

authority to issue bonds for the various subdivisions such as counties, municipalities, school districts, townships and library districts are under the separate heads relating to such subdivision and each have certain peculiar characteristics pertaining to the issue of such bonds.

By the Krueger Bill, the bond issuing authority of any political subdivision, may elect to submit any bond issue to a vote of the people. By this is meant that they may submit to a vote of the people bond issues which they are not required in the first instance to submit to such a vote but may issue on their own initiative.

In cases where they elect to submit a bond issue and in all cases in which the submission of such bond issue is required by law, such submission shall be under the terms and conditions of the Krueger Act. Insofar as the authorization in other sections is in conflict with the Krueger Bill, the Krueger Bill must prevail over such section by reason of being a later enactment and for the reason that it is an attempt to substitute a new method of procedure in all cases of bond issues voted by the people.

You are therefore advised that bond issues submitted to a vote of the people must carry by a fifty-five per cent vote to authorize the issuing of the bonds.

Respectfully,
C. C. CRABBE,
Attorney General.

3867.

SURETY BONDS—MEMBER OF COUNCIL MAY NOT WRITE BOND FOR
DEPOSITORY OF VILLAGE FUNDS—SECTION 3808 G. C. CONSTRUED.

SYLLABUS:

Contracts entered into by a depository under section 4295 of the General Code and for construction where the surety bond is solicited and written by a member of a council are illegal under section 3808 of the General Code.

COLUMBUS, OHIO, December 8, 1926.

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

GENTLEMEN:—I am in receipt of your communication as follows:

"A. The village of Euclid has established a legal depository in accordance with the provisions of sections 4295 and 4296 G. C.

B. The said depository bank furnishes surety company bonds as protection against loss of the public funds of said village.

C. The council of the village awards contracts for various improvements to be made within the corporate limits of said village and contractors are required to furnish construction bonds for the faithful performance of their contract, said construction bonds usually being in surety company form.

D. A member of the council of said village is a member of an insurance company in the city of Cleveland and writes surety company bonds.

Question: Would it be considered illegal for the member of the village council referred to above, to solicit and write surety company bonds to be furnished by the depository bank and the various contractors performing the work for the village, said surety company bonds to be filed with the clerk of said village in accordance with law, as a part of said contracts?"

Your question is whether it would be illegal for a member of the village council to solicit and write surety company bonds to be furnished by the depository bank and various contractors.

It will first be considered whether such action on the part of a member of a village council would make such member liable under the criminal statute.

Sections 12910, 12911 and 12912 are the criminal sections relating to an interest in a contract. The first two of these sections relate to an interest in a contract for the purchase of property, supplies or fire insurance for the use of the village and would not be applicable to the present circumstances, as these sections must be given a strict construction for the reason that they are criminal statutes.

Section 12912 relates to an interest in the profits of a contract, job or services for such corporation and it is believed is not applicable for the reason that a member of council is not interested in the profits derived from such contract. See *Richardson vs. Trustee*, 6 O. N. P. (N. S.) 595, and *State vs. Pinney*, 13 Decisions 210.

However, the question of whether such contract is illegal may be considered from a different viewpoint.

Section 3808 of the General Code in part provides :

"No member of the council, board, officer or commissioner of a corporation, shall have any interest in the expenditure of money on the part of the corporation other than his fixed compensation."

Section 4221 of the General Code provides :

"All contracts made by the council of a village shall be executed in the name of the village and signed on behalf of the village by the mayor and clerk. When any expenditure other than the compensation of persons employed therein, exceeds five hundred dollars, such contracts shall be in writing and made with the lowest and best bidder after advertising for not less than two nor more than four consecutive weeks in a newspaper of general circulation within the village. The bids shall be opened at twelve o'clock noon on the last day for filing them, by the clerk of the village and publicly read by him."

It will be seen by this section that it is the village council which authorizes all contracts and that the contracts are executed in the name of the village and signed by the mayor and clerk

Section 4222 of the General Code in part provides :

"Each such bid shall contain the full name of every person or company interested in it, and shall be accompanied by a sufficient bond or certified check on a solvent bank that, if the bid is accepted, a contract will be entered into and the performance of it properly secured, * * * The council may reject any and all bids. The contract shall be between the corporation and the bidder, and the corporation shall pay the contract price in cash."

By this section it will be seen that a bond is given with the contract to secure the proper performance of the same and is in fact a part of the contract and that it is necessary for the council to pass upon the matter of the sufficiency of the bond as a part of the contract and may reject the contract by reason of an insufficient bond.

Section 4295 of the General Code in part provides :

“Council may provide by ordinance for the deposit of all public moneys coming into the hands of the treasurer, in such bank or banks, situated within the municipality or county, as offer, at competitive bidding, the highest rate of interest and give a good and sufficient bond issued by a surety company authorized to do business in the state, * * * ”

Section 4296 of the General Code in part provides :

“In such ordinance the council may determine the method by which such bids shall be received, the authority which shall receive them, and which shall determine the sufficiency of the security offered, the time for the contracts for which deposits of public money may be made, and all details for carrying into effect the authority here given.”

It will be seen that by these sections a good and sufficient surety bond becomes a part of the depository bid and that the council must determine the authority which will receive such bids and pass upon the sufficiency of the security offered.

From the above sections it will be seen that in both instances it is necessary that the council take action entering into the contract. As a member of the council is interested in the award of the contract by virtue of obtaining a commission for executing the surety bonds, it is believed that such a member would have an interest in the expenditure of money by the corporation.

You are therefore advised that contracts entered into by a depository under section 4295 and for construction where the surety bond is solicited and written by a member of a council are illegal under section 3808 of the General Code.

Respectfully,
C. C. CRABBE,
Attorney General.

3868.

ABSTRACT, STATUS OF TITLE TO JOHN AND IDA MAY YODER TRACT OF LAND FOR PART OF SITE FOR ADDITIONAL INSTITUTION FOR THE FEEBLE MINDED IN NORTHERN OHIO.

COLUMBUS, OHIO, December 8, 1926.

In re: Abstract of Title of John and Ida May Yoder Tract.

HON. JOHN E. HARPER, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—Examination of an abstract, warranty deed and other data submitted for my examination and approval, discloses the following:

The Abstract as submitted was prepared by the Wayne County Abstract Company of Wooster, Ohio, and is certified under date of September 27, 1926, and pertains to 42.61 acres in the northeast part of the southeast quarter of section 17, township 16, range 12, East Union township, Wayne county, Ohio, which premises are more particularly described by metes and bounds in the caption to said abstract submitted herewith, and which land is to be used as a part of the site for an additional institution for the feeble minded in Northern Ohio.