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UNIFORM DEPOSITARY ACT—SECTION 2296-1 ET SEQ., G.C.  
—PROVISIONS NOT APPLICABLE IN CASE OF FUNDS RECEIVED BY MUNICIPAL CORPORATION—PROCEEDS, UTILITY REVENUE BONDS — ARTICLE XVIII, SECTION 12, CONSTITUTION OF OHIO.

SYLLABUS:

The provisions of the uniform depository act, Section 2296-1 et seq., General Code, are not applicable in the case of funds received by a municipal corporation as the proceeds of utility revenue bonds issued under authority of Section 12, Article XVIII, Ohio Constitution.

Columbus, Ohio, June 26, 1952

Bureau of Inspection and Supervision of Public Offices  
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

“We enclose a letter from our examiner currently engaged in making the regular examination of municipal records and accounts at C. . . . ., Ohio, in which several questions are raised pertaining to the custody of funds derived from the sale of Mortgage Revenue Bonds, and the responsibility of public officials for the safe-keeping of public funds when deposited in accordance with the provisions of an Indenture of Mortgage agreement.

“The city of C. . . . . invested \$2,000,000.00 of Sewage-Garbage Mortgage Revenue Bond construction funds in short term U. S. Government Notes pursuant to authority of Section 408 of the Mortgage Indenture agreement, quoted in the accompanying letter. The interest earned on said investments was credited to the construction fund.

“The city of C. . . . . has established a treasury investment board, under authority of Sections 4296-1 to 4296-4, General Code, which has the custody and control of all investment funds in the municipal treasury.

“1. Where the Mortgage Indenture agreement provides a special and different method to be used for the investment and custody of monies derived from the sale of Mortgage Revenue

Bonds, or that portion of the revenue allocated to debt service in the custody of a trustee, do the provisions of the Mortgage Indenture agreement prevail over the general laws pertaining to investment, deposit and safe-keeping of public funds?

"2. Do the provisions of Sections 2296-1 to 2296-25 of the General Code (the Uniform Depository Act) apply to the deposit of revenue bond construction funds, and revenue bond debt service funds?

"3. How shall the moneys paid over to a trustee bank named in the Mortgage Indenture agreement be protected so as to guarantee the safe-keeping of such funds when deposited outside the regular city depository bank?

"4. Does the provision contained in Section 405, paragraph 3, of the Mortgage Indenture agreement to the effect that 'the trustee shall not be responsible for any depreciation in the value of any obligations in which amounts in the DSR shall be invested as aforesaid, or for any loss arising from such investment' relieve said trust company of all liability in the matter?

"5. Do the provisions of Section 2296-15a, General Code, have any application to the funds derived from the sale of Mortgage Revenue Bonds, or the mortgage revenue debt service funds?

"6. When Mortgage Revenue bond funds or utility debt reserve funds have been paid over to a trustee named in the Indenture of Mortgage agreement by the treasurer of a municipality, pursuant to the provisions of said Mortgage Indenture agreement, is said treasurer and his bondsmen responsible for any loss which may result from the failure of the trustee bank to properly handle and account for all moneys and investments in its custody?

"Inasmuch as the foregoing questions are of state-wide interest, it is respectfully requested that you give consideration to the same and furnish us with your formal opinion in answer thereto."

An examination of the municipal ordinance providing for the issue of the mortgage revenue bonds here in question clearly indicates that it was enacted under authority of the grant of power found in Article XVIII, Section 12, Ohio Constitution. This section reads as follows:

"Any municipality which acquires, constructs or extends any public utility and desires to raise money for such purposes may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law; provided that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipi-

pality but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure."

This provision was under scrutiny in *Middletown v. City Commission*, 138 Ohio St., 596, the fourth paragraph of the syllabus in which is as follows:

"Section 12, Article XVIII of the Constitution, is self-executing and self-sufficient, and utility mortgage bonds created and issued strictly within its terms are not affected by other parts of the Constitution or by the Uniform Bond Act (Section 2203-1, et seq., General Code)."

If this constitutional provision is "self-executing and self-sufficient" and if a municipal corporation is authorized to proceed thereunder without reference to other parts of the constitution, it clearly appears that we are here confronted with another instance in which, as remarked by Judge Johnson in *Billings v. Railway*, 92 Ohio St., 478 (483), "The people (have) made a new distribution of governmental power."

In making such new distribution of governmental power in the adoption of the home rule amendments of 1912, the people did, of course, reserve to the General Assembly the power to pass laws limiting the power of municipalities in matters of taxation, debt and fiscal affairs. In this connection Section 13, Article XVIII, of the Constitution provides:

"Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities."

From the general provisions of Sections 3 and 7, Article XVIII of the Constitution, authorizing municipalities to exercise "all powers of local self-government," and the special provisions of Section 13, Article XVIII, supra, reserving certain powers to the General Assembly, we are bound to conclude that, as to matters of local self-government, the General Assembly possesses no power of legislation except such as has been

specially reserved to it by the constitution. This was evidently recognized by Judge Williams in *Cincinnati v. Gamble*, 138 Ohio St., 220, when, referring to the powers granted municipalities in Article XVIII, he said (p. 227):

“Such powers as are enumerated therein cannot of course be taken away by the Legislature.”

The uniform depository act, with which we are here concerned, cannot, therefore, be deemed applicable to municipal projects under authority of Section 12, Article XVIII, except to the extent that constitutional authority therefor can be found. However, under the rule in the *Middletown* case, *supra*, that the powers conferred on municipal corporations by Section 12, Article XVIII, are not affected by “other parts of the Constitution,” it is obvious that such constitutional authority does not exist. For this reason I conclude that the provisions of the uniform depository act, Section 2296-1, et seq., General Code, are not applicable in the case of funds received by a municipal corporation as the proceeds of utility revenue bonds issued under authority of Section 12, Article XVIII, Ohio Constitution.

This conclusion is such as to make unnecessary the consideration of the individual questions set out in your inquiry, since it must necessarily follow that the mortgage indenture in the instant case is not invalid merely because certain of its provisions do not conform to the provisions of the general law.

Respectfully.

C. WILLIAM O'NEILL  
Attorney General