2279.

DISAPPROVAL, BONDS OF CITY OF NELSONVILLE, ATHENS COUNTY, $5,754.40.

COLUMBUS, OHIO, March 11, 1925.

Re: Bonds of City of Nelsonville, Athens County, $5,754.40.

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

GENTLEMEN:—An examination of the transcript presented for the above bond issue discloses that the council of the city passed a bond ordinance under the provisions of section 3815, General Code, for the city's portion, and the property owners' portion to be paid for the improvement in an aggregate sum of $5,215.50.

Following the passage of this ordinance in the foregoing amount, the officials of the city then advertised and sold bonds in the sum of $5,754.40. Through inquiry concerning the foregoing discrepancy in the amount of the bonds, I am advised that the actual cost of the improvement is represented by the greater amount, and council of the city has passed an amendatory ordinance to correct the incorrect amount of the first bond ordinance. This has been done subsequent to the advertisement and sale of the bonds.

As the amount of the bonds as advertised for sale has been at variance with the bond ordinance providing for the issue, I feel that this creates a condition that cannot be remedied by subsequent legislation after the advertisement and sale of the bonds.

It is my opinion that the bonds must be sold in the amount as provided in the bond ordinance, at the time of the advertisement, in accordance with the requirement of section 3924 of the General Code, and proceedings for an increase in the amount of the issue must necessarily be had prior to the advertisement of sale.

It is therefore my conclusion that this discrepancy in the amounts of bonds as provided in the bond ordinance, and the amounts of bonds sold, cannot now be corrected by subsequent legislation, and it will be necessary for these bonds to be readvertised in accordance with the ordinance providing for the proper amount.

You are therefore advised not to purchase these bonds as advertised and sold under the provisions as shown by the transcript.

Respectfully,
C. C. CRABBE,
Attorney-General.

2280.

INDEFINITE POSTPONEMENT OF A BILL CERTIFIED TO THE LEGISLATURE BY SECRETARY OF STATE CONSTITUTES A REJECTION OF SUCH BILL—NINETY DAY PERIOD BEGINS TO RUN FROM DATE OF SUCH ACTION.

SYLLABUS:

Where a bill is certified to the legislature by the secretary of state in pursuance to an initiative petition, and the House takes such proceedings as to indefinitely postpone the bill, such proceedings constitute a rejection of such bill, in view of section 1b of article II of the Constitution, and the ninety day period begins to run from the date of such action.

COLUMBUS, OHIO, March 12, 1925.

HON. THAD H. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—In your recent communication you request my opinion upon a state

of facts which, gathered from your communication and the enclosure, I understand to be as follows: .

House Bill No. 10 was certified to the General Assembly by your department in compliance with the constitutional provision relating to the initiation of laws, and was introduced in the Lower House on January 7, 1925. On February 25th the committee to whom the bill was referred, indefinitely postponed the measure. On February 26th, the House accepted the report of the committee, and on March 3rd, reconsideration was refused by the House.

The question is whether the proceedings above taken constitute action on the bill which would require supplemental petitions to be circulated within ninety days from the date of such actions, or whether the proceedings taken, being an indefinite postponement, should be regarded as no action by the House, which would give four months from the date of the introduction of the bill before the ninety day period would begin to run for the filing of a petition in order to have the bill submitted to the electors.

The pertinent provisions of the Constitution, in so far as your inquiry is concerned, are believed to be as follows:

> "Art. II, Sec. 1. The legislative power of the state shall be vested in a general assembly * * * but the people reserve to themselves the power to propose to the general assembly laws * * * and to adopt or reject the same at the polls. * * * They also reserve the power to adopt or reject any law, * * * passed by the general assembly, except * * *
>
> "Sec. 1a. The first aforestated power reserved by the people is designated the initiative * * *.
>
> "Sec. 1b. When at any time, not less than ten days prior to the commencement of any session of the general assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors and verified as herein provided, proposing a law, the full text of which shall have been set forth in such petition, the secretary of state shall transmit the same to the general assembly as soon as it convenes. If said proposed law shall be passed by the general assembly, either as petitioned for or in an amended form, it shall be subject to the referendum. *If it shall not be passed,* or if it shall be passed in an amended form, or if no action shall be taken thereon within four months from the time it is received by the general assembly, it shall be submitted by the secretary of state to the electors for their approval or rejection at the next regular or general election, if such submission shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which supplementary petition must be signed and filed with the secretary of state within ninety days after the proposed law shall have *been rejected by the general assembly* or after the expiration of such term of four months, if no action has been taken thereon, or after the law as passed by the general assembly shall have been filed by the governor in the office of the secretary of state. The proposed law shall be submitted in the form demanded by such supplementary petition, which form shall be either as first petitioned for or with any amendment or amendments which may have been incorporated therein by either branch or by both branches of the general assembly."

It is believed that a careful reading of Section 1b will disclose that there are three separate and distinct situations in which a supplementary petition may be filed.

(1) When a proposed law shall have been rejected by the General Assembly, in which case it shall be filed within ninety days after such rejection;

(2) In the event no action has been taken upon the proposed law, the petition is required to be filed within ninety days after the expiration of four months from the time the proposed law is certified to the legislature by the Secretary of State;

(3) If the law is passed by the General Assembly the petition must be filed within ninety days after the filing of said bill with the Secretary of State.

The difficulty before us is to determine the legal effect of the proceedings taken, in view of the constitutional provision. If the proceedings of the legislature upon this bill amounts to a rejection, this in itself answers the question. On the other hand, if it amounts to "no action taken," this would make the question easy to solve.

Upon first consideration, it was my opinion, in view of the constitutional provision, that the proceedings taken did not amount to action. However, this position could not logically obtain in view of the case of *Pfeifer et al. vs. Graves, Secretary of State*, 88 O. S., 473. In that case a bill which was introduced and amended in committee and the amendment adopted by the legislature, but the bill never having been passed, was construed as some form of action. In that case the petitions were upheld, and according to the statement of facts, such petitions were circulated within the ninety day period following the final adjournment of the legislature.

In view of this situation it would appear that the court in its decision indirectly approved of the sufficiency of the petition, which would indicate that the action taken therein amounted to a final rejection of the bill upon the final adjournment of the legislature.

However, it is believed that the case before us may be contradistinguished from the Pfeifer case, supra. In that case the bill having been amended by the legislature, the same was still pending before the legislature, and of course it could not be determined what the final action, if any, were to be taken thereon until the final adjournment. It must be remembered that the case above referred to clearly pointed out that the language of Section 1b is to be fairly and reasonably interpreted so as to carry out the purpose of the people who adopted the dual form of direct and indirect legislation.

In other words, it would seem that the courts have intimated that this constitutional provision is to be liberally construed, to the end that the will of the people may be expressed. If it be held that the action taken in the case under consideration cannot constitute a rejection until final adjournment of the legislature, then it would appear that the legislature could defeat the referendum upon the measure by recessing until the end of the biennium. This construction would not be within the spirit of the constitution.

In this connection, it is believed helpful to refer to Hughes' Parliamentary Guide, 1924 Edition, page 166, wherein it is stated that the practice of American legislative bodies is that the vote by which a question is indefinitely postponed, may not be reconsidered.

Reference is had to Rule 103 adopted by the House in the present session of the legislature, which provides:

> "If a motion to indefinitely postpone a bill or resolution be carried, such bill or resolution shall be declared lost."

It is believed that the rule above quoted is sufficient to dispose of the inquiry, in view of the court's decision in reference to a construction which will permit the will of the voters to be expressed. The indefinite postponement of this bill, for practical purposes, amounts to a rejection of the bill.

Of course, it could be argued that the rule could be suspended by a two-thirds vote, and further action taken. However, the argument which counteracts this position is that when a bill had been definitely rejected by the legislature, it could reconsider its action.

In view of the rule and the action taken, it appears to be clear that it was the intent of the House of Representatives to reject the bill, and it is believed that such action, under the circumstances, should be construed as a rejection, in view of the constitutional provision referred to.

Respectfully,
C. C. CRABBE,
Attorney-General.

2281.

APPROVAL, FINAL RESOLUTION, ROAD IMPROVEMENT IN BELMONT COUNTY.

COLUMBUS, OHIO, March 13, 1925.

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

2282.

DISAPPROVAL, BONDS OF VILLAGE OF SHADYSIDE, BELMONT COUNTY. $3,180.00.

COLUMBUS, OHIO, March 12, 1925.

Re: Bonds of Village of Shadyside, Belmont County, $3,180.00.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—I have examined the transcript submitted for the foregoing issue of bonds and find that I cannot approve the same for the following reasons:

1. The transcript contains proof of publication of the notice of bond sale and in one instance recites that publication was made for four weeks, the last publication thereof being on January 30, 1925, and giving notice of the sale of bonds on February 2, 1925. The other publication recites that notice was published for four weeks, commencing on January 9, 1925, and giving notice of the sale on February 2, 1925. Section 3924 G. C. provides in part that such publication shall be given for a period of four weeks.

In the case of State of Ohio vs. Kuhner and King, 107 O. S., page 406, the court held as follows:

> "The requirement of section 1296 General Code, that 'the state highway commissioner shall advertise for bids for two consecutive weeks' is mandatory, and the contract entered on June 14 for advertisement in two weekly newspapers of the county on June 6th and June 13th is invalid."

2. Transcript shows that council voted on the motion for the first reading of the bond ordinance, and also on the motion for final passage of the ordinance, but does not show that there was any vote of the members of council on the suspension of the rules for the second and third reading.

Transcript is incomplete as to compliance with the statutes in other respects, so