

2315.

MAXIMUM MATURITY OF BONDS ISSUED UNDER SECTION 6956-35 G. C. IS FOR THIRTY YEARS.

SYLLABUS:

The maximum maturity of bonds issued under section 6956-35 G. C. is governed by section 2295-9 G. C. and is for thirty years.

COLUMBUS, OHIO, March 24, 1925.

HON. ROY R. STUART, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR:—I am in receipt of your communication as follows:

“The Board of County Commissioners of Lucas County contemplates the issuance of bonds for the elimination of a grade crossing and construction of a subway. The proposed improvement will be located on Inter-County Highway No. 11, and the legislation is proceeding under section 6956-22 and following of the General Code of Ohio.

“Section 2295-9, General Code, provides as follows:

“That the maturities of bonds, notes or other evidence of indebtedness issued by counties and other political subdivisions, including chartered municipalities, shall not extend beyond the following limitations as specified in the following classifications, the period to be measured from a date twelve months prior to the date of the earliest maturity, if maturing in annual installments, or six months prior thereto, if maturing in semi-annual installments:

“When issued for—

“‘Class (a) The acquisition of real estate or easements or other interests in real estate, grade crossing eliminations, and flood prevention, thirty years;’

“In the second paragraph of section 6956-35 is the following sentence:

“‘They (bonds) shall be of such denomination and payable at such place and times as the commissioners * * * determine, and bear interest not exceeding six per cent per annum, but shall not be sold for less than their par value.’

“The fourth paragraph of section 6956-35 provides as follows:

“‘The bond issues and tax levies herein authorized shall be subject to the limitation prescribed by law for bond issues and tax levies for the purpose of paying the county’s, township’s and municipality’s share of the cost of a road improvement carried forward by the state.’”

“This paragraph refers to sections 1222 and 1223 of the General Code. The third sentence of section 1223 provides as follows:

“‘Bonds issued under authority of this section shall state for what purpose issued and bear interest at a rate not to exceed six per cent per annum,

payable semi-annually, and in such amounts, and to mature in not more than ten years after their issue, as the county commissioners shall determine.'

"Query: Is the maximum maturity of these bonds within the limitation of thirty years, as prescribed by section 2295-9 of the General Code, or is such maturity limited to ten years, as prescribed by section 1223. We are of the opinion that section 2295-9 should be followed."

The statutes providing for the elimination of grade crossings are sections 6956-22 et seq. of the General Code of Ohio as found in 110 Ohio Laws, page 231. Section 6956-35, 110 Ohio Laws, page 237, relating to the issuing of bonds for the purpose of paying the county's share of the cost of eliminating grade crossings, provides as follows:

"The trustees of any township and the council of any village or city in which such proposed improvement is to be made may assume and agree to pay to the county on behalf of the village or city such portion of the costs of such improvement assumed by the county as the trustees or council deem reasonable.

"For the purpose of raising the money to pay the proportion of the cost of such improvement payable by the county, the bonds of the county may be issued to the necessary amount, and for the proportion determined by the council or trustees to be assumed by the municipality or township, the bonds of such municipality or township may be issued to the necessary amount. They shall be of such denomination and payable at such place and times as the commissioners, trustees or council respectively determine, and bear interest not exceeding six per cent per annum, but shall not be sold for less than their par value.

"After completion of the improvement, a tax may be levied by the county to pay the costs of maintaining and keeping in repair that part of the work required to be maintained and kept in repair by the county.

"The bond issues and tax levies herein authorized shall be subject to the limitation prescribed by law for bond issues and tax levies for the purpose of paying the county's, township's and municipality's share of the cost of a road improvement carried forward by the state."

Your question turns on the interpretation of the last paragraph of this section. That is, whether the "limitation" prescribed by law for bond issues and tax levies for the purpose of paying the county's share of the cost of road improvements carried forward by the state includes a limitation as the "maximum maturities" for such bonds, or is the maximum maturity governed by section 2295-9 G. C., 110 Ohio Laws, page 456? Said section provides:

"That the maturities of bonds, notes or other evidence of indebtedness issued by counties and other political subdivisions, including charter municipalities, shall not extend beyond the following limitations as specified in the following classifications, the period to be measured from a date twelve months prior to the date of the earliest maturity, if maturing in annual installments, or six months prior thereto, if maturing in semi-annual installments:

"When issued for—

"Class (a) The acquisition of real estate or easements or other interests in real estate, grade crossing elimination, and flood prevention, thirty years;

"Class (b) The construction or improvement of fireproof buildings or other structures, widening of roads, highways, streets or alleys, general waterworks improvements, sanitary and storm sewers, sewage disposal works and bridges, twenty-five years;

"Class (c) The construction or improvement of nonfireproof buildings or other structures, electric light plant and equipment, police and fire alarm and telegraph systems, fifteen years;

"Class (d) Waterworks meters, fire apparatus, road rollers, furniture and furnishings, machinery in garbage disposal plant, landscape painting, playground apparatus, sidewalks, curbs, gutters, and the construction, reconstruction, resurfacing, grading, or drainage of roads, highways, streets, or alleys, or improvements thereof by boulevard or white-way lighting system, ten years;

"Class (e) Motor vehicles other than fire apparatus, wagons and horses, bonds issued to pay judgments for personal injuries or other non-contractual obligations and also for defraying the expenses of an extraordinary epidemic of disease, five years;

"Class (f) Lighting, sprinkling, sweeping or cleaning of streets or other public places or other service for which municipal corporations or other political subdivisions are authorized by law to levy special assessments, one year;

"Class (g) Purposes not included in the foregoing clauses, such number of years not exceeding thirty as is the estimated period of usefulness of the asset, improvement, or other purpose, such estimate to be made by the fiscal officer;

"Class (h) A single bond issue for a purpose which includes two or more of the foregoing classes, the average number of years of usefulness as measured by the weighted average of the amounts proposed to be expended for said several classes in accordance with above table of maturities; such estimating and calculation of average to be made by the fiscal officer."

This section specifically states:

"That the maturities of bonds * * * issued by counties and other political subdivisions, * * * shall not extend beyond the following limitations * * * when issued for * * * grade crossing elimination * * * thirty years * * *."

This section needs no construction, the intent is clear and understandable. This section was enacted by the same legislature that enacted section 6956-31 G. C. A study of the history of section 2295-9 G. C. will show that the same maximum maturity was provided for by this section prior to its re-enactment.

Section 1223, General Code, 109 Ohio Laws, page 162, provides:

"The county commissioners, in anticipation of the collection of such taxes and assessments or any part thereof, and whenever such construction, improvement or repair is being done upon their application, may, whenever in their judgment it is deemed necessary, sell the bonds of said county in any amount not greater than the aggregate sum necessary to pay the respective shares of the estimated compensation, damages, cost and expense payable by the county, township or townships and the owners of the lands assessed or to be assessed for such improvement, but the aggregate amount of such

bonds issued and outstanding at any one time and to be redeemed by a tax levy upon the grand duplicate of the county shall not be in excess of one per cent of the tax duplicate of such county. In computing such one per cent. bonds to be redeemed by special assessments or by tax levies upon the interested township or townships shall not be taken into account. Bonds issued under authority of this section shall state for what purpose issued and bear interest at a rate not to exceed six per cent. per annum, payable semi-annually, and in such amounts, and to mature in not more than ten years after their issue, as the county commissioners shall determine. Prior to the issuance of such bonds the county commissioners shall provide for the levying of a tax upon all the taxable property of the county to cover any deficiency in the payment or collection of any township taxes, or any deficiency in the levy, payment or collection of any special assessments, anticipated by such bonds. The proceeds of such bonds shall be used exclusively for the payment of the cost and expense of the construction, improvement or repair of the highway for which the bonds are issued. If bids are made for a portion of the proposed issue, the commissioners may accept a combination of bids, if by so doing the bonds will produce the best price to the county, and at the request of the purchaser the bonds may be issued in denominations of one hundred dollars or multiples thereof, notwithstanding any provision of the resolution providing for their issue. Where such construction, improvement or repair is made upon the application of the township trustees such township trustees are hereby authorized to sell the bonds of the interested township in any amount not greater than the estimated compensation, damages, cost and expense of such construction, improvement or repair, and under like conditions hereinbefore prescribed for county commissioners. The making of the special assessment hereinbefore referred to shall not be a condition precedent to the issuance of bonds under the provisions of this section and such special assessments may be made either before bonds are issued under the provisions of this section or after the issuance of such bonds."

It will be noted that the language used in the third sentence is similar to that used in the second paragraph of section 6956-35 G. C., except that in the latter section the maximum maturity is omitted.

The Griswold act, of which section 2295-9 G. C. is a part, is a general law and applies to all bond issues unless the statute authorizing the issue provides a different procedure. We must therefore in construing any statute authorizing a bond issue take into consideration the Griswold act. We must harmonize any subsequent legislation with this act, if possible. With section 2295-9 G. C. in mind, it was not necessary to fix the maximum maturities in section 6956-35 G. C., and therefore, the omission of the limitation would seem to be intentional.

Section 2295 G. C. places a limitation of ten years on bonds for road improvements, which is the same limitation as that of section 1223 G. C., and fixes the maximum maturity of grade elimination bonds at thirty years.

Reading all the foregoing sections together, we come to the conclusion that the word "limitation" as used in the fourth paragraph of section 6956-35 G. C. refers to the one and a half mill tax levy limitation of section 1222 G. C. and the one per cent limitation of section 1223 G. C.

It is therefore my opinion that the maximum maturity of bonds issued under section 6956-35 G. C. is governed by section 2295-9 G. C. and is for thirty years.

Respectfully,

C. C. CRABBE,

Attorney General.