

3247.

THE AMOUNT OF BONDS THAT MAY BE ISSUED BY A CHARTER CITY IS GOVERNED BY THE PROVISIONS OF SECTION 3941 OF THE GENERAL CODE.

**SYLLABUS:**

*The limitation of the net indebtedness that may be created or incurred by a municipal corporation to one per cent as provided by section 3941 G. C. applies to charter municipalities as well as all others, and by implication section 3948-1 G. C. is repealed by section 3941 G. C. in so far as it is inconsistent therewith.*

COLUMBUS, OHIO, April 5, 1926.

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

GENTLEMEN:—Acknowledgment is hereby made of your communication as follows:

“Section 3948-1 G. C. provides that charter municipalities may incur indebtedness, without a vote of the people, equal to two and one-half per cent of the total valuation of all property in such municipal corporation as listed and assessed for taxation (109 O. L. 341).

“Section 3941 G. C. provides that the net indebtedness created or incurred by a municipal corporation without a vote of the electors shall never exceed one per cent of the total valuation of all property in such municipal corporation, as listed and assessed for taxation (111 O. L., 335).

“Question: Does section 3948-1 or section 3941 G. C. control the amount of bonds that may be issued by a charter city?”

Section 3941 G. C. as enacted in 102 O. L., page 264, provides as follows:

“The net indebtedness created or incurred by the council under the authority granted it in section one (1) of this act, and in an act passed April 29th, 1902, to amend sections 2835, 2836 and 2837 and to repeal section 2837a of the Revised Statutes (O. L. v. 95 p. 318) together with its subsequent amendments, shall never exceed four (4) per cent of the total value of all property in such municipal corporation as listed and assessed for taxation.”

House Bill No. 33, the Griswold Act, as enacted in 109 O. L., page 336, repealed original section 3941 G. C. and enacted in place thereof section 3941 as follows:

“The net indebtedness created or incurred by a municipal corporation under the authority granted to it in section 3939 of the General Code and all other provisions of law or of the constitution authorizing the creation or incurring of indebtedness without a vote of the electors shall never exceed two and one-half per cent of the total value of all property in such municipal corporation as listed and assessed for taxation.”

The same legislative act enacted a new section, which is section 3948-1 G. C., and is in part as follows:

“Exclusive of bonds approved by the electors of the corporation at a general or special election held in the manner provided in sections 3943-3947,

inclusive, of the General Code of Ohio, the net indebtedness created or incurred by any charter municipality shall never exceed two and one-half per cent of the total value of all property in such municipal corporations as listed and assessed for taxation. \* \* \*\*

Section 3941 G. C. as enacted by this act was made to apply to all indebtedness created or incurred by a municipal corporation without any limitation as to origin or class and was made to apply to every indebtedness that should be created or incurred under section 3939 G. C. and all other provisions of law or of the constitution authorizing the creation or incurring of indebtedness without a vote of the electors.

This section was broad in its scope and certainly included all municipal corporations whether charter or not. However, the same legislature saw the necessity of an identical provision concerning the limitation on charter municipalities and therefore enacted at the same time section 3948-1 G. C. The only purpose of the enactment of the latter section must have been to save any question that might arise on account of the constitutional provision for the organization and home rule granted to charter municipalities.

So long as the same limitations were granted by both sections, no rule of construction was required. Your question now arises on account of the enactment of the 86th General Assembly, 111 O. L., page 338, section 3941 G. C., which repealed the former section and enacted a new section as follows:

“Sec. 3941: The net indebtedness created or incurred by a municipal corporation under the authority granted to it in section 3939 of the General Code and all other provisions of law or of the constitution authorizing the creation or incurring of indebtedness without a vote of the electors shall never exceed one per cent of the total value of all property in such municipal corporation as listed and assessed for taxation provided that so long as said net indebtedness is more than one per cent any municipality may in any calendar year create or incur indebtedness without a vote of the electors in an amount equal to a sum not exceeding nine-tenths of the amount by which the net indebtedness of said subdivision created or incurred without a vote of the people has been reduced during the said calendar year.”

No reference is made by this act to section 3948-1 G. C. so the two sections now stand in the Code and for different provisions as to limitations, one applicable to all municipalities in which the limitation is one per cent, the other applicable to charter municipalities in which the limitation is two and one-half per cent.

The last enactment must necessarily prevail, and if no constitutional or legislative act can be found to exclude section 3948-1 G. C. from the provisions of section 3941 G. C., then the provisions of section 3948-1 G. C. so far as they are inconsistent with the new enactment must be repealed by implication.

Article XVIII of the constitution provides for the creation of charter municipalities and for local self-government by such municipalities.

Section 3 of Article XVIII of the constitution provides:

“Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.”

Section 3939 G. C. and all other provisions of law or of the constitution for creating or incurring indebtedness apply as well to charter municipalities as to others, and the general law last enacted as to such limitations will necessarily apply to all.

Section 13 of Article XVIII of the constitution provides that laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes. This constitutional provision is made without exception. The limitation as found in section 3941 G. C. is general and must be construed to apply to all municipalities. Any prior legislative act providing different limitation to one class must give way to such general law applying to all classes.

I am therefore of the opinion that the limitation of one per cent as provided in section 3941 G. C. and enacted in 111 O. L., page 338, applies to all municipalities and that said section repeals section 3948-1 G. C. in so far as such section 3948-1 G. C. is inconsistent therewith.

Respectfully,

C. C. CRABBE,  
*Attorney General.*

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3248.

APPROVAL, BONDS OF BERGHOLZ VILLAGE SCHOOL DISTRICT, JEFFERSON COUNTY, \$10,000.00.

COLUMBUS, OHIO, April 3, 1926.

Re: Bonds of Bergholz Village School District, Jefferson County, \$10,000.00, payable in 10 semi-annual installments of \$1,000.00 each—5½%.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

GENTLEMEN:—I have examined the transcript of the proceedings of the board of education and other officers of Bergholz Village School District, Jefferson County, relative to the above bond issue, and find the same regular and in conformity with the provisions of the Constitution and General Code of Ohio.

I am of the opinion that bonds issued under the proceedings set forth in the transcript, which is an authenticated copy of the proceedings of said officials, will, upon delivery, constitute a valid and binding obligation of said school district.

Respectfully,

C. C. CRABBE,  
*Attorney General.*

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3249.

APPROVAL, CERTIFICATE OF TITLE TO THE PREMISES IN NILE TOWNSHIP, SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, April 6, 1926.

HON. CHARLES V. TRUAX, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—Examination of a certificate of title and other data submitted by your department for examination and approval, discloses the following:

The certificate of title as submitted pertains to the following premises: