

340.

APPROVAL, LEASES TO LAND AT LAKE ST. MARYS.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval two certain leases in triplicate, executed by the State of Ohio through you as Superintendent of Public Works, whereby there are leased and demised to the respective lessees therein named, certain parcels of State reservoir lands at Lake St. Marys, which parcels of land are more fully described in said respective leases. Said leases are each for a term of fifteen years, at a rental of 6% on the appraised valuation of the respective parcels of land covered by said leases. The leases here in question are the following:

<i>Lessee.</i>	<i>Appraised Valuation.</i>
Lewis T. Higgins-----	\$200 00
Mary Oyer-----	200 00

An examination of the leases submitted shows that the same have been executed in conformity with the provisions of Section 471 and other sections of the General Code, relating to the execution of leases of this kind. Said leases are accordingly hereby approved, as is evidenced by my approval endorsed on said leases and on the duplicate and triplicate copies thereof.

Respectfully,
GILBERT BETTMAN,
Attorney General.

341.

DISAPPROVAL, BONDS OF VILLAGE OF EATON, PREBLE COUNTY, OHIO—\$17,000.00.

COLUMBUS, OHIO, April 23, 1929.

Re: Bonds of Village of Eaton, Preble County, Ohio, \$17,000.

Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—I have examined the transcript of the proceedings of the council and other officers of the village of Eaton, pertaining to an issue of sewage disposal works bonds in the above amount.

The bond resolution or ordinance as contained in the transcript which was adopted August 6, 1928, provides that these bonds shall bear interest at 5½ per centum per annum. After these bonds were offered to and rejected by the trustees of the sinking fund of the village of Eaton, they were advertised for sale pursuant to the provisions of Section 2293-28, General Code. This advertisement, as affixed to the affidavit in proof of publication thereof, states that these bonds will bear interest at the rate of 5½ per cent per annum, but does not state that anyone desiring to do so may present a bid or bids for such bonds based upon a different rate of interest, as permitted under Section 2293-28, General Code.

After receipt of five bids, three of which were based upon the interest rate of 5½%, as set out in the bond sale advertisement, one of which was based upon an

interest rate of $5\frac{1}{4}\%$ and one upon an interest rate of 6% , council accepted the bid based upon $5\frac{1}{4}\%$ and awarded the bonds thereon.

Section 2293-28, General Code, in prescribing what the advertisement for the sale of bonds shall contain, provides in part :

“Such advertisement may also state that any one desiring to do so may present a bid or bids for such bonds based upon their bearing a different rate of interest than specified in the advertisement, provided however, that where a fractional interest rate is bid such fraction shall be one-quarter of 1 per cent or multiples thereof. Such advertisement may also require every bidder to file with his bid a bond or certified check in a specified amount.”

Section 2293-29, General Code, insofar as is pertinent, is as follows :

“No bonds or notes shall be sold for less than the face value thereof with accrued interest. The highest bid, or if bids are received based upon a different rate of interest than specified in the advertisement the highest bid based upon the lowest rate of interest, presented by a responsible bidder, shall be accepted by the taxing authority, or in the case of a municipal corporation by the fiscal officer thereof. But in case a bid is accepted based upon a rate of interest other than that provided for in the ordinance or resolution adopted under Section 2293-26, such acceptance before taking effect must be approved by resolution of the taxing authority, which resolution shall be certified to the county auditor ; in such case bonds may be issued bearing the rate of interest provided for in such accepted bid without further amendment of the bond ordinance or resolution. * * * ”

As set forth in my opinion, No. 93, under date of February 14, 1929 :

“It has been repeatedly held by my predecessor that unless the advertisement states that bids may be presented based upon bonds bearing a different rate of interest (Section 2293-28 and Section 2293-29, General Code), the acceptance of a bid bearing a lower or different rate of interest is void ; and unless the advertisement contains such a provision, there is no assurance that the bidder who based his bid upon the rate of interest in the advertisement, would not have submitted a bid based upon a different rate of interest higher than the bid which was in fact accepted.” Opinions of Attorney General, 1927, Vol. III, 2075, 2377, 2381.

The transcript is also incomplete in that there appears no proof of publication of resolution declaring necessity of bond issue and resolutions authorizing bonds and notes in accordance with the provisions of Sections 4228, 4229 and 4232, General Code ; however, in view of the foregoing, I am of the opinion that the award of the bonds upon a bid based upon a different rate of interest than specified in the advertisement, there being no provision in said advertisement that bids might be submitted upon a different rate of interest, is void. I am, therefore, compelled to advise you not to purchase the above bonds.

Respectfully,
GILBERT BETTMAN,
Attorney General.