

938.

APPROVAL, BONDS OF FRANKLIN TOWNSHIP RURAL SCHOOL DISTRICT,
BROWN COUNTY, \$5,313.15, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, November 28, 1923.

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

939.

NOTES ISSUED BY SCHOOL DISTRICTS UNDER SECTION 5655 G. C. MUST
BE ISSUED WITH SAME FORMALITY AND SUBJECT TO THE RESTRICTI-
TIONS THAT "SERIAL" BONDS ARE UNDER GRISWOLD ACT.

SYLLABUS:—

Notes issued by a school district under House Bill No. 599 must be issued with all the formality and subject to the restrictions that "serial" bonds are under the Griswold Act.

COLUMBUS, OHIO, November 30, 1923.

HON. HAROLD E. KUHN, *Prosecuting Attorney, Millersburg, Ohio.*

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

"I submit the following statement of facts and request your opinion on the questions raised.

House Bill No. 599 provides for the funding of existing indebtedness by boards of education.

Section 4 of said bill requires each board of education having any such indebtedness in excess of four hundred dollars to issue the bonds or notes of the school district *in the manner provided by law.*

These questions arise:

I. In case notes are issued under section 4 of House Bill No. 599 must the notes be offered to either the sinking fund commissioners of the school district or to the Industrial Commission of Ohio?

II. In case notes are issued under section 4 of House Bill No. 599 must the notes be advertised for sale and be sold to the highest bidder as is the case when bonds are issued?

III. What procedure is necessary to make the notes valid?"

Section 5655-3, General Code of Ohio, as found in 110 O. L. p. 324, is as follows:

"Upon receiving the certificate of net floating indebtedness from the auditor of state each board of education having any such indebtedness in excess of four hundred dollars shall proceed to issue the bonds or notes of the school district in the total sum of said indebtedness. Such bonds or notes shall be full general obligations of the school district and shall be divided into sixteen substantially equal semi-annual installments, the first installment falling due on February 1, 1924, and subsequent installments falling due every six months thereafter, the final installment to fall due on August 1, 1931. Such bonds or notes shall bear interest at a rate not to exceed six per cent per annum, and shall be issued or sold in the manner provided by law. The proceeds thereof shall be applied immediately to the payment of existing indebtedness or shall be held for the retirement of bonds or notes falling due prior to January 1, 1924, and it shall be unlawful to use such proceeds for any other purpose. At the time of the issue of such bonds, the board of education shall levy a tax for the payment of the interest and principal thereof."

It will be noted that this statute provides that said bonds or notes "shall be issued or sold in the manner provided by law." It also provides that "such bonds or notes shall be full general obligations of the school district and shall be divided into sixteen substantially equal semi-annual installments." The use of the word "notes" is different from its use in any other section of the statute *authorizing* the borrowing of money. Section 5644 G. C. provides that for repair of a bridge, the commissioners may levy a tax and "may anticipate the collection of such special tax by borrowing a sum not to exceed the amount so levied * * * and may issue notes or bonds therefor, payable when said tax is collected." These are short term obligations and cannot be considered in the same sense as notes "under section 5655-3."

There are no statutes which provide the procedure to issue valid notes, therefore, it becomes necessary to search other statutes providing procedure for the issuance of certificates of indebtedness.

In the case of *Wampler et al. v. Haines*, 19 O. N. P. (N. S.) on page 365 of the opinion Judge Snediker says:

"All of the law with reference to taxation should be read together and a reasonable and proper construction placed upon the language, and not such a construction as would make the clear expression of the Legislature other than the very terms of the statute intend."

Section 2295-10, General Code, found in 109 O. L., p. 338, provides:

"Before any resolution, ordinance, or other measure providing for the issuance of bonds or incurring of indebtedness of any county, or other political subdivision, including charter municipalities, is passed or adopted, the fiscal officer thereof shall certify to the bond-issuing authority the maximum maturity of such bonds or indebtedness, calculated in accordance with the provisions of the foregoing section, and no such bonds shall be authorized or issued or indebtedness incurred with maturities extending beyond the maturities as thus certified by such fiscal officer. Where the proposed indebtedness falls within class (g), such certification shall also contain a schedule of the respective amounts of the proposed bonds falling within each of classes (a) to (f) inclusive. The amount expended from the proceeds of the bonds for any purpose or purposes falling within any class shall not exceed the amount allotted in said schedule to said class; provided, however, that when the bond-issuing authority deems such transfer to be necessary for the carrying out of the purpose of the bond issue, then such authority may transfer any unexpended portion of the

amount allotted to any class from the class to which it was originally so allotted to any class with a longer maturity and, upon such transfer, the amount expended for any purpose or purposes falling within the class to which such transfer has been authorized may include the amount so transferred; but no transfer may be made from any class to a class with a shorter maturity."

Since the issuing of notes is the incurring of indebtedness, the issuing of same are subject to the provisions of section 2295-10 G. C.

The object of the so-called Griswold Act was to eventually abolish the sinking fund trustees by making all indebtedness mature serially, and as the "bonds or notes" issued under section 5655-3 G. C., are made serial obligations, it is believed that the use of the word "notes" is practically the same as bonds.

The words "issued or sold in the manner provided by law" must refer to the manner in which "serial bonds" are issued, for certainly if in the issuance of bonds under this section the formalities must be observed, the same would be true of notes.

It is therefore my opinion that notes issued by school districts under House Bill No. 599 must be issued with all the formalities and subject to the restrictions that serial bonds are under the Griswold Act. It is believed that this answer will make unnecessary the answering of the specific questions asked by you.

Respectfully;

C. C. CRABBE,
Attorney-General.

940.

STENOGRAPHERS APPOINTED BY COURT OF APPEALS UNDER SECTIONS 1520 AND 1521, G. C., SHOULD BE PAID FROM STATE TREASURY.

SYLLABUS:—

Stenographers appointed by the court of appeals under the provisions of sections 1520 and 1521, General Code, may not legally be paid from the county treasury, but their salary or per diem should be paid from the state treasury upon the certification of the presiding judge of the court of appeals.

COLUMBUS, OHIO, November 30, 1923

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

GENTLEMEN:—This will acknowledge receipt of your recent letter requesting my opinion as follows:

"Sections 1520 and 1521 of the General Code, as amended in 103 O. L., 412, govern the appointment and compensation of official stenographers to the court of appeals, and section 1521 G. C. provides that:

"The compensation of such stenographer shall be fixed by the court and be payable from the state treasury upon the certificate of presiding judge of the district in which he serves."

In some counties, stenographers being appointed for cases upon appeals, and the attorneys desiring a record made of the testimony of the proceedings, under order of the judges of the court of appeals whatever services the stenographers performed were charged up in the case as part of the costs, which, of course, would come back to the county as there is always an appeal