

2702.

APPROVAL, BONDS OF AMELIA CONSOLIDATED RURAL SCHOOL DISTRICT, CLERMONT COUNTY, OHIO—\$60,000.00.

COLUMBUS, OHIO, December 20, 1930.

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

2703.

ISSUANCE OF BONDS—LEVY OUTSIDE FIFTEEN MILL LIMITATION MAY BE MADE WHEN—WHAT EFFECT SECTION 2, ARTICLE XII OF THE CONSTITUTION AS AMENDED, HAS ON A LEVY WHEN NOTES OR BONDS HAVE BEEN AUTHORIZED AND SUCH BONDS ARE OUTSTANDING—CONDITIONS NOTED.

**SYLLABUS:**

*In the event notes are issued before January 1, 1931, under the provisions of Section 2293-25, General Code, in anticipation of the issuance of bonds then authorized to be issued under the provisions of Sections 1223 and 2293-26, General Code, the levy provided in Section 1222, General Code, in anticipation of which such notes and bonds have been authorized, would be unaffected by Section 2, Article XII of the Constitution as amended, so long as any of such bonds are outstanding.*

COLUMBUS, OHIO, December 20, 1930.

HON. LEROY W. HUNT, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR:—I am in receipt of a letter from Harry S. Commager, Assistant Prosecuting Attorney of your county, which is as follows:

“Under date of June 2nd, 1930, you rendered an opinion, being Number 1932, determining under what conditions a levy could be made outside of the fifteen mill limitation for the retirement of bonds issued under Section 1223 of the General Code. This opinion does not determine the limitations of such levies where notes are issued prior to January 1st, 1931, in anticipation of the issuance of bonds issued pursuant to said Section 1223, wherein bonds have been authorized but not issued before said date.

May we request an opinion on this question:

Can a levy be made outside of the fifteen mill limitation under the provisions of Section 1222 of the General Code, where legislation has been duly passed providing a declaration of necessity for the issuance of bonds, fixing the amount of the bonds, the date of issuance, maturities, and interest, providing for a levy to be certified and extended upon the tax duplicate and collected, determining the necessity to issue notes in anticipation of the issuance of said bonds, and the actual issuance of said notes prior to January 1st, 1931, wherein the bonds are not to be issued until after January 1st, 1931?”

Opinion No. 1932, to which you refer, held as disclosed by the syllabus:

"After January 1, 1931, the effective date of the amendment of Section 2, Article XII of the Constitution of Ohio, a levy may not be made under the provisions of Section 1222, General Code, outside of the fifteen mill limitation provided in such constitutional amendment; provided, that, in the event bonds are authorized or issued under the provisions of Section 1223, General Code, in anticipation of the collection of taxes levied under Section 1222, General Code, outside the fifteen mill limitation, prior to January 1, 1931, such levy should continue to be made outside the fifteen mill limitation as long as any such bonds remain outstanding."

This opinion quoted the provisions of Section 1222, General Code, Section 2, Article XII of the Constitution as effective January 1, 1931, and the schedule thereof, and it is accordingly unnecessary to quote these provisions herein. This schedule provides that "all levies for interest and sinking fund or retirement of bonds issued or authorized prior to January 1, 1931, which are not subject to the statutory limitation of fifteen mills on the aggregate rate of taxation then in force \* \* \* shall not be subject to the limitation established by (this) said amendment." An answer to your question accordingly requires a determination of whether or not, in the event notes are authorized prior to January 1, 1931, in anticipation of the issuance of bonds, which bonds are to be issued in anticipation of the levy provided in Section 1222, General Code, it may be said that such bonds have been "authorized prior to January 1, 1931" within the meaning of this schedule.

In Opinion No. 1932, *supra*, I discussed the question of whether or not the schedule of this constitutional amendment may be construed as rendering the amendment inapplicable to existing tax laws authorizing taxes to be levied outside the fifteen mill limitation. After commenting upon this question, the following language is used:

"Section 1222 is merely enabling in its effect and unless the county has obligated itself to levy the tax therein provided, for and during a period of years extending beyond the effective date of the amendment, as in the case when bonds have been issued under Section 1223, General Code, there is nothing in the schedule to indicate that after such date the section shall be effective."

There is here a recognition that in the event a county has obligated itself to levy the tax provided in Section 1222 for and during a period of years extending beyond the effective date of the amendment, the above quoted provision of the schedule may be applicable.

The provisions of Sections 2293-25 and 2293-26, General Code, relating to the issuance of anticipatory notes are pertinent to your inquiry. These sections provide in part as follows:

Section 2293-25:

"Whenever the taxing authority of a subdivision has legal authority to, and desires to issue bonds without vote of the people, it shall pass a resolution or ordinance declaring the necessity of such bond issue, its purpose and amount. In such resolution or ordinance the taxing authority shall determine, and in any case where an issue of bonds has been approved by a vote of the people, the taxing authority shall by ordinance or resolution determine, whether notes shall be issued in anticipation of the issue of bonds,

and, if so, the amount of such anticipatory notes, not to exceed the amount of the bond issue, the rate of interest, the date of such notes, and their maturity, not to exceed two years. Except in the case of notes issued in anticipation of special assessment bonds, such notes shall be redeemable at any interest period and a resolution or ordinance providing for the issue of notes in anticipation of the issue of bonds shall provide for the levy of a tax during the year or years while such notes run, not less than that which would have been levied if bonds had been issued without the prior issue of such notes. A copy of such resolution or ordinance shall be certified by the fiscal officer of the subdivision to the county auditor of the county in which such subdivision is located."

Section 2293-26:

"If the taxing authority decides not to issue such anticipatory notes, or, if such notes are issued, they are about to fall due, the taxing authority shall adopt a resolution or ordinance determining whether the bonds are to be issued in one lot or in installments, and fixing the amount of the bonds to be presently issued which shall not be greater than the amount authorized; fixing their purpose in accordance with the prior resolution or ordinance of the taxing authority; and fixing the date, rate of interest and maturity which, however, need not be the same as those fixed in the prior resolution or ordinance. \* \* \* \* \*"

Section 2293-25, supra, requires that at the time notes are authorized in anticipation of the issuance of bonds, the bonds shall also be authorized. This for the reason that the section requires the note resolution to "provide for the levy of a tax during the year or years while such notes run, not less than that which would have been levied if bonds had been issued without the prior issue of such notes." Unless bonds are authorized and their maturities and interest rate at least tentatively fixed, it is impossible to determine the levy which this section requires to be provided for. The implication that the note resolution must also authorize bonds also appears in Section 2293-26, supra, wherein it is provided that at the time the notes are about to mature, the second bond resolution shall fix the date, rate of interest and maturity of the bonds "which, however, need not be the same as those fixed in the prior resolution or ordinance."

Having determined that at the time notes are authorized under the provisions of Section 2293-25, supra, it is necessary that the bonds in anticipation of which the notes are authorized be also authorized, it is next necessary to consider whether or not this preliminary authorization of bonds is an authorization within the meaning of the schedule of the constitutional amendment here under consideration. In my view this matter is to a large degree dependent upon the question of whether or not the county has obligated itself at the time of the passage of the note resolution to issue bonds and levy the tax provided in Section 1222 during the life of such bonds. Section 2293-26, supra, seems clear upon this point, wherein it is provided that "when the anticipatory notes" issued under the provisions of Section 2293-25 "are about to fall due, the taxing authority shall adopt" the second or final bond resolution. It is therefore apparent that after having authorized such anticipatory notes it is the mandatory duty of the taxing authority to issue bonds at the time such notes mature pursuant to the prior authorization of such bonds at the time of the authorization of the notes.

In view of the foregoing and in specific answer to your inquiry, it is my opinion that in the event notes are issued before January 1, 1931, under the provisions of Section 2293-25, General Code, in anticipation of the issuance of bonds then authorized

to be issued under the provisions of Sections 1223 and 2293-26, General Code, the levy provided in Section 1222, General Code, in anticipation of which such notes and bonds have been authorized would be unaffected by Section 2, Article XII of the Constitution as amended, so long as any of such bonds are outstanding.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

2704.

COUNTY HOSPITAL—CONSTRUCTION PURSUANT TO AUTHORITY OF ELECTORS—HOW TO PROCEED—WHEN COUNTY COMMISSIONERS MAY SELL REAL ESTATE—FUND INTO WHICH PROCEEDS MAY GO.

SYLLABUS:

1. *In the event a county proposes to construct a new county hospital pursuant to authority of the electors, proceedings therefor should be taken under the provisions of Section 3127, et seq., of the General Code.*
2. *A board of county commissioners may sell any tract of real estate belonging to the county and not needed for public use in parcels in the event it should appear to the best interests of the county so to do.*
3. *The proceeds of such sale should be paid into the sinking fund, the bond retirement fund or into a special fund for the construction or acquisition of a permanent improvement or improvements.*

COLUMBUS, OHIO, December 22, 1930.

HON. EVERETT L. FOOTE, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“On November 4, 1930, electors of Portage County approved the issue of seventy-five thousand dollars (\$75,000.00) of bonds for the purpose of providing funds to assist in the construction of a new fireproof county hospital in line with the proposal of the devisees of the last will and testament of Mary A. Robison.

The county now owns and operates a hospital situated on North Chestnut Street, Ravenna, which has been held by the State as unsafe for hospital purposes and the aforesaid devisees have offered a site on South Chestnut Street and fifty thousand dollars (\$50,000.00) in cash without restrictions for the erection and furnishing of a new county hospital.

The question has now arisen whether the new building should be constructed under Sections 3127 et seq. or Sections 2333 et seq.

Another question is whether the old hospital site can be sold in separate tracts or must it be sold as a whole, and finally, if the old hospital is sold, what disposition shall be made of the sale price.”

While I find no special authority whereby a county may receive a bequest or gift of property for a general county hospital as in the case of a county tuberculosis hospital under the provisions of Section 3142, General Code, there is probably no question as to such authority being contained in the general provisions of Section 18, General Code, which section provides as follows: