

of such order a portion of such distribution is made to the county treasurer in satisfaction of a finding of the court as to payment of taxes, is not "a person, firm or corporation charged with or legally authorized to pay real property taxes and assessments" within the meaning of Section 1 of House Bill No. 663, of the 90th General Assembly, as amended.

3. When, pursuant to the provisions of Section 1, of House Bill No. 663 of the 90th General Assembly, as amended, a taxpayer tenders his money to the county treasurer in payment of delinquent 1932 real estate taxes and assessments, but without penalty, prior to October 20, 1933, but after the August settlement between the county auditor and the county treasurer, the county treasurer has no authority to receive such payment except on a warrant, draft or pay-in-order of the county auditor. However, if the 1933 real estate tax duplicate has been delivered to the treasurer, such duplicate is the authority for the receipt of such items of tax, and the receipt should be noted therein.

4. When the county treasurer receives a payment of taxes after the August tax settlement and before the delivery to him of the duplicate for the current year, by authority of a warrant, draft or pay-in-order of the county auditor, such payment should be credited by the treasurer as in payment of the warrant and not on a duplicate which is not legally in the possession of the treasurer.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1738.

LIQUIDATED CLAIM—UNDER HOUSE BILL NO. 94 CLAIM FOR MONEY
ADVANCED TO MUNICIPAL CORPORATION IN 1919 FOR PAY-
MENT OF CULVERT CONSTRUCTED JOINTLY BY TWO MUNICI-
PALITIES, NOT LIQUIDATED CLAIM FOR PAYMENT OF TAXES.

SYLLABUS:

A claim for money advanced to a municipal corporation in the year 1919 for the purpose of enabling such corporation to pay its share of the cost of a culvert or bridge constructed jointly by two municipalities is not a "liquidated claim" within the meaning of the term as used in House Bill No. 94 of the 90th General Assembly, in the absence of a showing of compliance with the then provisions of the General Code with respect to the borrowing of money and the contracting of debts.

COLUMBUS, OHIO, October 16, 1933.

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

GENTLEMEN:—This is to acknowledge receipt of your request for my opinion predicated upon an inquiry which you enclose from the Director of Law of the city of Cleveland, which reads in part as follows:

"On August 5, 1919, West Park, then a separate municipality in Cuyahoga County, Ohio, passed an ordinance authorizing an agreement with The Crawford Land Company, whereby the latter was to pay \$15,000

to West Park, and West Park, by said ordinance, agreed to repay the same with interest at the rate of five per cent; said payment or deposit by The Crawford Land Company being made for the purpose of enabling West Park to pay its portion or its cost of building a culvert or bridge in W. 117th Street. W. 117th Street was the boundary line between West Park and the City of Cleveland, and the bridge was built by the City of Cleveland under a contract with West Park, whereby it was to pay to the City of Cleveland \$15,000. West Park took the money so furnished by The Crawford Land Company, paid it to the City of Cleveland, and the bridge was built.

The cost of the bridge was a little under the estimated cost, and \$1,756.27 was refunded by the City of Cleveland to West Park, and of that amount \$1,733.30 was placed by West Park in its sinking fund. What was done with the difference between \$1,756.27 and \$1,733.30 does not appear, but no part of it reached The Crawford Land Company.

Since the above transactions West Park was annexed to the City of Cleveland and The Crawford Land Company has never received the \$15,000 nor any part thereof.

Is this such an obligation that may be lawfully disposed of in accordance with substitute House Bill No. 94? If it can be so handled The Crawford Land Company has expressed its willingness to accept payment in that manner."

House Bill No. 94, referred to in the foregoing letter, was enacted by the 90th General Assembly. The act authorizes taxpayers to use "liquidated claims" for the payment of taxes under certain circumstances as therein set forth. The term "liquidated claims" as used in the act is defined in section 2, paragraph b thereof, as follows:

"Any sum of money that was due and payable January first, 1933, upon a contractual obligation duly executed between the subdivision and the taxpayer prior to such date."

Before considering any other phase of your question, such, for instance, as whether or not the annexation of the corporation of West Park to the city of Cleveland would preclude the taxpayer from invoking the provisions of House Bill No. 94 in the payment of taxes on property now within the city of Cleveland by using a liquidated claim against the corporation of West Park, it becomes necessary to consider whether or not the loaning of money to the corporation of West Park as set forth in the foregoing communication created a "contractual obligation duly executed between the subdivision and the taxpayer" prior to the annexation, which annexation I assume was prior to January 1, 1933. If the answer to this question is in the negative, it is clear that the provisions of House Bill No. 94 may not be invoked and your question must be answered in the negative.

Section 6, Article XIII of the Constitution provides that the General Assembly shall restrict municipalities in their power of borrowing money and contracting debts. A municipal corporation cannot, and could not in the year 1919, incur indebtedness except pursuant to statutory authority. Section 17, General Code, enacted in its present form in the year 1857, provides as follows:

"An officer or agent of the state of any county, township or municipal corporation, who is charged or intrusted with the construction, improvement or keeping in repair of a building or work of any kind, or with the management or providing for a public institution, shall make no contract binding or purporting to bind the state, or such county, township or municipal corporation, to pay any sum of money not previously appropriated for the purpose for which such contract is made, and remaining unexpended and applicable thereto, unless such officer or agent has been duly authorized to make such contract. If such officer or agent makes or participates in making a contract without such appropriation or authority, he shall be personally liable thereon, and the state, county, township or municipal corporation in whose name or behalf the contract was made, shall not be liable thereon."

Authority for borrowing money and contracting indebtedness at the time council of the corporation of West Park passed the ordinance agreeing to repay the land company the \$15,000 advanced with interest at 5% was contained in chapters 5 and 6, Title XII, Division III of the General Code. Chapter 5 relates to the levy of special assessments for certain purposes therein set forth and the borrowing of money in anticipation of the collection of such special assessments. There is nothing in your communication or in the letter attached thereto to indicate that the cost of the improvement in question was to be paid for by the levy and collection of special assessments. If such were the case, it would be necessary in determining the validity of any bonds or notes issued in anticipation thereof, to check the proceedings with respect thereto. An examination of the provisions of the General Code in force and effect in the year 1919 discloses no authority whereby two municipalities may cooperate in the construction of a bridge or aqueduct on a street forming the boundary line between two such municipalities. Such authority is now contained in Section 3615-1, General Code, 111 O. L. 508, effective July 29, 1925.

The next chapter comprised, in the year 1919, Sections 3912 to 3954-1, inclusive, General Code. Section 3912 provided as follows:

"Municipal corporations shall have special power to borrow money and to maintain and protect a sinking fund. The power to borrow money shall be exercised in the manner provided in this chapter."

From the communication of the Director of Law of the city of Cleveland, there is no indication of compliance with any of the detailed procedural steps set forth in Sections 3912, et seq., which must have been complied with before a valid indebtedness of the municipality could have been incurred.

In view of the foregoing, on the facts submitted, it is my opinion that the ordinance of council of the corporation of West Park passed in the year 1919 agreeing to repay the land company money advanced to pay the corporation's share of the culvert or bridge was invalid and the land company does not, by virtue thereof, have a liquidated claim within the meaning of the term as used in House Bill No. 94 of the 90th General Assembly, which may be used in the payment of taxes.

Respectfully,

JOHN W. BRICKER,
Attorney General.