

OPINION 65-52**Syllabus:**

A proposed bond issue outside of the constitutional ten mill tax limitation to be paid from funds derived from a general tax levy must be submitted to the electors under the provisions of Section 133.09, Revised Code. This section requires submission to the board of elections, ninety days preceding the election, notwithstanding a home rule charter provision that a municipal bond issue can be placed before the electorate if submitted to the board of elections sixty days prior to the election.

To: Ted W. Brown, Secretary of State, Columbus, Ohio
By: William B. Saxbe, Attorney General, April 1, 1965

I am in receipt of your request for my opinion which reads

as follows:

"Enclosed are copies of documents filed on March 1, 1965, with the Board of Elections of Lorain County. You will notice that they purport to place before the Board of Elections valid resolutions requiring the submission on May 4 of a proposed bond issue for the City of Sheffield Lake.

"The Uniform Bond Act provides, as you know, that bond issue resolutions must be filed by ninety days preceding the election. The charter of the City of Sheffield Lake provides, however, that municipal bond issues may be placed before the electorate by resolution submitted to the Board of Elections sixty days before the election. I would appreciate your opinion on the question of whether or not a charter municipal corporation can, by provision in its charter, deviate to this degree from the general law as contained in the Uniform Bond Act, Chapter 133 of the Revised Code. My concern is, of course, whether Section 13 of Article XVIII requires the city to comply with the Uniform Bond Act. Section 12 of Article XVIII may also be involved.

" * * * * * * * * "

Your letter of request mentions that perhaps Section 12, Article XVIII, Ohio Constitution, should be considered when answering the inquiry; this section reads:

"Any municipality which acquires, constructs or extends any public utility and desires to raise money for such purposes may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law; provided that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure. (Adopted September 3, 1912.)"

The purview of this constitutional provision only extends to mortgage bonds issued for public utility purposes beyond the general limit of bonded indebtedness of municipalities. The plain meaning of the language of this provision establishes the fact that bonds issued mandatorily must be secured only by the property of and revenues from the public utility. If only the property purchased with the funds from the sale of the bonds

and the revenue received from the operation of the utility are pledged for the payment of the bond obligation, there is no pledge of property of the state, as is prohibited by other provisions of law. A judicial pronouncement of this interpretation is found in the first paragraph of the syllabus of the case Kasch v. Miller, 104 Ohio St. 281, which paragraph reads in part as follows:

"* * * Where the entire improvement is to be paid for by the issue and sale of bonds in the name of the state, and the principal and interest are to be paid entirely out of the revenues derived from the improvement or from the sale of the corpus in case of default, a state debt is not thereby incurred within the purview of the state constitution; nor do the bonds so issued become an obligation or pledge the credit of the state under the express provisions of Section 412-2, General Code."

The bonds to be issued by the City of Sheffield Lake are not to be secured by a pledge of the property and revenue of a utility; therefore, Section 12, Article XVIII, Ohio Constitution, is not germane to the instant problem.

Your letter of request together with resolutions of the Council of the City of Sheffield Lake attached thereto reveal that the bonds are to be retired by payment from general tax funds, thus properly categorized as general obligation bonds.

Section 13, Article XVIII, Ohio Constitution, referred to in your letter reads:

"Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities. (Adopted September 3, 1912.)"

This constitutional provision provided a firm basis for the enactment of the Uniform Bond Act, Chapter 133, Revised Code. The opinion of the Supreme Court of Ohio in the case Middletown v. City Commissioners, 138 Ohio St. 599, commented on the Uniform

Bond Act and general obligation bonds at page 608:

"* * * * *"

"It follows that while the Uniform Bond Act undoubtedly applies to general obligation bonds for which a tax must be levied, * * *

"* * * * *"

I am further informed by your letter of request that the City of Sheffield Lake, a home rule charter city, has provided by charter that a proposed municipal bond issue may be placed before the electorate by resolution submitted to the Board of Elections sixty days before the election.

Section 133.09, Revised Code, which sets forth the procedural machinery for the submission of the question of issuing bonds to electors, reads in material part, as follows:

"The taxing authority of any subdivision may submit to the electors of such subdivision the question of issuing any bonds which said subdivision has power to issue. * * * Thereupon, if the taxing authority desires to proceed with the issue of said bonds, it shall, not later than four p.m. of the ninetieth day before the day of such election, certify its resolution, together with the amount of the average tax levy, * * * to the board of elections of the county which shall prepare the ballots and make other necessary arrangements for the submission of the question to the voters of the subdivision."

(Emphasis added)

Section 133.01 (B), Revised Code, defines municipal corporation as follows:

"(B) 'Municipal corporation' means any municipal corporation, including those which have adopted a charter under Article XVIII (18), Ohio Constitution."

The Uniform Bond Act is so called because it was enacted for the purpose of accomplishing a uniformity of practice tending to promote the marketing of public securities issued by the various political subdivisions of the state. See Oberlin v. Morris, 45 Ohio App. 470. Furthermore, the statutory provisions concerning bond issue elections, like other provisions of the Uniform Bond Act, have been ruled to be mandatory and to require strict compliance therewith. In the case State, ex rel Board of County Commissioners v. Guckenberger, 165 Ohio St. 12, the opinion of Court after mentioning Sections 133.09 and 133.11, Revised Code, stated at page 14:

"* * * * *"

"The above-quoted statutory requirements, contained in the Uniform Bond Act, are mandatory, and a strict compliance therewith is necessary. * * *

"* * * * *"

A municipal corporation by home rule charter may provide rules for local self government; however, such charter provisions cannot be in conflict with the general laws of Ohio according to Section 3, Article XVIII, Ohio Constitution.

In view of the obvious intent of the legislature in enacting the Uniform Bond Act viz., providing uniformity of procedures to enhance the marketability of public securities, and considering the judicial commitments of our courts to the proposition that the provisions of Chapter 133, Revised Code, are mandatory and require strict compliance, it becomes clear that the aforementioned charter provision of the City of Sheffield Lake is in conflict with a general law and, has no application to the bond issue mentioned in your request for my opinion.

Accordingly, it is my opinion that a proposed bond issue outside of the constitutional ten mill tax limitation to be paid from funds derived from a general tax levy must be submitted to the electors under the provisions of Section 133.09, Revised Code. This section requires submission to the board of elections, ninety days preceding the election, notwithstanding a home rule charter provision that a municipal bond issue can be placed before the electorate if submitted to the board of elections sixty days prior to the election.