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SERIAL NOTES—PAYMENTS OF OBLIGATIONS—RESERVE FOR INTEREST AND MATURING LIABILITIES—SECTION 5655-7, GENERAL CODE, CONSTRUED.

SYLLABUS:

When serial notes issued under the provisions of Section 5655-7, General Code, remain unsold and in possession of the tax levying authorities, the tax which has been levied for the paying of installments of interest on said notes as the same become due and for the redemption of said notes at maturity, may, as the same is collected, be used for the purpose of paying obligations for the payment of which the notes were issued. A sufficient amount of the funds derived from such tax levy, however, must be at all times available to meet the interest and maturing liabilities on said notes, whether the said notes have been sold and are outstanding or whether they still remain in the possession of the tax levying authorities.

COLUMBUS, OHIO, March 25, 1927.

HON. F. E. CHERRINGTON, *Prosecuting Attorney, Gallipolis, Ohio.*

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

“Under H. B. 527, providing for the refunding of the net deficiency on December 31, 1925, the several townships and school districts of the county having outstanding indebtedness of that date (December 31, 1925), went through with the formality of issuing notes up to and including the advertisement of the ten notes required by the law; all to be dated June 30, 1926, but with the exception of in not to exceed two cases, failed to receive bids on the notes. It has been impossible to sell them at private sale as further provided by said Bill, so that we still have the indebtedness and are no nearer payment than ‘when we first begun’ as the old song goes. The notes were not printed, for that meant a further outlay of \$25.00 for their printing, an expense I advised against until sale was had for the notes.

Trustees and school boards are threatened with suits on various amounts due different individuals to whom same are due.

I confess I am up against it as to what to advise; whether to pass a resolution to re-arrange the due dates of the notes, readvertise and try another sale of them, or what to do, so am writing to know if you cannot point us to a way to handle the matter.”

House Bill No. 527 to which you refer, sometimes called the Baxter Bill was passed as an emergency measure on January 15, 1926, and has been placed in the General Code as Sections 5655-4 to 5655-17, inclusive. The bill also provided for the enactment of Section 5660-1 of the General Code which has no application to the matters about which you inquire in your letter.

The purpose of the act was to provide adequate current revenue for any local taxing subdivision desiring to avail itself of the provisions of the act and to permit the funding of an existing indebtedness on December 31, 1925, of any such subdivision so that such indebtedness as of December 31, 1925, need not thereafter be taken into consideration in estimating revenues and balances available for appropriations for the needs of the subdivision or taxing district, taxing district being defined in the act as a county, school district, municipality or township.

The act fixes the manner of determining the net deficiency allocated between the several funds in any such taxing district as of December 31, 1925, and provides in Section 4 of the act (Section 5655-7, General Code), as follows:

"The taxing authorities of said taxing district shall include in their budgets for the year 1927, a sum equal in the aggregate to said net deficiency or may divide said total sums into not more than five equal parts and include one of said parts in each of their budgets beginning with the year 1927 and ending not later than the year 1931, and may levy a tax therefor; or they may use any unappropriated balances available in the year 1926 to pay any part of such deficiency for which said balances may lawfully be used. The proceeds of said tax shall be applied to making up the aforesaid deficiencies in the several funds in which they exist to the end that said deficiencies shall be entirely paid on December 31, 1931. Or the taxing authorities of said district may determine that the funding of said net deficiency is necessary in order to provide adequate cash for the operation of the taxing district. In such case they shall pass a resolution finding that the issue of notes funding said net deficiency is necessary and providing therefor, the said notes to be serial notes maturing in equal semi-annual installments and of which the earliest maturity shall be not later than December 31, 1927, and the latest maturity shall not be subsequent to December 31, 1931. Said notes shall bear not more than six per cent interest and shall be sold for not less than par and accrued interest. The resolution of the taxing authorities providing therefor shall thereupon be submitted to the Auditor of State for his approval. He shall determine whether it is necessary in view of the financial condition of said taxing district and other taxing districts covering the same territory to fund said deficiency or whether it can be provided for without such funding, and shall approve said resolution and issue of notes only if he finds it is so necessary. If he approves said resolution he shall return it with his approval to the taxing authorities, who shall issue and sell said notes in accordance with the resolution, and other provisions of law covering the issue and sale of the bonds of said taxing district, except that said notes shall not be included within any debt limitation applicable to said taxing district. They shall levy a tax to meet the interest and retirement payments thereon, which levy shall be outside of the limitations of Section 5649-5b of the General Code and of all provisions of law."

It will be seen from the provisions of this section that the net deficiency of any taxing district as determined in the manner provided for in the act may be met by using any unappropriated balances available in the year 1926, or by including it in the 1927 budget and levying a tax therefor, or if the needs of the situation require it, it may be funded by issuing serial notes therefor which notes shall mature in equal semi-annual installments of which the earliest maturity shall be not later than December 31, 1927, and the latest maturity not later than December 31, 1931.

The taxing subdivisions to which you refer in your communication have chosen the latter method of taking care of this net deficiency and I assume all the necessary requirements of law have been complied with in the issuing of these notes including the levying of the tax to meet the interest and retirement payments. The only difficulty now is that no buyers could be found for the notes and so far as ready money is concerned for the purpose of paying obligations, the taxing districts are no better off than they were before issuing the notes. They still have the notes and if purchasers can be found they may be sold any time as provided by law. Necessary legislation might be passed re-arranging the due dates and re-advertisement made, but all the requirements of the statute would have to be met in the new legislation, and the fixing of the dates of maturity must necessarily be as provided by the statute. It is, of course, a question whether it would be policy to go to this expense, inasmuch as there is no reason why the new issue would sell any more readily than the one already made.

The tax provided for when collected, should, of course, be applied to retiring the

notes for which it had been levied, and when the time comes that any note or notes for which there had been no purchasers would have become due if they had been outstanding, the tax that has been collected for the purpose of paying that particular note or notes may be applied to the payment of such obligations as would the moneys derived from the sale of the note or notes have been applied if the said note or notes had been sold, and in that event that particular note or notes might be cancelled.

Care must be observed, however, that sufficient of the funds derived from this tax levy are at all times available to cover interest and maturing liabilities, whether the notes have been sold and are outstanding, or whether they are still in the possession of the tax levying authorities.

As these notes most likely bear six per cent interest, and are secured by a tax levy which is outside of the fifteen mill limitation, it might be that the creditors of the various taxing subdivisions might be induced to accept the notes in payment of their claims rather than resort to getting judgment and waiting until provision may be made for the paying of the judgment.

Respectfully,
EDWARD C. TURNER,
Attorney General.

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INITIATED LAW—SYNOPSIS—AMENDMENTS.

SYLLABUS:

1. *Where a law is proposed by the initiative under the provisions of Section 1b, Article 2 of the Ohio Constitution and a synopsis of such proposed law is duly certified by the Attorney General under the provision of Section 5175-29e, General Code, and said proposed law is defeated by the general assembly of Ohio, and supplementary petitions circulated demanding the submission of said proposed law to the electors for their approval or rejection at the next regular or general election, said synopsis as certified by the Attorney General on the filing of the original petitions with the Secretary of State, is sufficient for the supplementary petitions as well.*

2. *In a case where amendments have been offered and agreed to in the House upon the consideration of an initiated bill and said bill with the amendments is defeated in the House, and where supplementary petitions are proposed to be circulated, the proposed law may be in the form as first petitioned for without regard to any amendment or amendments agreed to in the House.*

COLUMBUS, OHIO, March 25, 1927.

The Ohio State Chiropractic Society, Inc., Willard, Ohio.

GENTLEMEN:—This will acknowledge receipt of your letter of the 21st inst., requesting my opinion as follows:

"Kindly advise if synopsis furnished by Attorney General C. C. Crabbe, under date of April 29th, 1926, and which was used on initiative petitions, circulated by chiropractors, and filed with the Secretary of State in accordance with Section 1 B, Article 2 of the Constitution, is to be used on the supplementary petitions which we are preparing to circulate.

This bill was defeated by the House of Representatives on March 15th. We are now ready to proceed with the circulation of supplementary petitions.

In view of the fact that the synopsis given by the former Attorney General, was the first step necessary in carrying this law to the people of Ohio, I am of the opinion that the same synopsis will apply to the supplementary petitions. Will you kindly advise whether or not this is correct."