

1149.

ASSESSMENTS—NO STATUTORY LIMITATION ON PAYMENT THERE-
OF FOR COUNTY DITCH IMPROVEMENT WHEN—BONDS ISSUED
THEREFOR—UNIFORM BOND ACT AS TO MATURITY OF BONDS.

SYLLABUS:

1. *There is no statutory limitation on the period within which assessments to pay the cost of a county ditch improvement, the estimated cost of which exceeds five hundred dollars (\$500.00), must be payable, except that they shall be payable in not less than two semi-annual installments, and where bonds are issued in anticipation of the collection of such assessments, they cannot be made payable during a longer period than the maximum maturity of such bonds as certified by the fiscal officer of the county.*

2. *The provisions of Amended Senate Bill No. 403 do not affect the maximum maturities of bonds of a subdivision as limited by the Uniform Bond Act.*

COLUMBUS, OHIO, July 26, 1933.

HON. CLIFTON L. CARYL, *Prosecuting Attorney, Marysville, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

“This office is requesting your opinion on the following question:

That upon the filing of a petition with the County Commissioners for the purpose of cleaning out a County ditch, (which ditch is an old channel that formerly was a part of Millcreek, a stream running through this county and which contains stagnant water and such substances as are dangerous to public health in the respective communities) our question or inquiry is, as to whether or not the assessments against the respective property owners would necessarily have to be paid within a period of five years, as is now provided by Statute, or whether under Senate Bill 403 said assessments can be extended for a period of more than five years.

Said project is intended to be done under the new project known as The National Recovery Act.”

In referring to the five year limitation for ditch assessments, I presume you have in mind section 6460, General Code. This section, which is in the chapter relating to county ditches, provided prior to 1929, among other things, that assessments for ditch improvements shall be payable in not less than two nor more than ten semi-annual installments, and that in no event shall more than five years' time or ten semi-annual installments be given in any case for any assessments for any improvement under this chapter. This section was amended in 1929, and as it now stands, there is no limitation as to the time within which such assessments shall be payable where the estimated cost of the improvement exceeds five hundred dollars (\$500.00), except that they shall be payable in not less than two semi-annual installments. This statute was again amended by the 90th General Assembly (H. B. No. 72), but the change made by this amendment is not material to your question, the only change made being the addition of a provision that where an assessment or an unpaid balance of an assessment is five dollars (\$5 00) or less, the same shall be paid in full and not in installments.

I assume that the improvement in question involves more than a mere cleaning of the ditch and constitutes a permanent improvement as defined in section 2293-1, General Code. Prior to 1929, bonds could not be issued in anticipation of the collection of such assessments covering a period of more than five years, since assessments as paid must be applied to the liquidation of such bonds. Section 2293-24, General Code, and Opinions of the Attorney General for 1928, Vol. III, page 2352. As the statute now stands, if bonds are issued in anticipation of the collection of such assessments, the assessments of course cannot be payable over a longer period than the maximum maturity of such bonds as certified by the fiscal officer of the county, which maximum maturity shall be not less than five nor more than thirty years (Sections 2293-2, 2293-9 and 2293-10, General Code), unless these limitations of the Uniform Bond Act may be exceeded by virtue of the provisions of Amended Senate Bill No. 403. Amended Senate Bill No. 403 reads in part as follows:

“Section 1. For the purpose of enabling municipal corporations and other subdivisions of Ohio to participate in federal aid provided by the ‘national industrial recovery act’ enacted by the seventy-third congress of the United States, and for that purpose only, the taxing authority of any municipal corporation or any other subdivision provided for in said act is hereby authorized to issue bonds, during the effective period of said act subject to the provisions of sections 2293-1 to 2293-37, inclusive, of the General Code, except as hereinafter provided, and may be non-interest bearing for any number of consecutive years, beginning with the date of issue.

1. If the tax commission of Ohio certifies that the municipal corporation or other subdivision of Ohio is unable to issue such bonds subject to the limitations prescribed by sections 2293-14, 2293-15, 2293-16, 2293-17 and 2293-18 of the General Code whether or not such bonds shall have been or may be voted, then such bonds may be issued to the extent required without the authority of an election and outside of the limitations prescribed by said sections of the General Code after exhausting the powers for the creation of indebtedness within such limitations; provided, however, that the aggregate amount of such bonds issued under this act in excess of such limitations shall not exceed the amount by which the net indebtedness of the municipality or subdivision within such debt limitations, as it exists on the effective date of this act, will have been reduced by the 31st day of December, 1938. Such reduction in net indebtedness shall be determined by the aggregate principal amount of bonds maturing within said period. The certificate of the tax commission of Ohio shall also state the amount of such reduction and said certificate as to the matters required by this act shall be final. Nothing herein shall prevent the application to such bonds of the provisions of subsection d of section 2293-14 of the General Code to the extent that the income from the improvement for which the bonds are issued is sufficient to cover the cost of all operating expenses and debt charges on said bonds or part thereof.

2. Such bonds shall not be subject to the limitations of sections 2293-14, 2293-15, 2293-16 and 2293-17 of the General Code.”

The second paragraph of section 1 provides that the limitations of sections 2293-14, 2293-15, 2293-16, 2293-17 and 2293-18 on the net indebtedness which subdivisions may create or incur may be exceeded to a certain extent where the com-

mission certifies that a subdivision is unable to issue bonds subject to those limitations. Clearly, this paragraph has nothing to do with the maturity of bonds or with assessments.

While said Amended Senate Bill No. 403 provides that bonds may be non-interest bearing for any number of consecutive years, this, in my opinion, means any number of consecutive years in the period during which such bonds mature, the Uniform Bond Act having authorized only interest bearing bonds (section 2293-8, General Code), and was not intended to disturb the limitations of such act as to their maximum maturity. Bonds are authorized by Amended Senate Bill No. 403 to be issued "subject to the provisions of sections 2293-1 to 2293-37, inclusive, of the General Code, except as hereinafter provided," and the only limitations which are thereafter provided are the limitations as to net indebtedness and, of course, these provisions cannot apply to bonds issued in anticipation of the collection of assessments because such bonds are not to be considered in determining the net indebtedness of a subdivision. Section 2293-13, General Code.

I am of the opinion therefore that:

1. There is no statutory limitation on the period within which assessments to pay the cost of a county ditch improvement, the estimated cost of which exceeds five hundred dollars (\$500.00), must be payable, except that they shall be payable in not less than two semi-annual installments, and where bonds are issued in anticipation of the collection of such assessments, they cannot be made payable during a longer period than the maximum maturity of such bonds as certified by the fiscal officer of the county.

2. The provisions of Amended Senate Bill No. 403 do not affect the maximum maturities of bonds of a subdivision as limited by the Uniform Bond Act.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1150.

APPROVAL, NOTES OF PAINT CONSOLIDATED NO. 2 RURAL SCHOOL DISTRICT, HIGHLAND COUNTY, OHIO—\$3,799.00.

COLUMBUS, OHIO, July 26, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1151.

APPROVAL, NOTES OF PAINT CONSOLIDATED NO. 1 RURAL SCHOOL DISTRICT, HIGHLAND COUNTY, OHIO—\$2,262.00.

COLUMBUS, OHIO, July 26, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.