

section 5719, General Code, which, so far as pertinent to the question here presented, provides as follows:

“Judgment shall be rendered for such taxes and assessments, or any part thereof, as are found due and unpaid, and for penalty, interest and costs, for the payment of which, the courts shall order such premises to be sold without appraisalment. From the proceeds of the sale the costs shall be first paid, next the judgment for taxes, assessments, penalties and interest and the balance shall be distributed according to law.”

By way of specific answer to the question presented in your communication, I am of the opinion therefore that the expenses incurred in advertising the sale of property sold in foreclosure proceedings under the provisions of section 5718, General Code, are to be paid out of the proceeds of the sale of such property.

In my former opinion, referred to in your communication, the observation was made that if a sale of the property is not effected in such foreclosure proceedings, or if the property does not sell for enough to pay the costs in the case, the county treasurer as the party plaintiff in such action would, in his official capacity, be liable for the expenses incurred in obtaining service by publication upon parties defendant in the action; and that in such case the court under the provisions of section 11628, General Code, may enter judgment in favor of the county treasurer, as plaintiff in such action, against the delinquent property owner as the court may adjudge to be right and equitable. In said opinion it was further held that, inasmuch as in such case the county treasurer is acting in his official capacity, such expenses incurred in obtaining service by publication on the necessary parties defendant in the action, are payable out of the general county fund provided for by section 5625-9, General Code, on an appropriation of money therefor made by the county commissioners in the manner provided by section 5625-29, General Code.

No reason is perceived why the observations made in said former opinion should not apply in like case with respect to the expenses incurred in publishing the notice of the sale of property sold by the sheriff in the proceedings under the provisions of section 5718, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3496.

COUNTY BOND ISSUE—CONSIDERED IN COMPUTATION OF NET INDEBTEDNESS TO THE EXTENT ISSUED IN ANTICIPATION OF COLLECTION OF COUNTY TAXES AND NOT IN ANTICIPATION OF SPECIAL ASSESSMENTS AND TOWNSHIP TAXES.

SYLLABUS:

County bonds which have been issued in anticipation of the collection of county taxes, special assessments and township taxes, should be considered in computing the net indebtedness provided in Section 2293-16, General Code, only to the extent that such bonds are issued in anticipation of the collection of county taxes.

COLUMBUS, OHIO, August 10, 1931.

HON. ELMO M. ESTILL, *Prosecuting Attorney, Millersburg, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“I have two questions on which I would appreciate the opinion of your office. They are as follows:

1. Our County of Holmes desire to issue bonds for road purposes and although the County is to become the primary debtor on this bond issue it will collect from the Townships and property owners benefited by said road a portion of the total cost for the payment of which total cost county bonds are to be issued. If the face value of these bonds is taken in considering the limitation of net indebtedness of the county without a vote of the people the county would exceed its limitation of one per cent of the tax list of the county, but if the proportion of said face value of said bonds which the townships and property owners will contribute in partial payment thereof is deducted from the face value in considering the county's limitation of indebtedness the improvements can be made.

Is it your interpretation of Sections 2293-16 and 2293-13 that the face value of these bonds to be so issued by the county alone is to be used in determining the net indebtedness of the county or in determining said net indebtedness can the proportions that the townships and property owners will eventually pay be deducted from the total of said county bond issue in determining the net indebtedness limitation of the county.

Question No. 2. In the employment of a village Superintendent of Schools, the board of education desires to know whether a contract of employment can be legally made for a period of three years in which the salary of such superintendent is only specified for the first year, leaving the salary for the remaining two years to be determined by agreement between the board and the superintendent at the close of each year. Assuming that either party to the contract could by disagreement on the amount of the salary release themselves from the contract the second or third years, would this in your opinion affect the legality and binding force of the contract for the first year for which period the salary is definitely stated. The board does not desire to bind itself to pay for three years the same salary paid the first year which they consider to be a very substantial amount and which with changing conditions they may desire to decrease the second and third year of such employment. They would prefer not to follow my suggestion that they enter into only a one year contract under these circumstances.”

Section 2293-16, General Code, provides in so far as pertinent to your inquiry as follows:

“The net indebtedness created or incurred by any county without vote of the electors shall never exceed a sum equal to one per cent of the first one hundred million dollars or part thereof of the tax list of the county plus one-half of one per cent of such tax list in excess of one hundred million dollars. * * * * * In ascertaining the limitations of this section, the bonds specified in section 2293-13 * * * shall not be considered.”

Section 2293-13, General Code, provides that "Bonds or notes issued in anticipation of the levy or collection of special assessments, * * * (and) county bonds issued in anticipation of the levy or collection of township taxes * * * shall not be considered in calculating the net indebtedness."

Section 6919, General Code, authorizes a board of county commissioners to apportion the cost of a county road improvement between the county, the township in which the improvement is situated and the owners of specially benefited property. The township portion may be paid by a township tax levied by the county commissioners, Section 6927, General Code. The portion to be paid by the owners of specially benefited property is payable by special assessments levied by the county commissioners. Section 6912, General Code.

Section 6921-1, General Code, provides that "Where bonds are issued to provide funds for any such (road) improvement, the shares of the county and of the township or townships and of the real estate especially assessed, if any, may be provided by a bond issue by the county commissioners."

In view of Section 2293-13 to the extent that county bonds are issued in anticipation of the collection of township taxes and special assessments, they may be disregarded in computing the limitations of net indebtedness provided in Section 2293-16. The mere fact that a single issue may be partially in anticipation of the collection of special assessments and township taxes offers no difficulty in computing the limitations of net indebtedness provided by the legislature. To illustrate, in the case of an issue of bonds for the improvement of a road, 15% of which has been specially assessed against specially benefited property and 15% of the cost of which has been apportioned to the township by a levy of township taxes by the county commissioners, in computing the net indebtedness of the county at any time, it would only be necessary to consider 70% of the issue then outstanding.

It is my opinion, therefore, in specific answer to your first question, that county bonds which have been issued in anticipation of the collection of county taxes, special assessments and township taxes, should be considered in computing the net indebtedness provided in Section 2293-16, General Code, only to the extent that such bonds are issued in anticipation of the collection of county taxes.

You next inquire as to the employment of a village superintendent of schools. In this connection, your attention is directed to an opinion of this office, being my Opinion No. 690, appearing in Opinions of the Attorney General for 1929, Vol. II, p. 1045, copy of which is enclosed for your convenience, holding that there is no longer any authority for the appointment of a superintendent of schools by a village school district. Your reference must, accordingly, be to an exempted village school district rather than to a village school district. The matter of the attempted employment of persons by a board of education for a term of years without fixing the salary of such employe has been passed upon in a recent opinion of this office, being Opinion No. 3300, rendered June 5, 1931, to the Director of Education. I enclose a copy of this opinion herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.