

2801.

LAWS—PUBLIC OFFICERS TO ADMINISTER UNTIL DECLARED UNCONSTITUTIONAL BY PROPER COURT.

SYLLABUS:

Administrative public officials, in the administration of laws, should administer the laws as enacted by the proper legislative authorities, even though the constitutionality of such laws may be questionable, unless and until such laws are declared to be unconstitutional by a court of competent jurisdiction.

COLUMBUS, OHIO, October 29, 1928.

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

GENTLEMEN:—I am in receipt of the following inquiry from your office:

“Are the expenses of operating and maintaining a municipal court of the City of Toledo, Ohio, legally payable in part from the treasury of the City of Toledo?”

Article IV, Section 1, of the Constitution of Ohio, provides as follows:

“The judicial power of the state is vested in a Supreme Court, Courts of Appeals, Courts of Common Pleas, Courts of Probate, and such other courts inferior to the Courts of Appeals as may from time to time be established by law.”

In pursuance of the foregoing constitutional provision the Legislature from time to time has provided for the creation of municipal courts in various cities of the state. Provision for the establishment of a municipal court in the City of Toledo was made by an act of the General Assembly in 1917 (107 v. 704). The act was codified as Sections 1579-276 to 1579-329, inclusive, of the General Code.

By the terms of the foregoing act provision was made for the payment of a portion of the salary of the judges of the Municipal Court of Toledo from the treasury of the City of Toledo, (Sec. 1579-280). Provision was also made for the payment of jury fees from the city treasury (Sec. 1579-301), for the salary of the clerk and deputy clerks from the city treasury (Sec. 1579-313), for the salary of marshals and deputy marshals from said city treasury (Secs. 1579-319 and 1579-320), and the payment of the salary of the probation officers from the same source (Sec. 1579-324).

I am informed that your inquiry is prompted from the fact that the city solicitor of the City of Toledo has expressed his doubts with respect to the constitutionality of those provisions of the Toledo Municipal Court Act, providing for the payment of judges' and clerks' salaries and jury fees from the city treasury by reason of the home rule provisions of the Constitution of Ohio, and the fact that the City of Toledo has pursuant to Section 7 of Article XVIII of the Constitution of Ohio adopted a charter.

It is well settled that all statutory enactments are presumed to be constitutional and that administrative officers in the administration of laws are not only justified but are required to treat all laws as being constitutional until they have been declared to be otherwise by a proper authority.

This office has uniformly and repeatedly refused to pass upon the constitutionality of acts of the Legislature after their enactment unless they are clearly repugnant to

some specific provision of the Constitution. I see no reason to depart from the rule in this case. The Legislature has made similar provisions to those referred to above in the Toledo Municipal Court Act in a number of other municipal court acts and the Attorney General not being a court with jurisdiction to declare statutory enactments unconstitutional would only add confusion to a subject already confused if he should express his opinion to the effect that the provisions of the Toledo Municipal Court Act above referred to were unconstitutional.

You are therefore advised that it is your duty to treat the provisions of the Municipal Court Act of Toledo with respect to the manner of meeting the expenses of operating and maintaining the court as being constitutional until a court of competent jurisdiction declares them to be otherwise.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2802.

BONDS—SCHOOL BONDS ISSUED UNDER SECTIONS 5655-1 AND 5655-3,
GENERAL CODE—RETIRED—CONSIDERATION OF SAME UNDER
SECTION 2293-18, GENERAL CODE.

SYLLABUS:

Bonds issued under House Bill No. 599 of the 85th General Assembly (Sections 5655-1 to 5655-3, General Code), and retired during a calendar year, may not be considered in determining the amount of bonds which a school district is authorized to issue during said calendar year under the provisions of Section 2293-18, General Code.

COLUMBUS, OHIO, October 29, 1928.

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

GENTLEMEN:—This will acknowledge the receipt of your recent communication which reads:

You are respectfully requested to render this department your written opinion upon the following:

The outstanding indebtedness of Ashland City School District is as follows:

By vote of people.....	\$491,000 00
Without vote of people.....	43,000 00
	(\$5,000 of which is retired annually)
Issue under House Bill 599, without a vote of the people.....	\$36,000 00
	(\$12,000 of which is retired annually)

The tax duplicate of the district is \$26,000,000. Under the provisions of Section 2293-18, G. C., it is provided that if at the effective date of this act any of the limitations of Sections 2293-14, 2293-15, 2293-16 and 2293-17 are exceeded in any subdivision, such subdivision so long as such excess exists, may in any calendar year issue bonds falling within the classes covered by said