

the above bond issue. From the information submitted to me, this district has outstanding ninety-one thousand dollars (\$91,000.00) of bonds, issued under the provisions of Amended Substitute Senate Bill No. 175 of the 90th General Assembly. If the information submitted to me is correct, over thirty-nine thousand dollars (\$39,000.00) of this amount is actually in excess of the net indebtedness which may be incurred without a vote of the people. Section 4 of House Bill No. 11 of the third special session of the 90th General Assembly provides that the amount that may be issued under this act is the amount of net floating indebtedness certified by the Auditor of State less the amount of bonds which have been heretofore issued under the provisions of any act of the 90th General Assembly, which bonds are already in excess of the debt limitations which may be incurred.

Since the amount of bonds issued under said Amended Substitute Senate Bill No. 175 which is in excess of the debt limitations is greater than the amount of the net floating indebtedness as of July 1, 1934, as certified by the Auditor of State, it follows that this district cannot take advantage of the provisions of said House Bill No. 11.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

3478.

LIABILITY INSURANCE—MUNICIPALITIES GOVERNED BY SECTIONS
 4221, 4328 AND 4371, G. C., IN PROCURING SAME WHEN.

SYLLABUS:

Municipal corporations in securing public liability insurance covering the liability created by sections 3714-1, General Code, and in which the premium is in excess of five hundred dollars, are governed by sections 4221, 4328 and 4371, General Code.

COLUMBUS, OHIO, November 19, 1934.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads as follows:

“Since the enactment of Section 3714-1 G. C., 115 O. L., 206, municipal corporations have been making rather large expenditures covering premiums on public liability insurance policies. These expenditures for one policy in many instances exceed \$500.

Will you kindly advise this Department whether expenditures for such a purpose are governed by the provisions of sections 4328, 5371 and 4221 of the General Code, and should be made only upon express authority of council and by contract entered into after advertisement for bids.”

Section 3714-1, General Code, referred to in your letter, reads as follows:

“Every municipal corporation shall be liable in damages for injury or loss to persons or property and for death by wrongful act caused by the

negligence of its officers, agents, or servants while engaged in the operation of any vehicles upon the public highways of this state under the same rules and subject to the same limitations as apply to private corporations for profit but only when such officer, agent or servant is engaged upon the business of the municipal corporation.

Provided, however, that the defense that the officer, agent, or servant of the municipality was engaged in performing a governmental function, shall be a full defense as to the negligence of members of the police department engaged in police duties, and as to the negligence of members of the fire department while engaged in duty at a fire or while proceeding toward a place where a fire is in progress or is believed to be in progress or in answering any other emergency alarm."

It is to be noticed that there is no reference made to the right of a municipality to insure against the liability created by the above section of the General Code. Consequently, no reference is made to competitive bidding which is the point raised by your inquiry. This office has in numerous opinions declared that where a liability may exist against a political subdivision, the subdivision may take out insurance covering such liability. See for example Opinions of the Attorney General for 1929, Volume II, page 1013. The second branch of the syllabus of that opinion reads as follows:

"By reason of the liability created by Section 3228-17 of the General Code in cases where boards of township trustees are negligent in the performance of their duties in connection with roads, such boards may lawfully protect themselves against damages by means of insurance."

Section 4221, General Code, relative to contracts entered into by a village, reads as follows:

"All contracts made by the council of a village shall be executed in the name of the village and signed on behalf of the village by the mayor and clerk. When any expenditure other than the compensation of persons employed therein, exceeds five hundred dollars, such contracts shall be in writing and made with the lowest and best bidder after advertising for not less than two nor more than four consecutive weeks in a newspaper of general circulation within the village. The bids shall be opened at twelve o'clock noon on the last day for filing them, by the clerk of the village and publicly read by him."

It is clear that the language of this section is sufficiently broad to include a contract of insurance. There is no limitation in this section, except that the cost of the contract shall exceed five hundred dollars. The Supreme Court of Ohio in the case of *Mutual Electric Company vs. Pomeroy*, 99 O. S. 75, in construing section 4221, supra, declared that this section applies to all contracts in relation to service, material, or supplies, where the bidders have the right to name the price for which they are willing to perform or to furnish the same. There would seem to be no reason why a village should not comply with

section 4221 in the present situation and, consequently where the premium is in excess of five hundred dollars, it would follow that the village in such an expenditure should be governed by the provisions of section 4221.

You also inquire as to the necessity of competitive bidding where a city enters into a contract of insurance under sections 4326 and 4571, General Code, and the premium is in excess of five hundred dollars. These sections read as follows:

Section 4328. "The director of public service may make any contract or purchase supplies or material or provide labor for any work under the supervision of the department not involving more than five hundred dollars. When an expenditure within the department, other than the compensation of persons employed therein, exceeds five hundred dollars, such expenditure shall first be authorized and directed by ordinance of council. When so authorized and directed, the director of public service shall make a written contract with the lowest and best bidder after advertisement for not less than two nor more than four consecutive weeks in a newspaper of general circulation within the city."

Section 4371. "The director of public safety may make all contracts and expenditures of money for acquiring lands for the erection or repairing of station houses, police stations, fire department buildings, fire cisterns, and plugs, that may be required, and for the purchase of engines, apparatus, and all other supplies necessary for the police and fire departments, and for other undertakings and departments under his supervision, but no obligation involving an expenditure of more than five hundred dollars shall be created unless first authorized by ordinance of council. In making, altering, or modifying such contracts, the director of public safety shall be governed by the provisions of the preceding chapter relating to public contracts, except that all bids shall be filed with and opened by him. He shall make no sale or disposition of any property belonging to the city without first being authorized by resolution or ordinance of council."

An examination of these sections would indicate that where a contract of insurance is entered into by a city covering the liability created by section 3714-1, General Code, such expenditures should be governed by the terms of sections 4328 and 4371 supra.

I also call your attention to the necessity of complying with section 4403, General Code. This section reads as follows:

"No contract in the department of public service or the department of public safety in excess of five hundred dollars shall be awarded except on the approval of the board of control, which shall direct the director of the appropriate department to enter into the contract. The members of the board shall prepare estimates of the revenue and expenditures of their respective departments to be submitted to the council by the mayor, as provided by law."

In view of the above, and in specific answer to your inquiry, it is my opinion that municipal corporations in securing public liability insurance

covering the liability created by section 3714-1, General Code, and in which the premium is in excess of five hundred dollars, are governed by sections 4221, 4328 and 4371, General Code.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

3479.

MUNICIPALITY—MAY REISSUE FOR CIRCULATION ITS NOTES
 UNDER AM. S. B. No. 382 WITHOUT CONSENT OF THE TAX
 COMMISSION.

SYLLABUS:

1. *Notes which have been issued by a subdivision under the provisions of Amended Senate Bill No. 382 of the 90th General Assembly, as extended by House Bill No. 9, and as amended by House Bill No. 48 of the second special session of said General Assembly, and have been returned either through the payment or distribution of taxes, or the payment of any other obligation to the issuing subdivision, may, if it be so ordered by the taxing authority of such subdivision, be again issued and negotiated by such subdivision in the manner and for the purposes set forth in section 8 of said act, and it is not necessary for such subdivision to obtain the consent of the tax commission so to do.*

2. *It is not the duty of the county treasurer to accept such notes of a subdivision in excess of the amount which will be due such subdivision for its current operating expenses at the next ensuing settlement of real, public utility and tangible property taxes.*

HON. GEORGE N. GRAHAM, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication, which reads in part as follows:

“The purpose of this inquiry is to ascertain whether a municipality must first obtain consent of the Tax Commission before it reissues for circulation notes issued by the municipality under authority of Amended Senate Bill No. 382. Also, does the County Treasurer have a right to refuse to accept for taxes, notes issued by a municipality under this section, if the amount of the notes so accepted exceed the amount that the municipality will have due it for operating expenses.

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Section 2 of Amended Senate Bill No. 382 of the 90th General Assembly, as amended by House Bill No. 48 of the second special session of said General Assembly, reads as follows:

“If, as of the February settlement of real property taxes and assessments and public utility property taxes in the year 1933 and 1934, or at the August settlement of such taxes in said years, in any county, it shall appear that the amount of current real property taxes and