rate of interest in the new notes?”

“Question 3: If you hold that such higher rate of interest may not legally be paid, may the additional amount so paid be recovered from the banks to which it was paid upon a finding made by this department?”

Sections 2293-24 and 2293-25, General Code, provide for the issuance of notes maturing not later than two years after date of issue in anticipation of bond issues. Section 2293-26 provides that when such notes are about to fall due, the taxing authority shall adopt a resolution or ordinance to issue the bonds in anticipation of which the notes were issued. If a board of county commissioners fails to perform the duty imposed upon it by law to provide for the issuance of bonds when the anticipatory notes are about to mature, it has no authority to issue renewal notes or to extend the time of payment of the old notes by agreeing to pay a higher rate of interest than that provided therein. If the notes are not paid upon presentation at maturity, they would, of course, continue to bear interest until they are paid, at the same rate as that before maturity. Opinions of the Attorney General for 1932, Vol. II, page 1073; 44 C. J. 1236.

Where a higher rate of interest has been paid, the payment of such additional amount, in my opinion, is an illegal expenditure of public funds. Public moneys constitute a public trust fund which can be disbursed only by clear authority of law, and all persons dealing with a public subdivision are bound to know the limitations of the powers of its officers, and I am of the view that such an amount so expended may be recovered from the persons to whom it was paid upon a finding of your department, as provided by sections 286, et seq., General Code. *State, ex rel., vs. Maharry*, 97 O. S. 273; *Hicksville vs. Blakeslee*, 103 O. S. 508.

The only authority to renew anticipatory notes is found in section 2293-29, General Code, which provides in part as follows:

"When bonds are authorized to pay notes issued in anticipation thereof and are so advertised and still remain unsold at private sale after a period of ten days, the taxing authority of the subdivision may with the consent of the holder or holders thereof, renew any or all of such notes with interest at not to exceed six per cent per annum, for not to exceed two years, or the holder or holders of such notes may exchange said notes with interest thereon for said bonds at not less than their par value and accrued interest. * * *"

This section authorizing the issuance of renewal notes, under the conditions set forth therein, does not limit the rate of interest which the renewal notes shall bear to that borne by the notes renewed, and, consequently, such renewal notes may bear a higher rate of interest than that borne by the original notes. This same conclusion was reached, as to refunding bonds, in Opinions of the Attorney General for 1932, Vol. I, page 139.

Answering your questions, therefore, I am of the opinion that:

1. Where a board of county commissioners has issued and sold notes in anticipation of a bond issue and fails to provide for the issuance of such bonds when the notes mature, such board has no authority to issue renewal notes or to extend the time of payment of the original notes by agreeing to pay a higher rate of interest than that specified in such notes. However, if such notes are not paid upon presentation at maturity, they continue to bear interest at the rate specified therein until they are paid.

2. Where such county commissioners have paid a higher rate of interest than that specified in such notes, either in the extension of the time of payment thereof or in the issuance of renewal notes bearing a higher rate of interest, such increase may be recovered from the persons to whom it was paid, upon a finding by the Bureau of Inspection and Supervision of Public Offices.

3. Where bonds are authorized to pay notes issued in anticipation thereof and are advertised for sale as required by law and still remain unsold at private sale after a period of ten days, and such notes are then renewed, the renewal notes may bear a higher rate of interest than that borne by the notes renewed, not, however, exceeding six per cent per annum.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2314.

CIGARETTE TAX—DISTRIBUTION OF PROCEEDS THEREOF TO
TAX COMMISSION—EQUALIZATION FUND—PUBLIC SCHOOL
FUND AND STATE WELFARE INSTITUTIONS.

COLUMBUS, OHIO, February 24, 1934.

HON. HARRY S. DAY, *Treasurer of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows: