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AMENDED SENATE BILL 462, SECTIONS 2 AND 4—NOTES OR BONDS ISSUED—GENERAL OBLIGATIONS OF THE ISSUING POLITICAL SUBDIVISION—MAY BE SOLD AT PRIVATE OR PUBLIC SALE IF NOT SOLD FOR LESS THAN PAR AND ACCRUED INTEREST.

*SYLLABUS:*

1. *Notes or bonds issued under authority of Sections 2 and 4 of Amended Senate Bill 462 are general obligations of the issuing political subdivision.*

2. *Said notes or bonds are not subject to the net indebtedness limitations as provided in Sections 2293-14, 2293-16 and 2293-17, of the General Code.*

3. *Such notes or bonds issued under the authority of this act may be sold at private or public sale so long as the same are not sold for less than par and accrued interest.*

4. *The terms "notes" and "bonds" used in this act are to be construed in their generic sense and bonds as well as notes issued pursuant to this act must be issued on forms provided by the Bureau of Inspection.*

COLUMBUS, OHIO, August 13, 1938.

HON. JOSEPH T. FERGUSON, *Auditor of State, Columbus, Ohio.*

DEAR SIR: I am in receipt of your letter of recent date requesting my opinion, which reads as follows:

"Our attention has been called to Am. S. B. No. 462, effective July 11, 1938, and I direct attention to Sections 2, 3 and 4 thereof, and would like your opinion as to whether notes and bonds issued under these sections are general obligations, pledging the full faith and credit of revenues of the subdivisions issuing such notes and bonds."

Amended Senate Bill No. 462, passed by the 92nd General Assembly in special session, provides for certain revenue to be made available for poor relief purposes, authorizes certain political subdivisions to issue notes or bonds in anticipation of these revenues and defines various types of relief. Section 2 of this act reads as follows:

"In anticipation of the collection and distribution of the revenue herein provided for poor relief purposes, the board of county commissioners of any county, or the council or other

legislative body of any municipality or the trustees of any township may borrow money not in excess of ninety per centum of such anticipated revenue as determined by the bureau of inspection of the office of the auditor of state, and may from time to time issue notes of the county, municipality or township therefor; provided further that the amount so borrowed in the year 1938 shall not exceed eighty per centum of the revenues anticipated under Section 1 of House Bill No. 741 aforesaid as amended by this act less the amount already borrowed or encumbered under authority of Section 7 of said House Bill No. 741, aforesaid, plus an amount equal to eighty per centum of the revenues anticipated for the years 1939, 1940 and 1941 by reason of the levy provided by Sections 5544-17, 5545-2 and 6212-49b of the General Code; and the amount so to be borrowed in the year 1939 shall not exceed twenty per centum of the revenues anticipated under said Section 1 aforesaid as amended by this act, plus ninety per centum of the revenues anticipated for the years 1939, 1940 and 1941 by reason of the levy provided by Sections 5544-17, 5545-2 and 6212-49b of the General Code.

Such notes shall be issued on forms provided by the bureau of inspection, pursuant to a resolution of such county commissioners, council or township trustees, which sets forth the amount of notes to be issued, the denomination thereof, the rate of interest to be paid, and that such notes are issued pursuant to this act, and a complete report covering the details of the issuance of such notes shall be filed with the auditor of state on such forms as he may prescribe.

Such notes shall be payable on or before March 1, 1942, and shall bear interest from date at a rate not exceeding four per centum per annum, interest to be payable when notes are paid, shall be signed as provided in the uniform bond act of Ohio, and shall recite on their face that they are issued pursuant to this act and the resolution authorizing the same. The proceeds of such notes shall be allocated to a special fund in such subdivision for poor relief and the administration thereof, including payment of premiums to the industrial commission of Ohio for the public work-relief employes' compensation fund. The principal and interest of such notes shall be paid from the proceeds of the taxes provided in this act or any amendment thereto. The notes may be sold at not less than par and accrued interest.

Said notes may be issued pursuant to the provisions hereof notwithstanding and irrespective of the provisions of Section 2293-4 of the General Code and/or any other provisions of the General Code.”

I wish to direct your attention to the fact that this section provides for the issuance of notes only and makes no reference to bonds. It likewise enumerates specific revenues in anticipation of which these notes may be issued and in definite language provides that the principal and interest of these notes shall be paid from these revenues. This section standing alone, considered separate and apart from the other sections of the act, would support the contention that these notes are not general obligations of the issuing political subdivision.

The Supreme Court of the State of Ohio in the case of *Davis, Mayor, et al. vs. The State, ex rel. Pecsok*, 130 O. S. 411, considered the question of paying anticipatory notes issued under authority of Section 2293-4, General Code. This section authorizes taxing authorities to borrow money and issue notes therefor in anticipation of the collection of current revenues, further providing that the sum so anticipated shall be deemed appropriated for the payment of such notes at maturity. The sums so anticipated and appropriated were collected and expended for other purposes, allowing the notes to go unpaid. The court held that under these facts and the law applicable thereto the notes could not be paid from other sources or revenues. Paragraph 3 of the syllabus of this case reads as follows:

“Funds for the payment of such anticipatory notes are appropriated as a matter of law for their payment at the next succeeding semi-annual settlement, and when such notes are permitted to run past two semi-annual settlements without collection, and the appropriated funds are expended, no power has been delegated to make another appropriation or provide for their collection.”

The principles of law enunciated in this case lead to the conclusion that notes issued in anticipation of certain specified revenues and retired from those revenues alone are not general obligations of the issuing political subdivision.

Section 3 of Amended Senate Bill No. 462 provides for the disposition of the proceeds of the sale of any bonds or notes issued under Section 2 of this act. Here, for the first time, the word “bonds” appears.

Section 4 of this act reads as follows:

"If any county, municipality or township finds that it is unable to issue bonds under the provisions of Section 2 of this act by reason of the limitations imposed by Article XII, Section 2 of the constitution of Ohio, and Section 5625-2 of the General Code, the taxing authority of such subdivision shall submit the question of issuing such bonds to the electors of the subdivision either at a regular or special election.

Provided, however, that if the taxing authority of any county, municipality or township decides to submit the question of issuing bonds under the provisions of this act at a special election to be called for that purpose, the taxing authority of such county shall adopt, by a vote of a majority or more of its elected members, a resolution declaring the necessity for such bond issue, setting the date for such special election, and setting forth the additional facts as provided in Section 2293-19 of the General Code of Ohio, which resolution shall be certified to the county auditor at least fifteen days prior to the election at which it is desired to submit such question. Thereupon and not less than twelve days prior to such election, the county auditor shall certify to the taxing authority the facts as set forth in said Section 2293-19 of the General Code, and said taxing authority if it desires to proceed with the issuance of said bonds, shall not less than ten days prior to such election, certify to the board of elections of the county its resolution, together with the additional facts as provided in said Section 2293-19 of the General Code.

The election on the question of issuing such bonds shall be held under the provisions of Sections 2293-21, 2293-23, and 2293-23a of the General Code of Ohio except that publication of notice of such election shall be made on four separate days prior to such election in one or more newspapers of general circulation in the county and the board of elections may include the question of such bond issue or issues upon a regular ballot on questions and issues, or prepare and use a separate ballot therefor, which shall be printed and ready for use of absent voters not less than five days before the date of election.

When the question of issuing any such bonds is submitted to the electors of any county, municipality or township such bond issue shall require the affirmative vote of a majority of those voting upon the proposition."

It will be noted from a reading of the above quoted section that when a subdivision is unable to issue bonds under the provisions of Section 2

because of constitutional limitations, then the same may be voted. Here for the first time appears direct recognition that notes and bonds issued under the provisions of Sections 2 and 4 are general obligations of the issuing political subdivision. If such notes and bonds were not general obligations of the issuing political subdivision and a levy not made under the provisions of Article XII, Section 11 of the Constitution of Ohio, then in that event the constitutional limitations imposed by Article XII, Section 2 need not be considered. However, Section 4 of the act here under consideration contains a direct recognition of Article XII, Section 2.

From a study of Amended Senate Bill No. 462, it is needless to say that the act is poorly drafted in that many inconsistencies and ambiguities are prevalent. In Section 2 specific reference is made to the issuance of notes only. Section 3 refers to notes and bonds issued under Section 2. Section 4 refers to bonds issued under Section 2. These inconsistencies lead us to a short consideration of the terms "notes" and "bonds."

At the outset, it can be said that notes or bonds which are general obligations of the issuing political subdivision are to be considered as part of the bonded indebtedness of the subdivision. True likewise is the fact that a levy must be made for the retirement of such notes or bonds. It can be seen they are both evidences of indebtedness. They differ mainly in form and in some instances, formality of execution, and also in the period of time over which they extend. In a general sense, notes are evidences of indebtedness issued for a short period of time. The Uniform Bond Act provides that notes issued in anticipation of bonds may have a maturity of not to exceed two years. Section 2293-25, General Code. Bonds are usually considered as being issued over a greater period of years. Section 2293-9, General Code, providing the number of years that bonds, notes and other evidences of indebtedness may extend, does not make a distinction between notes and bonds but places the two on equal footing. The pertinent part of Section 2293-9, General Code, relative to this point reads as follows: °

"The maturity of bonds, notes or other evidences of indebtedness issued by any subdivision shall not extend beyond the following limitations as specified in the following classifications: \* \* \*"

In the recent case of *State, ex rel. vs. Hudson*, 134 O. S. 150, the court speaking through Day, J., pointed out the similarity of notes and bonds in so far as the indebtedness is concerned. On page 162, the court said:

“The village of Hudson issued bonds and exchanged them for the notes, thereby continuing the debt. The existing debt was not thereby extinguished and a new debt was not thereby created. Merely, the form of the debt was changed.”

To give effect to Sections 2, 3 and 4 of Amended Senate Bill No. 462, the entire act must be considered. The consideration of Section 2 alone would lead to an interpretation that would read out of the act the provisions of Sections 3 and 4 and leave the same meaningless.

I herewith quote certain excerpts from Sutherland’s Statutory Construction, Vol. 2, Second Edition, pages 709 and 711, respectively :

“A statute should be so construed as a whole, and its several parts, as most reasonably to accomplish the legislative purpose. It is said to be the most natural exposition of a statute to construe one part by another, for that expresses the meaning of the makers; this exposition is *ex verceribus actus*.”

“A statute is to be construed with reference to its manifest object, and if the language is susceptible of two constructions, one of which will carry out and the other will defeat such manifest object, it should receive the former construction.”

Considering the act in its entirety, I am of the opinion that notes and bonds issued under the provisions of Sections 2 and 4 are general obligations of the issuing political subdivision and that the terms “notes” and “bonds” are used in their generic sense throughout this act.

Notes or bonds issued under the provisions of this act are not subject to the net indebtedness limitations of Sections 2293-14, 2293-16 and 2293-17, General Code, for the reason that in Section 2 direct language is therein found that such notes may be issued pursuant to the provisions of this act notwithstanding and irrespective of the provisions of Section 2293-4 of the General Code and/or any other provisions of the General Code. In the same section, the legislature has specifically provided how many of such notes may be issued by expressly setting forth a percentage calculation based on the Bureau of Inspection’s determination of anticipated revenues.

The question as to whether or not notes and bonds issued under the provisions of this act may be sold at private sale has been presented to this office subsequent to the receipt of your request and I feel that a discussion on this matter at this time is quite pertinent. To my mind the broad language that notes may be issued pursuant to this act, regardless of any other provisions of the General Code, must be somewhat qualified to the extent that where the specific language of the act does not direct

a method, then the provisions of the General Code, especially the provisions of the Uniform Bond Act, must prevail. However, in Section 2 of this act it will be noted that the legislature has provided a method or at least has expressed its intent as to how such notes and bonds, using the two terms interchangeably and in their generic sense, may be sold, namely that the notes may be sold at not less than par and accrued interest. This, to my mind, is ample direction as to the sale of such notes and bonds and the issuing political subdivision may therefore sell such notes or bonds at private or public sale as they deem to be the best interests of the subdivision, irrespective of any of the provisions of the General Code.

The act likewise provides that the notes shall be issued on forms provided by the Bureau of Inspection. I have already stated that the act must be considered in its entirety so as to give force and effect to each section thereof and that the terms "notes" and "bonds" are therein used in their generic sense. This reasoning impels me to the conclusion that bonds as well as notes issued under the provisions of Sections 2 and 4 of Amended Senate Bill No. 462 must be issued on forms provided by the Bureau of Inspection.

In specific answer to your inquiry, it is my opinion that:

1. Notes or bonds issued under authority of Sections 2 and 4 of Amended Senate Bill 462 are general obligations of the issuing political subdivision.

2. Said notes or bonds are not subject to the net indebtedness limitations as provided in Sections 2293-14, 2293-16 and 2293-17 of the General Code.

3. Such notes or bonds issued under the authority of this act may be sold at private or public sale so long as the same are not sold for less than par and accrued interest.

4. The terms "notes" and "bonds" used in this act are to be construed in their generic sense and bonds as well as notes issued pursuant to this act must be issued on forms provided by the Bureau of Inspection.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*