

2360.

APPROVAL, BONDS OF THE VILLAGE OF YELLOW SPRINGS, GREENE COUNTY, OHIO—\$33,000.00.

COLUMBUS, OHIO, July 16, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

2361.

BONDS—MUNICIPAL—WHAT BONDS ARE EXEMPT FROM ONE PER CENT LIMITATION IN DETERMINING NET INDEBTEDNESS—SECTION 2293-14 (g), GENERAL CODE, DISCUSSED.

*SYLLABUS:*

*Sub-section (g) of Section 2293-14, General Code, does not exempt all bonds issued prior to January 1, 1922, from the one per cent limitation in calculating the net indebtedness of a municipality, but only exempts those bonds issued prior to January 1, 1922, which at the time of issuance were not required by law to fall within the percentage limitations as provided in Sections 3941 and 3948, General Code.*

COLUMBUS, OHIO, July 16, 1928.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge your recent communication, which reads as follows:

“Section 2293-14, Paragraph G, 112 O. L. 370, reads:—

‘All bonds issued previous to January 1, 1922, and not included in any of the above classes (a) to (f) inclusive, and bonds heretofore issued under Sections 4000-16 to 4000-28 inclusive of the General Code, and which at the time of issuance were not required by law to fall within the percentage limitations as provided in Sections 3941 and 3948 of the General Code.’

QUESTION: Are all bonds issued prior to January 1, 1922 exempt from the 1% limitation?”

The pertinent part of Section 2293-14, General Code, from which you quote in your communication, reads as follows:

“The net indebtedness created or incurred by a municipal corporation without a vote of the electors, shall never exceed one per cent of the total value of all property in such municipal corporation as listed and assessed for taxation.

The net indebtedness created or incurred by a municipal corporation shall never exceed five per cent of the total value of all property in such municipal corporation as listed and assessed for taxation.

In ascertaining the limitations prescribed by this section the bonds excepted in Section 2293-13 and the following bonds, and the amounts held in any sinking fund, and other indebtedness retirement fund for their retirement shall not be considered:

\* \* \*

(g) All bonds issued previous to January 1, 1922, and not included in any of the above classes (a) to (f) inclusive, and bonds heretofore issued under Sections 4000-16 to 4000-28 inclusive of the General Code, and which at the time of issuance were not required by law to fall within the percentage limitations as provided in Sections 3941 and 3948 of the General Code."

The question which you raise involves the determination as to whether or not the phrase "and which at the time of the issuance were not required by law to fall within the percentage limitations as provided in Sections 3941 and 3948 of the General Code", modifies the phrase "All bonds issued previous to January 1, 1922," or modifies only the phrase "and bonds heretofore issued under Sections 4000-16 to 4000-28 inclusive of the General Code". That is to say, whether or not all bonds issued previous to January 1, 1922, are to be excluded from the calculation of net indebtedness under Section 2293-14, General Code, regardless of whether at the time of the issuance of such bonds they were or were not required by law to fall within the percentage limitations as provided in Sections 3941 and 3948 of the General Code.

Section 2293-14, General Code, supra, was enacted by the 87th General Assembly as a part of The Uniform Bond Act and is found in 112 v. 364, 370. The manifest object of The Uniform Bond Act was to provide a uniform procedure for the issuance of bonds by counties, school districts except county school districts, municipal corporations and townships. Prior to the enactment of The Uniform Bond Act the provisions for issuing bonds by the above subdivisions were to be found under the various chapters pertaining to the subdivisions mentioned and the provisions for the issuance of such bonds were all slightly different. In providing for a uniform procedure for issuing bonds a great many sections of the General Code were repealed. Among the sections so repealed was Section 3949, General Code, which defined the term "Net Indebtedness" as applied to outstanding bonds and notes of municipalities. Before its repeal Section 3949, General Code, provided in part:

"The net indebtedness prescribed in Sections 3940, 3941, 3948 and 3948-1 of the General Code of Ohio, shall be the difference between the par value of the outstanding and unpaid bonds and the amount held in the sinking fund, judgment fund, bond fund, and other indebtedness retirement funds for their redemption.

In ascertaining the limitations of one-half per cent, two and one-half per cent and five per cent, prescribed in Sections 3940, 3941, 3948 and 3948-1, the following bonds shall not be considered:

\* \* \*

(f) Bonds issued for the purpose of purchasing, constructing, improving and extending water works to the extent that the income from such water works is sufficient to cover the cost of all operating expenses, interest charges and to pass a sufficient amount to a sinking fund to retire such bonds as they become due or to provide for the payment of the interest and principal installments of serial bonds as they become due or bonds heretofore issued, or heretofore authorized by the General Assembly, for municipally owned steam

railways, and bonds heretofore issued, or heretofore authorized by a vote of the people, under the authority of Sections 4000-16 to 4000-28 inclusive of the General Code, provided that all other bonds issued under the provisions of Sections 4000-16 and 4000-28 shall be counted in the limitation unless prior to their issues, the public utilities commission of Ohio on application made to it by the municipality concerned shall certify that in its opinion the interest and sinking fund charges thereon will be paid the third year of operation from the receipts of the rapid transit system to be constructed. Provided, further, that after the end of the third fiscal year of operation of any rapid transit system only such amount of the bonds heretofore or hereafter issued under the provisions of said section shall be excluded from consideration on which the interest, sinking fund and retirement have actually been paid from the receipts of the system during the preceding year, such payment to be certified by the fiscal officer of the municipality.

\* \* \*

(j) All bonds issued previous to January 1, 1922, and not included in any of the above classes (a) to (i) inclusive, which at the time of issuance were not required by law to fall within the percentage limitations as provided in Sections 3941 and 3948 of the General Code."

Sections 4000-16 to 4000-28, inclusive, General Code, referred to in both repealed Section 3949 and in Section 2293-14, General Code, constitute Chapter 2-2 of Title XII, Division IV of the General Code, which chapter bears the heading "Rapid Transit Commission." This chapter relates to the creation of rapid transit commissions in cities and the construction and maintenance of rapid transit railway systems in such cities. Section 4000-22, a part of this chapter, was amended in The Uniform Bond Act. Prior to such amendment this section authorized the issuance of bonds for the purpose of constructing rapid transit railway systems, and provided that if the amount of bonds to be issued exceeded One hundred and fifty thousand (\$150,000.00) dollars the question must be submitted to a vote of the people. Section 4000-22 also contained the procedure to be followed in holding such election. In view of the fact that The Uniform Bond Act now prescribes generally the proceedings to be followed in elections on all bond issues the Legislature amended Section 4000-22, General Code, eliminating therefrom the provisions as to the procedure to be followed in elections on bond issues under the authority of the chapter. Section 4000-23, General Code, was repealed in The Uniform Bond Act, and prior to such repeal provided:

"The aggregate amount of such bonds authorized by vote of the people or total indebtedness created under the authority of this act shall not be limited by the provisions of any act or statute of Ohio or law, except by the limitation herein set forth, and such aggregate or total indebtedness shall not exceed two per cent. of the total value of all property in such municipal corporation as listed and assessed for taxation."

As stated above, Section 3949, General Code, was repealed in The Uniform Bond Act and the Legislature enacted Section 2293-14, General Code, to take its place. While the language of the two sections is somewhat similar, in so far as the definition of net indebtedness is concerned, it will be observed that sub-section (f) of Section 3949 was eliminated in the enactment of Section 2293-14. It will also be observed that the language of sub-section (g) of Section 2293-14, General Code, is similar to that of sub-section (f) of old Section 3949, except that there has been added thereto, or rather inserted therein, the words "and bonds heretofore issued under Sections 4000-16 to 4000-28 inclusive of the General Code".

The question now arises as to whether the Legislature in inserting this language has intended to change the sense of former sub-section (j) of Section 3949, General Code, so as to eliminate from the calculation of the net indebtedness of municipalities all bonds issued prior to January 1, 1922, regardless of whether or not they were at the time of issuance exempted from the percentage limitations provided in Sections 3941 and 3948, General Code, or whether the sense of the section as to such bonds is exactly the same as it formerly was, except that there has been added thereto an additional class of bonds, to-wit, bonds heretofore issued under Section 4000-16 and 4000-28, General Code, which at the time of issuance were exempted from the percentage limitations provided in Sections 3941 and 3948, General Code.

I have no hesitancy in reaching the conclusion that under sub-section (g) of Section 2293-14, General Code, only those bonds issued prior to January 1, 1922, which were not at the time of issuance required by law to fall within the percentage limitations as provided in Sections 3941 and 3948 of the General Code, may be exempted in determining the net indebtedness of municipalities. That it was the intention of the Legislature to exempt from the calculations of net indebtedness bonds issued prior to January 1, 1922, except in so far as such bonds were not at the time they were issued required by law to fall within the percentage limitations prescribed in Sections 3941 and 3948, General Code, is indicated by the fact that a comma and the word "and" preceded the phrase "which at the time of issuance were not required by law to fall within the percentage limitations as provided in Sections 3941 and 3948 of the General Code." To my mind, this indicates clearly that it was the intention of the Legislature that the phrase following the word "and" should apply both to bonds issued prior to January 1, 1922, and to bonds issued under the provisions of Sections 4000-16 to 4000-28, General Code. As stated in Lewis' Sutherland Statutory Construction, Vol. 2, Section 401:

"\* \* \* Where changes have been introduced by amendment it is not to be assumed that they are without design. Every change of phraseology, however, does not indicate a change of substance and intent. The change may be made to express more clearly the same intent or merely to improve the diction. The change is often found to be the result of carelessness or slovenliness of the draftsman. The changes of phraseology may result from the act being the production of many minds and from being compiled from different sources. Hence the presumption of a change of intention from a change of language is of no great weight, and must mainly depend upon the intrinsic difference as resulting from the modification. A mere change in the words of a revision will not be deemed a change in the law unless it appears that such was the intention. The intent to change the law must be evident and certain; there must be such substantial change as to import such intention, or it must otherwise be manifest from other guides of interpretation, or the difference of phraseology will not be deemed expressive of a different intention. \* \* \*"

In view of the foregoing and in specific answer to your question, it is my opinion that all bonds issued prior to January 1, 1922, are not exempt from the one per cent limitation but that under sub-section (g) of Section 2293-14, General Code, only those bonds issued prior to January 1, 1922, which at the time of issuance were not required by law to fall within the percentage limitations as provided in Sections 3941 and 3948, General Code, are to be exempted in calculating the net indebtedness of a municipality.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*