

to this issue was approved by this office in an opinion rendered to your board under date of April 21, 1936, being Opinion No. 5397.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said school district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1867.

APPROVAL—BONDS CITY OF AKRON, SUMMIT COUNTY,
OHIO, \$68,000.00, PART OF ISSUE DATED NOVEMBER 1,
1937.

COLUMBUS, OHIO, February 3, 1938.

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

GENTLEMEN:

RE: Bonds of City of Akron, Summit County, Ohio,
\$68,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above city dated November 1, 1937. The transcript relative to this issue was approved by this office in an opinion rendered to the Industrial Commission under date of January 31, 1938, being Opinion No. 1848.

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

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1868.

MUNICIPAL WATERWORKS FUND — SURPLUS MONEY
TRANSFERS, AUTHORIZED AND VALID—AMENDED
SENATE BILL 408—EMERGENCY—FLOOD RELIEF.

SYLLABUS:

1. *During the effective period of Amended Senate Bill No. 408,*

92nd General Assembly, Special Session, transfers made pursuant to such act of surplus moneys in a municipal waterworks fund were authorized and valid.

2. *Opinion No. 1474, rendered November 17, 1937, reversed by City of Niles v. Ice Corporation, 133 O. S. 169.*

COLUMBUS, OHIO, February 3, 1938.

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

GENTLEMEN: You have made inquiry as to the validity of a transfer made on January 14, 1938, of surplus waterworks funds of the City of Portsmouth to the emergency flood relief fund under Amended Senate Bill 408, effective as an emergency measure December 27, 1937. Section 1 of such Senate Bill provided as follows:

“The board of township trustees of any township, the board of county commissioners of any county, the council or commission of any village or city in this state, are hereby authorized to apply moneys from any available funds in its treasury, not otherwise encumbered, for flood emergency relief purposes for a period from January 26, 1937, to January 15, 1938, inclusive. Upon the unanimous vote of any board of township trustees of any township, any board of county commissioners of any county, any council or commission of any village or city in this state, such board or council or commission may expend such funds for such flood emergency relief needs during said period from January 26, 1937, to January 15, 1938, inclusive. All other statutory provisions to the contrary are hereby suspended during the effective period of this act.”

There is no question but that the foregoing section is broad enough in its language to include waterworks funds since there is no specific reference nor limitation therein as to its applicability to funds derived from the proceeds of taxation. Section 3959, General Code, of course, expressly limits the use of waterworks funds to waterworks purposes, but the last sentence of Section 1 of Amended Senate Bill 408, *supra*, expressly suspends all statutory provisions which are in conflict with the authority therein conferred during the effective period of the act, and the conclusion is therefore inescapable that insofar as waterworks funds are concerned, such Section 3959 being suspended, the act authorizes the transfer of such moneys in the absence of any constitutional inhibition. The language of the act in its breadth and its failure to specifically refer to funds representing the proceeds of taxation, is

analogous to the provisions of Sections 5625-13a, et seq., General Code, relating to the transfer of funds of a subdivision.

In the recent decision of *City of Niles vs. Ice Corporation*, 133 O. S. 169, Ohio Bar, January 24, 1938, the first and third branches of the syllabus are as follows:

"The provisions of Section 5625-13a, General Code, relate to the transfer of funds of a political subdivision, whether tax-derived or not, and include, in their authorization to transfer, funds derived from the maintenance and operation of an electric light and power system, but do not apply to waterworks funds by reason of the provisions of Section 3959, General Code. (Paragraph 2 of the syllabus in the case of *City of Lakewood vs. Rees*, 132 Ohio St., 399, modified in part.) * * *

3. Section 5625-13a, General Code, permitting political subdivisions to transfer 'any public funds under its supervision' to another fund, does not release municipal corporations from the limitation upon their taxing power, imposed by the Constitution."

Under authority of the foregoing case, you are advised that it is my opinion that the specific transfer of which you inquire was valid.

In my Opinion No. 1474, rendered November 17, 1937, I held as set forth in the syllabus:

"There is no authority whereby surplus moneys in a municipal electric utility fund may be transferred to the general fund, Section 5625-13, General Code, containing no such authority except after the termination of the operation of such public utility and Sections 5625-13a to 5625-13g, both inclusive, General Code, relating solely to the transfer of funds derived from taxation. *Lakewood v. Rees*, 132 O. S. 399."

It is apparent that since the rendition of the foregoing opinion, the decision of the Supreme Court of the *Niles* case, supra, modifying the *Lakewood* case upon which the opinion was grounded, renders such opinion no longer declarative of the law of Ohio.

Respectfully,

HERBERT S. DUFFY,

Attorney General.