As tending to further support the above expressed view, attention is directed to section 3950 G. C. which provides that an indebtedness shall not be deemed to have been created or incurred within the meaning of the act until bonds have been delivered under the contract of sale.

In specific answer then to your question, it is the opinion of this department that the provisions of section 3940 G. C. would prohibit in the instance indicated, and for the purpose mentioned, the incurring of an indebtedness by the village of a sum in excess of $3,000 during the fiscal year of 1923.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3826.

MUNICIPAL CORPORATIONS—AUTHORIZED TO ACQUIRE, CONSTRUCT AND OPERATE MUNICIPAL WATERWORKS—SECTION 3963 G. C. REQUIRING FREE WATER FOR CERTAIN PURPOSES NOT APPLICABLE IN CASE WHERE BONDS ISSUED UNDER SECTION 12 OF ARTICLE XVIII OF OHIO CONSTITUTION AND ORDINANCE PROVIDE REASONABLE CHARGE MAY BE ASSESSED AGAINST CITY.

1. *Under the provisions of sections* 4, 5, 6 *and* 12 *of the Constitution of Ohio as adopted September* 3, 1912, *municipal corporations are authorized to acquire, construct and operate municipal waterworks and may contract relative to the disposal of the products of such utility.*

2. *Section* 3963 *G. C. requiring the furnishing of free water for certain municipal purposes not applicable in the case where a municipality has issued bonds under the provisions of section* 12 *of Article XVIII of the Constitution of Ohio as adopted September* 3, 1912, *to provide funds for the purchase of a municipal waterworks, and has included in the ordinance authorizing said bond issue the provisions that a fair and reasonable charge for hydrant rentals may be assessed against the city for water service rendered, and that the revenues of said waterworks beyond such as may be required for maintenance and operation, shall be credited to a special fund for the purpose of paying the principal and interest accruing under said bonded indebtedness.*

COLUMBUS, OHIO, December 22, 1922.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your request for the opinion of this department as follows:

> "The waterworks plant in the City of Galion, Ohio, was purchased from a private corporation, known as the Galion Water Works Company. Said purchase was authorized by vote of the people at the general election held in November, 1920, and the plant was taken over by the City in January 1921.

The city agreed to assume the outstanding bonds of said Galion Water Works Company in the amount of $125,000.00 with interest at the rate of 5 per cent and to pay to said Company $70,000.00 plus the actual amount in cash paid out by said water works company for any additions or improvements to the plant between the date of April 8, 1920, and the date of the City's taking over said plant. For the purpose of making such cash payment to said Company, the City authorized bonds in the sum of $80,000.00 under the provisions of section 12, of Article XVIII of the Constitution, and said bonds are mortgage bonds secured only by the property and revenues of said water works. Included in this ordinance is a clause to the effect that in case of foreclosure of said mortgage a franchise to the purchaser to operate in said city for a period of twenty years from the date of the sale of said property on foreclosure shall be granted; and that all revenues over and above maintenance and operating expenses from said water works property, including a fair and reasonable hydrant rental, a charge for all services rendered the city and all revenues from private consumers are hereby and shall be set aside in a special fund for the payment of interest and principal of said $125,000.00 of bonds now a lien on said property and the bonds that may be issued and sold under this ordinance. Copy of said ordinance is enclosed herewith.

During an examination made by this bureau it was noted that the city paid from its service fund to the water fund $7639.76 for hydrant rentals, which together with $14,051.71 collected from private consumers made the revenue necessary for the operation and maintenance of the plant and the creation of a sinking fund for the payment of principal and interest on the bonded debt.

Section 3963 G. C. provides in part that 'no charge shall be made by a city or village or by a water works department thereof, for supplying water for extinguishing fire, cleaning fire apparatus, or for furnishing or supplying connections with fire hydrants, and keeping them in repair for fire department purposes, the cleaning of the market houses, the use of any public building belonging to the corporation * * * or for the use of public school buildings in such city or village, etc.'

Question: Are the mandatory provisions of section 3963 G. C., that water free of charge shall be furnished by municipal corporations for certain purposes applicable to the Galion city water works under the conditions described?"

It is believed that the facts cited in your inquiry may be briefly restated as follows:

At the general election held in November, 1920, the city of Galion, Ohio, was authorized by a vote of the people to purchase a water works plant owned by the Galion Water Works Company, a private corporation. In January 1921 this property was taken over by the city, which assumed by the purchase the outstanding bonds of the said Galion Water Works Company totaling the sum of $125,000.00. In addition to this assumed obligation, and as part of the purchase price of said plant, the city paid the sum of $70,000.00 plus the actual amount in cash paid out by said water works company for additions and improvements between the date of April 8, 1920, and the date of the city's taking over of said plant. Included in the

ordinance providing for the bond issue required to meet the additional cash payment by the city is a clause to the effect that all revenues over and above maintenance and operating expenses from said water works property, including a fair and reasonable hydrant rental charged the city for services rendered, shall be set aside as a special fund for the payment of interest and principal of said $125,000.00 of bonds now a lien on said property and the bonds that may be issued and sold under said ordinance. Pursuant to the provisions of this ordinance the water works department charged the city and collected from the service fund of the corporation the sum of $7,639.76 for the hydrant rentals, which together with that of $14,051.00 collected from private consumers made up the necessary revenue for the maintenance and operation of the plant, and the creation of a sinking fund for the payment of principal and interest on the bonded debt. The question raised by your inquiry involves that of the authority of the city to charge the service department, or practically itself, with hydrant rentals in view of the provisions of section 3963 of the General Code. This section provides as follows:

> "No charge shall be made by a city or village, or by the waterworks department thereof, for supplying water for extinguishing fire, cleaning fire apparatus, or for furnishing or supplying connections with fire hydrants, and keeping them in repair for fire department purposes, the cleaning of market houses, the use of any public building belonging to the corporation, or any hospital, asylum, or other charitable institutions, devoted to the relief of the poor, aged, infirm, or destitute persons, or orphan or delinquent children, or for the use of the public school buildings in such city or village.
>
> But in any case where the school district, or districts, include territory not within the boundaries of the city or village, a proportionate charge for water service shall be made in the ratio which such tax valuation of the property outside the city or village bears to the tax valuation of all the property within such school district, subject to the rules and regulations of the waterworks department of the municipality governing, controlling, and regulating the use of water consumed."

It is noted that the section quoted provides in no uncertain language that no charge shall be made by a city or village, or by the waterworks department thereof, for supplying water for extinguishing fire, etc., or for furnishing or supplying connections with fire hydrants for fire department purposes and others used by the public buildings of the corporation. It is also noted that the section makes similar provisions relative to the supplying of free water to hospitals, asylums, or other charitable institutions, concluding with the general provisions relative to the proportionate charges to be collected for such water services in cases where the school district includes territory outside of the boundaries of the city or village. While the provisions of the section considered must be held to be clearly mandatory, in so far as they pertain to the supplying of city water by the municipality without charge for certain purposes, yet it would not seem altogether clear that this section may be held as operative or applying to the condition of facts stated in your inquiry. On the contrary rather, it would seem that the case cited involves more pointedly the question of the authority of a municipality to exercise certain contractual rights, apparently conferred under the provisions of Sections 4, 5, 6 and 12 of Article XVIII of the Constitution of Ohio as adopted September 3, 1912. Section 4 of said article provides:

"Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of, or full title to, the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility."

Section 5 provides:

"Any municipality proceeding to acquire, construct, own, lease or operate a public utility, or to contract with any person or company therefor, shall act by ordinance and no such ordinance shall take effect until after thirty days from its passage. If within said thirty days a petition signed by ten per centum of the electors of the municipality shall be filed with the executive authority thereof demanding a referendum on such ordinance it shall not take effect until submitted to the electors and approved by a majority of those voting thereon. The submission of any such question shall be governed by all the provisions of section 8 of this article as to the submission of the question of choosing a charter commission."

Section 6 provides:

"Any municipality, owning or operating a public utility for the purpose of supplying the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per centum of the total service or product supplied by such utility within the municipality."

Section 12 provides:

"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."

Considering the evident purpose and general tenor of the above quoted provisions of the Constitution, it would seem that the city in the case considered had acted wholly within the authority granted it, in contracting for the disposal of the products, and in applying the revenues of the utility in question for the purpose of meeting the obligations of the bond issue as authorized. In such a connection attention is directed to section 12 quoted, supra, which provides that the

mortgage bonds issued for such purposes shall not impose any liability upon such municipality, but shall be secured only upon the property and revenues of such public utility. Thus it would seem to be the evident purpose of the section to preserve intact the revenues of such public utility, for the purpose of meeting the obligations of the bonded indebtedness.

Considering Section 3963 G. C., it may be noted that the Supreme Court in the case of the Village of Euclid, et al., vs. Camp Wise Association, 102 O. S. 207, in the first paragraph of the syllabus held that by reason of the adoption of section 4, Article XVIII of the constitution of 1912, municipalities requiring waterworks subsequent to that date may operate the same independent of the restrictions imposed by sections 3963 and 14972 of the General Code. While it is true that the principal question before the court in the case cited, was that of the supplying of free water to charitable and benevolent institutions as provided by section 3963, G. C. yet from the reasoning employed by the court in reaching its conclusions, it is not entirely clear that other provisions of this section may not be involved by such a decision. However this may be, it can only be concluded, in view of the facts stated in your inquiry, that the city of Galion in charging for and selling to itself the products of the public utility acquired by it in conformity to the constitutional provisions relative thereto, has apparently acted within the scope of authority conferred upon municipalities under the provisions of these sections and is seemingly within its rights to contract in respect to matters relative to the products of such public utility.

Upon such considerations, therefore, I am inclined to the opinion that the provisions of section 3963, G. C. are not applicable to such a case as your inquiry contemplates, and from this conclusion it obviously follows that a negative answer should be returned to your specific question.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3827.

STATUS, ABSTRACT OF TITLE, STEESE FARM, PERRY TOWNSHIP, STARK COUNTY, OHIO.

COLUMBUS, OHIO, December 22, 1922.

Department of Highways and Public Works, Columbus, Ohio.

GENTLEMEN:—You have requested my opinion upon the title to the Steese farm situated in Perry township, Stark county, Ohio, as disclosed by the abstract submitted by the Department of Public Welfare.

In an examination that was made in March of this year of said abstract a number of defects were pointed out, some of which required court actions to clear up. After consideration, it is my opinion that all of the defects in the title have now been substantially corrected, and that the State will obtain a good title to said premises on the delivery and acceptance of proper deeds.

The Encumbrance Estimate containing the certificate of the Director of Finance to the effect that there is available the sum of $95,000 to cover the purchase price, it is understood has been obtained.