

This construction seems to be in accord with the intention of the Act which is set forth in the last paragraph as follows:

“That general economic conditions have made it impossible for many taxpayers to accumulate sufficient money to pay taxes and assessments charged on the real estate duplicate in semi-annual installments, as heretofore provided by law, whereby the amount and proportion of delinquent taxes and assessments have greatly increased in substantially all the counties in this state, and the taxing district entitled to share in the proceeds of such taxes and assessments have thereby suffered substantial failure in revenue, and have been curtailed and impaired in the performance of their necessary functions of government; so that it is immediately necessary to provide an inducement for the prompt payment of such taxes and assessments and a means whereby taxpayers can more conveniently discharge their public obligations with respect to the payment of such taxes and assessments, to the end that the amount of such delinquency may be quickly reduced. Therefore this act shall go into effect immediately.”

In conclusion, therefore, it is my opinion that when a taxpayer complies with the terms of Amended Senate Bill No. 3, known as the Whittemore Act, he is entitled to an abatement of all interest on the taxes and assessments shown on the tax list and duplicate for 1936 and prior years, and that interest at eight percent per annum, as provided in section 5704, General Code, is to be figured only on the taxes for 1937 and subsequent years.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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843.

BONDS — CALLABLE — WHERE ISSUED AND DELINQUENT SPECIAL ASSESSMENTS REASSESSED BY CITY — NO AUTHORITY TO ACCEPT OFFER FROM PROPERTY OWNERS TO PAY IN CASH WITHOUT INTEREST.

**SYLLABUS:**

*Where callable bonds have been issued and delinquent special assessments have been reassessed by a city, the city officials are without*

*authority to accept an offer from certain of the property owners to pay their respective reassessments in cash without interest.*

COLUMBUS, OHIO, July 5, 1939.

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

GENTLEMEN: Your request for my opinion reads as follows:

"We are inclosing herewith a letter from the Solicitor of the City of Cuyahoga Falls, Ohio, in which it is shown that delinquent special assessments have been reassessed and in anticipation of the collection thereof, callable bonds have been issued in accordance with the provisions of Sections 2293-5j and 2293-5p.

It is further indicated in the letter that certain property owners now desire to pay the reassessments in cash without interest, and that the City, if authorized to do so, could accept such cash payments and call an equal amount of the bonds for redemption from the proceeds of said payments, without entailing any loss or incurring extra burden upon the general taxpayers.

In view of the provisions of Section 3892, G. C., and other cognate sections, which provide in effect that when a special assessment is made and confirmed by council, it shall be final, and when bonds or notes bearing interest are outstanding on account of such assessments, interest shall be added to the annual installments of the assessments, we are not clear as to the authority of the city officials to accept such payments in cash without interest.

Will you kindly examine this inclosure and advise us in answer to the following question:

Question. If callable bonds have been issued in anticipation of the reassessment of delinquent special assessments, and certain of the property owners desire to pay said reassessments in cash without interest, are the city officials authorized to accept such offer in view of the fact that an equal amount of the bonds may be called for redemption from the proceeds of said payments without entailing any loss to the general taxpayers of the city?"

There are two classes of refunding bonds which your letter requires me to consider.

Section 2293-5, General Code, provides in part that with the approval of the Bureau of Inspection and Supervision of Public Offices, the taxing authority of any subdivision, at any time prior to December 31, 1940, may refund any outstanding bonds of the subdivision which have matured or which are about to mature.

Section 2293-5j, General Code, reads as follows:

“Whenever serial bonds issued in anticipation of the collection of special assessments are refunded, as authorized by section 2293-5 of the General Code, the taxing authority may reassess against each lot or parcel of land upon which the original assessments were levied and are due and unpaid, the due and unpaid part of the installments of such assessments with interest as hereinafter set forth; and, whenever, irrespective of the issuance of any refunding bonds, any annual assessment installment certified to the county auditor for collection has become due and remains unpaid and the political subdivision has paid all of the annual or semi-annual serial bond maturities which are due and which were issued in anticipation of the collection of said special assessment, the taxing authority may from time to time reassess against each lot or parcel, upon which the original assessments were levied and are due and unpaid, the due and unpaid part of the installments of such assessments. The amount so reassessed in any case against each lot or parcel shall be equal to the amount due and unpaid on the principal sum of the original assessment or installment or installments of assessments so reassessed, and shall include in addition any interest included in or accrued upon such installments, but shall not include any penalties or any interests chargeable under the provisions of General Code section 5704, which shall thereupon be remitted. When reassessed to pay refunding bonds, such total amount shall be payable in substantially equal annual or semi-annual installments which may commence at the tax paying period immediately following the tax paying period at which the last installment of the original assessment will be due and payable over the period of years for which said refunding bonds are issued, and shall bear interest at the same rate as is borne by such refunding bonds; and when otherwise re-assessed, such total amount shall be payable in substantially equal annual or semi-annual installments which may commence at the tax paying period immediately following the tax paying period at which the last installment of the original assessment will be due, and ending not more than fifteen years from the date of the reassessment, and shall bear interest at such a rate not to exceed six per centum as the taxing authority may fix in its assessing measure. Such re-assess-

ments shall not be subject to the limitations of General Code, section 3819 or to any other statutory limit on the amount of assessments.”

It will be noted that this section requires that the reassessment, when made to pay refunding bonds, shall be payable in substantially equal annual or semi-annual installments which shall bear interest at the same rate as is borne by such refunding bonds.

Section 2293-5l, General Code, provides as follows:

“After the taxing authority has approved said assessments, like proceedings shall be had for the levy, certification, payment and collection of said assessments as apply to the levy, certification, payment and collection of original assessments, and all provisions of law relating to the levy, certification, payment and collection of original assessments, except so far as in this act otherwise set forth, shall govern such levy, certification, payment and collection of such reassessments, and excepting that such certification shall distinctly state the fact that it is a reassessment, and shall specify the original assessments for which the same is substituted. Upon certification of the first installment of such re-assessment for collection to the county auditor and to the county recorder when registered title is involved, the county auditor and also the county recorder in case of registered lands, shall cancel the installments of original assessments so re-assessed against the lots or parcels on which the re-assessment has been made and the interest and penalty thereon, as the same stand on the tax list and duplicate, and on the original certificate of title. Any special assessment or assessments re-assessed as provided in this section shall not again be re-assessed.”

You will note that this section provides that the same procedure for levy, certification, payment and collection of said reassessments govern as applied to the original assessment, except so far as in the act otherwise set forth.

The other class of refunding bonds is authorized by Section 2293-5p, General Code, which provides for the issuance of refunding bonds with the consent of not less than seventy-five per cent in amount of the holders of outstanding bonds of any issue or installments thereof maturing or about to mature in any one fiscal year.

Section 2293-5q, General Code, provides as follows:

“Whenever serial bonds issued in anticipation of the collection of special assessments are refunded or are being refunded as authorized by the foregoing section, or by any law now or

hereafter in force authorizing municipalities or other taxing subdivisions to take advantage of the federal bankruptcy law relating thereto, the taxing authority shall re-assess against each lot or parcel of land upon which the original assessments were levied the total amount unpaid upon such assessment whether due or not, and whether the same have been re-assessed or not under the provisions of sections 2293-5k and 2293-5l of the General Code, anything in section 2293-5l to the contrary notwithstanding, plus all costs of the refunding and reassessment proceedings together with interest as hereinafter set forth. The amount so re-assessed shall include the unpaid balance of the principal sum of the original assessment so re-assessed and any interest included in or accrued upon certified installments, together with the costs of the refunding and reassessment proceedings, but shall not include any penalties or any penalty interest included in or chargeable under the provisions of the General Code section 5704. When re-assessed to pay refunding bonds, authorized under the provisions of section 2293-5p of the General Code, or under any law now or hereafter in force authorizing municipalities or other taxing subdivisions to take advantage of the federal bankruptcy law relating thereto, such total amount shall be payable in substantially equal annual installments over the period of years for which such refunding bonds are issued and shall bear interest at the same rate as is borne by such refunding bonds. Like proceedings shall be had thereon as is provided in section 2293-5k of the General Code, except that in the case of political subdivisions having a bonded indebtedness including interest matured or accrued thereon prior to June 1, 1937, equal to fourteen per cent (14%) or more of its assessed valuation, the county auditor shall forthwith cancel any and all previously certified installments of original or any re-assessed assessments on which such re-assessment has been made, and shall thereupon certify for collection annually only the re-assessment installment as certified by the taxing authority."

It will be noted that this section provides that when reassessments have been made to pay refunding bonds issued under the provisions of Section 2293-5p, supra, the total amount of such reassessments shall be payable in substantially equal annual installments over a period of years for which such refunding bonds are issued and shall bear interest at the same rate as is borne by such refunding bonds.

Section 2293-5r, General Code, is substantially the same as Section 2293-5l, supra, but applies, of course, to reassessments made under authority of Section 2293-5q, supra.

Section 3892, General Code, has to do with the collection of assessments generally and is quoted as follows:

“When any special assessment is made, has been confirmed by council, and bonds, notes or certificates of indebtedness of the corporation are issued in anticipation of the collection thereof, the clerk of the council, on or before the second Monday in September, each year, shall certify such assessment to the county auditor, stating the amounts and the time of payment. The county auditor shall place the assessment upon the tax list in accordance therewith and the county treasurer shall collect it in the same manner and at the same time as other taxes are collected, and when collected, pay such assessment, together with interest and penalty, if any, to the treasurer of the corporation, to be by him applied to the payment of such bonds, notes or certificates of indebtedness and interest thereon, and for no other purpose. For the purpose of enforcing such collection, the county treasurer shall have the same power and authority as allowed by law for the collection of state and county taxes. Each installment of such assessments, remaining unpaid after becoming due and collectible, shall be delinquent and bear the same penalty as delinquent taxes. The city solicitor or the regular and authorized legal representative of any such municipality is hereby authorized and directed to act as attorney for the county treasurer in actions brought under authority of section twenty-six hundred and sixty-seven of the General Code for the enforcement of the lien of such delinquent assessments. Any assessment in the amount of five dollars or less, or whenever the unpaid balance of any such assessment is five dollars or less, the same shall be paid in full, and not in installments, at the time the first or next installment would otherwise become due and payable.”

None of the statutes quoted or referred to specifically authorizes the taxpayer to pay the reassessments in cash without interest where bonds have been issued in anticipation of the collection of such reassessments. On the contrary, it will be noted that Sections 2293-5j and 2293-5q, supra, both provide, with respect to the reassessments to which they are applicable, that such reassessments shall be payable in substantially equal installments, Section 2293-5j providing that same may be annual or semi-annual and Section 2293-5q providing that they shall be annual. Both of said sections provide that the installments shall bear interest.

It would, therefore, seem that the Legislature, by specifically providing that the reassessments should be payable in installments which should bear interest, did not intend any other option of payment. When

it specifically provided one method of payment, it is presumed to have forbidden all others; *expressio unius est exclusio alterius*.

In 44 C. J., 808, I find the following statement made with reference to statutory provisions for the payment in installments of special assessments:

“Such provisions are generally construed to confer on a property owner an option to pay in installments, and not to require him to do so or to prevent him from paying the whole assessment at any time by paying the amount thereof and such interest as he is liable for, at the time of payment.”

An examination of the cases cited in the footnote in support of this statement will disclose that they all turned upon the peculiar statutory provisions existing in those jurisdictions. They afford little, if any, assistance to the present problem and certainly can not be construed as supporting the broad statement laid down in the text.

The Ohio statutes in question provide a specific method for the payment of reassessments and since no other way is provided by law for such payment, that method must be followed. For these reasons, I am of the opinion that where refunding bonds have been issued in anticipation of the collection of reassessment of special assessments, such reassessments may be paid only in installments with interest and may not be paid in cash without interest.

Specifically answering your question, where callable bonds have been issued and delinquent special assessments have been reassessed by a city, the city officials are without authority to accept an offer from certain of the property owners to pay their respective reassessments in cash without interest.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*