

pensation during their term or an "allowance or perquisite" as the expression is used in Section 31 of Article II of the Constitution, neither of which is permitted.

From the way this bill is drawn, it is not entirely clear whether the person who framed it intended to provide by its terms that the members of the legislature were to be reimbursed for expenses incurred by them for board and room during their attendance on special sessions of the legislature or whether it was the intent to provide for the payment of these expenses as an expense of the General Assembly itself.

It is of course, perfectly proper for the General Assembly to provide from public funds for the payment of the cost of its sessions, and within proper limits it is the judge of what are legitimate expenses of the General Assembly itself. If the cost of board and room for the members of the legislature may properly be regarded as an expense of the legislature itself, the bill would no doubt be construed, if enacted into law, as providing for such an expenditure, inasmuch as courts always endeavor to give to a legislative enactment a construction which will make it constitutional if possible, in preference to an interpretation which would render the statute unconstitutional and inoperative. I cannot subscribe to the view that the personal expenses of members of the legislature, incurred for board and lodging while attending sessions of the legislature, may be classed as proper expenses of the General Assembly itself, on a parity with the furnishing of heat, light, desks, stationery and other conveniences and necessities intended for the more prompt and efficient discharge of its duties. In my opinion, such expenditures are purely personal expenses of the individual members.

I am therefore of the opinion that the bill in question, if enacted into law under any view that may be taken of it would be held to be unconstitutional.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1988.

CITY—FUNDS THEREOF DEPOSITED IN TREASURY INVESTMENT ACCOUNT AND NOT NEEDED FOR SIX MONTHS OR MORE MAY NOT BE INVESTED IN NOTES OF SUCH CITY ISSUED UNDER AUTHORITY OF AM. S. B. No. 382.

SYLLABUS:

When a city has established a treasury investment account, in accordance with the provisions of sections 4296-1 to 4296-4, inclusive, of the General Code, funds not needed for a period of six months or more may not be invested in notes of such city issued under authority of Amended Senate Bill No. 382, passed by the 90th General Assembly.

COLUMBUS, OHIO, December 11, 1933.

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

GENTLEMEN:—I acknowledge receipt of your communication which reads as follows:

"Sections 4296-1 to 4296-4 of the General Code authorize the investment of moneys in a city treasury which are not needed for a period of six months or more, in obligations issued by such city.

Amended Senate Bill No. 382, passed by the Ninetieth General Assembly, and effective June 30, 1933, authorizes subdivisions, with the approval of the Tax Commission, to issue non-interest bearing certificates of indebtedness payable in not more than five years, and pledges the collection of delinquent taxes toward the payment of such certificates.

Question. When a city has established a treasury investment account in accordance with the provisions of sections 4296-1 to 4296-4 of the General Code, may funds not needed for a period of six months or more be invested in certificates of indebtedness issued under authority of Amended Senate Bill No. 382?"

Section 4296-1, General Code, reads in part as follows:

"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 or banks be invested in obligations of such city in the manner prescribed in the next succeeding three sections hereof. * * * "

Section 4296-2, General Code, reads as follows:

"Whenever any obligations 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 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, reads in part as follows:

"The chief accounting officer of such city shall maintain an account to be known as the 'treasury investment account' in which he shall enter all transactions relating to the investment of treasury funds, as provided in sections 4296-1 and 4296-2. ***."

These statutes do not expressly provide that the obligations of the city in which funds of the city may be invested must be interest bearing obligations but there was no authority at the time of the passage of these statutes for issuing obligations which were not interest bearing. Ordinarily, the obligations of the city bear a greater rate of interest than the city is able to obtain from a depository and, apparently, one of the purposes of this legislation was to enable a city to save this difference in interest by temporarily investing in obligations of the city, moneys not immediately required, which securities could be sold when such money is needed for municipal purposes.

Amended Senate Bill No. 382, passed by the 90th General Assembly, provides for the issuance by subdivision of negotiable notes within certain limitations and with the approval of the Tax Commission in anticipation of the ultimate collection of delinquent taxes for current revenues, which notes shall be in denominations of not less than one dollar nor more than fifty dollars and shall be payable without interest not later than five years after date thereof. Section 5 of the act provides that the proceeds of delinquent taxes levied for current operating expenses required for the retirement of such notes, which have not been pledged to the payment of bonds issued under authority of House Bill No. 394 of the 89th General Assembly, as amended, shall be pledged to the payment of such notes, and that the proceeds of such taxes when received by the subdivision shall be expended for no other purpose until the full payment of the notes.

Sections 8 and 9 of the act read as follows:

Section 8.

"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."

Section 9.

"Any subdivision having issued notes pursuant to the authority of this act may at any time call and pay before maturity all or any part thereof, and the fiscal officer thereof may purchase any part thereof upon the open market with any funds which may be in the treasury of the subdivision available for such purpose, but none of such notes shall be received by any public officer in exchange for public money in his possession or under his control except upon the payment of such notes out of funds available therefor."

Section 8 provides the manner in which such notes may be negotiated by the subdivision issuing them and how they may be received and accepted by such subdivision. They may be negotiated to evidence the indebtedness of such subdivision to anyone for salaries or wages, and on contracts or other obligations of the subdivision which might otherwise be paid in cash. They are to be accepted by such subdivision from the county treasurer in making advance payments to or semi-annual settlements with the subdivision, and shall also be accepted in payment of any obligation due to such subdivision. 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. On the other hand, section 9 provides how such notes may be redeemed prior to their maturity, and this section expressly provides that "none of such notes shall be received by any public officer in exchange for public money in his possession or under his control except upon the payment of such notes out of funds available therefor." All the funds available therefor would include both the proceeds of the delinquent taxes pledged to the payment of such notes and the proceeds of taxes levied in pursuance of the note ordinance or resolution which are required to retire such notes. Notes so redeemed could not again be issued and negotiated. This section does not authorize the investment in such notes of funds of a subdivision raised for other purposes and which will eventually be needed for such other purposes. While these notes when issued by a city would be obligations of such city, and while sections 4296-1, et seq., provide that a city may invest in its own obligations, I am of the view that the provisions of said Amended Senate Bill No. 382, in effect, prevent the executive officer, the law officer and the fiscal officer of a city from investing funds of such city not immediately needed and selling such notes later when such money becomes needed for municipal purposes.

I am of the opinion therefor that when a city has established a treasury investment account, in accordance with the provisions of sections 4296-1 to 4296-4, inclusive, of the General Code, funds not needed for a period of six months or more may not be invested in notes of such city issued under authority of Amended Senate Bill No. 382, passed by the 90th General Assembly.

Respectfully,

JOHN W. BRICKER,

Attorney General.