

It has been repeatedly held that public boards such as boards of county commissioners and boards of trustees like those provided for in Section 3068, *supra*, have such powers, and *only such powers* as are expressly conferred by law and those impliedly necessary to carry the express powers into effect. See *Commissioners vs. Rafferty* 19 O. N. P. (N. S.) 97; *State vs. Mills*, 20 O. N. P. (N. S.) 427 and cases cited therein.

In the latter case it was held:

“County commissioners can exercise no power unless it is conferred upon them by statute and in the exercise of such power they must comply with the provisions of the statute which confers it.”

I know of no statute authorizing or permitting a board of county commissioners to engage in the motion picture or show business, nor do I find any authorization in any of the sections of the code contained in Chapter 2, Title X, Division IV entitled “Memorial Buildings,” (Sections 3059 to 3069-3 inclusive) or any other section of the General Code, for the board of trustees provided for in Section 3068, *supra*, to engage in such business. And since such authority has not been conferred by the legislature, it is my opinion that the board of trustees in question cannot legally engage in the motion picture or show business.

Nothing herein, however, should be construed as holding that a proper lease may not be entered into for the use of such building for any lawful purpose. In this connection your attention is invited to the case of *State vs. Mills*, *supra*.

Respectfully,

EDWARD C. TURNER.

*Attorney General.*

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120.

SINKING FUND TRUSTEES, HAVING FUNDS IN BONDS ISSUED BY THEIR OWN TAXING SUBDIVISION, NOT AUTHORIZED TO RETIRE SUCH BONDS UNTIL DUE—TAXING SUBDIVISIONS MAY FIX MATURITIES OF BONDS WITHIN LESSER PERIOD THAN MAXIMUM PROVIDED UNDER SECTION 2295-9, GENERAL CODE.

SYLLABUS:

1. *Sinking fund trustees, who have invested funds in their hands in bonds issued by their own taxing subdivision, are not authorized to retire such bonds until the same become due.*

2. *Taxing subdivisions, in issuing bonds, may fix the maturities of said bonds to be within a lesser period than the maximum provided for under Section 2295-9 of the General Code.*

COLUMBUS, OHIO, March 1, 1927.

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

GENTLEMEN:—I am in receipt of your communication in which you request my opinion upon the following propositions:

“May the sinking fund trustees purchase bonds of their own taxing district for investment purposes and then retire such bonds immediately or at any time prior to the date of maturity?”

Section 2295-9, G. C., provides the maximum life of bonds for various purposes and the question arises as to whether bonds may be issued for any such purpose for a less period. For instance the maximum life of bonds for fire apparatus is ten years; may council issue bonds for said purpose and make them payable in one year or any number of years less than the maximum limit?"

1. The Constitution of Ohio provides in Article XII, Section 11 as follows:

"No bonded indebtedness of the state, or any political subdivisions thereof, shall be incurred or renewed, unless, in the legislation under which such indebtedness is incurred or renewed provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity."

In pursuance of this provision of the Constitution, laws have been passed providing for a state sinking fund (Section 382, et seq., of the General Code), a county sinking fund (Sections 2976-19 to 2976-27 inclusive of the General Code), a school district sinking fund (Sections 7613 to 7619, General Code, inclusive), a municipal sinking fund (Sections 4507 to 4522 of the General Code), and a library sinking fund (Sections 4014, et seq., of the General Code.)

The officers charged with the administration of these several sinking funds are, generally speaking, to provide for a levy for interest and sinking fund purposes, to receive the proceeds thereof, to invest them in securities or hold them in reserve, and to take up the matured funded obligations of the several subdivisions as they become due. For the purpose of taking up these matured obligations as they become due, it is necessary that the sinking fund commissioners or trustees have available funds held in reserve or securities that may be readily converted into cash.

While the details of the duties of the several boards of commissioners or trustees for state, county, school district, municipal and library funds are somewhat different, their duties and powers so far as pertinent to the purposes of this opinion, are practically the same.

By virtue of the terms of the Griswold Act as amended March 9, 1923, (110 O. L. 456) boards of county, municipal and school district sinking fund trustees are abolished insofar as their powers and functions relate to bonds issued after January 1, 1922, and their duties and powers pertaining to such issues are transferred to the treasurer of the county, municipality and school district respectively. But until the maturity of all bonds the legislative or administrative action authorizing the issuance of which has been completed or had become effective before January 1, 1922, the local sinking fund authorities provided for by the law as it existed prior to the passage of the Griswold Act are to continue to exercise their respective functions.

Considerable latitude is given to the various boards of trustees of sinking funds by way of investment of funds in their hands, yet they are charged with the clear and positive duty of having funds available in the sinking fund to meet outstanding bonds as they become due as well as all interest maturing thereon. Upon the faithful performance of this duty by such trustees depends the financial credit of the city.

Laws authorizing such boards to invest funds in their hands in the bonds of their own taxing subdivision have been enacted, and such investment is encouraged by providing in some instances that such bonds shall first be offered to the sinking fund officials of the issuing subdivision before they may be sold in the market.

When such bonds are so purchased by the sinking fund trustees they become assets in the hands of the board the same as other securities purchased by them, and may if necessary be sold by them for the purpose of raising funds to meet other neces-

sary obligations. If, however, by some means or other the bonds of its own taxing subdivision when purchased by a board of sinking fund commissioners were retired either in legal effect or by some affirmative action of the board itself the liquid assets of the board would be reduced by an amount equal to the face value of the bonds so retired and while the net indebtedness of the taxing subdivision would not be affected the amount of working capital so to speak, would be depleted, and a condition might be brought about whereby there might not be sufficient assets available for the payment of interest and bond maturing obligations, and thereby the credit of the city would be impugned.

If it were possible for sinking fund commissioners to retire or cancel bonds of their own taxing subdivision which they had purchased there would be no purpose at all in the issuing of bonds, for the improvement or other obligation for which the bonds are issued might as well be paid for by an appropriation from the sinking fund in the first instance. This method of procedure would obviously preclude the accumulation of a sinking fund and defeat the entire purpose of establishing such fund.

From what has been said, it is my opinion that the purpose of creating sinking fund commissions was to make them custodians of the sinking fund, with power to invest the funds thereof in proper securities and sell such securities and reinvest the funds if thought necessary and for the best interests of the subdivision, but that no authority is given by implication or otherwise to retire or redeem an issue of bonds before it shall have become due.

It is significant that from the clear provisions of the Constitution it was the intention of the framers thereof that the funds derived from the levy of taxes which political subdivisions are required to make, when bonded indebtedness is incurred are for the purpose of paying interest on the obligation and providing a *sinking fund* for the *final redemption* of such indebtedness *at maturity*. This *sinking fund* so provided is what the sinking fund officials have under their control and the ultimate purpose of it is for "*final redemption at maturity*" of bonds issued for obligations incurred. No other use can be made of it. If sinking fund officials bought bonds and cancelled them they would be using the moneys in their hands for sinking funds for a totally unauthorized purpose. They are only to preserve and invest the funds and apply them to their ultimate use which is paying certain obligations and redeeming bonds at their maturity.

2. Coming now to your second question, I quote the first clause of Section 2295-9 of the General Code to which you refer, which reads as follows:

"That the maturities of bonds, notes or other evidence of indebtedness issued by counties and other political subdivisions, including charter municipalities, shall not extend beyond the following limitations as specified in the following classifications, the period to be measured from a date twelve months prior to the date of the earliest maturity, if maturing in annual installments, or six months prior thereto, if maturing in semi-annual installments:"

Then follows an enumeration of several classes of bonds for which limitations as to final maturity are made.

Without reviewing the history of the legislation limiting the life of bonds issued for indebtedness incurred for acquiring property or constructing improvements it is sufficient to say that it was the purpose and intent of such legislation, as evidenced by its history, to require the payment of such indebtedness within the estimated life or usefulness of the asset property, construction or improvement for which the debt has been incurred. The statute itself in using the language, "shall not extend beyond the limitation as specified" indicates that such maturity must be within the time limited

and so long as maturities are fixed within the time limited the requirements of the statute are met.

As a matter of public policy good financing would call for making loans as short as possible.

It is therefore my opinion that bonds may be issued which will mature within a less period than the maximum fixed by law.

Respectfully,  
EDWARD C. TURNER.  
*Attorney General.*

121.

COMMISSIONER OF MOTOR VEHICLES—IS THE APPOINTED AUTHORITY REFERRED TO IN SECTION 486-13, GENERAL CODE—IS IN THE UNCLASSIFIED CIVIL SERVICE—IS NOT ENTITLED TO THE THREE PERSONAL EXEMPTIONS AUTHORIZED BY PARAGRAPH 8, DIVISION (a), SECTION 486-8, GENERAL CODE.

*SYLLABUS:*

1. *The commissioner of motor vehicles is the appointing authority to whom certifications under Section 486-13, General Code, should be made by the civil service commission to fill classified positions in the bureau of motor vehicles.*
2. *The position of commissioner of motor vehicles is in the unclassified civil service of the state of Ohio.*
3. *The commissioner of motor vehicles is not entitled to the three personal exemptions authorized by paragraph 8, division (a) of Section 486-8, General Code, which permits an exemption from the classified service of two secretaries, assistants or clerks and one personal stenographer for each of the principal appointive executive officers, authorized by law to appoint such secretary, assistant or clerk and stenographers.*

COLUMBUS, OHIO, March 1, 1927.

*The State Civil Service Commission, Columbus, Ohio.*

GENTLEMEN:—Acknowledgment is made of your letter of recent date, in which you quote Section 6290-1, of the General Code, and state:

“Prior to the adoption of this act the automobile department was treated as a division of the office of the Secretary of State and the appointing authority for all employes of the automobile division was the Secretary of State.”

You inquire as follows:

- “1. Is the Commissioner of Motor Vehicles the appointing authority to whom certifications shall be made by this department to fill classified positions.
2. Is the position of Commissioner of Motor Vehicles in the classified or unclassified service?
3. Is the Commissioner of Motor Vehicles entitled to the three personal exemptions outlined under Section 486-8-8, which permits two secretaries, assistants or clerks and one personal stenographer, exempt from the classified service for each of the principal appointive executive officers?”