

Cohen, 30 O. S. 436, and *Markley vs. Whitmore*, 61 O. S. 587, in construing a similar provision to that contained in Section 5692, *supra*, it was held that only the taxes and assessments which were due and payable on the day of the judicial sale might be discharged from the proceeds thereof, notwithstanding there may be taxes which are a lien upon said premises, by virtue of the provisions of Section 5671, General Code, which fixes the date upon which the lien for real estate attaches.

In specific answer to your inquiry, I concur in the conclusions of my predecessor, notwithstanding the provisions of Section 5692, General Code, to which you refer.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1369.

BOND ISSUE—AUTHORIZED BY SCHOOL DISTRICT ELECTORS IN 1925
—PORTION NOT ISSUED BEFORE UNIFORM BOND ACT EF-
FECTIVE, NOW ISSUABLE—MATURITIES.

SYLLABUS:

1. *When the electors of a school district authorized the issuance of bonds in the amount of \$800,000 in the year 1925 in accordance with the laws as then in force and effect, and \$320,000 bonds have already been issued pursuant to such authorization, the remaining bonds authorized in the amount of \$480,000 may now be issued pursuant to the provisions of Sections 2293-25 to 2293-29 inclusive, of the General Code, for the purpose authorized by the electors.*

2. *The maturities of such bonds should be in accordance with the provisions of Sections 2295-7, 2295-9, 2295-10 and 2295-12, General Code, as in force and effect in September, 1925.*

COLUMBUS, OHIO, January 6, 1930.

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

GENTLEMEN:—Your letter of recent date is as follows:

“We are enclosing herewith a transcript of the proceedings of the board of education of the C. City School District in the matter of an issue of \$800,000 of bonds. You will note that in the resolution submitting the question to a vote of the people the maturity of the bonds covering the entire \$800,000 was fixed. You will also note that in pursuance of a favorable vote an issue of \$320,000 was made under this vote with maturities which correspond practically with the maturities designated in the resolution to submit to a vote of the people.

Question: May the board of education of this district at this time sell the remaining \$480,000 of the bonds; or whether, since the maturity dates for the entire issue of \$800,000 were established in the resolution adopted by the board of education on the first day of September, 1925, can they only sell those bonds which have not matured before this date?”

Section 20 of the Uniform Bond Act, 112 O. L., 385, is as follows:

“Bonds issued prior to the effective date of this act and bonds issued after

said date, which have been approved by vote of the people, or by resolution of the taxing authority prior to the day this act is filed with the Secretary of State, shall be valid obligations of the taxing district issuing the same if they would be valid under the provisions of law in effect prior to the passage of this act. Bonds which have been approved by vote of the people, prior to the effective date of this act, may be issued thereafter under the provisions of Section 2293-25 to 2293-29 inclusive. Tax levies, in anticipation of which any such bonds have been issued, shall be levied notwithstanding the repeal of the law authorizing such levies."

The Legislature has here expressly provided that bonds which have been approved by vote of the people prior to the effective date of the Uniform Bond Act may be issued thereafter under the provisions of Sections 2293-25 to 2293-29, inclusive. Section 2293-25, as amended by the 88th General Assembly, provides for the issuance of notes in anticipation of the issue of bonds. Section 2293-26, also amended by the 88th General Assembly, provides in part as follows:

"If the taxing authority decides not to issue such anticipatory notes, or if such notes are issued, when they are about to fall due, the taxing authority shall adopt a resolution or ordinance determining whether the bonds are to be issued in one lot or in installments, and fixing the amount of the bonds to be presently issued which shall not be greater than the amount authorized; fixing their purpose in accordance with the prior resolution or ordinance of the taxing authority; and fixing the date, rate of interest and maturity which, however, need not be the same as those fixed in the prior resolution or ordinance. If it is determined to issue bonds in installments, then a similar resolution or ordinance shall be adopted whenever a new installment of such bonds is to be issued. * * * ."

There is no question but that, under the provisions of Section 20 of the Uniform Bond Act, supra, and Section 2293-26 of the same act as amended, the Legislature has expressly authorized the issuance of bonds in installments, regardless of when authorized by vote of the electors. As a matter of practice, in the larger municipalities, the question of issuing bonds for school purposes in an amount sufficient to take care of the needs of the district for a number of years is occasionally submitted to the electors, and upon the question carrying by the statutory majority, bonds are issued in installments as required. Your attention is further called to the express provision as contained in Section 2293-26, supra, that at the time of issuing any installment of bonds heretofore authorized, the date, rate of interest and maturity need not be the same as fixed in the prior resolution or ordinance.

The maximum maturity for which bonds authorized in 1925 may now be issued would be in accordance with the weighted average as calculated by the fiscal officer in accordance with the provisions of Sections 2295-7, 2295-9 and 2295-10, as in force and effect prior to repeal in the Uniform Bond Act. A somewhat similar question to the one which you present was considered in my opinion No. 1332, rendered under date of December 26, 1929, copy of which is herewith enclosed.

Specifically answering your question, I am of the opinion that:

1. When the electors of a school district authorized the issuance of bonds in the amount of \$800,000 in the year 1925 in accordance with the laws as then in force and effect, and \$320,000 bonds have already been issued pursuant to such authorization, the remaining bonds authorized in the amount of \$480,000 may now be issued pursuant to the provisions of Sections 2293-25 to 2293-29, inclusive, of the General Code, for the purpose authorized by the electors.

2. The maturities of such bonds should be in accordance with the provisions of Sections 2295-7, 2295-9, 2295-10 and 2295-12, General Code, as in force and effect in September, 1925.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1370.

MUNICIPALITY—RENTING OR INSTALLING TRAFFIC SIGNALS WITH RECEIPTS FROM MOTOR VEHICLE LICENSE AND GAS TAXES UNAUTHORIZED.

SYLLABUS:

A municipal corporation may not legally use its proportion of the motor vehicle license tax and the gasoline tax receipts for the purpose of paying the cost of installing traffic signals or the cost of rentals thereof.

COLUMBUS, OHIO, January 7, 1930.

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

DEAR SIRs :—Your recent communication reads :

“Question 1. May a municipal corporation legally use its proportion of the motor vehicle license tax and gasoline tax receipts for the purpose of paying the cost of installing traffic signals?”

“Question 2. May a municipal corporation legally use its proportion of the motor vehicle license tax and gasoline tax receipts for the purpose of paying rent for the use of traffic signals?”

The sections of the General Code which must necessarily dispose of your inquiry are 6309-2, which relates to the motor vehicle license tax, 5537 which provides for the first two cent gasoline tax, and 5541-8 which provides for the second gasoline tax. In view of the number of times that these sections have been quoted in opinions heretofore rendered, it is not believed necessary again to set them forth.

It may be stated in substance that the first section above mentioned authorizes the municipality's share of the funds to be used for the purpose of maintenance and repair, construction and repaving of public roads and streets.

Section 5537 provides that the moneys received by the municipalities

“shall be used by such municipal corporations for the sole purpose of maintaining and repairing the public streets and roads within such corporation.”

Section 5541-8 requires the funds received from the so-called second gasoline tax to be

“expended by each municipal corporation for the sole purpose of constructing, maintaining, widening and reconstructing the public streets and roads within such corporation.”

In my opinion No. 294, rendered to your Bureau under date of April 12, 1929, it was held, as disclosed by the syllabus that :