

Section 3924 G. C. in its present form was amended in 106 O. L., page 493, and was therefore in force at the time of the publication of notices of this issue of bonds.

In the case of *State of Ohio vs. Kuhner and King*, 107 O. S., page 405, 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."

Applying the same rule, which must necessarily be done, in this case, these bonds have not been given legal advertisement as required by law. In view of the fact that the proceedings have not been legal and in conformity with the provisions of the statute, I am compelled to disapprove the same, and advise you not to purchase said bonds.

Respectfully,
C. C. CRABBE,
Attorney General.

2029.

APPROVAL, BONDS OF STARK COUNTY, \$40,000.00, FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, December 5, 1924.

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

2030.

APPROVAL, BONDS OF VILLAGE OF GENOA, OTTAWA COUNTY, \$7,000.00, FOR STREET IMPROVEMENTS.

COLUMBUS, OHIO, December 5, 1924.

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

2031.

TAXES AND TAXATION—BONDS OF CORPORATION HELD FOR INVESTMENT PURPOSES BY SUCH CORPORATION, LATER TO BE RE-SOLD, ARE SUBJECT TO TAXATION.

SYLLABUS:

Where a corporation carries on its books an item representing its own bonds which were purchased and held not for retirement at maturity, but for investment

purposes, and which bonds will in all probability be resold, and later recalled for retirement, said corporation should pay taxes on said bonds.

COLUMBUS, OHIO, December 5, 1924.

The Tax Commission of Ohio, Columbus, Ohio.

Gentlemen :—

Acknowledgment is hereby made of the receipt of the Commission's letter of recent date, requesting the opinion of this department as follows:

"The Commission herewith encloses a letter from Mr. Zangerle, Auditor of Cuyahoga County, with reference to the taxation of certain bonds of The Cleveland and Sandusky Brewing Company. We kindly request your opinion on the questions raised by Mr. Zangerle in this matter."

The further facts as disclosed by the said letter of Mr. Zangerle, Auditor of Cuyahoga County, to the Commission are as follows:

"The Cleveland and Sandusky Brewing Company carries on its books an item representing its own bonds. These bonds were purchased below par and held not for retirement at maturity, but for investment purposes. They have a separate account for bonds held for retirement. The bonds in the first account will in all probability be resold and sent to New York, then later recalled for retirement.

First: Should the Cleveland and Sandusky Brewing Company pay taxes on these bonds?

Second: If the company does not pay taxes on the bonds, should the amount represented by such holdings be disallowed as a debt determining the excess credits of the company for taxation?"

It is noted that this corporation purchased some of its own bonds. In *Barry vs. Missouri, K. & T. Ry Co.* (C. C.) 34 Fed. 828, Judge Wallace said:

"There is no principle in law of corporations or mortgages which forbids a corporation that has issued a series of mortgage bonds from purchasing a part of them back and reissuing them before maturity, when the financial interests in the corporation will thereby be promoted, unless the organic law of the corporation prohibits the exercise of such a power."

Jones on Corporate Bonds and Mortgages, says:

"Section 525. A company may purchase its own bonds as an investment and reissue them. If the facts show that there was no intention of paying the bonds, but they were regarded and reported by the company as still outstanding, they are valid in the hands of a subsequent purchaser and are secured by the lien of the mortgage."

The Constitution of Ohio, Article XII, Section 2, provides:

"Laws shall be passed, taxing by a uniform rule, * * * investments in bonds, * * *."

In accordance with this constitutional provision, the legislature enacted section 5328, General Code, which reads:

“All * * * personal property in this state, belonging to individuals, and all moneys, credits, investments in bonds, * * * of persons residing in this state, shall be subject to taxation, except only such property as may be expressly exempted therefrom. Such * * * investments shall be entered on the list of taxable property as prescribed in this title.”

Further, it is provided by section 5323, General Code, that:

“The term ‘investments in bonds’ as so used, includes all moneys in bonds, * * * whether issued by incorporated or unincorporated companies, * * * held by persons residing in this state, whether for themselves or others.”

Section 5320, General Code, provides:

“The word ‘person’ as used in this title, includes * * * corporations, * * *.”

In addition to the statement that this corporation is the owner of some of its own bonds, the communication advises that:

“These bonds were purchased * * * and held not for retirement at maturity, but for investment purposes.”

It is evident that the bonds in question come within the statutory definition of ‘investment in bonds,’ as provided in section 5323, General Code. It is clear, therefore, that they are subject to taxation under the general rule as expressed in Section 5328, General Code, unless the purchase by the corporation of its own bonds works an extinguishment of said bonds. The proposition that the aforesaid purchase does not work an extinguishment of said bonds is sustained by:

Barry vs. Missouri K. & T. Ry. Co. (C. C.) 34 Fed., 829, and Jones on Corporate Bonds and Mortgages, section 325, hereinbefore cited. Also by American Brake Shoe & Foundry Company vs. N. Y. Rys. Co. 277 Fed. 261,

in which the seventh paragraph of the syllabus reads:

“A purchase by a corporation of its own bonds with cash in its treasury held not to extinguish the same where it was the manifest intention that they should be kept alive.”

In applying the law as expressed in the foregoing constitutional and statutory enactments, and other authorities herein cited, to the submitted statement of facts, you are advised that in the opinion of this department, your first question should be answered in the affirmative, and that The Cleveland and Sandusky Brewing Company should pay taxes on these bonds.

As your second question is predicated on a negative answer to your first question, and as your first question is answered herein in the affirmative, an answer to your second question becomes unnecessary.

Respectfully,
C. C. CRABBE,
Attorney-General