

is concerned, the ballot for municipal judge must be a non-partisan ballot, and the ballot for clerk of court will appear under the proper designation if there is a nomination by a political party.

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

2620.

MUNICIPALITIES—AUTHORITY TO ISSUE BONDS FOR PURPOSES SPECIFIED IN SECTION 3939 G. C.—APPROVAL OF FIFTY-FIVE PER CENT OF ELECTORS VOTING UPON THE PROPOSITION REQUIRED.

SYLLABUS:

1. *Under the provisions of house bill No. 175, municipalities shall submit the question of a bond issue for the purposes specified in section 3939, General Code, when the amount exceeds the limitations of section 3941, General Code, as amended, at the November election only, except in cases where it is necessary to rebuild or repair public property wholly or partially destroyed by fire or other casualty.*

2. *The question of issuing bonds after July 21, 1925, by municipalities, when an election is required, shall be approved by fifty-five per cent of the electors of the municipality voting upon the proposition before the taxing authorities of such municipality shall have authority to proceed with the issuance of such bonds.*

COLUMBUS, OHIO, June 30, 1925.

HON. MARION B. OWEN, *Prosecuting Attorney, Urbana, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent communication as follows:

“The city of Urbana, Ohio, is considering the advisability of submitting to a vote of the people the question of a bond issue for a purpose within the scope of the Longworth bond act. House bill No. 175 provides in substance that bond issues of a political subdivision of the state of Ohio may hereafter be submitted only at a regular November election and that the issue of bonds shall hereafter be authorized by a vote of fifty-five per cent of the electors. As I understand it, this law becomes effective during next July, and by its terms, expressly amends section 3941 of the General Code.

“Section 3942 of the General Code of Ohio apparently grants to council the authority to issue bonds ‘upon obtaining the approval of the electors of a corporation at a general or special election.’

“The specific questions therefore which I desire answered are as follows:

“FIRST: Can the council of the city of Urbana, Ohio, submit to the people the question of a bond issue only at the regular November election, or can the question be submitted at the August primary, or at a special election called for the purpose?

“SECOND: What majority of the electorate is necessary to authorize a municipal bond issue when the question of the issuance of bonds is submitted to the people?”

The questions submitted by you require a construction and application of the provisions of house bill No. 175 with reference to the various statutes involved, and particularly sections 3940, 3941, 3942 and 3947, General Code.

House bill No. 175 so far as pertinent to your questions provides as follows:

"The bond-issuing authority of any political subdivision may elect to submit any bond issue authorized by law to vote of the people. In such case and in every case on which said bond issuing authority is required to submit any bond issue to vote of the people, they shall pass a resolution which shall set forth the necessity of such bond issues, its purpose, amount and approximate maturities, and of the levy of a tax outside of the limitations of section 5649-5b of the General Code, and all other limitations upon tax rates prescribed by law, to pay the interest on and to retire the said bonds. Said resolutions shall also state approximately the dates and maturities of the bonds to be issued.

"\* \* \* The election shall be held at the regular place for voting in such district at such November election, and shall be conducted, canvassed and certified in the same manner as regular elections in such taxing district for the election of officers thereof. \* \* \*

"If fifty-five per cent of those voting upon the proposition vote in favor thereof, the taxing authorities of such district shall have authority to proceed with the issue of such bonds, and the levy of a tax sufficient to pay the interest and retirement levies on such bonds outside of the limitations of section 5649-5b and all other limitations upon tax rates prescribed by law during the life of the bonds in the manner provided by law. \* \* \*

"The question of issuing bonds shall always be submitted to popular vote at a November election, except that whenever it is necessary to rebuild or repair public property wholly or partially destroyed by fire or other casualty, the question of issuing bonds to rebuild or repair said property or to build a new similar property in lieu of repairing or rebuilding said property may be submitted to popular vote at a special election called for that purpose with the consent of the tax commission of Ohio. In such case the bond-issuing authority of said subdivision shall submit said question to the tax commission of Ohio, and if said tax commission of Ohio finds that the submission of said question at a special election is necessary to meet the requirements of the people of said subdivision, it shall certify said fact together with its written consent to the bond-issuing authority desiring to have said special election called. Thereupon the requirements of sections 2, 3 and 4 of this act shall apply but all references in said sections to the November election shall be taken to refer to the date of said special election, instead of the November election therein referred to. The provisions of sections 2, 3, 4 and 5 of this act shall supersede the various provisions of law governing the issue of bonds of any bond-issuing authority, the passage of resolutions, the publication of notices, the holding of elections, the form of the ballot, the percentage of vote required, the time of holding elections and the levy of taxes, insofar as they are inconsistent herewith. \* \* \*

"The net indebtedness created or incurred by a municipal corporation under the authority granted to it in section 3939 of the General Code and all other provisions of law or of the constitution authorizing the creation or incurring of indebtedness without a vote of the electors shall never exceed one per cent of the total value of all property in such municipal corporation as listed and assessed for taxation provided that so long as said net

indebtedness is more than one per cent any municipality may in any calendar year create or incur indebtedness without a vote of the electors in an amount equal to a sum not exceeding nine-tenths of the amount by which the net indebtedness of said subdivision created or incurred without a vote of the people has been reduced during the said calendar year."

It will be observed that section 3941, General Code, is expressly repealed by the provisions of this act, and that section 3 of the act provides that the election shall be held at the regular place for voting in such district at such November election, and shall be conducted, canvassed and certified in the same manner as regular elections in such taxing district for the election of officers thereof.

The last paragraph of section 5 of the act provides that the provisions of sections 2, 3, 4 and 5 of this act shall supersede the various provisions of law governing an issue of bonds, or any bond issuing authority, the passage of resolutions, the publication of notices, the holding of elections, the form of the ballot, the percentage of vote required, and the levy of taxes in so far as they are inconsistent herewith.

So far as I can determine, this law repeals by implication the provisions of sections 3942 and 3947, General Code, as to procedure, the percentage of the vote required, and the time of holding elections upon the question of issuing bonds.

Giving a specific construction to the question submitted by you, it is found that house bill No. 175 provides in the first instance that the bond issuing authority of any political subdivision may elect to submit any bond issue authorized by law to a vote of the people.

The provisions of section 5 of the act, however, are mandatory, and require that the question of issuing bonds shall always be submitted to popular vote, at a November election, except when it is necessary to rebuild or repair public property wholly or partially destroyed by fire or other casualty, etc.

It is therefore apparent that the question of issuing bonds shall always be submitted at a November election, except as otherwise provided in the act, that is, for refunding bonds and when within limitations, or when it is necessary to rebuild or repair public property wholly or partially destroyed by fire or other casualty, etc.

The provisions of section 5 of the act together with the last paragraph of the section above quoted, seem to fully cover all bond issues of the political subdivisions specified therein, except as provided within the exceptions as found in sections 5, 7 and 8 of the act; and insofar as the last paragraph of section 5 of the act applies to sections 3940, 3942 and 3947 of the General Code, these sections are superseded by the provisions thereof.

You are therefore advised that on and after July 21, 1925, municipalities shall submit the question of a bond issue for the purposes specified in section 3939, General Code, when the amount thereof exceeds the limitations of section 3941, General Code, as amended, at the November election only, except in cases where it is necessary to rebuild or repair public property, wholly or partially destroyed by fire or other casualty. Such bond issue shall be approved by fifty-five per cent of the electors of the municipality voting upon the proposition before the taxing authorities of said municipality shall have the authority to proceed with the issuance of such bonds.

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