

2135.

APPROVAL, BONDS OF VILLAGE OF FAIRPORT, LAKE COUNTY, OHIO,  
IN AMOUNT OF \$20,000.

COLUMBUS, OHIO, June 4, 1921.

*Industrial Commission of Ohio, Columbus, Ohio.*

Re: Bonds of the village of Fairport, Lake county, Ohio, in the sum of \$20,000, for the purpose of extending the time of payment of certain bonded indebtedness, which said village is unable to pay at maturity by reason of its limits of taxation, the same being six bonds of the denomination of \$2,000 each and sixteen bonds of the denomination of \$500 each.

GENTLEMEN:—The above issue of bonds is one provided for by resolution of the council of the village of Fairport, Lake county, Ohio, for the purpose of extending the time of payment of certain special assessment bonds issued by said village, which said village is unable to pay at maturity by reason of its limits of taxation. It appears from the transcript that these bonds were issued by said village in the year 1911 in anticipation of the collection of special assessments for the construction of sewers upon streets of said village, located within a certain sewer district of said village.

The only question that has occurred to me in the examination of the transcript relating to this issue of bonds is whether the said special assessment bonds are such general obligations of the village that they can be funded under the provisions of sections 3916 and 3917 G. C. In this connection it will be noted that these bonds were issued prior to the adoption of section 11 of article XII of the State Constitution, requiring provision to be made for annual tax levies for interest and sinking fund purposes with respect to all bonds issued by a taxing district, and prior to the enactment of section 3914-1 G. C., which in terms makes special assessment bonds issued by a municipality general obligations of such municipality and further requires a levy of taxes to protect the principal and interest of such bonds against any deficiency caused by failure to collect assessments.

This question was considered in an opinion of the attorney general under date of May 20, 1914 (Annual Report of Attorney-General, 1914, Vol. I, page 682), in which it is said:

“Bonds issued by municipal corporations in anticipation of special assessments constitute a general obligation of the municipality for the payment of which it is answerable as a ‘political subdivision.’ The purpose of making street improvements and other improvements, the cost of which is to be partly charged upon owners of specially benefited property on the part of a municipal corporation, may be characterized as a municipal function in the most exact sense. The municipality relies for its revenue upon the assessments which it levies, but those who deal with it in making the improvement, i. e., those to whom it becomes indebted on that behalf, such as the contractors on the one hand, and those who lend it money for such a purpose on the other hand, are deed of the property therein conveyed is as follows:

not obliged to rely exclusively upon such sources of revenue. The rule as I have stated it, is not, perhaps, a universal one, but it certainly obtains in Ohio.”

My investigation leads me to the conclusion that the view expressed by the Attorney-General in the opinion above referred to is correct, and that a special assessment bond, issued before the adoption and enactment of section 11 of Article XII of the state constitution and of section 3914-1 G. C., is to be considered as a general obligation of the municipality issuing it, unless the act under the authority of which such bond is issued, or the bond itself on the face thereof, expressly provides that the right of the holder of such bond shall be limited to the special assessments in anticipation of which such bond was issued. *United States vs. Fort Scott*, 99 U. S. 152; *Lobb vs. Columbia Township*, 179 U. S. 472; *Vickrey vs. Sioux City*, 115 Fed. 437; *Board of County Commissioners vs. Gardiner Savings Institute*, 119 Fed. 36; *State vs. Fayette County*, 37 O. S. 526; *City of Charlotte vs. Trust Co.*, 159 N. C. 388; *Fowler vs. City of Superior*, 85 Wis. 411.

In this case the transcript does not clearly indicate whether the special assessment bonds which are sought to be funded by the proceedings under consideration were issued under section 3914 G. C., or as sewer district bonds under section 3881 G. C. In either event, we may perhaps safely assume that these bonds were issued in form usual with respect to bonds issued under these respective sections, in which case it would follow under the principles of law above noted that said bonds are general obligations of the village of Fairport, that is, that they are such bonds as the village would be authorized and required to pay both as to principal and interest by a levy of taxes upon all the taxable property on the duplicate of said village. It follows from this that if said village, as is found and determined in the resolution providing for this bond issue, is unable to pay said bonds by levy of sufficient taxes by reason of its limits of taxation, said village, by authority of sections 3916 and 3917 G. C., is authorized to extend the time of payment of the indebtedness represented by said bonds.

No other question has suggested itself to me in the consideration of the transcript relating to this issue of bonds, and I am, therefore, of the opinion that properly prepared bonds covering this issue will be valid and binding obligations of said village when the same are executed and delivered.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

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2136.

APPROVAL, BONDS OF VILLAGE OF CLYDE, OHIO, IN AMOUNT OF \$44,000 FOR REPAIR OF WATER WORKS AND ELECTRIC LIGHT PLANT.

COLUMBUS, OHIO, June 4, 1921.

*Industrial Commission of Ohio, Columbus, Ohio.*