

tary or respiratory openings of the body, such as the nasal passages, throat, trachea, and bronchial tubes.

It is therefore the opinion of this department that "skin" as employed in the law intends to refer to the outer covering of the body only, and is used in its ordinary or common meaning, not referring to the mucous membrane lining the passages of the nose, throat or bronchial tubes.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

2932.

GRISWOLD ACT—MUNICIPAL CORPORATIONS AUTHORIZED TO MEET DEFICIENCIES IN CURRENT OPERATING REVENUES UNDER HOUSE BILL 4 (109 O. L. 17)—EFFECT OF GRISWOLD ACT (109 O. L. 336) ON ABOVE MENTIONED LAW—SEE ALSO OPINION NO. 2984, APRIL 13, 1922, p. —, MODIFYING AND SUPPLEMENTING THIS OPINION.

1. *The initial proceedings under House Bill No. 4, 109 O. L. 17, looking toward the borrowing of money to meet deficiencies in the current operating revenues of a municipal corporation for the year 1921 must have been taken during that calendar year.*

2. *Municipalities are not authorized by section 3916 of the General Code, as amended 109 O. L. 346, to borrow money to pay anticipated deficiencies in current operating revenues.*

3. *The amendment and re-enactment of sections 4506 and 4513 of the General Code in House Bill 33, 109 O. L. 336, does not have the effect of removing all interest and sinking fund levies on account of bonds issued prior to January 1, 1922, from the limitations of the Smith One Per Cent law, sections 5649-1 et seq. of the General Code.*

COLUMBUS, OHIO, March 15, 1922.

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

GENTLEMEN:—The bureau submits for the opinion of this department the following questions relative to the application and interpretation of the so-called Griswold Act (109 O. L. 348):

"We are in receipt of many inquiries relative to construction of the sections of the Griswold act, and will accordingly appreciate your opinion thereon. House Bill No. 4 (109 O. L. 17) is 'An act to authorize the taxing authorities of municipal corporations to fund deficiencies in operating revenues for the year 1921, issue bonds and to levy taxes for such purposes and to declare an emergency.' This act was filed in the office of the Secretary of State February 24, 1921.

Section 3916 G. C., as amended, 109 O. L. 339, provides that:

'For the purpose of extending the time of payment of any indebtedness created or incurred before the first day of January, 1924, which from its

limits of taxation the corporation is unable to pay at maturity, the council thereof may issue bonds of the corporation or borrow money so as to change but not to increase the indebtedness, in such amounts, for such length of time and at such rate of interest as council deems proper, not to exceed six per cent per annum, payable annually or semi-annually.'

Section 21 of House Bill No. 33, (109 O. L. 348) provides in part that:

'and all acts or parts of acts inconsistent herewith be, and the same are hereby repealed.'

*Question 1.* Is said House Bill No. 4, (109 O. L. 17) repealed by section 21 of House Bill No. 33, (109 O. L. 348) filed in the office of the Secretary of State on the 18th day of May, 1921?

Bonds issued under authority of House Bill No. 4 are outside of taxes and bonded debt limitations while those issued under authority of section 3916 G. C., as amended, are seemingly within such limitations.

*Question 2.* If House Bill No. 4 is not repealed by section 21 of House Bill No. 33, can a municipality at this time issue and sell bonds to cover deficiencies for the year 1921 under said House Bill No. 4?

*Question 3.* Can a municipality knowing that income will not meet fixed charges for the year 1922, such as salaries, water rentals, and street lighting, all contractual obligations, issue bonds under section 3916 G. C. to fund deficiencies now existing and include therein the deficiency that is certain to occur through the year 1922 operations?

Section 4506 G. C., as amended, 109 O. L. 346, provides that:

'Municipal corporations having outstanding bonds or funded debts shall, through their councils and in addition to all other taxes authorized by law, levy and collect annually a tax upon all the real and personal property in the corporation sufficient to pay the interest and provide a sinking fund for the extinguishment of all bonds and funded debts heretofore issued and incurred and the taxes so raised shall be used for no other purpose whatever.'

Section 4513 G. C., as amended, provides that:

'On or before the first Monday in May of each year, the trustees of the sinking fund shall certify to council the amount of tax necessary to provide a sinking fund for the future payment of bonds heretofore issued by the corporation, for the payment of interest on such bonded indebtedness, and the rents due on perpetual leaseholds of the corporation not payable from a special fund, and the expenses incident to the management of the sinking fund. The council shall place the several amounts so certified in the tax ordinance before and in preference to any other item and for the full amount certified. Such taxes shall be in addition to all other taxes authorized by law.'

Section 5649-1 G. C., as amended, 109 O. L. 348, provides that:

'In any taxing district, the taxing authority shall, within the limitations and in the manner prescribed by law, levy a tax sufficient to provide for interest and maturity payment purposes for all serial bonds issued by any

political subdivision, and for interest and for sinking fund purposes of all bonds heretofore issued by such political subdivision, which tax shall be placed before and in preference to all other items, and for the full amount thereof.'

It has been suggested to this department that sections 4506 and 4513 General Code might be deemed special legislation provided especially for municipal corporations while section 5649-1 G. C. is a general provision covering any taxing district.

*Question 4.* Are levies made in pursuance of sections 4506, 4513 G. C., as amended, 109 O. L. 346, outside of limitations in view of the general provisions of amended section 5649-1 General Code?"

House Bill No. 4 referred to in the bureau's first question, authorizes the borrowing of money to provide funds to meet deficiencies in the current operating revenues of municipal corporations estimated to occur in the year 1921. It is very definitely a measure authorizing the borrowing of money for current expenses of that year, and need not be further considered when this point is established.

House Bill No. 33 contains the following sections in addition to those quoted by the bureau:

"Section 2. (2295-7 G. C.) No county, school district, township, municipality, including charter municipalities, or other political subdivision shall, with the exceptions hereinafter named, create or incur any indebtedness for current operating expense. The acquisition or construction of any property, asset or improvement with an estimated life or usefulness of less than five years shall be deemed current expense. This prohibition shall not apply to borrowing as provided by law in anticipation of collection of special assessments or in anticipation of special assessments or current revenues or for defraying the expenses of an extraordinary epidemic of disease or emergency expenses made necessary by sudden casualty which could not have reasonably been foreseen or for deficiencies created by enjoined taxes as provided in section 5659-1 of the General Code, or for paying final judgments upon non-contractual obligations as provided in section 4 thereof. The estimate of the life of the property, asset or improvement proposed to be acquired or constructed from the proceeds of any bonds, shall be made in any case by the fiscal officer of the subdivision and certified by him to the bond-issuing authority and shall be binding upon such authority."

"Section 23. This act shall take effect from and after January 1, 1922, and its provisions shall govern and apply to all ordinances, resolutions, measures and proceedings pending on that date."

The first question which arises is as to whether money may now be borrowed under House Bill No. 4, the year 1921 having expired.

In the opinion of this department a negative answer must be returned to this question irrespective of House Bill No. 33. While it is true that House Bill No. 4 contains no provision requiring the initial or other steps necessary to the borrowing of money thereunder to be taken at any particular time, it does contemplate borrowing to meet anticipated future deficiencies. See paragraph 2 of section 1 and sub-paragraphs 3, 4 and 5 of section 2. The act as a whole is clearly a temporary act, and it would be over-stepping the boundaries of reason to hold that the authority to borrow thereunder lasts indefinitely. Though no time is fixed when the ascer-

tainment of the deficiency must be made, it is clear that such action must be taken within a reasonable time, having regard to the objects and purposes of the whole act, and this department is of opinion that it is too late to act under this act after January 1, 1922.

Now, House Bill No. 33 did not go into effect at all until January 1, 1922, and whatever repealing effect it had was not exercised until that time; but on that date, as already stated; House Bill No. 4 was virtually a dead letter. But one question could possibly arise, and that would be in a case wherein action under House Bill No. 4 had been initiated prior to the first of January, 1922, but bonds authorized to be issued under that act had not actually been issued. If the bureau has such a specific question in mind it will be reserved from consideration in this opinion; but unless there are such cases it is a sufficient answer to the bureau's question to state that, save at least as to proceedings begun in the year 1921, under House Bill No. 4, the act became negatory on January 1, 1922, irrespective of any possible inconsistency between it and House Bill No. 33.

This statement also answers the bureau's second question, except as to the possible circumstances concerning which no opinion is at this time expressed.

The bureau's third question is answered in the negative. Section 3916 is in form substantially identical with section 5656 of the General Code, which has repeatedly been construed by this department. A copy of an opinion to the prosecuting attorney of Richland county, being Opinion No. 2728, is enclosed herewith. This opinion construes sections 3916 and 5656 as amended in House Bill No. 33, in the light of section 2 of the same act.

There is no color of authority in section 3916 to borrow money to meet future anticipated deficiencies in operating revenues, however certain they may be.

A negative answer is also returned to the bureau's fourth question. The language to which the bureau calls attention in sections 4506 and 4513 of the General Code respectively, has always been in those sections, and was not introduced into either of them by the Griswold Act. The only change made in section 4506 was in the exclusion of the words "and for the payments of all judgments final except in condemnation of property cases," and the addition of the word "heretofore." Similar changes are made in section 4513.

These sections in their original form antedated section 5649-1 of the General Code, and as the sections then stood, the mere declaration in the first two of them to the effect that interest and sinking fund levies in municipal corporations "shall be in addition to all other taxes authorized by law" did not have the effect of excluding these "additional taxes" from the limitations of the Smith one per cent law. It follows that the mere repetition of this language in the section amended for another purpose cannot give to the language any new meaning.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*