

2165.

APPROVAL, NOTES OF VAN BUREN TOWNSHIP RURAL SCHOOL DISTRICT, MONTGOMERY COUNTY, OHIO, \$24,000.00.

COLUMBUS, OHIO, January 16, 1934.

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

2166.

BONDS—TREASURER OF STATE SHOULD REGISTER BONDS ISSUED PURSUANT TO SECTION 6828-44a, G. C., ALTHOUGH NOT PAYABLE AT HIS OFFICE.

**SYLLABUS:**

*The Treasurer of State should register bonds issued pursuant to section 6828-44a, General Code, as enacted by the 90th General Assembly, notwithstanding the fact that such bonds by their terms are not payable at his office.*

COLUMBUS, OHIO, January 16, 1934.

HON. HARRY S. DAY, *Treasurer of State, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication in which you make certain inquiries relating to your duties with respect to the registration in your office of bonds in the amount of \$165,000.00 issued by the City of Mansfield, Richland County Conservancy District under the authority of Amended Senate Bill No. 96, enacted by the 90th General Assembly, to retire warrants heretofore issued by the district to pay preliminary expenses incurred by such district.

The question with respect to your duty, if any, to register these bonds arises from the fact that by the terms of these bonds and of the legislation of the conservancy district authorizing the issue of the same, the bonds are to be paid not at the office of the Treasurer of State but at a certain named bank in the City of Mansfield, Ohio. In this connection, it is noted that these bonds are issued under section 6828-44a, which was enacted in and by Amended Senate Bill No. 96 as a supplemental section to section 6828-44, General Code, which is a part of the original Conservancy Act of Ohio enacted by the 80th General Assembly under date of February 17, 1914. In view of this fact and of the further fact that the only provisions of the Conservancy Act of Ohio relating to the issue of bonds by a conservancy district prescribes that bonds issued under the original conservancy act shall be paid at the office of the Treasurer of State, it has been urged that the bonds here in question should likewise have been made payable at the office of the Treasurer of State. As a matter of statutory construction, there is some force in this argument. However, I am quite clearly of the view that this question, though the same might well be material as between the City of Mansfield, Richland County Conservancy District and the holder of these bonds, is not one of controlling importance in the consideration of the provisions of section 6828-44a, General Code, in so far as they relate to your duties with respect to the registration of these bonds.

Section 6828-44a, General Code, as enacted by Amended Senate Bill No. 96, in making provision for the issue of bonds for the purpose therein indicated, provides that "such bonds shall be executed by the president of the board of

directors, attested with the seal of such district, and by the signature of the secretary of the said board, and shall be registered by the treasurer of the state of Ohio." The above quoted provision of this supplemental act which, as above noted, was enacted as section 6828-44a, General Code, was taken word for word from section 6828-47, General Code, which is one of the original sections of the Conservancy Act of Ohio and which provided for the issue of bonds in anticipation of the collection of assessments to pay the cost and expense of improvements made by the conservancy district as provided for in said original act. As above noted, section 6828-47, General Code, provided that bonds issued under the authority of this section should be paid at the office of the Treasurer of State.

On a consideration of various statutes enacted in many of the states of the Union providing for the registration of bonds in the office of some particular state officer therein named, I do not find that such provisions with respect to the registration of bonds have any necessary connection with the place of the payment of such bonds. On the contrary, I find that in many of the states provision is made for the registration in the office of a state officer, usually the state auditor, of bonds issued not only by the particular state but by counties, townships, municipal corporations and by other political subdivisions therein, and as a rule such statutes are entirely silent with respect to the place of the payment of such bonds. As a rule, statutes of this kind require the state officer therein named to not only register such bonds but upon a proper showing to him of the validity of such bonds, to make a certificate to this effect. And most of the cases which have arisen under statutes of this kind have been directed to the question as to whether a certificate of this kind, issued by the state officer in such case, is binding upon the municipal corporation or other political subdivision issuing such bonds so as to estop it from contesting the validity of the bonds. Touching this question, the following is said in Abbott on Public Securities, at page 367:

"The effect, however, of registration or certification will depend largely upon the purpose of the law requiring this to be done. If this is merely to afford a ministerial and clerical record of bonds issued, their validity can be attacked. The registration or certification is not conclusive upon this point.

If, on the other hand, the language of the statute as well as its purpose indicates the proceedings to be of a quasi judicial character, a certification by the official with the act of registration will operate substantially as a judgment upon the questions within his jurisdiction and they will be regarded as a *res adjudicata*."

There is nothing in the act here in question which requires you as Treasurer of State to make or issue any certificate relating to the validity of the bonds issued by the City of Mansfield, Richland County Conservancy District. The only pertinent provision of the section in this connection is that such bonds "shall be registered by the treasurer of the state of Ohio." It is obvious that the only purpose that can be served by this provision of section 6828-44a, General Code, is to afford a ministerial and clerical record of bonds issued under this section of the General Code. Included within the purpose of the statute in providing for the registration of these bonds is, perhaps, that of providing a check against the issue of bonds in excess of the amount of bonds provided for in the resolution or resolutions of the board of directors of the conservancy district relating to and providing for the particular bond issue which is submitted to the Treasurer of State for registration.

Upon the considerations above noted, I am quite clearly of the opinion that your duty to register the bonds here in question is not affected by the fact that these bonds, by their terms and in accordance with the resolution or resolutions providing for their issue, are made payable at a place other than the office of the Treasurer of State. And I am quite as clearly of the opinion that when you have registered these bonds and have endorsed your name certifying such facts upon the bonds your duties with respect to this matter are at an end and that no liability is incurred by you with respect to the payment of these bonds and the interest thereon, or otherwise.

In view of the apparent purpose to be served under the statutes by the registration of these bonds, it is suggested that such bonds be registered with respect to their several serial numbers and the respective amounts of the several bonds and the respective maturities thereof. In such registration there should also be a reference to the Amended Senate Bill No. 96, enacted by the 90th General Assembly (sec. 6828-44a, G. C.), and to the resolution or resolutions of the board of directors of said conservancy district providing for the issue of these bonds, and to the date or dates thereof.

It is evident from what has been said above that the mere signing by you of the blank form as printed on the back of these bonds does not in itself constitute a registration of these bonds as provided for in said act. I believe I have sufficiently indicated to you the nature of the record to be made by you in the registration of these bonds; and as to this, I may say in conclusion that I know of no statutory provision which requires the conservancy district to furnish to you any record book for this purpose.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

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2167.

APPROVAL, NOTES OF ELYRIA CITY SCHOOL DISTRICT, LORAIN COUNTY, OHIO, \$75,000.00.

COLUMBUS, OHIO, January 17, 1934.

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

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2168.

APPROVAL, BONDS OF WEATHERSFIELD TOWNSHIP RURAL SCHOOL DISTRICT, TRUMBULL COUNTY, OHIO, \$3,700.00.

COLUMBUS, OHIO, January 17, 1934.

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