

2267.

DEPOSITORY BOND—"CERTIFICATES OF INDEBTEDNESS" ISSUED BY
POLITICAL SUBDIVISION MAY NOT BE ACCEPTED.

SYLLABUS:

"Certificates of indebtedness" issued by a political subdivision may not be accepted legally as security for a depository bond.

COLUMBUS, OHIO, March 6, 1925.

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

GENTLEMEN:—I am in receipt of your communication as follows:

"You are respectfully requested to furnish this department your written opinion on the following:

"Question: May certificate of indebtedness issued by any political subdivision of this state, that is authorized to issue same, be legally accepted as security on a depository bond?"

The statutes relating to securities for depositories of the funds of the state and various subdivisions thereof are as follows:

Section 330-3 G. C.:

"The treasurer of state before making such deposits shall require that * * * bank * * * to deposit with him United States government bonds, bonds of this state, county, township, school district, road district, or municipal bonds of this state * * *."

Section 2732 G. C. provides:

"In place of the undertaking provided for herein, the commissioners may accept as security for money so deposited the following securities:

"(a) Bonds or other interest bearing obligations of the United States or those for the payment of principal and interest of which the faith of the United States is pledged, including bonds of the District of Columbia;

"(b) Bonds of the state of Ohio;

"(c) Legally issued bonds of any city, village, county, township or other political subdivisions of this state * * *."

Section 4295 G. C. provides:

"* * * or secure said moneys by a deposit of bonds or other interest bearing obligations of the United States or those for the payment of principal and interest of which the faith of the United States is pledged, including bonds of the District of Columbia; bonds of the state of Ohio or of any other state of the United States; legally issued bonds of any city, village, county, township or other political subdivision of this or any other state or territory of the United States * * *."

Section 7607 G. C. provides:

"* * * Such bank or banks shall give good and sufficient bond, or shall deposit bonds of the United States, the state of Ohio, or county, mu-

municipal, township or school bonds issued by the authority of the state of Ohio.
* * *"

It will be noted that there is no provision in any of these sections permitting the acceptance of "certificates of indebtedness" as security on a depository bond.

In Opinions of Attorney General for 1913, page 1488, it was held:

"Under section 3913, General Code, a city is empowered to issue certificates of indebtedness in anticipation only of fund available from taxes and revenues at the next semi-annual settlement of tax collections.

"The trustees of the sinking fund are not empowered by the statutes to invest their moneys in such certificates."

The section relating to investment of the sinking fund is section 4514 G. C., which provides in part as follows:

"The trustees of the sinking fund shall invest all moneys received by them in bonds of the United States, the state of Ohio, or of any municipal corporation, school, township, or county bonds, in such state * * *."

It is apparent that the security in which the funds of a sinking fund may be invested is the same as that provided for as security for depositories, and it is believed that the same principle of law is applicable to the depository as would be applicable to a sinking fund trustee.

However, as the laws relating to the issuance of "certificates of indebtedness" have been changed in some particulars, it is believed that a restatement of the law is not amiss. The section authorizing the issuing of "certificates of indebtedness" for municipalities is 3913 G. C., 110 O. L. 457, which provides:

"In anticipation of the collection of current revenues in and for any fiscal year (excepting taxes and assessments to be received for the payment of interest or principal of bonds, notes or other indebtedness), such corporations may borrow money and issue certificates of indebtedness therefor, signed as municipal bonds are signed, but no loans shall be made to exceed the amount estimated to be actually received from such taxes and other current revenues for such fiscal year, after deducting all advances. Such corporation may borrow money and issue certificates of indebtedness in anticipation of the collection of taxes and assessments to be received during the fiscal year for the payment of interest or principal of bonds issued previous to January 1, 1922. The proceeds of any such certificates shall be used only for the purpose for which the anticipated revenues, taxes or assessments were raised, collected or appropriated. The sums so anticipated shall be deemed appropriated for the payment of such certificates at maturity. The certificates shall not run for a longer period than six months, nor bear a greater rate of interest than six per cent and shall not be sold for less than par with accrued interest."

The section authorizing the issuing of "certificates of indebtedness" in counties, townships and boards of education, in anticipation of collection of current revenues is section 5655 G. C., 110 O. L., page 324, which provides:

"In anticipation of the collection of current revenues in any fiscal year, the county commissioners of any county, the board of education of any school district or the township trustees of any township may borrow money and issue certificates of indebtedness therefor, but no loans shall be made to

exceed the amount estimated to be actually received from taxes and other current revenues for such fiscal year, after deducting all advances. The sums so anticipated shall be deemed appropriated for the payment of such certificates at maturity. The certificates shall not run for a longer period than six months nor bear a greater rate of interest than six per cent and shall not be sold for less than par with accrued interest. Provided that after January 1, 1924, no board of education shall borrow money in anticipation of the funds to be received at, or in advance of, the August settlement with the county auditor."

It will be noted that the "certificates of indebtedness" under these sections are in anticipation of the collection of current revenues, and no authority is granted to issue "certificates of indebtedness" in anticipation of the levy or collection of special assessments.

Section 6602-4 G. C., 110 O. L., page 340, authorizes the issuing of "certificates of indebtedness" for the purpose of paying the cost of any improvement under section 6602-1 G. C., which section is as follows:

"Section 6602-4. For the purpose of paying a part or the whole of the cost of construction, maintenance, repair or operation of any improvement provided for in this act or for paying the sanitary engineer provided for under the provisions of this act, and for paying for his assistants and all his other necessary expenses, the board of county commissioners may borrow money at a rate of not exceeding six (6%) per cent per annum on certificates of indebtedness to be signed by its president and clerk; such certificates of indebtedness shall be made payable at a time not more than five years from their date; or, for such purposes, the board of county commissioners may issue bonds as herein provided, or may appropriate money from any funds in the county treasury available. After the adoption of the improvement resolution, to provide means to pay the cost of any such improvement, the board of county commissioners shall, by resolution of said board, appropriate any funds in the county treasury available for that purpose, authorize the issuance of certificates of indebtedness, or authorize the issue of bonds of the county, in an amount not exceeding the estimated cost thereof by more than ten (10%) per cent, plus such amount as shall be necessary to pay the installments of interest on such bonds or on certificates of indebtedness to accrue before the first installment of taxes and assessments hereinafter provided for shall be collected. In case money has been borrowed on certificates of indebtedness as herein authorized, bonds may be later issued and sold to retire such certificates of indebtedness. Such bonds shall state the particular improvement or improvements on account of which they are issued and the date of resolution or order of the board directing their issuance. Such bonds may bear interest at a rate not exceeding six (6%) per cent per annum, payable semi-annually; may be of such denominations and payable at such time and place as the board of county commissioners shall provide, and may be issued from time to time as the work progresses and advertised and sold as other county bonds are required to be advertised and sold."

It has been contended that "certificates of indebtedness" are bonds as they are made general obligations of the subdivision issuing same. In the case of *Commissioners of Muskingum County vs. State of Ohio*, 78 Ohio State, pages 287-301, it is stated in the opinion of Summers J., in an attempt to distinguish between a negotiable promissory note and a municipal bond:

"It is contended that the negotiable promissory notes held by the banks were bonds, and that the commissioners were authorized to issue new bonds and to exchange them for the notes. In its broad sense a bond comprises a negotiable promissory note, under seal, but a promissory note is not a municipal bond within the meaning of those words as understood in the commercial world. A negotiable promissory note generally is made payable to a person, or order, and is for a comparatively short period of time, while a bond generally is made payable to bearer, has a long time to run and has negotiable interest coupons attached. It is easier to distinguish them than to point out the distinction."

The Constitution of Ohio, Article XII, Section 11 provides:

"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."

Under this provision, bonded indebtedness cannot be incurred, unless, in the legislation incurring such indebtedness, a levy of tax is made. Under sections 3913 and 5655 G. C., "certificates of indebtedness" are issued to be paid from receipts of current revenues, and no levy of tax is made, therefore, "certificates of indebtedness" issued under these sections could not be considered as bonds.

Section 6602-4 G. C. in several places authorizes the issuing of "certificates of indebtedness" or of issuing bonds. The language of section 6602-4 G. C. apparently differentiates between "certificates of indebtedness" and bonds by providing for the issuing of either in some instances. The language used in this act is as follows:

"* * * The board of county commissioners may borrow money at a rate not exceeding six per cent (6%) per annum on certificates of indebtedness to be signed by its president and clerk; * * * or, for such purposes, the board of county commissioners may issue bonds as herein provided, * * *."

It further says:

"* * * The board of county commissioners shall, * * * authorize the issuance of certificates of indebtedness, or authorize the issue of bonds of the county, * * *."

It will be noted that the language here is "may issue certificates of indebtedness, or may issue bonds."

In the case of *Commissioners vs. State*, supra, Summers J. on page 304 says:

"Section 2834a does not confer power to borrow and to issue bonds as evidence of the debt, the power given is to borrow, or to issue bonds; and as originally enacted it read power to issue bonds or to borrow money, and this necessarily excludes the implication that the power to borrow includes the power to issue bonds."

From this we would infer that when language is used authorizing the doing of one thing, or of the doing of another, this necessarily excludes the implication that the doing of the one thing includes the power to do the other.

Section 6602-4 G. C. further provides:

"In case money has been borrowed on certificates of indebtedness as herein authorized, bonds may be later issued and sold to retire said certificates of indebtedness."

For the retirement of "certificates of indebtedness," provided under section 6602-4 G. C., the board may appropriate money or issue bonds. There is no levy or tax provided for in the resolution issuing "certificates of indebtedness," therefore, "certificates of indebtedness" issued under section 6602-4 G. C. cannot be considered bonds.

If we could by any process of reasoning come to the conclusion that "certificates of indebtedness" are bonds within the terms of the depository sections, then we must come to the conclusion that as such they are illegal, for the reason that the mandate of the Constitution requiring a levy of taxes to retire the same has not been complied with.

You are therefore advised that "certificates of indebtedness" issued by a political subdivision may not be accepted legally as security on a depository bond.

Respectfully,

C. C. CRABBE,

Attorney-General.

2268.

DISAPPROVAL, BONDS OF CHESTER TOWNSHIP RURAL SCHOOL DISTRICT, GEAUGA COUNTY, \$100,000.00.

COLUMBUS, OHIO, March 7, 1925.

Re: Bonds of Chester Township Rural School District, Geauga County,
\$100,000.00.

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

GENTLEMEN:—I have examined the transcript for the foregoing issue of bonds and find that each of the advertisements for the sale of the foregoing bonds contains a statement that these bonds are being issued under the authority of the general laws of the state of Ohio, particularly sections 7629 and 7630 of the General Code of Ohio.

The transcript shows the issue to be made upon the approval of the electors of the school district, and under the provisions of section 7625 G. C.

Section 2294 G. C. provides in part as follows:

"The advertisement shall state the total amount and denomination of bonds to be sold, how long they are to run, the rate of interest to be paid thereon, whether annual or semi-annual, the law or section of law authorizing the issue, the day, hour and place in the county where they are to be sold."

It is therefore observed that this statute requires notice to bond buyers of the specific law or sections of law authorizing the issue. In this case the advertisement gave notice of an issue under sections of law providing for different methods of procedure, and with specific limitations different from the provisions of the law under which the issue is really made, and it is therefore my opinion that such failure to make the advertisement give reference to the proper statute was not in compliance with the intent of section 2294 G. C.