

1341.

APPROVAL, BONDS OF BRIDGEPORT VILLAGE SCHOOL DISTRICT, BELMONT COUNTY, \$10,000.00, FOR COMPLETION OF THE FURNISHING AND EQUIPPING OF SCHOOL BUILDING.

COLUMBUS, OHIO, April 8, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

1342.

APPROVAL, BONDS OF BEAVERDAM VILLAGE SCHOOL DISTRICT, ALLEN COUNTY, \$3,000.00, TO CONSTRUCT NON-FIREPROOF SCHOOL BUILDING.

COLUMBUS, OHIO, April 8, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

1343.

AUTHORITY OF COUNTY COMMISSIONERS TO ISSUE BONDS UNDER SECTIONS 5643 AND 5644 G. C.—EXPENSE OF REBUILDING OR REPAIRING BRIDGES.

SYLLABUS:

1. *County commissioners may, under sections 5643 and 5644 G. C., issue bonds to repair and rebuild bridges which have been washed out by floods without submitting the question of such issue to the voters of the county.*
2. *Where several bridges have been condemned by the county commissioners under section 5643 G. C., the necessary expense of rebuilding or repairing same may be included in one issue of bonds.*
3. *Where a special tax has been levied or bonds issued under sections 5643 and 5644 G. C., the money from such levy or issue of bonds may not be used to paint or repair other bridges.*

COLUMBUS, OHIO, April 8, 1924.

HON. R. W. FINSTERWALD, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—I am in receipt of your recent communication as follows:

“Due to numerous floods in Athens County, a large number of bridges have been washed out.
The county bridge fund is overdrawn.

QUERY:

1. May county commissioners issue bonds to repair and rebuild these bridges without submitting the question of issue to vote?

2. Must bonds be issued for each separate bridge, or can one issue be made to cover all this expense?

3. May any part of the proceeds from the sale of bonds be expended to paint bridges?

The answers to your questions will, I am sure, be suggested by a careful analysis of section 5638, 5643 and 5644 of the General Code of Ohio, which sections are as follows:

"Section 5638. The county commissioners shall not levy a tax, appropriate money or issue bonds for the purpose of building county buildings, purchasing sites therefor, or for land for infirmary purposes, the expenses of which will exceed \$15,000.00, except in case of casualty, and as hereinafter provided; or for building a county bridge, the expense of which will exceed \$18,000.00, except in case of casualty, and as hereinafter provided; or enlarge, repair, improve, or rebuild a public county building, the entire cost of which expenditure will exceed \$10,000.00; without first submitting to the voters of the county, the question as to the policy of making such expenditure."

"Section 5643. If an important bridge, belonging to or maintained by any county, becomes dangerous to public travel, by decay or otherwise and is condemned for public travel by the commissioners of such county, and the repairs thereof, or the building of a new bridge in place thereof, is deemed, by them, necessary for the public accommodation, the commissioners, without first submitting the question to the voters of the county, may levy a tax for either of such purposes in an amount not to exceed in any one year two-tenths of one mill for every dollar of taxable property upon the tax duplicate of said county."

"Section 5644. If the county commissioners deem it necessary or advisable, they may anticipate, the collection of such special tax by borrowing a sum not exceeding the amount so levied, at a rate of interest not exceeding six per cent. per annum, payable semi-annually and may issue notes or bonds therefor, payable when said tax is collected, or the commissioners, without such submission of the question may proceed under the authority conferred by law to borrow such sums of money as is necessary for either of the purposes before mentioned, and issue bonds therefor. For the payment of the principal and interest on such bonds, they shall annually levy a tax as provided by law."

By the provisions of section 5638 G. C. county commissioners may not build a county bridge, the cost of which exceeds \$18,000.00, without submitting the question of such expenditure to the voters of the county, "except in case of casualty, and as hereinafter provided." It is believed that the words "as hereinafter provided" refer to the provisions of section 5643 G. C., supra.

This belief is supported by the opinion found in Opinions of the Attorney-General for 1917, Volume II, page 1137, in which it is stated:

"The words, 'as hereinafter provided,' refer to the provisions of section 5643 G. C."

Generally speaking our statutes offer two distinct theories of procedure or method in the issuance of bonds, namely,

First, the levy of sufficient taxes and the issuance of bonds in anticipation of the collection.

Second, the issuance of bonds and the levy of taxes to pay the interest thereon and retire them when due.

Sections 5643 and 5644 G. C. supra confer on the county commissioners three distinct powers as follows:

First, the power of levying a tax which must not in any one year exceed two-tenths of one mill.

Second, the power to anticipate the collection of the special tax by borrowing money, either by the issuance of bonds or by the issuance of notes, which obligations must be payable when the tax is collected.

Third, the power to borrow money "under the authority conferred by law" and then to levy an annual tax for the payment of the principal and interest thereon.

The first of these powers is conferred by section 5643 G. C., and the question naturally arises whether the levy of two-tenths of one mill shall run on the tax duplicate for more than one year. This question is answered in Opinions of Attorney General, 1916, Volume II, page 1352. The second branch of the syllabus is as follows:

"Said limitation applies to the special taxes which may be levied in any one year for the purpose of building or repairing bridges as therein referred to. Such special tax is limited to a single levy on one duplicate, and if bonds are issued in anticipation of its collection under the first paragraph of section 5644 G. C., they must be made payable when such tax is collected."

The second of the powers referred to above is conferred by section 5644 G. C. If a special tax is levied under the provisions of section 5643 G. C. and the county commissioners deem it necessary to anticipate the collection if such special levy by issuing bonds under the first part of section 5644 G. C., such bonds must be made payable when such tax is collected. This conclusion is arrived at in Opinions of Attorney General, 1916, Volume II, page 1352, in the second branch of the syllabus which is quoted above. This is in accordance with the first of the two general methods or theories above described.

The third power is also conferred in section 5644 G. C. and reference in this section of the "authority conferred by law" is to section 2434 G. C., to which you are referred. It will be observed that this section of itself and as adopted and referred to in section 5644 G. C. provides for the issuance of bonds according to the second general method or theory above described.

The levy of two-tenths of one mill mentioned in section 5643 G. C. does not apply to bonds issued under the latter part of section 5644 G. C., as it specifically provides:

"* * * of the commissioners, without such submission of the question may proceed under the authority conferred by law to borrow *such sums of money as is necessary* for either of the purposes before mentioned, and issue bonds therefor. For the payment of the principal and interest on such bonds, they shall annually levy a tax as provided by law."

This belief is strengthened by the Opinions of the Attorney General, 1916, Volume II, page 1352, where it is stated in the first branch of the syllabus:

"The limitation of two-tenths of one mill, mentioned in section 5643 G. C. does not apply to the interest and sinking fund levies which may be

made for the retirement of bonds issued under the latter part of section 5644 of the General Code, as to which there is no limitation, excepting the general ones of the Smith law."

In Opinions of the Attorney General, 1917, Volume I, page 408, it is stated in the second branch of the syllabus:

"This limitation as to special tax authorized by section 5643 of the General Code does not apply to the levy made by the county commissioners for the purpose of paying interest on and providing a sinking fund for the payment of bonds issued under the latter part of section 5644 G. C., and such levy may be made annually in such amount as may be necessary to pay the interest on said bonds and to create a sufficient sinking fund to pay the bonds as they mature."

In answer to your first question it is my opinion that the county commissioners may issue bonds to repair and rebuild bridges which have been washed out by floods, without submitting the question of providing money for such purpose to the vote of the people.

Section 5644 G. C., in part provides:

"* * * may proceed under the authority conferred by law to borrow such sums of money as is necessary for either of the purposes before mentioned, and issue bonds therefor. * * *"

This section does not limit the issuance of bonds to one bridge, and as there is no limitation on the amount of bonds that may be issued, except the limit on the bond, interest and sinking fund levies by the so-called Smith one per cent law, it is apparent, considering the related sections that one issue of bonds could cover the whole expense of building or repairing bridges, and one issue may be made by the county commissioners provided they proceed under authority and pursuant to sections 2434 and 5644 G. C.

In answer to your second question, it is therefore my opinion that if several bridges have been condemned under section 5643 G. C. by the county commissioners, and they deem it necessary to issue bonds to rebuild or repair same, one issue may be made to cover all expense.

Under sections 5643 and 5644 G. C., a tax may be levied, or bonds issued only when a bridge is condemned by the county commissioners, and under this section, money cannot be raised to repair or rebuild bridges not condemned.

Section 2434 G. C. in part provides:

"For the execution of the objects stated in the preceding section * * * or for the purpose of erecting or acquiring * * * additional land for * * * bridges, * * * or for the purpose of enlarging, repairing, improving, or rebuilding thereof, * * * the commissioners may borrow such sum or sums of money as they deem necessary, at a rate of interest not to exceed six per cent, per annum, and issue the bonds of the county to secure the payment of the principal and interest thereof. * * *"

This provision of the statute authorizes the borrowing of money and the issuing of bonds for the repair and rebuilding of bridges generally.

In answer to your third question, it is my opinion that money raised by tax

levies and bond issues under sections 5643 and 5644 G. C. may not be used to paint or repair other bridges.

Respectfully,
C. C. CRABBE,
Attorney General.

1344.

ELECTIONS—VOTING PRECINCTS—SECTION 4845 G. C. CONSTRUED.

SYLLABUS:

Under the provisions of section 4845 G. C., the board of deputy state supervisors of election may divide a municipality where registration is not required, or any ward or precinct thereof, or a township or precinct thereof, into two or more voting precincts, when four hundred votes or more have been cast at the last preceding November election therein.

When such number of votes have been cast at the last preceding November election, said board of deputy state supervisors of election shall make such division when a majority of the voters therein petition therefor.

COLUMBUS, OHIO, April 9, 1924.

HON. THAD H. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of the 10th instant, requesting my opinion as follows:

“We are submitting herewith letter from the deputy state supervisor of elections for Knox County, asking for an opinion as to the rights of the board under section 4845 General Code. Will you kindly advise us as to the law applying in this matter?”

Attached to your letter is one from the clerk of the deputy state supervisors of elections of Knox County, as follows:

“Our Knox County election board desires your opinion upon the following matter:

The incorporated village of Danville and former village of Buckeye City, in our county, lie adjoining each other, and each formed a separate election precinct.

At the November election, 1923, a vote was taken in each village upon the question of annexing the village of Buckeye City to the village of Danville. The question voted upon carried in each village, and the village of Danville now includes the former village of Buckeye City, and the election precinct of Buckeye City is now abolished by being merged with the village of Danville.

Our county election board is desirous of now dividing the village of Danville into two (2) voting precincts, substantially as they were before annexation.

The total vote of both villages at the November election, 1923, was only 373, whereas, section 4845 of election laws seems to require at least four hundred votes before the county election board can divide,