

required outside of the limitations of section 5649-5b G. C.

The ballot as submitted to the electors at the election held November 3, 1925, also recited that the levy of taxes outside of existing limitations estimated by the county auditor to average .5082 mills for the maximum period of twenty years would be required to pay the principal and interest on such bonds.

The tax valuation of the school district as shown by the transcript amounts to \$1,158,900.00; the issue of bonds in the sum of \$80,000.00 was submitted to the Tax Commission of Ohio for approval, and such approval provided that the amount of the issue should not exceed the amount prescribed by section 7630-2 of the General Code and thereafter the bond resolution was passed providing for the issue of \$69,500.00.

The financial statement also recites that the school levy now amounts to 8.40 mills besides the 2.65 mills included in the state levy. It is therefore apparent that the levy for this issue of bonds must necessarily be outside of limitations, and it is also observed that the levy of .5082 mills calculated upon a tax duplicate of \$1,158,900.00 would only produce annually the sum of \$586.95.

The bond resolution provides that the bonds shall be in the amount of \$2,000.00 each and shall mature on March 15th and September 15th of each of the years 1927 to 1945, inclusive.

These maturities would, therefore, amount to \$4,000.00 each year, together with the interest computed on the amount of the bonds. It is, therefore, apparent that the sinking fund requirements provided would be wholly inadequate to meet said maturities.

You are, therefore, advised that these bonds cannot be paid with the tax levy as provided by the proceedings herein shown, and for that reason you are advised not to accept said bonds.

Respectfully,

C. C. CRABBE,

*Attorney General.*

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3567.

DISAPPROVAL, BONDS OF VILLAGE OF BRYAN, WILLIAMS COUNTY,  
\$31,000.00.

COLUMBUS, OHIO, August 3, 1926.

Re: Bonds of village of Bryan, Williams County, \$31,000.00.

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

GENTLEMEN:—Section 1 of the bond ordinance submitted in the transcript for the above bond issue recites:

“That certain indebtedness heretofore incurred by the village of Bryan, Ohio, to wit: Street improvement bonds Nos. 9, 10, 11 and 12, due March 1, 1926, dated July 1, 1912, and in the denomination of \$500.00 each; ornamental light bonds Nos. 11 to 15, inclusive, due March 1, 1926, dated December 15, 1912, and in the denomination of \$500.00 each; street improvement bonds Nos. 13 to 16, inclusive, due September 1, 1926, dated July 1, 1912, and in the denomination of \$500.00 each; ornamental light bonds Nos. 16 to 20, inclu-

sive, due September 1, 1926, dated December 15, 1912, and in the denomination of \$500.00 each; fire truck bonds No. 17 to 20, inclusive, due March 1, 1926, dated March 1, 1921, and in the denomination of \$500.00 each; refunding bonds Nos. 31 to 60, inclusive, due September 1, 1926, dated November 1, 1920, and in the denomination of \$500.00 each, refunding bonds Nos. 5 and 6, due March 1, 1926, dated September 1, 1922, and in the denomination of \$1,000.00 each; the total of said bonds amounting to \$28,000.00; and a certain unfunded indebtedness of the village of Bryan, Ohio, to the trustees of the Fountain Grove cemetery in the sum of \$3,000.00, is hereby determined and declared to be an existing, valid and binding obligation of said village."

Section 3916 of the General Code provides :

"For the purpose of extending the time of payment of any indebtedness created or incurred before the first day of January, 1924, which from its limits of taxation the corporation is unable to pay at maturity, the council thereof may issue bonds of the corporation or borrow money so as to change but not to increase the indebtedness, in such amounts, for such length of time and at such rate of interest as the council deems proper, not to exceed six per cent per annum, payable annually or semi-annually."

It is therefore observed that the "unfunded indebtedness of the Fountain Grove Cemetery" must have been incurred prior to January 1, 1924, and then to have been legally incurred without a certificate that funds were available to meet the contract, which would not be very plausible.

Section 11 of Article XII of the Ohio Constitution provides :

"No bonded indebtedness of the state, or any political subdivisions thereof, shall be incurred or renewed, unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity."

Following this amandatory provision of the Constitution it has not been deemed practicable or legal to permit the issuance of refunding bonds to pay bonds issued since January 1, 1913, (the date when the constitutional provision went into effect), for the reason that if said bonds were legally issued, and the officers of the taxing district did not misappropriate the sinking funds, then such funds arising from the constitutional levy should have been available to meet the bonds at maturity.

This would not preclude the issue prior to January 1, 1913, and section 3916 G. C. provides for refunding certain indebtedness incurred prior to January 1, 1924, but section 5649-9f G. C. (111 O. L., 337) provides in part as follows :

"Whenever the bond-issuing authority of any political subdivision desires to refund any outstanding bonds of the subdivision in question which are about to mature other than serial bonds or bonds which are subject to call or redemption and which the political subdivision proposes to call or redeem prior to maturity, they shall submit to the tax commission of Ohio the question whether said bonds shall be refunded and in what manner."

It is, therefore, observed that all serial bonds are eliminated from the approval by the tax commission. The only kind of indebtedness that is now left for refunding

is that represented by term bonds, and this only upon approval by the tax commission, which approval is not shown in the transcript submitted in this issue.

Furthermore, it would appear from section 1 of the bond ordinance that the bonds in this case sought to be refunded are serial bonds. In view of the statutory and constitutional provision as above recited I am compelled to advise that the foregoing bonds are not legal and valid obligations of the village of Bryan, and you are advised not to accept the same.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*

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3568.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN JEFFERSON, PORTAGE, PREBLE, AND DEFIANCE COUNTIES.

COLUMBUS, OHIO, August 4, 1926.

*Department of Highways and Public Works, Division of Highways, Columbus, Ohio.*

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3569.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE ALBERT M. HIGLEY COMPANY, CLEVELAND, OHIO, COVERING GENERAL CONTRACT FOR SUN PORCHES, CLEVELAND STATE HOSPITAL, CLEVELAND, OHIO, AT EXPENDITURE OF \$15,405.00.

COLUMBUS, OHIO, August 6, 1926.

HON. G. F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Highways and Public Works, for and on behalf of the Department of Public Welfare, and The Albert M. Higley Company, of Cleveland, Ohio. This contract covers the general contract for sun porches, Cleveland State Hospital, Cleveland, Ohio, and calls for an expenditure of \$15,405.00.

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. There has further been submitted a contract bond upon which the United States Fidelity and Guaranty Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.