

"The amount of school funds that may be deposited in a bank by a board of education under authority of Section 7604, General Code, can not in any case, or under any circumstances, exceed the amount of the bank's paid in capital stock."

The apparent purpose of the provisions of Section 7607, *supra*, to the effect that where a school district contains less than two banks, depository contracts may be made with other banks conveniently located, is to insure competition for the school funds of a district and to make provision that the school district shall receive interest on its funds to the extent of at least two per cent, to the end that the district may secure the best possible contract for the deposit of its school moneys, and obviously, even if there are two banks in a district and they refuse to bid, or are not qualified for any reason to receive the funds of the district, or are not able to furnish the proper security for those funds, the board of education of the district has no other alternative than to fall back on the provisions of Section 7607, General Code, and make depository contracts with some bank conveniently located that will bid at least two per cent for those funds and properly secure them as provided by law.

Under the facts stated in your letter, the board of education is required, in accordance with the provisions of Section 7604, General Code, to make some provision for the deposit of the proceeds of the bond issue in question and if the bank with which they have a depository contract is not qualified to receive those funds and there is no other bank in the district that is qualified or willing to receive the funds and pay at least two per cent interest thereon and furnish the security required by law, I am of the opinion that the board may lawfully contract with some bank outside the district and conveniently located which will receive the funds, furnish the proper security and pay at least two per cent interest on the funds so received.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2956.

**GASOLINE TAX—COUNTY COMMISSIONERS MAY NOT ISSUE NOTES
IN ANTICIPATION OF THE RECEIPT OF FUNDS THEREFROM.**

SYLLABUS:

A county may not issue notes as provided in Section 2293-4, General Code, in anticipation of the receipt of funds from the gasoline tax to be distributed to the several counties within this state, notwithstanding the fact that a county may have sought to have incurred other indebtedness in anticipation of the receipt of such funds or in anticipation of the issuance of such notes.

COLUMBUS, OHIO, February 17, 1931.

HON. CEDRIC W. CLARK, *Prosecuting Attorney, Pomeroy, Ohio.*

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

"I am enclosing herewith copy of resolution adopted by the Board of County Commissioners of Meigs County and desire to ask whether or not your office has ruled upon the legality of borrowing money in anticipation of the gasoline tax under authority of Section 2293-4, General Code.

You will note the introduction to the resolution stating the indebtedness necessitating the borrowing of this money. Assuming that the indebtedness referred to was incurred in violation of Section 5625-33, General Code, would that affect the Bank loaning the money?

The resolution was passed without my knowledge and I have now been called upon to give an opinion as to the validity of the transaction. Not having a copy of the opinions of your office of the preceding year, I was unable to ascertain whether such a question had been considered by you."

Attached to your communication is the following resolution:

"WHEREAS, There now exists a valid indebtedness against Meigs County, incurred in the maintenance and repair of County Highways; and

WHEREAS, The current revenues of said county applicable to such purpose are not sufficient to pay any of said indebtedness; and

WHEREAS, There is due and payable to said county from the State of Ohio as part of the current revenue from the collection of Gasoline Tax for the current fiscal year a sum in excess of ten thousand dollars, Therefore be it

RESOLVED, That the Board of County Commissioners of Meigs County, Ohio, under the authority of Section 2293-4 of the General Code of Ohio borrow from the Farmers' Bank and Savings Company of Pomeroy, Ohio, the sum of Ten Thousand Dollars in anticipation of the said current revenues, and issue a note for said amount, due and payable on or before March 15, 1931, bearing interest at the rate of six per cent per annum."

Opinion No. 1920, rendered May 29, 1930, copy of which is enclosed, laid down the principle that funds to be received from the gasoline tax are not current revenues within the meaning of the term as used in Section 2293-4 of the Uniform Bond Act, and therefore this section does not authorize the issuance of notes in anticipation of the collection of such taxes.

The only additional fact which you present not disposed of by an application of these principles followed in the foregoing opinion is that indebtedness seems to have been previously incurred in the maintenance and repair of county highways. It is very probable that this so-called indebtedness was incurred in violation of Section 5625-33, General Code, requiring that there be attached to every contract or order involving the expenditure of money a certificate of the fiscal officer as to the availability of funds to meet such contract or order. Assuming such to be the case, there is no authority upon which any different construction of Section 2293-4, General Code, may be predicated under such circumstances.

It is accordingly my opinion that a county may not issue notes as provided in Section 2293-4, General Code, in anticipation of the receipt of funds from the gasoline tax to be distributed to the several counties within this state, notwithstanding the fact that a county may have sought to have incurred other indebtedness in anticipation of the receipt of such funds or in anticipation of the issuance of such notes.

Respectfully,

GILBERT BETTMAN.

Attorney General.