

3369.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS,  
CLARK, TUSCARAWAS AND TRUMBULL COUNTIES.

COLUMBUS, OHIO, July 21, 1922.

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

3370.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS,  
HOCKING COUNTY.

COLUMBUS, OHIO, July 21, 1922.

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

3371.

GRISWOLD ACT—OPINIONS NOS. 2923, 3031 AND 3302 MODIFIED IN  
VIEW OF DECISION OF SUPREME COURT, STATE EX REL. JOHN-  
SON VS. CHANDLER, 105 O. S.—BONDS TO WHICH ACT NOT AP-  
PLICABLE—HOW LONG SINKING FUND TRUSTEES CONTINUE TO  
FUNCTION—WHERE FUNCTIONS ARE EXERCISED FOR BONDS  
ISSUED AFTER JANUARY 1, 1922.

*Opinions Nos. 2923, 3031 and 3302 modified in view of the decision of the Su-  
preme Court in State ex rel. Johnson vs. Chandler, decided July 5, 1922.*

*The Griswold act does not apply to bonds, the legislation or administrative action  
authorizing the issuance of which was complete and effective prior to January 1, 1922.*

*Bonds of the character above described are to be regarded as sinking fund bonds  
within the meaning of section 20 of the Griswold act, section 2295-14 of the General  
Code, and other similar provisions of that act; so that so long as any such bonds  
which have been issued remain outstanding, the local sinking fund authorities pro-  
vided for by the law as it existed prior to the enactment of the Griswold act, are to  
continue to exercise their respective functions, though such bonds were issued after  
January 1, 1922.*

COLUMBUS, OHIO, July 21, 1922.

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

GENTLEMEN:—The recent decision of the Supreme Court in the case of State of Ohio ex rel. Johnson vs. Chandler, decided July 5, 1922, makes it necessary for

this department to modify Opinions Nos. 2923 and 3031, wherein it was held that the provisions of section 14 of the so-called Griswold act, section 2295-12 of the General Code, must be complied with in all cases in which the issuance of bonds has been fully authorized by complete legislation prior to January 1, 1922, but the bonds so authorized have not been in whole or in part disposed of nor binding contracts made for their disposition prior to that date.

The same decision makes it necessary to modify Opinion No. 3302, in which it was held that the term "bonds to be retired by means of a sinking fund," as used in section 20 of the Griswold act, section 2295-14 of the General Code, should be in practice taken to mean all bonds issued prior to January 1, 1922.

It is true that the case mentioned does not deal specifically with the problems involved in any of these opinions. The exact question considered in that case was as to the application of section 6 of the Griswold act, section 2295-9 of the General Code, to bonds, the legislation for which was complete prior to January 1, 1922, but which were not sold until after that date, in whole or in part. The court held in effect that this section which regulates the length of maturities has no application to the particular issue thus described.

It is true that by a refinement of reasoning, a distinction can be drawn between the case cited and the questions considered by this department in the opinions referred to, but it is not believed that it was the intention of the General Assembly that any one issue of bonds should be subject to some of the provisions of the Griswold act and not subject to others. On the contrary, it is believed that a fair and workable interpretation of the whole act would require us to conceive of two classes of bonds, those to which the act as a whole applies, and those to which it does not apply; and more particularly those, the proceedings with respect to which, both as regards issuance and as regards retirement, are to be had under the scheme of things existing prior to the effective date of the Griswold act, and those with respect to which similar proceedings are to be fully regulated by the Griswold act itself.

Proceeding on this broad principle then, it is believed that the decision in the case cited makes it necessary for this department to recede from the position which it has heretofore taken with respect to the application of section 2295-12 of the General Code, and to hold in the particular cases arising in the city of Elyria which evoked the first two opinions above mentioned, that in both of these cases the bonds, the issuance of which had been fully provided for by legislation completely effective prior to January 1, 1922, may now be sold and delivered, though the maturities do not conform to the provisions of section 2295-12 of the General Code.

This conclusion is reached with a greater confidence because though section 2295-12 of the General Code was not directly before the court in the case cited, some comment is found in the opinion of the court relative to this section and its character is consistent with the conclusions now reached.

The conclusion that the third of the opinions above referred to must also be modified is not quite so obvious, as the court in its opinion in the case cited did not consider this question either directly or indirectly. However, as brought out in the said opinion of this department now under discussion, the test for determining whether a bond is to be regarded as a serial bond within the meaning of various expressions of this character found in the Griswold act, or on the other hand, as a bond to be retired by means of a "sinking fund" within the meaning of section 2295-14 of the General Code and other similar expressions found elsewhere in the Griswold act, is furnished by determining whether sections 14 and 15 of the Griswold act, being sections 2295-12 and 5649-1b of the General Code, were complied with in the issuance of the bonds in question. In other words, if the bonds are

issued in strict conformity with section 2295-12 of the General Code, and if the necessary tax levies to provide for the payment of interest and the retirement of the bonds, are those which the county auditor, acting under section 5649-1b of the General Code, is to compute, then the bonds are serial, and are not to be retired by means of a "sinking fund;" but if section 2295-12 was not complied with in their issuance, and if the debt service levies are to be made from year to year, not by the county auditor as a ministerial officer, but by the ordinary tax levying authority for the issuing subdivision, or by some board of trustees or commissioners of the sinking fund, then regardless of actual conformity in the maturities of the bonds to the present requirements of section 2295-12 of the General Code, the bonds are not "serial" bonds in the sense in which the term is used in the act in question, but must be regarded as bonds to be retired by means of a sinking fund within the meaning of section 2295-14 of the General Code.

These things being true, a holding that a particular issue of bonds actually sold and delivered after January 1, 1922, is not subject to section 2295-12 of the General Code, so that it is not necessary to re-form legislation in order to dispose of the securities, leads to the practical result that section 5649-1b will not have been complied with in the issuance of such bonds—a result irresistible because compliance with this section is a part of the action of the bond issuing authority in the sense that it is one of the requirements of the ordinance, or other similar measure authorizing the issuance of bonds—and forces the conclusion that such bonds—for example, the Elyria bonds dealt with in the first two opinions of this department mentioned herein—are to be regarded as "sinking fund bonds;" so that though they may be issued in the sense of being sold and delivered on a date subsequent to January 1, 1922, when once issued the local sinking fund commission will continue in existence as the debt retirement administration of the issuing subdivision until these bonds are retired.

Putting it in the form of a general principle, the conclusion reached in the third of the opinions above referred to is modified to this extent: The phrase "bonds to be retired by means of a sinking fund" found in section 2295-14 of the General Code; that "heretofore issued" found in section 2976-26, 4513 and 5649-1b of the General Code as amended in the Griswold act, both refer to bonds authorized by legislation or other proceedings of the bond issuing authority fully effective prior to January 1, 1922; and the phrase "serial bonds" employed in sections 7614 and 5649-1 of the General Code is to be taken as referring to bonds, the legislation or other similar proceedings for the authorization of which was not completed until after January 1, 1922. The other conclusions in the said opinion so far as dependent upon this modification, are to be regarded as similarly modified.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*