

and it appears to me that it is clearly disposed of by the sections quoted in whole or in part. The only question involved being as to the extent to which a refunder may be made in case of the discontinuance of business by a licensee, we are not concerned particularly about the initial payment except that under the provisions of section 5896 the full amount of the assessment must be paid or charged upon the duplicate if a refunder is to be had at all. It is further provided in said section that such order of refunder shall not be less than one-fifth of the whole amount to be assessed in one year. In case of the discontinuance of business by a person who has paid the full assessment under the law, or is charged therewith, it is provided that he shall be entitled to a refund for a proportionate amount of the assessment, except that no such refunding order shall be for less than one-fifth of the whole amount to be assessed in any one year. The tax levied is \$50 00 per year and if a licensee has operated for a period longer than four-fifths of the year and then discontinues business, he has gone beyond the point of being entitled to any refunder, and it is the opinion of this office that no refunder can be granted for a period of less than one-fifth of the year under any circumstances.

The state of facts set forth in the first paragraph of your letter could not arise under the law as it exists as the only practical result would be as above stated and the licensee would be obliged to pay under all circumstances for the time he operated as such licensee, and if any portion of the time short of one-fifth of the year was abandoned by him under his license he would be entitled to no relief in the shape of a refunder.

Respectfully,

JOHN G PRICE,

Attorney-General.

1326

DISAPPROVAL, BONDS OF MOULTON TOWNSHIP, AUGLAIZE COUNTY,
OHIO, IN AMOUNT OF \$12,800 FOR ROAD IMPROVEMENTS

COLUMBUS, OHIO, June 9, 1920.

Industrial Commission of Ohio, Columbus, Ohio

RE: Bonds of Moulton township, Auglaize county, in the amount of \$12,800, to pay the cost and expense of the Cozad road improvement.

GENTLEMEN—I have examined the transcript of the proceedings of the township trustees relative to the above bond issue and find from the information contained in said transcript, that the proceedings for the improvement of said road were commenced by the filing of a petition of property owners April 7, 1919. The bond resolution purports to authorize the issuance of bonds bearing interest at the rate of six per cent per annum. Prior to the amendment of section 3298-15e of the General Code by the enactment of house bill 699, which was passed February 4, 1920, and approved by the governor February 16, 1920, the township trustees were not authorized to issue road improvement bonds under authority of said section bearing interest in excess of five per cent.

Following the rule of construction laid down by the supreme court of Ohio in the case of state ex rel Andrews vs Zangerle, auditor of Cuyahoga county, No 16578, decided May 11, 1920, I am of the opinion that the township trustees were without authority to issue bonds for road improvements, the proceedings for which were commenced prior to February 16, 1920, bearing a rate of interest in excess of five per cent per annum.

I am, therefore, of the opinion that the bonds in question are not valid and binding obligations of Moulton township and advise the industrial commission not to purchase the same.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1327.

MUNICIPAL CORPORATION—CITY ENGINEER EMPLOYED ON PER DIEM BASIS—WHEN SURVEYS FOR PROPOSED WATERWORKS EXTENSION CAN BE PAID FROM APPROPRIATION FOR CITY ENGINEER.

A city having employed its engineer on a per diem basis, and the city council in the semi annual appropriation ordinance having made sufficient appropriation in the public service fund to cover the compensation of the engineer on the basis that he be employed for every day in the six months' period, the service director of such city may draw upon such appropriation to pay the expense of surveys for proposed waterworks extension, to the extent that appropriations from waterworks revenues are insufficient to pay such expense.

COLUMBUS, OHIO, June 9, 1920.

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

GENTLEMEN—You have recently submitted for opinion the following:

“Statement of Facts.

The city of Bellaire employs an engineer not on a fixed salary but on a per diem basis. The state fire marshal of Ohio has issued orders for the city to supply water to outlying districts of the municipality. The city is desirous of having preliminary survey of the engineer to ascertain the probable cost or expense of the water lines to such outlying districts and to make plans and surveys for such purposes. The above mentioned per diem arrangement as to the engineer's salary is provided for in the semi-annual appropriation ordinance by an item sufficient to cover the salary of the engineer on basis that he be employed every day during the six months' period. The service director is desirous of carrying out the wishes of council as to the survey mentioned. The semi-annual appropriation of waterworks funds contains an item for 'Administration' but the amount appropriated under said item is not sufficient to withstand the expense of the surveys above mentioned.

“*Question:* May such compensation of the engineer for the time spent on the survey described be legally charged to the general appropriation for engineering in the public service fund or should it be charged by the director of public service to the waterworks fund?”

In connection with your statement that

“the service director is desirous of carrying out the wishes of council as to the survey mentioned”