

Industrial Commission under date of February 25, 1935, being Opinion No. 3972.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

259.

HOUSE BILL No. 16—IF EFFECTIVE—NOT VIOLATIVE OF
THE CONSTITUTION OF OHIO.

SYLLABUS:

In the event of the enactment of House Bill No. 16, the provisions contained in Section 7, paragraph (c) thereof, relating to the right of trial by jury in certain criminal contempt proceedings, would not be violative of the Constitution.

COLUMBUS, OHIO, March 16, 1937.

HON. KENNETH M. PETRI, *Acting Chairman, Committee on Judiciary, House of Representatives, Columbus, Ohio.*

DEAR SIR: This is to acknowledge receipt of your letter of the eleventh, in which you advise that your committee is desirous of securing the opinion of this office as to the constitutionality of a certain provision of House Bill No. 16.

House Bill No. 16 is a bill entitled "A Bill To Define and limit the jurisdiction of courts sitting in equity, and for other purposes." The bill relates primarily to controversies arising from labor union disputes. The particular provision of the bill upon which you desire an expression of this office as to constitutionality is contained in paragraph (c) of Section 7 of the bill, providing the right of a trial by jury in cases of certain "indirect criminal contempt proceedings." This provision reads as follows:

"Section 7. In all cases where a person shall be charged with indirect criminal intent, the accused shall enjoy

* * * * *

(c) Upon demand, the right to a speedy and public trial by an impartial jury of the judicial district wherein the con-

tempt shall have been committed, provided that this requirement shall not be construed to apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court, * * *."

It is, of course, a general principle of law that the jurisdiction of courts in contempt proceedings is conferred primarily by the Constitution and is an inherent power of the judiciary. Accordingly, the power of the legislature with respect to matters of contempt is subject to certain necessary limitations. The language of the court speaking through Shauck, J., in the case of *Hale vs. State*, 55 O. S. 210, at 213, is as follows:

"The difference between the jurisdiction of courts and their inherent powers is too important to be overlooked. In constitutional governments their jurisdiction is conferred by the provisions of the constitutions and of statutes enacted in the exercise of legislative authority. That, however, is not true with respect to such powers as are necessary to the orderly and efficient exercise of jurisdiction. Such powers, from both their nature and their ancient exercise, must be regarded as inherent. They do not depend upon express constitutional grant, nor in any sense upon the legislative will. The power to maintain order, to secure the attendance of witnesses to the end that the rights of parties may be ascertained, and to enforce process to the end that effect may be given to judgments, must inhere in every court or the purpose of its creation fails. Without such power no other could be exercised."

In a consideration of your question, a distinction must be drawn between two recognized classes of proceedings for contempts. These proceedings have been classified by the courts as civil and criminal. The distinction between these classes of civil and criminal contempt proceedings is not always clear, many cases falling within the shadow zone. The distinction set forth by the United States Circuit Court of Appeals in the case of *Re Nevitt*, 117 Fed. 448, 54 C. C. A. 622, has been frequently cited. The court said:

"Proceedings for contempts are of two classes—those prosecuted to preserve the power and vindicate the dignity of the courts, and to punish for disobedience of their orders, and

those instituted to preserve and enforce the rights of private parties to suits, and to compel obedience to orders and decrees made to enforce the rights and administer the remedies to which the court has found them to be entitled. The former are criminal and punitive in their nature, and the government, the courts, and the people are interested in their prosecution. The latter are civil, remedial, and coercive in their nature, and the parties chiefly in interest in their conduct and prosecution are the individuals whose private rights and remedies they were instituted to protect or enforce. * * * A criminal contempt involves no element of personal injury. It is directed against the power and dignity of the court, and private parties have little, if any, interest in the proceedings for its punishment. But if the contempt consists in the refusal of a party or a person to do an act which the court has ordered him to do for the benefit or the advantage of a party to a suit or action pending before it, and he is committed until he complies with the order, the commitment is in the nature of an execution to enforce the judgment of the court, and the party in whose favor that judgment was rendered is the real party in interest in the proceedings."

An examination of the reported cases in Ohio fails to disclose any expression of the judiciary fully defining the powers of the General Assembly under the Ohio Constitution with respect to the matter of trials by jury in contempt proceedings. The case of *Joseph Ammon vs. T. H. Johnson, Guardian*, 3 O. C. C. 263, laid down the general principle that cases of contempt are not triable by jury, but at page 271, the opinion of the court contains an express recognition of the fact that it was not therein concerned with criminal contempt. The right to trial by jury in cases of criminal contempt has been clearly recognized by the Supreme Court of the United States in *Michaelson vs. United States*, 266 U. S. 42, 69 L. Ed. 162, 45 S. Ct. 18. I quote the following pertinent language from the opinion of the court delivered by Justice Sutherland:

"The courts of the United States, when called into existence and vested with jurisdiction over any subject, at once become possessed of the power. So far as the inferior Federal courts are concerned, however, it is not beyond the authority of Congress. Ex parte Robinson, 19 Wall. 505, 510-511, 22 L. ed. 205; *Bessette vs. W. V. Conkey Co.*, 194 U. S. 324, 326, 48 L. ed. 997, 24 Sup. Ct. Rep. 665; but the attributes which inhere in that power and are inseparable from it can neither be abrogated

nor rendered practically inoperative. That it may be regulated within limits not precisely defined may not be doubted. The statute now under review is of the latter character. It is of narrow scope, dealing with the single class where the act or thing constituting the contempt is also a crime in the ordinary sense. It does not interfere with the power to deal summarily with contempts committed in the presence of the court or so near thereto as to obstruct the administration of justice, and is in express terms carefully limited to the cases of contempt specifically defined. * * * But the simple question presented is whether Congress may require a trial by jury upon the demand of the accused in an independent proceeding at law for a criminal contempt which is also a crime. In criminal contempts, as in criminal cases, the presumption of innocence obtains. Proof of guilt must be beyond reasonable doubt and the defendant may not be compelled to be a witness against himself. * * *

The proceedings is not between the parties to the original suit, but between the public and the defendant. The only substantial difference between such a proceeding as we have here, and a criminal prosecution by indictment or information is that in the latter the act complained of is the violation of a law, and in the former the violation of a decree. In the case of the latter, the accused has a constitutional right of trial by jury; while in the former he has not. The statutory extension of this constitutional right to a class of contempts which are properly described as 'criminal offenses' does not, in our opinion, invade the powers of the courts as intended by the Constitution or violate that instrument in any other way."

Applying these principles, it is observed that the bill in question by its own terms in its provisions with respect to trial by jury hereinabove quoted relates to criminal contempt cases. The proviso set forth in paragraph (c), supra, that the right to trial by jury therein conferred shall not be construed to apply to contempt committed in the presence of the court or so near thereto as to interfere directly with the administration of justice, is in complete accord with the principles adhered to in the decision of the Supreme Court of the United States, supra, wherein the court said that the Act of Congress there under consideration "does not interfere with the power to deal summarily with contempts committed in the presence of the court or so near thereto as to obstruct the administration of justice."

It is recognized that in the application of the language of House Bill No. 16 here under consideration to individual cases which might

arise, difficult questions may perhaps be presented as to the constitutional effect of the position that a particular proceeding is within the terms of the act as providing a trial by jury. But in the determination of such questions, it must be remembered that it is a well established rule that where an act as applied to a given case is susceptible to two constructions, one of which will render it valid and the other of which will render it violative of the Constitution, the construction will be adopted which will support its constitutionality. *State ex rel. vs. Zangerle*, 103 O. S. 566.

In view of the foregoing, it is my opinion that in the event of the enactment of House Bill No. 16, the provisions contained in Section 7, paragraph (c) thereof relating to the right of trial by jury in certain criminal contempt proceedings, would not be violative of the Constitution.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

260.

APPROVAL—BONDS OF SOUTH EUCLID-LYNDHURST VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, \$15,000.00 (Unlimited).

COLUMBUS, OHIO, March 16, 1937.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.
GENTLEMEN:

RE: Bonds of South Euclid-Lyndhurst Village School Dist., Cuyahoga County, Ohio, \$15,600.00 (Unlimited).

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of refunding bonds dated February 1, 1937, bearing interest at the rate of 4% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.