

2922.

CITY HEALTH DISTRICT—WHEN MUNICIPALITY BECOMES A CITY BY PROCLAMATION OF SECRETARY OF STATE, CITY HEALTH DISTRICT CREATED THIRTY DAYS AFTER ISSUANCE OF SUCH PROCLAMATION—SEE SECTION 1261-16 G. C.

Under the provisions of section 1261-16 of the General Code, a municipality becoming a city by the proclamation of the Secretary of State, becomes a city health district thirty days after the issuance of such proclamation.

COLUMBUS, OHIO, March 9, 1922.

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

GENTLEMEN:—Your letter of recent date received in which you request the opinion of this department on the following question:

“May a village becoming a city on January 1, 1922, constitute a city health district on or after such date under the provisions of section 1261-16 of the General Code?”

General Code section 1261-16 is as follows:

“For the purpose of local health administration the state shall be divided into health districts. Each city shall constitute a health district and for the purposes of this act shall be known as and hereinafter referred to as a city health district. The townships and villages in each county shall be combined into a health district and for the purposes of this act shall be known as and hereinafter referred to as a general health district. As hereinafter provided for, there may be a union of two general health districts or a union of a general health district and a city health district located within such district.”

The following sections of the General Code show the classification of cities and villages and the advancement of village officers to city officers:

“Sec. 3497. Municipal corporations, which, at the last federal census, had a population of five thousand or more, shall be cities. All other municipal corporations shall be villages. Cities which, at any future federal census, have a population of less than five thousand shall become villages. Villages which, at any future federal census, have a population of five thousand or more, shall become cities.”

“Sec. 3498. When the result of any future federal census is officially made known to the Secretary of State, he forthwith shall issue a proclamation, stating the names of all municipal corporations having a population of five thousand or more, and the names of all municipal corporations having a population of less than five thousand, together with the population of all such corporations. A copy of the proclamation shall forthwith be sent to the mayor of each municipal corporation, which copy shall be forthwith transmitted to council, read therein and made a part of the records thereof. From and after thirty days after the issuance of such proclamation each municipal corporation shall be a city or village, in accordance with the provisions of this title.”

"Sec. 3499. Officers of a village advanced to a city, or of a city reduced to a village, shall continue in office until succeeded by the proper officers of the new corporation at the next regular election, and the ordinances thereof not inconsistent with the laws relating to the new corporation shall continue in force until changed or repealed."

Section 4404 G. C. provides for the establishment of a board of health and is as follows:

"Sec. 4404. The council of each city constituting a city health district, shall establish a board of health, composed of five members to be appointed by the mayor and confirmed by the council, to serve without compensation, and a majority of whom shall be a quorum. The mayor shall be president by virtue of his office. Provided that nothing in this act contained shall be construed as interfering with the authority of a municipality constituting a municipal health district, making provision by charter for health administration other than as in this section provided."

Section 3499 advances village officers to city officers. Being so advanced they are charged with performing the duties of city officials.

In the case of *Wise vs. Barberton*, 20 O. C. C. n. s. 390, the court said in its discussion as to whether village officers advanced to city officers, by reason of the proclamation of the Secretary of State, function according to the laws governing cities or according to the laws governing villages:

"What is meant by the expression 'laws relating to the new corporation?' It means that part of the municipal code which lays down the rules governing cities, if the new corporation is a city, as in this case.

The laws governing cities, then, apply here, and we hold that the law vesting the veto power in the mayor of a city applies and the mayor had a right to veto the ordinance of December 11, 1911, and it never went into effect, because it was not passed over his veto."

General Code section 1261-16, above quoted, provides that a city is a health district; section 3497 designates what shall be villages and what cities; section 3498 indicates at what time a village becomes a city; section 3499 continues village officers in office until the next regular election.

As pointed out in 20 C. C. n. s. 390, above referred to, upon advancement of a village to a city, village officers become city officers. The village officers advanced to city officers are therefore charged with the appointment of a board of health as provided in General Code section 4404.

The above review is made for the purpose of showing that in thirty days after the proclamation of the Secretary of State a municipality composed of five thousand or more inhabitants becomes not only a city in name but a city in fact, its officials being charged immediately with the duty of conducting its affairs according to the laws governing cities.

General Code section 1261-16 is clear and unambiguous. The statement as contained in the statute, "each city shall be a health district * * *" permits of but one construction when consideration is given to the duties of the advanced officials as above outlined.

You are therefore advised that thirty days after the proclamation of the Secretary of State, a village advanced to a city automatically becomes a health district and the officers of said city are charged with the appointment of a city district board of health.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

2923.

GRISWOLD ACT—BOND ISSUE—LEGISLATION PASSED AND EFFECTIVE PRIOR TO JANUARY 1, 1922—BOND SALE ON JANUARY 13, 1922, BUT MATURITIES OF BONDS DID NOT CONFORM TO SECTION 14 OF GRISWOLD ACT, SECTION 2295-12 G. C. (109 O. L. 344)—BONDS ILLEGAL.

Where all the legislation providing for the issuance of waterworks bonds had been passed and become effective prior to January 1, 1922, and the bonds had been offered to the trustees of the sinking fund, etc., and were advertised for sale, such sale to be held on January 13, 1922, such bonds were nevertheless not "issued"; so that if their maturities did not conform to section 14 of the Griswold Act, so-called, 109 O. L. 344—2295-12 of the General Code—the same was illegal.

COLUMBUS, OHIO, March 9, 1922.

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

GENTLEMEN:—This department acknowledges receipt of the bureau's letter of recent date, enclosing a communication from the clerk of the council of the city of Elyria, stating the following facts:

"On October 3, 1921, the council of the city of Elyria passed Ordinance No. 2496 authorizing the issuance of \$10,000.00 of water works bonds known as Series "X," to be dated December 1, 1921, maturing serially from 1936 to 1945 at the rate of \$1,000.00 per year. After the expiration of the referendum period these bonds were offered to the sinking fund trustees of the city of Elyria and declined by said board and were thereafter offered to the board of commissioners of the sinking fund of Elyria City School District and declined by said board also. Thereafter the bonds were offered to the Industrial Commission of Ohio and December 8, 1921, were declined by said commission. Upon the rejection of the bonds by the Industrial Commission, the said bonds were advertised for four weeks for sale at public sale, the sale to be held January 13, 1922, and necessarily one of the advertisements was published on January 3, 1922, in order that the notice of bond sale should be published four times, a week apart."

The letter of the clerk goes on to state that the question is now raised as to the application of the Griswold Act, so-called, 109 O. L. 336, it being contended that the maturities of the bonds do not comply with section 14 thereof, being section 2295-12 of the General Code, and that the advertising for sale and the conduct of the sale being proceedings in connection with the issuance of the bonds, section 23