

2984.

GRISWOLD ACT—HOUSE BILL NO. 4 (109 O. L. 17) IS INCONSISTENT WITH SECTIONS 2295-7 AND 3916 G. C. AS AMENDED IN HOUSE BILL NO. 33 (109 O. L. 336)—EXPRESS PROVISIONS OF SECTION 21 OF HOUSE BILL NO. 33 (109 O. L. 348) WERE REPEALED WHEN SAID HOUSE BILL NO. 33 WENT INTO EFFECT ON JANUARY 1, 1922—OPINION NO. 2932, DATED MARCH 15, 1922, MODIFIED AND SUPPLEMENTED.

House Bill No. 4, 109 O. L. 17, is inconsistent with section 2295-7 of the General Code as enacted in House Bill No. 33, 109 O. L. 336, and with section 3916 of the General Code as amended therein (p. 339), by implication, and the express provisions of section 21 of House Bill No. 33 (109 O. L. 348) were repealed when said House Bill No. 33 went into effect on January 1, 1922.

Opinion No. 2932 modified and supplemented.

COLUMBUS, OHIO, April 13, 1922.

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

GENTLEMEN :—This department desires to supplement and in a sense to modify Opinion No. 2932 addressed to the bureau under date of March 15, 1922. The opinion there dealt with the following questions submitted by the bureau :

“Question 1. Is said House Bill No. 4 (109 O. L. 17) repealed by section 21 of House Bill No. 33 (109 O. L. 348) filed in the office of the Secretary of State on the 18th day of May, 1921?”

Bonds issued under authority of House Bill No. 4 are outside of taxes and bonded debt limitations, while those issued under authority of section 3916 G. C., as amended, are seemingly within such limitations.

Question 2. If House Bill No. 4 is not repealed by section 21 of House Bill No. 33, can a municipality at this time issue and sell bonds to cover deficiencies for the year 1921 under said House Bill No. 4?”

These questions were both answered by the single statement that in the judgment of this department House Bill No. 4 expired by its own implications drawn from its own provisions on January 1, 1922, so that the questions submitted by the bureau did not even arise.

This statement is withdrawn. While the argument in favor of it is persuasive, yet in view of the provisions of other similar acts with respect to which such a holding would involve an absurdity, it is felt that it should not be put forward as a reason for the conclusion reached in Opinion No. 2932, but that the questions submitted by the bureau should be considered on their merits.

It will not be necessary in this supplemental opinion to quote section 2295-7 of the General Code. It is sufficient to state that the only word requiring interpretation therein in order to answer the questions now to be considered is the word “current.”

In Opinion No. 2728 given by this department to the prosecuting attorney of Richland county, under date of December 22, 1921, some discussion of this question was indulged, although the question was not answered. The query was raised as to whether the word “current” as used in section 2295-7 was indicative of the expenses pertaining to a particular year. This is not the usual meaning of the word in such

a context, as is evidenced by the definitions quoted in that opinion from lexicons. A moment's reflection will show that that cannot be the sense in which the word is used in section 2295-7, for if it were, the evident purpose of the legislature could be very easily thwarted by merely allowing obligations representing operating expenses of a given year to accumulate and remain unpaid until after the expiration of that year and then borrowing money to meet or discharge them. The legislature in adopting section 2295-7 evidently did not intend to sanction any such subterfuge, but rather to prohibit borrowing for the payment of all "running expenses;" and this is the sense in which the word "current" is used.

To be sure, this statement does not entirely dispose of the underlying question as to the meaning of section 2295-7; because it still remains arguable that the section should be given a "prospective" meaning in common with all others where the contrary intention does not clearly appear; so that while in the abstract that section prohibits such a proceeding as is above outlined, yet it does not prohibit the borrowing of money to pay current operating expenses of a preceding year, under authority of a statute not expressly repealed, which may be assumed to authorize such a borrowing to be made in the year 1922, namely, House Bill No. 4.

But as pointed out in Opinion No. 2728, a contrary holding on this point does not really give a retrospective operation to section 2295-7 at all. That section looks forward in all its parts by prohibiting "future" borrowings for designated purposes; it has no effect upon rights vested under past borrowings, even though it be given full force in accordance with the tenor of its words to prohibit future borrowing for past expenses. There is no saving clause in the act. On the contrary, the last section of the act in which section 2295-7 is found is applicable to all pending proceedings. The conclusion is therefore reached that section 2295-7 is inconsistent with House Bill No. 4, and by reason of the express words of section 21 of House Bill No. 33, House Bill No. 4 was repealed when House Bill No. 33 took effect, namely, on the first day of January, 1922.

This conclusion takes into account the fact that under sections 3916 and 5656 of the General Code as amended in House Bill No. 33, it is still possible for a time to borrow money for the payment of certain obligations representing current expenses, as held in Opinion No. 2728 above referred to. But these sections as amended are inconsistent with House Bill No. 4 in the respect pointed out in the bureau's first question, namely, in that the taxes to be levied for the retirement and interest of bonds issued under House Bill No. 4, are outside of tax limitations, while those required for the purposes of the bonds under sections 5656 or 3916, are within such limitations.

It is accordingly the opinion of this department, as above stated, that House Bill No. 4 is repealed as of the first of January, 1922, and furthermore that this repeal is effective, notwithstanding the pendency of proceedings begun but not completed under said House Bill No. 4 on that date.

This conclusion disposes of the second question submitted by the bureau when the former opinion was rendered, and as a whole should take the place of that part of Opinion No. 2932 which deals with the first two questions mentioned therein.

Respectfully,
JOHN G. PRICE,
Attorney-General.