

Number	Name	Acreage
2246	E. T. and C. E. Scarr.....	242
2247	George M. Gray .....	263
2248	Thos. A. and Jas. V. Carton.....	64

Each and all of these leases are for a term of five (5) years and in each instance the property described is leased to the State for the sole purpose of a state game refuge. And, in this connection, it is noted that as to each of these leases the Conservation Council, acting through you as Conservation Commissioner, has made an order setting aside the lands described in the lease for the purpose of a state game and bird refuge, as provided for in section 1435-1, General Code.

Upon examination of these leases, I find that the same have been executed and acknowledged by the respective lessors in the manner provided by law. I also find upon examination of the provisions of these leases and of the conditions and restrictions therein contained, that the same are in conformity with statutory provisions relating to the execution of leases of this kind.

I am, accordingly, approving these leases as to legality and form, as is evidenced by my approval endorsed upon the several leases and upon the duplicate copies thereof, all of which are herewith returned.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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3344.

BONDS—BOND ISSUING AUTHORITY MAY REJECT ALL BIDS AND RE-ADVERTISE WHEN—REFUNDING BONDS MAY BE EXCHANGED FOR REFUNDED BONDS WHEN.

*SYLLABUS:*

1. *After bonds have been advertised pursuant to the provisions of Section 2293-28, General Code, and bids received pursuant thereto, the bond issuing authority has the power to reject all bids submitted and readvertise such bonds.*

2. *In the event refunding bonds are advertised for sale and a bid is duly submitted for such bonds pursuant thereto, such bonds may not be exchanged for bonds refunded unless all bids submitted pursuant to such advertisement are rejected, the bonds readvertised and no bids submitted to such advertisement and the same remain unsold at private sale for a period of ten days.*

COLUMBUS, OHIO, October 24, 1934.

HON. RAY B. WATTERS, *Prosecuting Attorney, Akron, Ohio.*

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

“Summit County is in the process of issuing refunding bonds to take the place of 40 per cent of Summit County bonds which matured October 1, 1934. The Summit County Commissioners determined on a plan of paying 60 per cent in cash and refunding 40 per cent. The refunding bonds are dated October 1, 1934. The rate of interest determined upon

by the County Commissioners is  $4\frac{1}{4}\%$ . These bonds were duly advertised for sale and today was the date set for receiving bids. The determination of the acceptance or rejection of the bid has been deferred until October 26. The bidder claims that it is compulsory upon the County Commissioners to accept his bid, and that it would be illegal for the Commissioners to reject the bid and to distribute the refunding bonds in kind to the bondholders.

The plan of the County Commissioners contemplated distributing bonds in kind unless an acceptable bid was made for the bonds, in which case the cash would be distributed to the present bondholders.

Will you kindly render us an opinion as to:

1. Can the County Commissioners reject the bid of  $5\frac{3}{4}\%$  when their original resolution set the interest rate at  $4\frac{1}{4}\%$ ?
2. May the refunding bonds now be distributed in kind to the present bondholders upon the rejection of the bid of  $5\frac{3}{4}\%$ , without further advertising?

We might further say that quite a few of the bondholders have already accepted the 60 per cent in cash and have delivered their bonds to the County Treasurer, who will in turn deliver the balance of 40 per cent either in refunding bonds or cash, according to the final action of the Board of County Commissioners. A few of the bondholders are endeavoring to force the county to accept the high bid in order to secure the cash balance on the matured bonds."

The answer to your questions depends upon the provisions of Section 2293-29, General Code, which provides in so far as pertinent as follows:

"No bonds or notes shall be sold for less than the face value thereof with accrued interest. The highest bid, or if bids are received based upon a different rate of interest than specified in the advertisement the highest bid based upon the lowest rate of interest, presented by a responsible bidder, shall be accepted by the taxing authority, or in the case of a municipal corporation by the fiscal officer thereof. But in case a bid is accepted based upon a rate of interest other than that provided for in the ordinance or resolution adopted under section 2293-26, such acceptance before taking effect must be approved by resolution of the taxing authority, which resolution shall be certified to the county auditor; in such case bonds may be issued bearing the rate of interest provided for in such accepted bid without further amendment of the bond ordinance or resolution. When bonds have been once advertised and offered at public sale, as provided by law and they or any part thereof remain unsold for want of bidders, those unsold may be sold at private sale at not less than their par value and accrued interest thereon bearing a rate of interest not greater than that provided in the resolution or ordinance under the provisions of section 2293-26.

When bonds are authorized to refund outstanding bonds and are so advertised and still remain unsold at private sale after a period of ten days, the holder or holders of such maturing bonds may exchange such bonds with interest thereon for a lesser or like amount of the refunding bonds at not less than their par value and accrued interest. Any excess or deficit in par value of maturing bonds or refunding bonds shall be paid by the bond holder or the subdivision as the case may be. The amount of cash and the amount of refunding bonds to be given to such bond holders

shall be determined by the amount of cash in the sinking fund or bond retirement fund available for such payment and shall be certified to by the fiscal officer and approved by resolution of the taxing authority before any such bonds are exchanged.

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With respect to the matter of the power of the awarding authority to reject all bids, although the statute does not specifically provide that this may be done, it is a general principle of contract law consistently recognized by the courts that an offer need not be accepted; when a bid is submitted pursuant to advertisement requesting the submission thereof, such bid constitutes an offer which may or may not be accepted by the awarding authority. The acceptance of such offer and the award of a contract is a discretionary matter with the awarding authority and in all cases where it is believed that for any cause the best interests of the public may be served by rejecting all bids, the awarding authority unquestionably has power so to do. After having done so, however, the situation which prevails is the same as though no advertisement had been made. It follows, of course, that your first inquiry must be answered in the affirmative.

With respect to your second question as to whether or not after all bids have been rejected the subdivision may exchange refunding bonds for bonds refunded, your attention is directed to the fact that the only authority to so exchange bonds is predicated upon the refunding bonds having been advertised and still remaining unsold at private sale after a period of ten days. There is no authority to sell bonds of any kind at private sale unless such bonds have been duly advertised and offered at public sale and for want of bidders remain unsold. It follows that it may not be said that bonds remain unsold at private sale for a period of ten days when such bonds have been advertised and a bid or bids submitted pursuant to such advertisement. There is no authority therefore granted to exchange refunding bonds for bonds refunded under existing circumstances unless all bids are rejected and the refunding bonds readvertised and no bids received pursuant to such advertisement and ten days elapse without such bonds being sold at private sale.

In specific answer to your questions, it is my opinion that:

1. After bonds have been advertised pursuant to the provisions of section 2293-28, General Code, and bids received pursuant thereto, the bond issuing authority has the power to reject all bids submitted and readvertise such bonds.

2. In the event refunding bonds are advertised for sale and a bid is duly submitted for such bonds pursuant thereto, such bonds may not be exchanged for bonds refunded unless all bids submitted pursuant to such advertisement are rejected, the bonds readvertised and no bids submitted to such advertisement and the same remain unsold at private sale for a period of ten days.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

3345.

APPROVAL, BONDS OF RANDOLPH TOWNSHIP RURAL SCHOOL DISTRICT, MONTGOMERY COUNTY, OHIO—\$20,396.00.

COLUMBUS, OHIO, October 25, 1934.

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