

advised as to what the rule would be under a similar statement of facts, but where the transfer proposed was to be made within the same county, that is, under section 4692 G. C. rather than 4696 G. C. as appears in your original letter. In answer to this question you are advised that the county board of education may legally transfer school territory which is uncentralized under the provisions of section 4692 G. C., but the county board of education is not required to make such transfer within the county school district even though a petition of seventy-five per cent. of the electors in the territory to be transferred was presented to the board. In centralized school territory, that is, where there has been a vote had by the electors upon the question of centralization, and not a mere resolution to submit such question to the electors, transfers of such centralized school territory may be made by the county board of education when a petition of two-thirds of the qualified electors of the territory petitioning for the transfer is presented to the county board of education, but even under 4727, wherein this provision occurs, the county board of education is not required to mandatorily make such transfer.

You are therefore advised that it is the opinion of this department that where a board of education of a rural school district passed a resolution under section 4726 to submit to the electors of the school district the question of centralization of schools, and that subsequent to the passing of this resolution and prior to the election certain electors of said rural school district signed a petition and filed the same with the county board of education asking that said territory in which the petitioners constituted seventy-five per cent. of the total number of electors therein be transferred to an adjoining school district, in accordance with the provisions of section 4696 G. C., the county board of education may not only legally make such transfer, but is required to do so. A mere resolution by a board of education to submit to the electors of the district the question of the centralization of the schools does not give to such territory the status of centralized school territory, since the voters have not passed in the affirmative upon the question to be submitted.

Where the same conditions exist under section 4692 G. C., that is, within the county school district, the county board of education may legally make such transfer of school territory, but is not required to do so.

Centralization of schools is not wholly accomplished by a mere affirmative vote taken under section 4726 G. C. in favor of centralization, since that section says that following such vote the "rural board of education shall proceed at once to the centralization of schools of a rural district, and, if necessary, purchase a site or sites and erect a suitable building or buildings thereon." It is within the discretion of the board of education following a vote upon centralization to decide whether such centralized school shall be operated thereafter at one site, or at more than one site.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

3825.

BOND ISSUE—UNDER SECTION 3940 G. C. A VILLAGE MAY NOT FOR PURPOSES DESIGNATED IN SECTION 3939 G. C. ISSUE BONDS SO AS TO CREATE INDEBTEDNESS IN SUM IN EXCESS OF ONE-HALF OF ONE PER CENT OF THE TOTAL OF TAX DUPLICATE OF TAXING DISTRICT IN ANY ONE FISCAL YEAR.

*Under the provisions of section 3940 G. C. a village may not for any of the purposes designated under section 3939 G. C. issue bonds so as to create an indebtedness against the corporation in a sum in excess of one-half of one per cent of the total of the tax duplicate of the taxing district in any one fiscal year.*

COLUMBUS, OHIO, December 22, 1922.

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

GENTLEMEN:—Acknowledgment of your communication of recent date which reads as follows:

“We respectfully request your written opinion upon the following matter:

*Statement of Facts.*

The council of a village is desirous of issuing bonds in about the sum of \$6,000.00 to buy new equipment for their electric light plant which has about gone to pieces. Their tax duplicate is a little over \$600,000.00. This will permit them to issue about \$3,000.00 in bonds in any one year. They are issuing bonds for \$3,000.00 this year. The ordinance will be passed this month, and become effective the latter part of December. However, the bonds cannot be sold until next year. They will also want to issue \$3,000.00 in bonds next year.

*Question:* Are the bonds authorized this year considered as being issued this year although not sold until next year and can a like number of bonds for \$3,000.00 be issued next year and sold that year?”

Pertinent to your question, it is to be significantly noted that the Eighty Fourth General Assembly of Ohio has made many radical changes in the laws relating to the issuance of bonds and notes by political subdivisions. Among the various provisions of the Griswold Act, so-called, and found on page 336, 109 O. L. is that provided by section 2295-12 G. C. which requires that said bonds shall be serial in number, with maturities to begin not earlier than the day of the final tax settlement between the county treasurer and the local political subdivision or taxing district. It would seem evident that the purpose of this legislation is to require that the funds necessary to meet these obligations shall be in the hands of the treasurer of the local taxing district when said bonds mature.

Bearing in mind then the general requirements of the Griswold Act, your attention is directed to the provisions of section 3940 G. C. which are thought to be directly pertinent to your question.

This section provides:

“Such bonds may be issued for any or all of such purposes but the total indebtedness created in any one fiscal year, by the council of a municipal corporation under the authority conferred in the preceding section, shall not exceed one-half of one per cent. of the total value of the property in such municipal corporation as listed and assessed for taxation.”

It is apparent that this section is a direct limitation upon section 3939 G. C. which provides specifically for the various purposes for which a municipality may issue bonds, and although direct reference is not made by your inquiry to this section, it is inferred from the form of the question submitted that section 3939 G. C. is the authority for the issuance of the bonds in question. Applying the principles of section 3940 G. C. to your question it would follow that if the grand total of the taxing duplicate of the district is \$600,000, bonds may be issued for the indicated purpose, not to exceed \$3,000 in any one fiscal year. In this connection, section 3796 G. C. provides that the fiscal year as applied to municipalities begins on the first day of January and ends on the 31st day of December of the calendar year. Hence, it is concluded that section 3940 G. C. limits the creation of indebtedness by the village in the instance considered to the sum of \$3,000 during the year commencing January 1st and ending December 31st. Since your question states that the preliminary procedure for the bond issue in question will not be completed until some time in December, 1922, it follows that the tax levy made for the purpose of providing funds to care for said bond issue could not get upon the 1922 duplicate, but must first appear upon the 1923 duplicate, and this would be conclusive evidence that the indebtedness of the municipality must be considered as occurring in the year 1923. Hence, in the question considered, if the municipality creates an indebtedness for the purpose specified, in the sum of \$3,000 during the year 1923, it could not again, and within the fiscal year commencing January 1, 1923, and ending December 31st of the same year, levy a like sum for similar purposes without violating the provisions of section 3940 G. C.

It may be noted generally in connection with the subject considered, that sections 2596 and 2683 of the General Code require the county treasurer and county auditor to meet at the office of the latter on or before the 15th day of February, and on or before the 10th day of August in each year, to make settlement with each other and to determine the amount of tax with which the treasurer shall stand charged. Section 2689 G. C. provides that the county treasurer, immediately after each semi-annual settlement with the auditor, shall pay upon the auditor's warrant, to the township treasurer, city treasurer, and proper officers of village and school districts all moneys in the county treasury belonging to the respective subdivision.

Since section 2295-12 G. C. provides that serial bonds shall not begin to mature earlier than the day of the final tax settlement between the county treasurer and the local taxing district as provided by sections 2596 and 2683 G. C. quoted, *supra*, it would follow that if bonds were issued before the making up of the budget in June, 1923 (section 5649-3a G. C.) the first bond of such a series could not mature earlier than some date following the tax settlement in August, 1923, and after the treasurer of the taxing district had received his funds from the county treasurer as provided by section 2689 G. C. Thus it would seem that in the situation indicated by your inquiry, that although the bond resolution and other preliminary proceedings may be passed by council in December, 1922, no obligation for their payment accrues against the village during the fiscal year of 1922. Hence, though said bonds may be said to be "issued," (or, perhaps it may be more accurately stated, "in the process of being issued," since the same are not to be sold or delivered until some time within the fiscal year 1923) during the fiscal year of 1922, it is believed that the indebtedness of the city for their redemption as provided by the limitations of section 3940 G. C. would not attach until some time during the fiscal year of 1923.

As tending to further support the above expressed view, attention is directed to section 3950 G. C. which provides that an indebtedness shall not be deemed to have been created or incurred within the meaning of the act until bonds have been delivered under the contract of sale.

In specific answer then to your question, it is the opinion of this department that the provisions of section 3940 G. C. would prohibit in the instance indicated, and for the purpose mentioned, the incurring of an indebtedness by the village of a sum in excess of \$3,000 during the fiscal year of 1923.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

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3826.

MUNICIPAL CORPORATIONS—AUTHORIZED TO ACQUIRE, CONSTRUCT AND OPERATE MUNICIPAL WATERWORKS—SECTION 3963 G. C. REQUIRING FREE WATER FOR CERTAIN PURPOSES NOT APPLICABLE IN CASE WHERE BONDS ISSUED UNDER SECTION 12 OF ARTICLE XVIII OF OHIO CONSTITUTION AND ORDINANCE PROVIDE REASONABLE CHARGE MAY BE ASSESSED AGAINST CITY.

1. *Under the provisions of sections 4, 5, 6 and 12 of the Constitution of Ohio as adopted September 3, 1912, municipal corporations are authorized to acquire, construct and operate municipal waterworks and may contract relative to the disposal of the products of such utility.*

2. *Section 3963 G. C. requiring the furnishing of free water for certain municipal purposes not applicable in the case where a municipality has issued bonds under the provisions of section 12 of Article XVIII of the Constitution of Ohio as adopted September 3, 1912, to provide funds for the purchase of a municipal waterworks, and has included in the ordinance authorizing said bond issue the provisions that a fair and reasonable charge for hydrant rentals may be assessed against the city for water service rendered, and that the revenues of said waterworks beyond such as may be required for maintenance and operation, shall be credited to a special fund for the purpose of paying the principal and interest accruing under said bonded indebtedness.*

COLUMBUS, OHIO, December 22, 1922.

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

GENTLEMEN :—Acknowledgment is made of the receipt of your request for the opinion of this department as follows:

“The waterworks plant in the City of Galion, Ohio, was purchased from a private corporation, known as the Galion Water Works Company. Said purchase was authorized by vote of the people at the general election held in November, 1920, and the plant was taken over by the City in January 1921.