

Section 2293-27, G. C., 112 O. L., page 375, reads:

'Before selling any notes or bonds of the subdivision the taxing authority shall offer the same at par and accrued interest to the trustees or commissioners or other officers who have charge of the sinking fund of the subdivision and such officers shall have the option of purchasing said notes or bonds or rejecting the same.'

QUESTION: May the sinking fund trustees of a city or village invest surplus funds in notes issued by the corporation?"

The authority conferred by Section 2293-27, General Code, upon the officials in charge of the sinking funds of political subdivisions to purchase notes of their subdivisions, in addition to bonds, is obviously, in my opinion, operative as an extension of the investment powers of such officials to include this form of security. It would be an absurdity to give such officers the option to purchase notes and at the same time to hold that there could be no funds available for such purpose.

I am therefore of the opinion that the provisions of Section 2293-27 of the General Code, granting the option to officials in charge of sinking funds of subdivisions to purchase notes of such subdivisions, extends the limitation upon the investments of the trustees of the sinking fund of a city or village to include the notes of such city or village. Section 2293-27 is the later enactment and, insofar as its terms necessarily conflict with those of Section 4514 of the Code, the later enactment is operative.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1333.

CIVIL SERVICE EMPLOYEE IN STATE INSTITUTION WHO PERSISTENTLY REFUSES TO SETTLE HIS JUST DEBTS MAY BE DISCHARGED FOR FAILURE OF GOOD BEHAVIOR—CIVIL SERVICE COMMISSION MAY REVIEW CASE.

SYLLABUS:

Where an employe in a state institution acting under the knowledge that his wages cannot be garnished persistently refuses to make any effort to settle his just debts, the managing officer of such institution would be justified in finding that such persistent refusal constitutes a failure of good behavior and would be justified in discharging the offender.

If the employe feels that his discharge is unjustified, he is entitled to the benefit of a review of the case by the civil service commission.

COLUMBUS, OHIO, December 6, 1927.

The State Civil Service Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of your recent request for my opinion upon the following:

"The managing officer of one of the larger state institutions has referred the following situation to this commission upon which we respectfully desire your opinion:

It appears that a number of the employes of this particular institution have contracted personal debts in the city in which the institution is located and the creditors have constantly requested cooperation and assistance in the collection of such debts from the managing officer, who has on several occasions requested his employes to make every possible effort to settle their just debts. In some cases the employe has apparently made no effort whatever and the situation appears to be growing to an alarming extent. It seems that they are perhaps taking advantage of the fact that their wages cannot be garnisheed. This results in an annoying situation to the appointing authority and he has appealed to this commission to determine whether he has authority to discharge under Section 486-17a 'any other failure of good behavior', an habitual offender who makes little or no effort to settle his just debts."

Section 486-17a, General Code, referred to in your communication, reads in part:

"The tenure of every officer, employ (employe) or subordinate in the classified service of the state, the counties, cities and city school districts thereof, holding a position under the provisions of this act, shall be during good behavior and efficient service; but any such officer, employe or subordinate may be removed for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of the provisions of this act or the rules of the commission, or any other failure of good behavior, or any other acts of misfeasance, malfeasance or nonfeasance in office. * * *"

The phrase "or any other failure of good behavior" is rather broad and I find it very difficult to secure any good definition of the words "good behavior," as used in the above section. The following quotations are taken from the syllabus of the case of *United States vs. Hrasky*, 88 N. E. 1032; 240 Ill. 560:

"Good behavior is conduct authorized by law."

"The phrase 'during good behavior' means 'while conducting oneself conformably to law.'"

"Behavior is the bearing with respect to propriety, morals and requirements of law."

It would seem to me that the determination as to whether or not there has been a failure of good behavior on the part of an appointee or employee in any of the departments or institutions of the state should rest, in the first instance, in the sound discretion of the appointing or employing officer, subject to a review by your commission and by the courts, and should be determined in the light of the facts of each particular case. I do not believe it possible to lay down any hard and fast rule which could be used as a guide to officers in the application of the phrase "or any other failure of good behavior."

From what you have said in your communication, it appears that some of the employes of the particular institution to which you have reference have been the source of considerable annoyance to the managing officer, by reason of their failure

to pay their personal debts, and are apparently making no effort whatsoever to pay the same, even in the face of repeated warnings on the part of said officer.

Where an employe acting under the knowledge that his wages cannot be garnisheed persistently refuses to make any effort to settle his just debts, I am of the opinion that the managing officer would be justified in finding that such persistent refusal constitutes a failure of good behavior and would be justified in discharging the offender.

If the employe feels that his charge is unjustified, he is entitled to the benefit of a review of the case by your commission.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1334.

BRIDGE—LOCATED PARTLY WITHIN MUNICIPALITY AND PARTLY WITHOUT SAME—REPAIR DISCUSSED.

SYLLABUS:

1. *Where a bridge is located partly within and partly without a municipal corporation, and no part of said bridge is on an established road, as provided in Sections 2421 and 7557, General Code, a board of county commissioners is without authority to construct a bridge or repair an existing one, without first laying out and establishing a county road over a street or streets adjoining and forming one or more of the approaches to said bridge. In order to constitute a county road, within the provisions of Sections 6906, et seq., of the General Code, such road when so laid out and established must be a continuation of a state or county road extending into or through such municipal corporation, or must be a part of a continuous road improvement.*

2. *Where a bridge is established on a county road or upon one of the roads coming within the classification of roads, as provided in Sections 2421 and 7557, General Code, or where the county commissioners have laid out and established a county road within a municipality so that such bridge is on a county road, it is the duty of the county commissioners to construct and keep in repair such bridge.*

3. *Under the provisions of Sections 3295, et seq., of the General Code, the township trustees are authorized and empowered to co-operate with a municipality or a county in the construction or repair of a bridge, a part of which is located within and part of which is located without such municipality, such co-operation and participation in the improvement being subject to an agreement between the board of township trustees and the municipality, or the board of township trustees and the county commissioners.*

4. *Where a bridge over a stream lies partly within a municipality and partly within a township adjoining such municipality, and no part of such bridge is located upon a county road, free turnpike, improved road, abandoned turnpike or a plank road in common public use, which said road is of general and public utility running into or through such municipality, the duty of constructing that portion of such bridge located within such municipality is placed upon such municipality. However, the board of township trustees of the township, in which a part of such bridge is located, and the municipality may by agreement undertake the construction or repair of such bridge.*

COLUMBUS, OHIO, December 6, 1927.

HON. CLARENCE J. CROSSLAND, *Prosecuting Attorney, Zanesville, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date requesting my opinion as follows: