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BONDS—ISSUANCE, SECTION 2293-15b G. C.—MAY BE SUBMITTED TO VOTE OF ELECTORS OF ISSUING SUBDIVISION AT GENERAL ELECTION WITHOUT CONSENT OF DEPARTMENT OF TAXATION OF OHIO OR DIRECTOR OF EDUCATION—O. A. G. 1950, OPINION 1847 REVERSED IN PART.

SYLLABUS:

The question of the issuance of bonds pursuant to Section 2293-15b, General Code, may be submitted to a vote of the electors of the issuing subdivision at a general election without the consent of the Department of Taxation of Ohio or the Director of Education. 1950 Opinions of the Attorney General, Opinion 1847, reversed in part.

Columbus, Ohio, December 27, 1950

Hon. Webb D. Tomb, Prosecuting Attorney
Seneca County, Tiffin, Ohio

Dear Sir:

This will acknowledge receipt of your request for a reconsideration of my opinion No. 1847 for the year 1950, reading as follows:

“In reply to your letter of October 9, 1950, relative to your opinion number 1847, dated June 6, 1950, I should like to request that you reconsider said opinion and advise me relative to modification or reversal if any results from your reconsideration.”

From prior correspondence between our offices it is understood that your request refers to the third branch of the syllabus of said opinion, which reads as follows:

“The consent of the department of taxation and the director of education are necessary prerequisites to submitting the question of issuance of bonds to a vote of the electors pursuant to Section 2293-15b of the General Code of Ohio.”

In reviewing said opinion I note that I arrived at the foregoing conclusion on the premise that the word “waived” as used in Section 2293-15b of the General Code, prevented the submission of the question of issuing bonds to a vote of the electors at a general election.

Upon reconsideration and further study of that part of Section 2293-15b, General Code, which reads in part, as follows:

“The provisions of section 2293-22 of the General Code, requiring the question of issuance of bonds to be submitted to a vote of the electors at a general election shall be waived for submitting an issue under this act and such question may be submitted, with the consent of the department of taxation of Ohio and the director of education, to a popular vote at a primary election or at a special election called, according to law, for that purpose. * * *”.

I am inclined to the position that such premise is erroneous.

The word “waived” is defined in Webster’s New International Dictionary, 2d Ed., as meaning:

“To throw away; to relinquish voluntarily as a right which one may enforce if he chooses.”

Section 5293-22, General Code, requires that the question of issuing bonds shall always be submitted to popular vote at a November election except that the question of issuing certain types of bonds may be submitted to a vote at other elections as specifically set forth therein. The term “November election” has been interpreted as meaning the general election held in the month of November. Without the provision in Section 2293-15b of the General Code, the bonds authorized to be issued thereunder would be required by Section 2293-22 of the General Code, to be submitted at a general election. In the absence, therefore, of any qualifying provision of said Section 2293-15b, General Code, the state or any taxpayer affected by a proposed issue of bonds thereunder would have a right to require an issuing subdivision to submit the question of the issuance of such bonds only at a general election.

By including in said Section 2293-15b the provision above quoted, such right on the part of the state or a taxpayer affected thereby has been waived and as that word is above defined has been relinquished to the extent that such bonds may be submitted as well, with the consent of the Department of Taxation of Ohio and the Director of Education, to a popular vote at a primary election or at a special election called according to law for that purpose.

It is therefore my opinion, upon reconsideration of said Opinion No. 1847, that the conclusion reached in the third branch of the syllabus thereof

was in error and that the question of issuing bonds proposed to be issued under Section 2293-15b, General Code, may be submitted to a vote of the electors at a general election without the consent of the Department of Taxation of Ohio or the Director of Education and may be submitted at a primary election or a special election called according to law, for that purpose, upon the consent of the Department of Taxation of Ohio and the Director of Education.

Respectfully,

HERBERT S. DUFFY,
Attorney General.