

I have carefully examined said leases, find them correct in form and legal, and am therefore returning the same with my approval endorsed thereon.

Respectfully,

JOHN G. PRICE,
Attorney-General.

3275.

MUNICIPAL CORPORATIONS—MAY BORROW MONEY AND ISSUE CERTIFICATES OF INDEBTEDNESS FOR PURPOSE OF ANTICIPATING CURRENT SINKING FUND REVENUES—SEE SECTION 3913 G. C. (109 O. L. 336).

Under section 3913 G. C. as amended 109 O. L. 336, the council of a municipal corporation may borrow money and issue certificates of indebtedness for the purpose of anticipating current sinking fund revenues.

COLUMBUS, OHIO, June 27, 1922.

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

GENTLEMEN :—The bureau requests the advice of this department as follows :

"In Opinion No. 1141 of 1918, Volume I, page 546, concurred in by letter of July 16, 1920, it was held that :

'A municipal corporation may not borrow money under section 3913 G. C. in anticipation of sinking fund levies nor for the purpose of meeting a deficiency in the sinking fund.'

Section 3913 G. C. at the time this opinion was rendered provided in part that :

'In anticipation of the general revenue fund in any fiscal year, such corporation may borrow money and issue certificates of indebtedness therefor, etc.'

The opinion cited above construes the phrase 'In anticipation of general revenue fund' as not including the sinking fund since such sinking fund is not a part of such general revenue fund.

Said section 3913 G. C. was amended in 109 O. L. 336, and now provides in part that :

"In anticipation of the collection of current revenues in any fiscal year such corporations may borrow money and issue certificates of indebtedness therefor, etc."

Question: In view of such amendment can certificates of indebtedness or notes be issued by a municipality for sinking fund purposes?"

An examination of the opinion of 1918 referred to, as well as an earlier one found in Vol II, Opinions of Attorney-General, 1915, page 1082, shows that the holding to which the bureau refers in its question was indeed based upon the words "general revenue fund" as occurring in section 3913 of the General Code prior to its amendment in 1921. The elimination of these words at least destroys the basis of the former opinions and requires reconsideration of the question.

In the opinion of this department the verbal change in the section does produce

a result contrary to that formerly reached. The purpose of section 3913 of the General Code is to authorize borrowing in anticipation of revenues that are already in process of collection and applying the proceeds of the loan to the purposes for which the revenues have been raised, where such application is necessary or expedient to be made prior to the time when the revenues accrue in the ordinary course of fiscal administration. No reason has been found for not applying such a policy to sinking fund or debt retirement revenue as well as to other current revenue. The sinking fund authorities, for example, have no power to borrow money in anticipation of revenues; so that no inference against the apparent meaning of section 3913 in its present form can be drawn from the existence of any other power to accomplish the same result.

It is therefore the opinion of this department that certificates of indebtedness or notes can lawfully be issued by a municipality for sinking fund purposes under section 3913 of the General Code and subject to the restrictions thereof. The proceeds of the loan when realized will become a part of the sinking fund to be administered as sinking fund money without further action on the part of council. The proceeds of the sinking fund levy to the extent so anticipated will be automatically appropriated to the payment of the loan with interest and would not constitute general sinking fund revenues.

While the foregoing conclusion seems unavoidable to this department, it likewise seems impossible to conceive of a case where there would be occasion to exercise the power thus newly granted, unless gross mismanagement of the fiscal operations of the municipality had occurred. For since the Griswold act has separated the function of administering sinking fund from that of paying final judgments, the only obligations chargeable to this sinking fund are those the maturities of which can be arranged for in advance so as to co-ordinate with tax settlement periods.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3276.

MUNICIPAL CORPORATIONS—HAVE AUTHORITY TO REFUND INDEBTEDNESS UNDER SECTION 3916 G. C. (109 O. L. 339)—LIMITATION, INDEBTEDNESS MUST BE INCURRED PRIOR TO JANUARY 1, 1924—HOW ORDINANCE FOR ISSUANCE OF REFUNDING BONDS PUBLISHED.

1. *Under section 3916 G. C. as amended 109 O. L. 339, municipal corporations have the same power to refund indebtedness as they had prior to the amendment of that section except that the indebtedness must be incurred prior to January 1, 1924.*
2. *An ordinance providing for the issuance of refunding bonds must be published in the manner required by law.*

COLUMBUS, OHIO, June 27, 1922.

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

GENTLEMEN:—The bureau has requested the advice of this department upon the following questions: