

1375.

COUNCIL OF MUNICIPAL CORPORATION—MAJORITY VOTE NECESSARY TO PASS RESOLUTION FOR BOND ISSUE.

*SYLLABUS:*

*An ordinance or resolution providing for an issue of bonds by a municipality no longer requires a two-thirds affirmative vote of all members elected or appointed to the council of such municipality, but such ordinance or resolution may be adopted with the concurrence of a majority of the members elected or appointed to such council, as provided in Section 4224, General Code.*

COLUMBUS, OHIO, December 15, 1927.

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

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

“Section 3939, G. C., before amendment, 112 O. L. 379, provided that ‘when it deems it necessary the council of a municipal corporation by an affirmative vote of not less than two-thirds of the members elected or appointed thereto by ordinance may issue and sell bonds, etc.’”

The amendment of Section 3939 eliminated any reference to bonds and it appears that the authority is now found in Sections 2293-2, G. C., et seq., 112 O. L. 364.

Question: Does an ordinance or resolution providing for an issue of bonds require a two-thirds affirmative vote of all members elected or appointed to council?”

Prior to its amendment in House Bill No. 1, 87th General Assembly (112 O. L. 364, 379), Section 3939, General Code, contained the general authority for the issuance of bonds by municipalities. Before its amendment, said section provided in part:

“When it deems it necessary, the council of a municipal corporation, by an affirmative vote of not less than two-thirds of the members elected or appointed thereto, by ordinance, may issue and sell bonds in such amounts and denominations, for such period of time and at such rate of interest, not exceeding six per cent per annum, as said council may determine and in the manner provided by law, for any of the following specific purposes: \* \*”

As amended in House Bill No. 1, supra, Section 3939, General Code, contains the authority for acquiring, constructing or establishing certain improvements. It no longer contains the authority for issuing bonds. This authority is now found in House Bill No. 1, supra, and specifically in Section 2293-2, General Code. Said section, which is a part of House Bill No. 1, supra, provides as follows:

“The taxing authority of any subdivision shall have power to issue the bonds of such subdivision for the purpose of acquiring or constructing, any permanent improvement which such subdivision is authorized to acquire or construct. But no subdivision or other political taxing unit shall create or incur any indebtedness for current operating expenses, except as provided in Sections 2293-3, 2293-4, 2293-7 and 2293-24 of the General Code. The

estimate of the life of permanent improvements proposed to be acquired, constructed, improved, extended or enlarged 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 4224, General Code, prescribes the procedure to be followed by councils of municipalities in adopting ordinances and resolutions. It provides:

"The action of council shall be by ordinance or resolution, and on the passage of each ordinance or resolution the vote shall be taken by 'yeas' and 'nays' and entered upon the journal, but this shall not apply to the ordering of an election, or direction by council to any board or officer to furnish council with information as to the affairs of any department or office. No by-law, ordinance or resolution of a general or permanent nature, or granting a franchise, or creating a right, or involving the expenditure of money, or the levying of a tax, or for the purchase, lease, sale, or transfer of property, shall be passed, unless it has been fully and distinctly read on three different days, and with respect to any such by-law, ordinance or resolution, there shall be no authority to dispense with this rule, except by a three-fourths vote of all members elected thereto, taken by yeas and nays, on each by-law, resolution or ordinance, and entered on the journal. No ordinance shall be passed by council without the concurrence of a majority of all members elected thereto."

Ordinances or resolutions providing for bond issues are clearly within the provisions of Section 4224, *supra*. Such ordinances or resolutions are of a general or permanent nature and they also involve the expenditure of money and the levying of taxes.

In view of Section 4224, *supra*, and in view of the fact that the legislature has specifically repealed the provisions of Section 3939, General Code, which section required a two-thirds affirmative vote of the members elected or appointed to the council of a municipality on an ordinance for the issue of bonds, it is my opinion, specifically answering your question, that such bond ordinance or resolution at the present time requires only a majority vote of the members of such council.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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1376.

APPROVAL, BONDS OF VILLAGE OF ROCKY RIVER, CUYAHOGA COUNTY—\$12,500.00.

COLUMBUS, OHIO, December 15, 1927.

*Industrial Commission of Ohio, Columbus, Ohio.*