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TAXING AUTHORITY OF ANY SUBDIVISION—MONEY MAY NOT BE BORROWED AND NOTES ISSUED IN ANTICIPATION OF COLLECTION OF CURRENT REAL ESTATE TAXES, IN CASES WHERE APPRAISAL OF REAL ESTATE HAS NOT BEEN COMPLETED AND NO LEVIES HAVE BEEN MADE.—SECTION 2293-4 G. C.

## SYLLABUS:

Money may not be borrowed and notes issued by the taxing authority of a subdivision under Section 2293-4, General Code, in anticipation of the collection of current real estate taxes, in cases where the appraisal of real estate has not been completed and no levies have been made.

Columbus, Ohio, January 24, 1946

Hon. Joe M. Moorhead, Prosecuting Attorney  
Findlay, Ohio

Dear Sir:

This will acknowledge receipt of your letter inquiring if the taxing authorities in your county are authorized by Section 2293-4, General Code, to borrow money in anticipation of the collection of real estate taxes for the fiscal year 1946.

Section 2293-4, General Code, so far as pertinent to your inquiry, reads as follows:

“In anticipation of the collection of current revenues in and for any fiscal year, the taxing authority of any subdivision

may borrow money and issue notes therefor, but the aggregate of such loans shall not exceed one-half of the amount estimated to be received from the next ensuing settlement of taxes for such fiscal year as estimated by the budget commission, other than taxes to be received for the payment of debt charges, and all advances, but whenever a partial, semi-annual or final tax settlement is delayed, such borrowing authority may be exceeded and money borrowed in anticipation of the receipt of taxes for debt charges to the extent necessary to meet such debt charges but not in excess of such estimated receipts, less all advances. The sums so anticipated shall be deemed appropriated for the payment of such notes at maturity. The notes shall not run for a longer period than six months and the proceeds therefrom shall be used only for the purposes for which the anticipated taxes were levied, collected and appropriated. No subdivision shall borrow money or issue certificates in anticipation of such taxes before January first of the year of such tax receipts."

Section 2293-4 is one of the sections of the Uniform Bond Act and must be strictly construed (*State, ex rel. Curren v. Rees, Director of Finance, 125 O. S., 578*), and anticipatory notes issued under its authority "must be issued and retired in strict conformity therewith" (*Davis, Mayor v. State, ex rel. Pecsock, 130 O. S., 411*).

I note the statements in your letter that the appraisal of real estate in your county has not been completed, and that the valuations on which to base and compute taxes to be levied and collected for use during the present year are unknown at this time. In addition thereto the State Department of Taxation has specifically advised me that no tax rates have been fixed, that no levies have been made, and that no tax duplicate has been prepared and filed with the county treasurer. If such be the situation in your county, there is at this time no current real estate tax revenue subject to collections, or whose collection may now be anticipated under Section 2293-4 for borrowing purposes.

The other two statutes referred to in your letter, to wit, 5625-26 and 5625-27, General Code, are sections of the budget law. They make no attempt to confer any authority whatever upon any political subdivision to borrow money. Their only possible application to Section 2293-4 would be for the purpose of enabling the taxing authority of a subdivision to determine the amount of money it may borrow in those cases in which it is authorized by that section to borrow money and issue notes.

You are therefore advised, under the facts stated in your letter and those furnished by the Department of Taxation, that the taxing authorities involved in your inquiry are not in position at this time to take advantage of the borrowing power provided for in Section 2293-4, General Code, quoted above.

Respectfully,

HUGH S. JENKINS,  
Attorney General