

covering the liability created by section 3714-1, General Code, and in which the premium is in excess of five hundred dollars, are governed by sections 4221, 4328 and 4371, General Code.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

3479.

MUNICIPALITY—MAY REISSUE FOR CIRCULATION ITS NOTES
 UNDER AM. S. B. No. 382 WITHOUT CONSENT OF THE TAX
 COMMISSION.

SYLLABUS:

1. *Notes which have been issued by a subdivision under the provisions of Amended Senate Bill No. 382 of the 90th General Assembly, as extended by House Bill No. 9, and as amended by House Bill No. 48 of the second special session of said General Assembly, and have been returned either through the payment or distribution of taxes, or the payment of any other obligation to the issuing subdivision, may, if it be so ordered by the taxing authority of such subdivision, be again issued and negotiated by such subdivision in the manner and for the purposes set forth in section 8 of said act, and it is not necessary for such subdivision to obtain the consent of the tax commission so to do.*

2. *It is not the duty of the county treasurer to accept such notes of a subdivision in excess of the amount which will be due such subdivision for its current operating expenses at the next ensuing settlement of real, public utility and tangible property taxes.*

HON. GEORGE N. GRAHAM, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication, which reads in part as follows:

“The purpose of this inquiry is to ascertain whether a municipality must first obtain consent of the Tax Commission before it reissues for circulation notes issued by the municipality under authority of Amended Senate Bill No. 382. Also, does the County Treasurer have a right to refuse to accept for taxes, notes issued by a municipality under this section, if the amount of the notes so accepted exceed the amount that the municipality will have due it for operating expenses.

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Section 2 of Amended Senate Bill No. 382 of the 90th General Assembly, as amended by House Bill No. 48 of the second special session of said General Assembly, reads as follows:

“If, as of the February settlement of real property taxes and assessments and public utility property taxes in the year 1933 and 1934, or at the August settlement of such taxes in said years, in any county, it shall appear that the amount of current real property taxes and

public utility taxes unpaid and delinquent in such county, or in any other subdivision therein, is more than ten per centum of the total amount of such current taxes, due and payable at such semi-annual period, in such county or other subdivision, as shown by the tax list and duplicate of such county, the county auditor of such county may, and upon certification to him of a resolution requesting such action, duly adopted by the taxing authority of the county or any other subdivision therein, shall make, certify to and file with the tax commission of Ohio a statement in such form as the commission may prescribe, showing:

(1) The total amount of current taxes levied for current operating expenses of the county, and of any or all of the other subdivisions therein, on the duplicate of real property and public utility property, and payable at such settlement, including, in the case of the August settlement, such taxes payable at the preceding February settlement.

(2) The total amount of current taxes levied for current operating expense of the county and of each such other subdivision on such duplicate which shall have been collected and apportioned to the county and each such other subdivision.

(3) The face value of notes, if any, previously issued during the fiscal year by the county, pursuant to the provisions of this act, and the amount of such notes so issued by each such other subdivision in the county.

(4) The amount and face value of certificates, if any, previously issued during the fiscal year, pursuant to Senate Bill No. 351, passed March 30, 1933, and approved April 15, 1933.

(5) Such other facts with respect to the budget of the county and each such other subdivisions therein, amounts available for current operating expenses in each subdivision, amounts of notes or certificates redeemed and canceled, the rate at which notes or certificates have theretofore been used in the payment of taxes, such estimates of future revenues, and such other material matters as the commission may require in the form of statement prescribed by it. For the purpose of preparing such statement, the county auditor may require the fiscal officer of any subdivision in the county to furnish to him, duly certified, any information which the commission may so require."

Sections 3, 4 and 5 of said Amended Senate Bill No. 382 read as follows:

Section 3. "Upon the filing of any such statement with the commission, the commission shall make an order determining, as to the county and each such other subdivision therein:

(1) Whether or not such subdivision shall have authority to issue notes pursuant to this act.

(2). The amount of notes which may be issued by any subdivision, so authorized.

In making the determination herein authorized and required, the commission shall be governed by the following limitations:

(a) The amount of such notes which any subdivision shall be authorized to issue shall not exceed, in face value, the difference

between the amounts required to be set forth in the statement of the county auditor by paragraphs 1 and 2 of section 2 of this act, less the sum of the following:

The amount required to be set forth in such statement as to the subdivision by paragraph 3 of said section 2, and a reasonable pro rata proportion of the amount so required to be set forth by paragraph 4 thereof.

(b) The amount of notes authorized to be issued upon any application pursuant to this act shall be limited to such amount as, in the opinion of the commission, having regard for notes previously issued and not redeemed and canceled, will not permit more of said notes to be used in the payment of taxes pursuant to section 8 of this act than can be received by the subdivision issuing the same through the distribution of tax collections for its current operating expenses."

Section 4. "Any subdivision which shall be authorized to issue notes pursuant to this act may, by ordinance or resolution of its taxing authority, provide for the issuance of notes of said subdivision which shall be serially numbered; shall be in such denominations not less than one dollar or more than fifty dollars, as the chief fiscal officer may determine; shall be due and payable to bearer without interest not later than on or before five years from their date at the treasury of the subdivision issuing them, and shall be signed by or bear the facsimile signatures of the officers of the subdivision authorized to sign bonds; shall be negotiable instruments, and in all respects governed by the laws applicable to negotiable instruments, and be appropriately printed or lithographed by the county auditor. In all respects not otherwise provided in this act, the authorization, execution, and sale of such notes shall be controlled by the provisions of the uniform bond act."

Section 5. "The legislation of the taxing authority providing for the issuance of notes pursuant to this act shall pledge such portion of the proceeds of taxes levied by the subdivision for current operating expenses and then delinquent as shall not already have been pledged to the payment of bonds issued pursuant to the provisions of an act entitled 'An act to authorize local subdivisions to issue bonds in the years 1931 and 1932, to supply deficiencies in revenues caused by non-payment of taxes,' etc., passed June 24, 1931, 114 O. L. 860, as amended by an act entitled 'An act to amend sections 2 and 3' of said last named act, passed October 1, 1932, and as may be required for the retirement of such notes, and the proceeds of such portion of such delinquent taxes when received by the subdivision shall be expended for no other purpose until the full payment of such notes."

Section 8 of said act reads as follows:

"Notes authorized by this act may be negotiated and issued by a subdivision at not less than their full face value to evidence the indebtedness of such subdivision to any person, firm or corporation to whom it may be indebted for salary of employes for services, wages, and on contracts and other obligations of the subdivision

which might otherwise be paid in cash, and shall be received and accepted at their full face value by the treasurer of the county within which they were issued in payment of any and all taxes charged on any duplicate of real estate and public utility property or on the general duplicate of tangible personal property, but excluding special assessments. All of such notes issued which are received by the county treasurer in payment of taxes shall thereupon be used by him at their full face value in making advance payments to or semi-annual settlements with the subdivisions which issued such notes to an amount not exceeding in the aggregate the amount due such subdivision for its current revenues other than taxes to be received for the payment of debt charges. Such notes shall further be received and accepted at face value by the subdivision which issued them in full payment of any obligation due to such subdivision of whatsoever character. Such notes which have been issued and returned either through the payment or distribution of taxes or the payment of any other obligation to the subdivision which originally issued them, may, if it be so ordered by the taxing authority of such subdivision, be again issued and negotiated by the subdivision in the manner and for the purposes hereinbefore set forth, or the same may be by such subdivision canceled."

House Bill No. 9 of the second special session of the 90th General Assembly authorizes subdivisions to issue temporary notes in anticipation of the issue of the notes authorized by said Amended Senate Bill No. 382. Section 3 of House Bill No. 9 reads as follows:

"Any political subdivision having authorized the issuance of notes under authority of said Amended Senate Bill No. 382, may sell all or any part of said notes at private sale for not less than their face value in their definitive form or in the temporary form authorized by this act."

Section 4 of said House Bill No. 9, as amended by said House Bill No. 48, reads as follows:

"Notes authorized to be issued by said Amended Senate Bill No. 382 may be issued on or after January 1, 1934, as well as during the year 1933, for current operating expenses or other indebtedness incurred or due during the fiscal year 1933; and such notes may be issued on or after January 1, 1935, as well as during the year 1934, for current operating expenses or other indebtedness incurred or due during the fiscal year 1934."

As seen above, section 8 of this act provides that:

" * * * Such notes which have been issued and returned either through the payment or distribution of taxes or the payment of any other obligation to the subdivision which originally issued them, may, if it be so ordered by the taxing authority of such subdivision, be again issued and negotiated by the subdivision in the manner and

for the purposes hereinbefore set forth, or the same may be by such subdivision canceled.”

There is no provision in this section that the consent of the Tax Commission is necessary before such notes may be renegotiated and reissued unless such requirement is included in the provisions that such reissuance and renegotiation shall be made in the manner therein set forth.

Section 2 of the act provides for the filing with the Tax Commission by the County Auditor for a subdivision desiring to issue such notes a statement containing the information required. Section 3 provides that the tax commission shall thereupon determine whether such subdivision shall have authority to issue such notes and the amount thereof. Sections 4 and 5 set forth the steps to be followed by such subdivision in providing for their issuance. Section 8 provides the manner in which such notes, when authorized, shall be negotiated and issued, except as modified by section 3 of said House Bill No. 9, and this is the manner in which notes which have been returned to the issuing subdivision may again be issued and negotiated. I do not believe that the requirement of section 2, as to the filing of a statement of the subdivision by the County Auditor with the Tax Commission or the determination of the Tax Commission as to the authority of a subdivision to issue such notes, these being steps required to be taken before a subdivision can by proper legislation provide for the issuance of such notes, is any part of the manner of their negotiation or issuance. Where section 8 provides that notes returned to the subdivision may be again issued and negotiated “in the manner and for the purposes hereinbefore set forth,” it apparently means in the manner and for the purposes set forth in said section 8. While I have not had before me this same question, I said in my opinion No. 1988, found in Opinions of the Attorney General for 1933, Volume III, page 1905, “when such notes are so received and accepted by the subdivision, they may again be issued and negotiated in the same manner as provided in said section.”

I come now to your second inquiry. While section 8 of the act provides that such notes after they are negotiated “shall be received and accepted at their full face value by the treasurer of the county within which they were issued in payment of any and all taxes charged on any duplicate of real estate and public utility property or on the general duplicate of tangible personal property, but excluding special assessments,” said section also provides that all of the notes so received by the county treasurer “shall thereupon be used by him at their full face value in making advance payments to or semiannual settlements with the subdivisions which issued such notes to an amount not exceeding in the aggregate the amount due such subdivision for its current revenues, other than taxes to be received for the payment of debt charges.” Consequently, if the county treasurer would accept notes in an amount exceeding the amount due to such subdivision for its current operating expenses at the next ensuing semiannual settlement, the county treasurer would not have sufficient cash to make settlements with the other subdivisions of the county who did not issue any of such notes. Certainly, the law does not require a county treasurer to accept in payment of taxes a greater amount of notes than he could distribute to the subdivisions issuing them in making advance payments to or semi-annual settlements with such subdivision.

Specifically answering your inquiries, it is my opinion that:

1. Notes which have been issued by a subdivision under the provisions of Amended Senate Bill No. 382 of the 90th General Assembly, as extended by House Bill No. 9, and as amended by House Bill No. 48 of the second special session of said General Assembly, and have been returned either through the payment or distribution of taxes, or the payment of any other obligation to the issuing subdivision, may, if it be so ordered by the taxing authority of such subdivision, be again issued and negotiated by such subdivision in the manner and for the purposes set forth in section 8 of said act, and it is not necessary for such subdivision to obtain the consent of the tax commission so to do.

2. It is not the duty of the county treasurer to accept such notes of a subdivision in excess of the amount which will be due such subdivision for its current operating expenses at the next ensuing settlement of real, public utility and tangible personal property taxes.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3480.

APPROVAL, ABSTRACT OF TITLE TO LAND IN ANDOVER TOWNSHIP, ASHTABULA COUNTY, OHIO, OWNED BY THE PYMATUNING LAND COMPANY, FOR PUBLIC PARK, HUNTING AND FISHING GROUNDS.

COLUMBUS, OHIO, November 19, 1934.

HON. WILLIAM H. REINHART, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval an abstract of title to certain tracts of land in Andover Township, Ashtabula County, Ohio, which tracts, together with other tracts of land in Williamsfield, Andover and Richmond Townships in said county, the state of Ohio is acquiring from The Pymatuning Land Company. These lands are being acquired for the purpose and to the end that such lands and the waters inundating and submerging the same as a result of the construction and maintenance by the Water and Power Resources Board of the commonwealth of Pennsylvania of the dam at and across the outlet of the Pymatuning Swamp into the Shenango River in Crawford County, Pennsylvania, may be used as a public park and as public hunting and fishing grounds or territory.

These tracts of land are parts of Lots Nos. 45 and 46, according to the original survey of said township, respectively, and are bounded and described as follows:

Parcel 1. Beginning at a point in the center of the highway running East and West between Lots Nos. 45 and 46 in said Township, distant North 89 deg. 45' East, 2085.4 feet from the point of intersection of the center line of said East and West highway with the center line of the highway running North and South along the West line of Lots Nos. 45 and 46 in said Township, said point of in-