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TAXING AUTHORITY OF SUBDIVISION—DUTY OF OFFICERS WHO HANDLE FISCAL AFFAIRS OF POLITICAL SUBDIVISION WHERE MONEY BORROWED UNDER SECTION 2293-4 G. C. TO COLLECT AND HOLD AMOUNT NECESSARY FOR SATISFACTION OF PRINCIPAL AND INTEREST TO DATE OF MATURITY OF NOTES—FUND—PROCEEDS OF SEMI-ANNUAL SETTLEMENT OF TAXES ACCRUING NEXT AFTER ISSUANCE OF NOTES—PAYMENT FROM MONEYS HELD UPON DATE OF MATURITY.

SYLLABUS:

It is the duty of the officers charged with the handling of the fiscal affairs of a political subdivision that borrows money under the provisions of Section 2293-4, General Code, to collect and hold the amount necessary for the satisfaction of the principal and interest to date of maturity of notes issued pursuant to said section of the General Code from the proceeds of the semi-annual settlement of taxes occurring next after the issuance of such notes and to satisfy the same from the moneys so held upon the date of their maturity.

Columbus, Ohio, December 5, 1949

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Dear Sir:

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

“Your attention is directed to the provisions of G. C., Section 2293-4, authorizing the taxing authority of a subdivision to borrow money and issue notes therefor subject to certain conditions.

Under date of September 1st, your office rendered Opinion No. 938, in which it was held that where a school board borrows money and issues notes, pursuant to Section 2293-4, G. C., said board may legally pay interest on said money for a period not to exceed six months, irrespective of whether the notes fall due on or after the close of the fiscal year.

For some time past, various personnel in this Bureau held the opinion that when a subdivision borrowed money under the above section, it was the duty of the borrower, on receipt of the

proceeds against which the loan had been made, to promptly repay the loan, and that there was no authority to pay interest on any note after date of receipt of the revenue against which the money was borrowed. This view was based on the holding of the Supreme Court in the case of *Davis, Mayer, et al. v. State, ex rel. Pecsok*, 130 O. S. 411, in which it was held if a loan were permitted to run past the time of receipt of the funds against which the money was borrowed, there would be no authority to appropriate money from a later distribution to pay the loan.

In view of the foregoing, your opinion is respectfully requested as to whether or not it is the duty of a political subdivision that borrows money, under the provisions of the above noted section, on the receipt of the funds against which the money was borrowed, to promptly pay the principal and interest due on the notes though prior to the maturity date of the notes, or may the board impound such receipts until the maturity date of the notes and then use such money to liquidate the debt.

In the event that a subdivision does not on receipt of the revenue against which the money was borrowed, apply such revenue on the payment of the notes, may such subdivision lawfully pay interest on such notes from the time of receipt of the funds to the date of maturity of such notes, presuming, of course, that such notes are not paid until the date of maturity?"

The syllabus of Opinion No. 938, referred to in your letter, reads as follows:

"Where a school board borrows money and issues notes pursuant to Section 2293-4, General Code, said board may legally pay interest on said money for a period not to exceed six months, irrespective of whether the notes fall due on or after the close of the fiscal year."

In the case of *Davis, Mayer, et al. v. The State, ex rel. Pecsok*, 130 O. S. 411, 200 N. E. 181, which you mention in your inquiry, the Supreme Court considered the question of paying anticipatory notes issued under authority of Section 2293-4, General Code. Said section authorizes taxing authorities to borrow money and issue notes therefor in anticipation of the collection of current revenues, further providing that the sum so anticipated shall be deemed appropriated for the payment of such notes at maturity. In said case the sums so anticipated and appropriated were collected and expended for other purposes, allowing the notes to go unpaid. The court held that under those facts and the law applicable thereto the notes could not be paid from other sources or revenues. Paragraph 3 of the syllabus of this case reads as follows:

“Funds for the payment of such anticipatory notes are appropriated as a matter of law for their payment at the next succeeding semi-annual settlement, and when such notes are permitted to run past two semi-annual settlements without collection, and appropriated funds are expended, no power has been delegated to make another appropriation or provide for their collection.”

In the body of the opinion in said case the court, at page 421, said :

“A careful reading strengthens the contention that these instruments were promissory notes. They were authorized by law, it is true, but the limitations in the statute authorizing their issue surround them with many restrictions. The law states that the taxing authority of any subdivision may borrow money and issue notes therefor in anticipation of the collection of current revenues in and for any fiscal year, but the aggregate of such loans shall not exceed one-half the amount estimated to be received from the next semi-annual settlement of taxes for such fiscal year, as estimated by the budget commission, other than taxes to be received for debt charges and all advances. The sums so anticipated shall be deemed appropriated for the payment of such notes at maturity. The notes shall not run for a longer period than six months, and the proceeds therefrom shall be used only for the purpose for which the anticipated taxes were levied, collected and appropriated. No subdivision shall borrow money or issue certificates in anticipation of the February tax settlement before January first of the year of such tax settlement.”

And at page 424, further stated :

“It would seem that there was but one course for the fiscal officers of the city of Cleveland to follow, and that was the course blazed by the law. These notes could be issued within the limitations provided by law. They could not run beyond the next semi-annual settlement. When the next semi-annual settlement was made, an appropriation sufficient to retire the notes was made from the collection as a matter of law and it was then and there the duty of the chief accounting officer of the city, who under the charter was the Commissioner of Accounts, to forthwith, when the obligations became due, collect same from the proceeds of the semi-annual settlement that were appropriated as a matter of law to their payment.”

If the third sentence of the last quoted paragraph were to stand alone it would lend support to the position that any notes issued under said section of the General Code would have to be paid promptly upon receipt of the funds against which the money was borrowed. It will be observed

from the above quotation from page 421, however, that the court, in stating the limitations of such obligations, recognized that the statute permits such notes to be executed for a maximum period of six months. It will further be observed that the court in the above quoted paragraph from page 424 qualified the duty of the chief accounting officer to collect and pay the amount of the notes from the proceeds of the semi-annual settlement "when the obligations became due". The factual situation in that case involved non-payment of the notes after two semi-annual settlements. The reference to limiting the notes to the next semi-annual settlement in the third sentence of the last quoted paragraph above was to emphasize the fact that the money for the payment of such notes must be collected and paid from that settlement and not from any subsequent settlement.

It is my opinion that Section 2293-4, General Code, contemplates, within its limited operation, the same general plan with respect to the borrowing and repayment of money by a political subdivision as that provided by other parts of the Uniform Bond Act for general obligations of subdivisions. That is, the subdivision creates an obligation by the execution of the instrument given in consideration of the loan of money at which time the anticipated tax money which is to be used to satisfy the obligation is encumbered and appropriated for that purpose by operation of law; that thereafter the tax money is collected by the subdivision and held for the payment of the debt; upon maturity of the instrument or instruments evidencing the debt the moneys so held are applied to the satisfaction of the same. The statute authorizing the anticipation notes does not limit the due date of such instruments to the date of the semi-annual tax settlement but, on the contrary, specifically limits the due date to not more than six months from the date of issuance. The authority is thereby granted the subdivision to issue such notes for any specified length of time up to six months irrespective of the semi-annual settlement date.

In view of the foregoing, I am of the opinion that my prior Opinion No. 938 for the year 1949 is not inconsistent with the holding in the Pecsok case, supra, and that it is the duty of the officers of the subdivision charged with the duty of handling its fiscal affairs to collect and hold the amount necessary for the satisfaction of the principal and interest to date of maturity of notes issued by the subdivision under Section 2293-4,

General Code, from the proceeds of the semi-annual settlement of taxes occurring next after the issuance of such notes and to satisfy such notes from the moneys so held upon the date of their maturity.

Respectfully,

HERBERT S. DUFFY,
Attorney General.