

authority extending that privilege to him under the provisions of Section 4980, General Code, because he "will be a legally qualified elector at the next ensuing general election."

Specifically answering your question therefore, it is my opinion that a person who will not become an elector of the state until October 28, 1928, is not legally qualified to file a declaration of candidacy as a candidate for county office at the primary election, August 14, 1928.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2186.

CITY COUNCIL—AUTHORITY TO INVEST MONEYS IN CITY TREASURY—DETERMINATION OF AMOUNT—BOND.

SYLLABUS.

1. *A general ordinance authorizing the investment of moneys in the treasury of a city, which will not be required to be used for a period of six months or more, may be enacted by the council or other legislative authority of a city, leaving the determination of the amount of funds available for investment and the particular securities in which they will be invested to the chief executive officer, the chief law officer and the chief fiscal officer, as provided in Section 4296-2, General Code.*

2. *The bond to be given by the officers of a city having the power to make investments of idle funds, pursuant to Sections 4296-1, et seq., of the General Code, is in addition to the ordinary official bonds of such officers conditioned upon the faithful performance of their duties.*

COLUMBUS, OHIO, June 2, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication, as follows:

"Section 4296-1 G. C., 112 O. L. 128, provides for the investment of funds in municipal treasuries.

Question 1. Is it necessary in each instance, where money is in the city treasury and which will not be needed or required to be used by the city for a period of six months or more that council pass an ordinance authorizing the investment of particular funds in specified bonds or can a general ordinance authorizing such investment be enacted, which leaves the determination of the amount not needed for six months and the bonds in which it will be invested to the officers specified in Section 4296-2, General Code?

Question 2. Section 4296-4, G. C., provides that the officers making investments of treasury balances are required to give bond in the amount fixed by ordinance of council. Is such bond to be given in addition to the bond furnished for the faithful performance of their duties, etc.?"

The Eighty-seventh General Assembly passed Senate Bill No. 90, the title of which is as follows:

“AN ACT—To supplement Section 4296 of the General Code, by the enactment of supplemental Sections 4296-1, 4296-2, 4296-3 and 4296-4, to provide for the investment of moneys belonging to the treasuries of cities, not required for immediate use.”

Sections 4296-1 and 4296-2, as therein found, are as follows:

Section 4296-1. “The council or other legislative authority of any city may by ordinance provide that whenever there are moneys in the treasury of such city which will not be required to be used by such city for a period of six months or more, such moneys may in lieu of being deposited in a bank be invested in obligations of such city in the manner prescribed in the next succeeding three sections hereof. Provided, however, that the language herein contained shall not be interpreted to cause a different application of an unexpended balance in a fund created by an issue of bonds than that provided by Section 3804 of the General Code.”

Section 4296-2. “Whenever any obligation of a city, the council or other legislative body of which has passed an ordinance as authorized by Section 4296-1 hereof, are to be sold, and the same are not taken by the sinking fund commission, or when such obligations are otherwise available for purchase by such city, the auditor or other chief fiscal officer shall submit to the mayor, or to the chief executive officer if the mayor be not such, and to the chief law officer of such city, a statement of moneys in the treasury or in the process of collection, and a schedule showing the probable requirements of money for the use of the city for such period not less than six months as the aforesaid ordinance or the chief executive officer shall direct, together with a recommendation as to whether any moneys in the treasury should be invested in such obligations. The mayor or other chief executive officer, the chief law officer, and the auditor or other chief fiscal officer may thereupon order such investments of moneys in the treasury in such obligations, at not more than par and accrued interest, as they may deem advisable in the interest of the city. It shall not be necessary to advertise such bonds before such investment is made. No investment shall be made except in obligations which have been passed upon and approved as to validity by a reputable firm of bond attorneys. Whenever it is necessary to convert any such investment into cash, it shall be done by first offering the obligations held by the city to the sinking fund commission, and if the sinking fund commission decline to take the same or any part thereof, then such remaining obligations shall be sold in any manner authorized by law for the sale of investments by the sinking fund; provided, that no such obligations shall be sold for less than par and accrued interest.”

Section 4296-3, General Code, prescribed the duties of the chief accounting officer of the city with relation to the investments provided for in the preceding sections. Section 4296-4 is as follows:

“All securities belonging to the treasury of any city or to any fund thereof, other than the sinking fund, shall be in the custody of the city treasurer, and shall be kept by him in a safe deposit box or vault belonging to a regular city depository. Such safe deposit box or vault shall be opened only in the presence of one or more of the three officers named in Section 4296-2 hereof, and only upon a warrant or order of the chief accounting officer directing the deposit or removal of securities purchased or sold, or the clipping of interest coupons for collection. A report of whatever is placed in or removed

from such safe deposit box or vault upon any such occasion shall be signed by the treasurer and by the witness or witnesses required by this section, and shall be returned to the chief accounting officer upon the same day. Whenever any securities are so held for the city the officers having power to make such investments shall be bonded in amounts to be stipulated by ordinance. Such bonds may cover other contingencies in which such officers might become liable to the city."

The answer to your first question is made clear by a careful reading of Sections 4296-1 and 4296-2. The first section gives the authority to council or other legislative authority to provide that whenever there are moneys in the treasury which will not be required for a period of six months or more, the same may be invested in accordance with the provisions of the act. As I construe this authority, the ordinance may be passed irrespective of whether at the time of the passage there existed moneys in the treasury of the character described. That is to say, a general ordinance may be passed providing, in the language of the section, "that whenever there are moneys in the treasury of such city which will not be required to be used by such city for a period of six months or more, such moneys may in lieu of being deposited in a bank be invested in the obligations of such city in the manner prescribed in the next succeeding three sections hereof." This language is prospective in its effect and clearly contemplates the enactment of a general ordinance which will confer authority upon the officials designated by Section 4296-2 to invest moneys not needed as the same may be received. This position is fortified by the provisions of Section 4296-2, supra, which authorizes the auditor to submit to the mayor and the chief law officer a statement of the moneys in the treasury or in process of collection, together with a schedule showing the probable requirements of money for "such period not less than six months", as the aforesaid ordinance or the mayor shall direct. It is to be observed that the ordinance may direct a greater period than six months and, if so, such action on the part of the council would be binding upon the other officials. Thereafter the mayor, the chief law officer, and the auditor or other fiscal officer may order such investments of money as they deem advisable in the interest of the city. The machinery just described makes it clear that there is no necessity for a specific ordinance for each specific investment. If general authority is conferred for the investment of idle funds, then the action may be taken by the fiscal officer submitting the statement to the mayor and the chief law officer as to the funds and the requirements which will develop the net amount available for investment. Thereupon these three officers may invest, within their discretion, the surplus so set forth. Nowhere is action on the part of the council indicated.

I have accordingly reached the conclusion that a general ordinance authorizing the investment of moneys in the treasury of a city, which will not be required to be used for a period of six months or more, may be enacted by the council or other legislative authority of a city, leaving the determination of the amount of funds available for investment and the particular securities in which they will be invested to the chief executive officer, the chief law officer and the chief fiscal officer, as provided in Section 4296-2, General Code.

You further inquire as to the bond to be given pursuant to Section 4296-4 of the Code, supra. The pertinent part of that section is the last two sentences, which are as follows:

"Whenever any securities are so held for the city the officers having power to make such investments shall be bonded in amounts to be stipulated by ordinance. Such bonds may cover other contingencies in which such officers might become liable to the city."

This clearly contemplates a specific bond to cover the securities in which the officers mentioned have the power to make investments. This is a bond separate and apart from the ordinary bonds provided for generally in Sections 4667 et seq. of the General Code. By the terms of Section 4668, each of the ordinary bonds is conditioned upon the faithful performance of the duties of the office. In this instance, however, the bond should cover specifically any failure to account for the securities under the control of the person so bonded. It is to be noted that the last sentence authorizes this bond to cover other contingencies in which the officers might become liable to the city. It is further true that both under this section and Section 4667 the amount of the bond is to be such as council prescribes. While it is clear that the two bonds may accordingly be combined into one, I do not feel that the bond theretofore given by these officials prior to their being authorized to make investments, in pursuance of the provisions of Section 4296-1, et seq., is sufficient to satisfy the requirements of Section 4296-4, supra. That is to say, in my opinion council should act, prior to giving the power of investment to the officials herein above referred to, by requiring them to give such additional bonds as seem to council proper. While this bond may conceivably be combined with the ordinary official bond, the combination should not be merely contingent upon the faithful performance of the duties of the office, but should include a specific provision to cover the additional duties and responsibilities placed upon the officers in question by the provisions of Senate Bill No. 90.

Specifically answering your second inquiry, therefore, I am of the opinion that the bond to be given by the officers of a city having the power to make investments of idle funds, pursuant to Sections 4296-1, et seq., of the General Code, is in addition to the ordinary official bonds of such officers conditioned upon the faithful performance of their duties.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2187.

APPROVAL, BONDS OF THE CITY OF ATHENS, ATHENS COUNTY—
\$6,524.29.

COLUMBUS, OHIO, June 2, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2188.

ROAD IMPROVEMENT—WHEN COUNTY BONDS ISSUED TO PAY TOWNSHIP'S SHARE, LEVY AGAINST TOWNSHIP MUST RUN CONCURRENTLY WITH LIFE OF BONDS—SINKING FUND LEVY—PREFERRED OVER PORTION OF TWO MILL LEVY NOT ALREADY PLEDGED—SECTIONS 1222 AND 1223, GENERAL CODE, DISCUSSED.

SYLLABUS.

1. *Where bonds are issued by a county to pay the township's share of the cost of the improvement of a road under authority of former Section 1223 of the General Code, the*