

tion. Therefore, it would be difficult to bring such an employe within the terms of Section 1717, Revised Statutes, prohibiting an increase of salary of an officer during his term, whether he be elected or whether he be appointed."

To the same effect are the following authorities:

Alabama vs. Sanders, 187 Ala. 79; *Stone vs. Strain*, 18 Ala. App. 228; *People vs. Strong*, 67 Colo. 599; *Bayley vs. Garrison*, 190 Cal. 690; *Harrold vs. Barnum*, 8 Cal. App. 21; *Quernheim vs. Asselmeier*, 296 Ill. 494; *Jefferson County vs. Cole*, 204 Ky. 27; *Shanks vs. Howes*, 214 Ky. 613; *Commonwealth vs. Iron Company*, 153 Ky. 116; *State, ex rel. vs. Johnson*, 123 Mo. 43; *State, ex rel. vs. Gordon*, 238 Mo. 168; *Gibbs vs. Morgan*, 39 N. J. Eq. 126; *Bowers vs. Albuquerque*, 27 N. M. 291; *State, ex rel. vs. Sierra County*, 29 N. M. 209; *Muskogee County vs. Hart*, 29 Okla. 693; *Summers vs. State*, 5 S. Dak. 321; *State, ex rel. vs. Oklahoma City*, 38 Okla. 349; *Funderburk vs. Oliver*, 140 So. 370; *Cunning vs. Humboldt County*, 266 Pac. 522.

Consequently, I am of the opinion that a provision of a city charter prohibiting the change of the salary of any officer or employe of the city during the term for which he was elected or appointed does not apply to an appointive officer or employe who serves at the pleasure of the appointing power, and therefore the salary of such an officer or employe may be reduced or increased, during the time he is serving under his appointment, by the officer or body having the power to fix his salary.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2406.

JUDGMENT—BONDS MAY BE ISSUED BY SUBDIVISION TO PAY FINAL JUDGMENT ONLY WHEN SUCH JUDGMENT BASED ON NON-CONTRACTUAL OBLIGATION.

SYLLABUS:

Bonds may be issued by a subdivision to pay a final judgment only when such judgment is based on a non-contractual obligation.

COLUMBUS, OHIO, March 24, 1934.

HON. WAYNE L. ELKINS, *Prosecuting Attorney, Ironton, Ohio.*

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

"The Burlington School Board, Lawrence County, in 1929, undertook to pass the proper legislation to borrow \$5000.00 to build a new school house. The Iron City Savings Bank of Ironton, Ohio, now in

liquidation, loaned \$5000.00 on notes signed by the members of the board of education in anticipation of the funds to be raised by the bond issue. The legislation, in a way, was passed by the board, but no bonds were ever issued. It is my opinion that the legislation was not regular and that said bond issue could not now be made. The liquidator of the bank has taken judgment against said board of education for the amount due on the notes. .

I would like to know whether any bond issue can now be made to pay off this judgment. I am aware that, under Sec. 5625-8, G. C. O., tax levy can be made to pay said judgment. The board of education prefers to issue bonds to pay off this indebtedness, if the same can be done. Please give me an opinion as to whether bonds can now be issued for this purpose, and if so, please suggest the method."

If the liquidator of the bank holding the notes in question brought suit thereon and recovered judgment, it would seem that the court must have found that the notes were valid obligations of the subdivision and that the legislation was not fatally defective, in which event bonds could be issued under section 2293-26, General Code, in pursuance of the legislation which provided for the issuance of bonds for the construction of a school building and the issuance of notes in anticipation thereof. However, I do not have sufficient facts to advise me fully as to what the situation is with respect to these notes. I therefore assume that the proceedings of the board of education were so irregular that bonds cannot now be issued in connection with said improvement.

Section 2293-3, General Code, sets forth the kind of judgments for the payment of which bonds may be issued by a subdivision. This section reads as follows:

"When the fiscal officer of any subdivision certifies to the bond-issuing authority that, within the limits of its funds available for the purpose, the subdivision is unable to pay a final judgment or judgments rendered against the subdivision in an action for personal injuries or based on other non-contractual obligations, then such subdivision may issue bonds for the purpose of providing funds with which to pay such final judgment in an amount not exceeding the amount of the judgment or judgments together with the costs of suit in which such judgment or judgments are rendered and interest thereon to the approximate date when the proceeds of such bonds are available."

The judgment in question is based on a contractual obligation, and I know of no authority for the issuance of bonds for the payment of such a judgment.

Consequently, I am of the opinion that bonds may be issued by a subdivision to pay a final judgment only when such judgment is based on a non-contractual obligation.

Respectfully,
JOHN W. BRICKER,
Attorney General.