

3040.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN  
GALLIA AND WAYNE COUNTIES.

COLUMBUS, OHIO, April 29, 1922.

*Department of Highways and Public Works, Division of Highways, Columbus, Ohio.*

3041.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN  
CLERMONT AND TRUMBULL COUNTIES.

COLUMBUS, OHIO, May 1, 1922.

*Department of Highways and Public Works, Division of Highways, Columbus, Ohio.*

3042.

GRISWOLD ACT—EFFECT OF SAID ACT UPON BONDS ISSUED BY  
MUNICIPALITIES IN ANTICIPATION OF LEVY OR COLLECTION  
OF STREET ASSESSMENTS—SEVERAL QUERIES ANSWERED.

1. Bonds issued by municipalities in anticipation of the levy or collection of street assessments (sections 3812, et seq., G. C.) are subject to the provisions of sections 2295-9, 2295-10, 2295-12 and 5649-1b of the Griswold Act, so-called (109 O. L. 336, et seq.).

2. The deficiency levy directed by section 3914-1 G. C. to be made upon all the taxable property of the municipality in the case of the issuance of bonds in anticipation of the levy or collection of special assessments is subject to the procedure described in section 5649-1b, and must be certified to and acted upon by the county auditor in the manner set out in the latter section.

3. By reason of section 2295-12 of the Griswold Act, the period for the payment of street assessment installments when their levy or collection is anticipated by a bond issue cannot be made any longer than ten years, notwithstanding the provisions of previously-existing section 3815 G. C., authorizing a twenty-year period for the payment of such installments.

4. By reason of sections 2295-9 and 2295-12 of the Griswold Act, bonds issued by municipalities in anticipation of the levy or collection of street assessments may not have any greater number of serial maturities than nine.

5. If a municipality in levying street assessments anticipate the levy or collection by an issue of bonds, and such municipality is to pursue the plan of itself collecting the installments of assessment by legal action (sections 3898 and 3899 G. C.),

council may fix the times of payment of the installments to the city treasurer at ten in number, such times to antedate respectively the serial maturities of the bonds. But if the municipality is to pursue the plan of collecting the installments through the county treasurer, then the installments cannot be made any greater than nine in number; and this is true whether the assessment be made before the bonds are issued, or not.

6. The issuance of short term notes in anticipation of the levy and collection of street assessments, said notes to be discharged out of the fund arising on completion of the work from payments of assessments in cash and from the proceeds of bonds issued in anticipation of the collection of the assessments, as outlined in *Opinions of Attorney-General for 1914, Vol. I, p. 897*, is not precluded by any of the legislation of the *Griswold Act*. Municipal corporations still have authority to issue such short term notes on the plan outlined; and this is true even though the subsequent issue of assessment bonds applicable to the discharge of the notes is to run for the full maturity period of ten years. *Quaere*, whether street assessment bonds are subject to the making of the fiscal officer's certificate as to the life of the property (section 2295-7); and whether, if such certificate is required, the full ten-year maturity term may be adopted if the certificate shows a lesser life than ten years.

7. Section 4301 G. C. (amended 109 O. L. 213) is not to be taken as establishing for municipalities a different time than that contemplated by section 2295-12 G. C. for the maturity of the first bond installment.

COLUMBUS, OHIO, May 1, 1922.

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

GENTLEMEN:—You have submitted for the consideration of this department a statement of facts and inquiries as follows:

“On October 17th, 1921, a city council adopted a resolution for a street improvement by grading and graveling; February 22, 1922, council passed an ordinance determining to proceed with the improvement; provision being made in said acts for the payment of special assessments, not paid in cash, to be paid in twenty semi-annual installments.

In line with the above legislation it is desired to issue bonds, dated March 1st, 1922, to cover the portion specially assessed.

Can such bonds be issued with legal maturing dates in view of the requirements as to bond maturities covered by section 6, class (d), and section 14 of House (Griswold) Bill No. 33, 109 Ohio Laws, 336.

And if not, how may we give full effect to section 3815 G. C., as to the twenty installment special assessment plan of payment?”

Section 3815 is part of the chapter relating to the making and levying of assessments by municipalities on account of improvements carried out under the assessment plan. Section 3814 provides for the so-called “resolution of necessity” and section 3815, having reference to the contents of such resolution, reads as follows:

“Such resolution shall determine the general nature of the improvement, what shall be the grade of the street, alley, or other public place to be improved, the grade or elevation of the curbs, and shall approve the plans, specifications, estimates and profiles of the proposed improvement. In such resolution council shall also determine the method of the assessment, the mode of payment, and whether or not bonds shall be issued in anticipa-

tion of the collection thereof. *Assessments for any improvement may be payable in one to twenty installments at such time as council prescribes.*"

Section 6 of the so-called Griswold Act, designated section 2295-9 G. C. reads in part as follows:

"Sec. 2295-9. That the maturities of bonds issued by counties and other political subdivisions, including charter municipalities, shall not extend beyond the following limitations as specified in the following classification, the period to be measured from the date of the bonds.

Bonds issued for—

\* \* \* \* \*

Class (d)—waterworks meters, fire apparatus, road rollers, furniture and furnishings, machinery in garbage disposal plant, landscape planting, playground apparatus, sidewalks, curbs, gutters, and the *construction, reconstruction, resurfacing, grading, or drainage of roads, highways, streets, or alleys, ten years.*"

\* \* \* \* \*

Section 14 of said Griswold Act, designated section 2295-12, reads as follows:

"Sec. 2295-12. All bonds hereafter issued by any county, municipality, including charter municipalities, school district, township or other political subdivision, shall be serial bonds maturing in substantially equal annual installments beginning not earlier than the date fixed by law for the final tax settlement between the county treasurer and the political subdivision or taxing district next following the inclusion of a tax for such issue in the annual budget by the county auditor as provided by law and not later than eleven months thereafter."

Sections 3914 and 3914-1 G. C. in their form as amended in the Griswold Act, read:

"Sec. 3914. Municipal corporations may issue bonds or notes in anticipation of the levy of special assessments or of the collection thereof. Such bonds or notes may be in sufficient amount to pay *that portion of the estimated cost of the improvement or service for which the assessments are levied.* In the issuance and sale of such bonds or notes the municipality shall be governed by all restrictions and limitations with respect to the issuance and sale of other bonds or notes, and the assessments as paid shall be applied to the liquidation of such bonds or notes. Council ordinances and proceedings relating to the issuance of such bonds or notes shall not require publication."

"Sec. 3914-1. Bonds or notes issued in anticipation of the levy of special assessments or the collection thereof shall be full, general obligations of the issuing municipal corporation, and for the payment of the principal and interest of the same, the full faith, credit and revenues of such municipal corporation shall be pledged. To provide for any deficiency in the levy, payment or collection of said assessments as the same fall due, the council of the issuing municipal corporation shall, prior to the issuance of the bonds or notes above mentioned, provide for the levy of a tax upon all the taxable property of said corporation."

Previously to the amendment of said sections 3914 and 3914-1 there was a separate section, section 3915, which dealt with the issuing of notes in anticipation of the collection of special assessments. Said section 3915 was repealed by the Griswold Act; and the provisions of said section were in effect incorporated into sections 3914 and 3914-1, or in other words, both notes and bonds in connection with assessments were included under one head, where previously they had been dealt with in separate statutes. It may be noted in passing that prior to the time of the Griswold changes, section 3914 contained the expression

“Municipal corporations may issue bonds *in anticipation of special assessments;*”

and sections 3914-1 and 3915 the expression

“in anticipation of the *collection* of special assessments,”

whereas in their new form as now in effect, sections 3914 and 3914-1 make reference to bonds or notes

“in anticipation of the *levy* of special assessments or of the *collection* thereof.”

Since street improvement assessment bonds issued under authority of sections 3914 and 3914-1 are referable to assessments for the payment of such bonds, it follows that when such bonds are issued section 3815 becomes inoperative insofar as it provides for the payment of street assessments in one to twenty installments, if it be found that section 2295-9 (section 6 of the Griswold Act) has application to street assessment bonds. It will have been noted that section 3815 G. C. does not limit the twenty installments to semi-annual payment, but permits the installments to run to the full extent of twenty years. On the other hand, section 2295-9 limits the term of bonds for street improvements to ten years. At the threshold of your inquiry, then, is the question whether provisions of the Griswold Act, generally speaking, apply to street assessment bonds.

This question, in the belief of this department, is clearly to be answered in the affirmative. To begin with, sections 2295-9 and 2295-12 (sections 6 and 14 respectively of the Griswold Act), make no exception on their face with reference to street assessment bonds, nor has any express exemption in favor of such bonds been found elsewhere in the Griswold Act. If we seek for an implication of the exemption of assessment bonds, it is not to be found; on the contrary, the implication is all the other way. Let it be noted that the very purpose of the Griswold Act is to provide among other things for the issuance only of serial bonds. While it has no doubt been a common practice throughout the state to have street assessment bonds mature serially, there has been nothing mandatory in the assessment laws to that end. It will be noted that section 20 of the Griswold Act, designated section 2295-14, provides that in time the boards of sinking fund trustees will be abolished. Hence, unless the provisions of the Griswold Act are held applicable to street assessment bonds, we would have the anomalous situation that such bonds might be made payable from a sinking fund, with no machinery at hand to care for such a fund. Again, it will be noted that section 2295-11, being section 13-b of the Griswold Act, reads as follows:

“Section 2295-11. The cost of construction of any building, utility or improvement may be construed to include interest payable during construc-

tion on bonds issued for such construction. A sum not to exceed one year's interest on any bond issue may be included in the amount of the issue to the extent necessary to care for interest maturing previous to the receipt of the taxes or assessments from which such interest is to be ultimately paid."

Here we have clearly a legislative expression showing that assessment bonds are treated as within the purview of the terms of the Griswold Act.

Without going further into considerations along these lines, we are clearly to conclude that both in letter and spirit, the Griswold Act is applicable to street assessment bonds. This leaves us in the position of having to reconcile the provisions of the act with the assessment statutes as they existed at the time the act became effective.

In view of the foregoing, there is no escape from the conclusion that the assessment term provisions of section 3815 cannot fully operate when assessment bonds are issued; that is to say, that council may no longer prescribe a period extending to twenty years for the payment of installments of street assessment, but is limited to such period of years as will permit of the payment of all installments within the ten year term for street improvement bonds prescribed by section 2295-9 of the Griswold Act. This brings on the question as to the time for maturities of street assessment bonds and the subject of adjustment as between those maturities and the payment of street assessments.

As already seen, provision is made in section 3914-1 that assessment bonds are full obligations of the issuing municipality, and that a deficiency levy must be made for the purpose of caring for any shortage that may result from failure to levy the assessments or from failure to collect them. Moreover, section 11 of article XII of the Constitution of Ohio is to be kept in mind, reading as follows:

"No bonded indebtedness of the state, or any political subdivisions thereof, shall be incurred or renewed, unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity."

These statutory and constitutional provisions, together with section 2295-12 of the Griswold Act, point clearly to the answer to be given in the matter of maturities of street assessment bonds. True, it is conceivable that in given cases no resort to general tax revenues may be necessary for the payment of such assessment bonds; for the installments of assessment include interest calculated at the same rate as interest on the bonds, and such installments may, by order of council, be payable to the city treasurer at a date earlier than is involved in payment to the county treasurer at the June tax collection (see Opinions, Attorney-General, 1914, Vol. II, p. 1703; 1917, Vol. III, p. 2380; 1918, Vol. II, p. 1466; Guardian Savings & Trust Company vs. City of Cleveland, 28 O. C. A. 265). From such considerations, it might be urged that it is the coming due of the assessments, or installments thereof, rather than the date of tax collections, which governs the maturities of bonds. But to this, it is a sufficient answer that we must take account of the fact that in practice many of the assessment installments will not be paid to the city treasurer and will be certified to the county treasurer for collection as other taxes are collected. See section 3892. Since by the very terms of the Griswold Act the sinking fund machinery is gradually to go out of existence, the constitutional and statutory provisions above noted as to the protection of all bonds by making them general obligations, and by requiring general levies for their payment, assume even greater importance than has here-

tofore attached to them, at least from the standpoint of practical operation. These considerations lead clearly to the conclusion that it is the general tax collection provisions rather than the assessment collection provisions which must govern the maturity of street assessment bonds. Stating this last proposition in another way, it may be said that from the viewpoint of the owner of the bonds, his protection lies ultimately in the fact that the bonds are general obligations of the issuing municipality, and are ultimately subject to payment from the general tax revenues of the municipality; therefore to make the protection effective, the bonds should not mature any earlier than a date at which there is positive assurance that the necessary general tax revenues will be available for the payment of the bonds.

What has been said, then, makes applicable in principle to assessment bonds the view stated in Opinion No. 2847 of this department dated February 8, 1922, and addressed to Hon. J. F. Henderson, Prosecuting Attorney, Ashland, Ohio, wherein it was said that

"if bonds were issued on April 1, 1922, or prior to the making up of the budget of June, 1922, the earliest date at which the first bond would mature would be a date following the tax settlement in August, 1923, and after the treasurer of the taxing district had received his funds from the county treasurer in the manner set forth in section 2689 G. C."

Your inquiry speaks of bonds proposed to be dated March 1, 1922. Taking such date for purposes of illustration, and keeping in mind that the maturity of the first bond cannot be any earlier than approximately September 1, 1923, the further question arises from your inquiry as to the maturity of the remainder of the bonds. It is clear that if the bonds are dated March 1, 1922, the last one cannot be made to fall due any later than March 1, 1932, since by the terms of section 2295-9, bonds of the class now in question shall not extend beyond ten years from the date of the bonds. It is further to be noted that by the terms of section 2295-12, the bonds must mature in substantially equal annual installments. And see opinion of this department No. 2901, dated February 25, 1922. It follows that the maturities of the bonds must be fixed as between September first, 1923 (approximately) and March first, 1932; and in practical effect this will not give time for more than nine annual maturity installments. If desirable, the maturity of the first bond might be fixed as March first, 1924, and the remaining maturities on March first of each year thereafter to and including March first, 1932. See section 2295-12, as to eleven-months' optional period for date of maturity of the first bond.

In the light of these conditions as to the maturities of the bonds, what is to be said of the time for the payment and collection of the assessment? Council is vested with authority to fix the time of the coming due of the assessment installments. (See section 3815, above quoted; section 3825 G. C. and Opinions, Attorney-General, 1917, Vol. III, p. 2380, cited *supra*.) And it has been held that there is no absolute necessity of certifying the assessments or installments to the county treasurer for collection as taxes, for the reason that the municipality may resort to an action at law for their collection. See *Guardian Savings & Trust Company vs. Cleveland*, *supra*; and see section 3898 and 3899 G. C. Hence, if the assessments are to be collected through the municipal authorities exclusively, council might fix ten as the number of annual installments in which a street assessment might be payable, even though the serial maturities of the bonds issued in anticipation of such assessment were but nine in number. To illustrate: If the bonds are dated March first, 1922, and the last one of the series is due and payable March first, 1932, council might, for example, fix June first of each year beginning with 1922 and ending with 1931, as the date of payment of the installments, and this plan would give ten installments.

June first, 1922, is used as an illustration only, as much later dates might be adopted, as, for illustration, the dates might be February first, 1923 (first installment), and February first, 1932 (last installment), making ten in all and giving as the due date of the last installment, a date in advance of the coming due of the last serial bond on March first, 1932. If any of the installments were not paid when due, the municipal authorities might immediately resort to legal proceedings in the name of the corporation, as above stated. It is well to note, also, that the installments constitute a lien on the lots or parcels of lands assessed, which lien begins with the date of the assessment (sections 3897 and 3906 G. C.).

It is but proper to add, in passing, that the reasoning in an opinion of one of my predecessors (Opinions, Attorney-General, 1915, Vol. II, p. 1291), seems to be somewhat inconsistent with that in *Guardian Savings & Trust Company vs. Cleveland*, *supra*, in that the views of my predecessor go to the point that independent legal action by and in the name of the municipality for the collection of an assessment is available only in case bonds or notes have *not* been issued in anticipation of the assessment. This view of my predecessor, however, would seem to have been entirely departed from in a subsequent opinion of this department already cited above (Opinions, 1917, Vol. III, p. 2380).

But it is to be presumed that in the majority of cases, the municipality will not attempt to collect assessments or installments thereof by direct legal action, and that the provisions of section 3892 will come into play, whereby the assessments, or installments, will be certified annually to the county auditor to be by him placed upon the duplicate for collection by the county treasurer "in the same manner as other taxes are collected." In the event this latter plan is followed, the result will be that the assessment cannot be divided into any greater number than nine installments, unless we assume that section 3892, when read with such statutes as sections 3815 and 3825, permits of the collection of the whole installment by the county treasurer at one time, instead of in the two semi-annual tax collections. To illustrate: If the bonds are dated March first, 1922, and the last of the series is made payable March first, 1932, and the assessment installments are made payable beginning June first, 1922 (or even as late as November first, 1922, *Trust Co. vs. Cleveland*, *supra*), then it is plain that through certification to and collection by the county treasurer at the December tax collection, beginning with the December, 1922, collection, ten installments will have been collected upon completion of the December, 1931, collection. This method of collection would produce the assessment share each year by March first, since by that date the February settlement will have been completed. But it is equally plain that if the installment is to be collected one-half with the December collection and the remaining half with the June collection, then the assessment share will not be on hand by March first, nor until approximately September first, on the completion of the August settlement. This department is aware that the practice has been in many counties to make but one annual collection of street assessments, rather than to collect one-half in December and the remainder in June; and is not prepared to say that such practice is without legal warrant. It is well to note, however, that whatever may be the inconsistency between sections 3892 and 3905 G. C., as pointed out in *Trust Co. vs. Cleveland*, *supra*, and in previous opinions of this department, both of those sections state that when assessments reach the books of the county treasurer they are to be collected "in the same manner" as other taxes. So that this department, in attempting to arrive at a general rule as between maturities of bonds and collection of assessments, prefers to assume (without deciding), that the property owner has the right to insist that the collection of the assessment, when certified to the county officers, be made one-half in December and one-half in June. As a result of this assumption, the conclusion follows, as already

suggested, that there may be not more than nine assessment installments in cases where the installments are to be collected through the county treasurer.

The conclusion just stated would be equally applicable, whether bonds are issued before or after the assessment is made. This office has long since held that street assessment bonds might be issued before the assessment is levied (Opinions, 1914, Vol. I, p. 897). This principle would seem to have been fortified by the Griswold amendments to sections 3914 and 3914-1, above noted. But in line with the opinion last cited, the practice in some municipalities has been to issue bonds only for the *municipality's share* in advance of the making of the assessment, leaving the *assessment share* to be taken care of by short-term temporary notes issued (in anticipation of the levy and collection of assessments) as estimates become due the contractor, which notes are in turn paid when the work is done by applying to them the proceeds of bonds issued in anticipation of the levy and collection of the assessments. This practice has been made possible by the fact that the Burns Law (section 3806, et seq.) has been held not applicable to the assessment share of cost of the improvement (Comstock vs. Nelsonville, 61 O. S. 288). And again, in other municipalities, the practice has been to make and levy the assessment on the basis of estimated cost, after which bonds are issued in anticipation of the collection of the assessment so levied. That this has been the practice in the city of Cleveland is inferable from the case of Trust Co. vs. Cleveland, *supra*. But even supposing that one or the other of the plans just outlined is followed, and taking, for illustration, bonds dated March first, 1922, the first installment of the assessment anticipated by such bonds would not be certified to the county auditor any sooner than would permit of its collection with the taxes of the year 1922, payable December, 1922, and June, 1923; hence, as already noted, there would seem to be no ground for distinction in the matter of times for collecting the assessment as between bonds issued before the assessment is made and bonds issued after the assessment is made.

Mention has not thus far been made of section 5649-1b (section 15, Griswold Act). That section reads:

"The resolution, ordinance or other measure under which bonds are issued or authorized shall contain a levy of taxes sufficient to pay the interest and principal of the bonds as they mature, and every such resolution, ordinance or measure shall be certified by the fiscal officer of the political subdivision to the county auditor of the county in which the subdivision is located. Thereafter, the county auditor, without further action by the tax-levying authority of the subdivision, shall include said annual levies in the appropriate annual budgets submitted by him to the budget commissioners as provided in section 5649-3c of the General Code, including the county budgets; provided, however, that the county commissioners of any county, board of education of any school district, trustees of any township or council or chief legislative body of any municipality or other political subdivision may in any year appropriate for the purpose of paying any part of the annual interest or principal of such bonds of the political subdivision any surplus in the sinking fund or other bond retirement fund of the political subdivision not required for the purpose for which the said sinking or other bond retirement fund was raised and certify such appropriation to the county auditor, and thereupon the tax levy of the subdivision for the current year for the interest and principal of said bonds and the sum submitted by the auditor to the budget commissioners for said purpose shall be reduced by the amount so certified, and the sum appropriated as aforesaid shall not be used or expended for any purpose other than the payment of the interest and principal for which appropriated until and unless said interest and prin-



cipal be otherwise fully paid or liquidated; provided that no such appropriation shall be made from the sinking fund without the approval of the sinking fund trustees or commissioners. The sum thus included in any budget submitted to the budget commissioners shall not be reduced by said commissioners and shall be given by said auditor and commissioners and other taxing authorities all the precedence and priorities provided by law for interest and sinking fund levies."

This section immediately follows section 2295-12. Moreover, the latter section prescribes a certain action by the county auditor as the basis for the fixing of the initial bond maturity, to wit: "the inclusion of a tax for such issue \* \* \* by the *county auditor* as provided by law." Section 5649-1b, after providing that the legislation for the issue of bonds shall contain a levy for the discharge of the principal and interest of the bonds, and that such levy shall be certified to the county auditor, goes on to provide that the *county auditor*, "*without further action* by the tax-levying authority of the subdivision," shall include the levy in the appropriate annual budget. Clearly, then, the two sections are to be read together, with the result that section 5649-1b is applicable to all bonds that section 2295-12 applies to. Since section 5649-1b in terms provides for a broader general tax levy than is provided for in terms by section 3914-1, relating specifically to assessment bonds, it might be urged that the two sections are to be taken as dealing with different subjects; that the latter section was intended to provide fully and exclusively for the assessment bonds to which it applies; and that consequently such bonds are not subject to the provisions of sections 5649-1b or 2295-12, or indeed of any of the new legislation of the Griswold Act. But considerations have already been stated for the belief that street assessment bonds come within the scope and purpose of the Griswold Act. That scope and purpose can only be effectuated by holding section 5649-1b applicable to such bonds; for not only must the latter section, as has been seen, be read with section 2295-12, but it also constitutes the groundwork of the new legislation in the Griswold Act. Any inconsistency which this view involves as between sections 3914-1 and 5649-1b is to be resolved, if possible, in such way as to give effect to both sections.

"It is settled that where there are contradictory provisions in statutes and both are susceptible of a reasonable construction which will not nullify either, it is the duty of the court to give such construction, and further, that where two affirmative statutes exist one is not to be construed to repeal the other by implication unless they can be reconciled by no mode of interpretation." *In re Hesse*, 93 O. S. 230; 234.

With this rule in mind, any seeming inconsistency between the two sections now under discussion disappears if the deficiency levy prescribed by section 3914-1 is, as in the belief of this department it must be, certified and acted upon as prescribed by section 5649-1b.

If the views above expressed are correct, they import that another section of the Griswold Act, namely, section 2295-10, is applicable to street assessment bonds. That section so far as now in point reads:

"Before any resolution, ordinance or other measure providing for the issuance of bonds *or incurring of indebtedness* of any county, or other political subdivision, including charter municipalities, is passed or adopted, the fiscal officer thereof shall certify to the bond-issuing authority the maximum maturity of such bonds *or indebtedness*, calculated in accordance with the

provisions of the foregoing section, and no such bonds shall be authorized or issued or indebtedness incurred with maturities extending beyond the maturities as thus certified by such fiscal officer. \* \* \*"

Since this section uses the word "indebtedness" as well as the word "bonds," and since sections 3914 and 3914-1 in their form as amended by the Griswold Act, place bonds and notes in the same category, we are led to inquire further into the matter of so-called short term notes above mentioned. Sections 3914 and 3914-1 make no mention of short term notes. Upon the face of things the notes contemplated by said two sections may well be of the same character practically as bonds; that is to say, the notes might extend over the same period of years, or approximately the same period of years, as do the installments of assessments, and be payable out of each installment of assessments in exactly the same way as are what we ordinarily know as assessment bonds. On the other hand, short term notes, so-called, are, as already indicated, interim obligations of temporary character ordinarily extending over the period between the signing of the contract for the street improvement work and the completion of such work, and are in practice discharged out of the fund created by the payments of assessments in cash on completion of the work plus the proceeds of assessment bonds issued in anticipation of the collection of such assessments as are not paid in cash. Assuming that because of the above-quoted provisions of section 2295-10, long term street assessment notes as above defined are subject to the provisions of sections 2295-9, 2295-10, 2295-12 and 5649-1b, are we to conclude that municipalities are now without authority to issue short term notes as above defined, with the view of applying to the discharge of such short term notes the proceeds of long term notes or bonds extending over the maximum maturity period of ten years?

The answer, in the opinion of this department, is in the negative.

Any other answer, it is believed, could be founded only on the theory that the interim period covered by the short term notes must be counted as a part of the ten-year maximum period provided for bonds, and, as we are assuming, for long term notes, by section 2295-9. It is quite true that by the terms of section 3914-1, notes, whatever be their term, whether for a short or long period, must be protected by the general deficiency levy. But on the other hand, it is equally true that by the terms of section 2295-9 the period of maturities is to be measured from *the date of the bonds*. Moreover, the maturity period mentioned in section 2295-9 is a maximum and not a minimum or a fixed term; so that there is nothing in said section, or elsewhere in the Griswold Act, or in the provisions of amended sections 3914 and 3914-1, indicating that the maturity period may not be made as much shorter than ten years as may be desired. The earlier opinion of this department, above cited, dealing with short term notes, has pointed out sufficiently that there is nothing inconsistent in issuing two kinds of obligations relating to the same project, that is, short term notes, followed by long term bonds or notes. Upon the whole, then, this department is of the belief that the Griswold Act does not have the effect of vacating the views expressed in the earlier opinion. It may be added that, in the belief of this department, full compliance with the terms of the Griswold Act will be had if the fiscal officer's certificate (described in section 2295-10), preceding the issue of the short term notes, recites the purpose of the notes; the period over which they will extend; the fact that they are being issued in anticipation of the levy and collection of certain assessments; that on the completion of the improvement they will be taken up by the fund resulting from cash payments of assessments and the proceeds of an issue of bonds in anticipation of the assessments not paid in cash; and that such bonds are to run for ten years from their date. Following the making of such certificate, the legislation for the issue of the short term notes will include a

provision for the levy mentioned in section 3914-1. This levy will be renewed in the later legislation for the actual issue of the assessment bonds.

Even if the view were to prevail that the period covered by the short term notes must be counted as part of the maturity period named in section 2295-9, there would be no obstacle to the issue of the short term notes; for the maturity period and the assessment installment period might be reduced by the length of the short term note period. This, however, is but a suggestion; since it is the view of this office, for reasons above outlined, that there is no objection to the issuance of street assessment bonds for the full maturity period of ten years even if such bonds are preceded by short term notes.

In what has been said as to short term notes, it has been assumed that the fiscal officer's preliminary certificate defined in section 2295-7, G. C. (section 2, Griswold Act), will, if applicable to street assessment bonds, have shown an estimated life of ten years or more for the proposed improvement. This assumption leaves unanswered two questions which are involved in street assessment bond issues, first, must the certificate of life of the improvement be made in the case of street assessment bonds; and second, if such certificate is required and shows an estimated life of less than ten years, does such estimate constitute an implied limitation upon the bond maturity period as set out in section 2295-9. Whatever may be the answers to these questions, they go only to the point of bond maturity term and assessment term and are not determinative of the further question of whether short term notes may be issued.

For the sake of completeness of discussion, reference is also made to section 4301 G. C., which reads:

"On the first Monday of February and August in each year, the county treasurer shall pay over to the treasurer of the corporation, all moneys received by him up to that date, arising from taxes levied, and assessments made, belonging to the corporation. Moneys received from other sources for municipal corporations, shall be paid over by the county treasurer to the municipal corporations, on or before the 10th day of each month following the receipt of or collections thereof."

This section first appeared as section 155 of the Municipal Code of 1869 (66 O. L. 149), and it has since remained unchanged insofar as it mentions "the first Monday in February and August in each year." At the time of its passage, present sections 2596 and 2602 were in effect in their present form insofar as they name February 15th and August 10th as the ultimate days of final semi-annual settlement between county auditor and county treasurer, and fix "immediately after" such settlements as the time for crediting to political subdivisions the amounts of taxes collected on their several accounts. (56 O. L. 128; sections 21 and 22). Subsequent to the original enactment of section 4301 in the year 1869, the original form of present section 2692 was enacted, permitting payments to political subdivisions of two-thirds of tax collections, in advance of semi-annual settlements.

Section 4301, since it prescribes the turning over of "all moneys \* \* \* received up to that date" (first Mondays of February and August) is not literally inconsistent with the terms of sections 2596, 2602 and 2692. This being true, it would seem that the general accounting plan and policy embodied in the latter sections should be followed, and that section 4301 is not to be regarded as establishing for municipalities a different time than that contemplated by section 2295-12 for the maturity of the first bond installment.

The foregoing discussion has proceeded upon the assumption that if the Griswold Act were applicable, in whole or in part, to street assessment bonds, it would

be applicable to the bonds mentioned in your inquiry. That such assumption is correct is shown by section 23 of the act in question.

Summarizing what has been said, you are advised that in the opinion of this department—

1. Bonds issued by municipalities in anticipation of the levy or collection of street assessments (sections 3812, et seq., G. C.), are subject to the provisions of sections 2295-9, 2295-10, 2295-12 and 5649-1b of the Griswold Act, so-called (109 O. L. 335, et seq.).

2. The deficiency levy directed by section 3914-1 G. C. to be made upon all the taxable property of the municipality in the case of the issuance of bonds in anticipation of the levy or collection of special assessments is subject to the procedure described in section 5649-1b, and must be certified to and acted upon by the county auditor in the manner set out in the latter section.

3. By reason of section 2295-12 of the Griswold Act, the period for the payment of street assessment installments when their levy or collection is anticipated by a bond issue cannot be made any longer than ten years, notwithstanding the provisions of previously-existing section 3815, G. C., authorizing a twenty-year period for the payment of such installments.

4. By reason of sections 2295-9 and 2295-12 of the Griswold Act, bonds issued by municipalities in anticipation of the levy or collection of street assessments may not have any greater number of serial maturities than nine.

5. If a municipality in levying street assessments anticipate the levy or collection by an issue of bonds, and such municipality is to pursue the plan of itself collecting the installments of assessment by legal action (sections 3898 and 3899 G. C.) council may fix the times of payment of the installments to the city treasurer at ten in number, such times to antedate respectively the serial maturities of the bonds. But if the municipality is to pursue the plan of collecting the installments through the county treasurer, then the installments cannot be made any greater than nine in number; and this is true whether the assessment be made before the bonds are issued or not.

6. The issuance of short term notes in anticipation of the levy and collection of street assessments, said notes to be discharged out of the fund arising on completion of the work from payments of assessments in cash and from the proceeds of bonds issued in anticipation of the collection of the assessments, as outlined in Opinions of Attorney-General for 1914, Vol. I, p. 897, is not precluded by any of the legislation of the Griswold act. Municipal corporations still have authority to issue such short term notes on the plan outlined; and this is true even though the subsequent issue of assessment bonds applicable to the discharge of the notes is to run for the full maturity period of ten years. The questions whether the fiscal officer's certificate described in section 2295-7 is applicable to street assessment bonds, and if applicable, whether the full maturity period may be adopted when the fiscal officer's certificate of the life of the property has shown a lesser period than ten years are not passed upon.

7. Section 4301, G. C. (amended 109 O. L. 213) is not to be taken as establishing for municipalities a different time than that contemplated by section 2295-12, G. C. for the maturity of the first bond installment.

Respectfully,

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