

my approval thereon, and return same to you herewith, together with all other data submitted to me in this connection.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3768.

APPROVAL, CONTRACT OF STATE OF OHIO WITH THE VEHORN AND OSTERFELD PLUMBING COMPANY, DAYTON, FOR HEATING AND VENTILATING GYMNASIUM, OHIO UNIVERSITY, ATHENS. AT A COST OF \$17,900— SURETY BOND EXECUTED BY SOUTHERN SURETY COMPANY.

COLUMBUS, OHIO, November 28, 1922.

HON. LEON C. HERRICK, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted to me for approval a contract (four copies) between the State of Ohio, acting by the Department of Highways and Public Works, and The Vehorn and Osterfeld Plumbing Company, a corporation, incorporated under the laws of Ohio, of Dayton, Ohio. This contract is for the heating and ventilating for gymnasium at the Ohio University, Athens, Ohio, and calls for an expenditure of Seventeen Thousand, Nine Hundred Dollars (\$17,900.00).

Accompanying said contract is a bond to insure faithful performance, executed by Southern Surety Company.

I have before me the certificate of the Director of Finance that there is an unencumbered balance legally appropriated sufficient to cover the obligations of this contract.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon, and return same to you herewith, together with all other data submitted to me in this connection.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3769.

DISAPPROVAL, BONDS OF THE CITY OF NILES, TRUMBULL COUNTY, \$16,000, FOR PURPOSE OF FUNDING INDEBTEDNESS.

COLUMBUS, OHIO, November 28, 1922.

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

Re: Bonds of City of Niles, Trumbull County, \$16,000, for the purpose of funding certain indebtedness in the safety and service funds of said city.

GENTLEMEN:—This proposed issue of bonds is one under the assumed authority of sections 3916 and 3917 of the General Code, and as above noted, is for the stated

purpose of funding certain indebtedness incurred in the operation of the safety department and the service department of said city.

Section 3916 G. C. under certain conditions and within certain limitations authorizes a municipal corporation to fund by an issue of bonds and thereby extend the time of payment of indebtedness which from its limitations of taxation the municipality is unable to pay at maturity.

The ordinance providing for this issue of bonds does not contain any recital or make any finding to the effect that the city of Niles is unable to pay the indebtedness which is sought to be funded by this issue of bonds by reason of the limits of taxation of said city, and for this reason I am required to hold that said ordinance is defective and the bonds sought to be authorized thereby to be invalid.

The transcript relating to this issue of bonds is further defective in this that although the bond ordinance recites that said indebtedness "has heretofore been determined to be an existing, valid and binding obligation of the city of Niles," the transcript does not set out any formal resolution or other legislation of the council where said determination is made. Neither does the bond ordinance make any determination of this fact otherwise than by recital above noted.

In this connection it will be noted that section 3917 of the General Code provides that no indebtedness of such municipal corporation shall be funded, refunded or extended, unless it shall first be determined to be an existing, valid and binding obligation of the corporation by a formal resolution of the council thereof. Though an ordinance would doubtless be as efficacious as a formal resolution for the purpose of providing for an issue of bonds for the purpose of funding existing indebtedness, said ordinance is not sufficient unless it complies with the provisions of section 3917 of the General Code by expressly finding that the indebtedness to be funded is an existing, valid and binding obligation of the municipality.

In addition to the above, I note that the ordinance providing for this issue of bonds was passed November 4, 1922, and that the maturity date of the first two bonds covering said issue is April 1, 1924. As an evidence it will be observed that unless the first levy for said sinking fund purposes with respect to the bonds provided for in said ordinance has been included in the 1922 budget of said city to be collected at the December, 1922 and June, 1923 collection of taxes, said maturity date of said first two bonds is too early and the provisions of said ordinance fixing said maturity date is in violation of section 2295-12 General Code.

However, the first tax levy for the purpose of paying the interest on this bond issue and the principal of said first two bonds may have been included in the 1922 budget of the city, and if this be so, the maturity date fixed for said two first bonds is not objectionable.

However, by reason of the first two objections above noted, I am of the opinion that said proposed bond issue is invalid and that you should not purchase the same.

Respectfully,

JOHN G. PRICE,

Attorney-General.