

"The amount of fees payable under section 5498 by corporations formed or organized (reorganized) under this act shall be three-twentieths of one per cent upon its subscribed or issued and outstanding preferred stock, plus ten cents for each share of common stock without par value, subscribed or issued and outstanding, but not less than ten dollars in any case."

Respectfully,

JOHN G. PRICE,
Attorney-General.

1263.

ROADS AND HIGHWAYS—BONDS ISSUED UNDER PROVISIONS OF SECTION 1223 G. C.—SECTION AMENDED INCREASING AUTHORIZED MAXIMUM INTEREST RATE ON BONDS—OLD SECTION APPLICABLE TO PENDING PROCEEDINGS PROVIDED INTEREST RATE NOT INCREASED, OTHERWISE PROCEEDINGS MUST BE COMMENCED ANEW—SALE OF BONDS UNDER SECTION 1223 G. C. GOVERNED BY SECTION 2294 G. C.—HOW ADVERTISEMENT CAN BE MADE WHERE TWO ISSUES NECESSARY UNDER SECTION 1223 G. C.—DEFECTIVE ADVERTISEMENT OF ABOVE BOND ISSUES DOES NOT HAVE EFFECT OF INVALIDATING VALID STEPS BEFORE ADVERTISING BEGUN.

1. *An increase in the authorized maximum interest rate on bonds authorized by section 1223 G. C., in connection with state aid road improvement proceedings, through the medium of an amendment of said section, does not operate to discontinue state aid road improvement proceedings pending when such amendment becomes effective. See section 26 G. C.*

2. *The offering at public sale of bonds authorized by section 1223 G. C. is governed by section 2294 G. C. (106 O. L. 492).*

3. *Where a second issue of bonds under section 1223 G. C. is made necessary through an increase in estimated cost of a state aid improvement project, the commissioners may advertise the public sale of the two issues either together or separately.*

4. *A defective advertisement of the public sale of bonds authorized by section 1223 G. C. does not have the effect of invalidating such valid steps as took place, before the advertising was begun.*

COLUMBUS, OHIO, May 20, 1920.

HON. F. M. CUNNINGHAM, *Prosecuting Attorney, Lebanon, Ohio.*

DEAR SIR:—Your letter of recent date is received, reading:

"As I understood section 1223 G. C. authorizing county commissioners to issue bonds in certain cases bearing interest at five per cent was amended in February, 1920, so as to permit six per cent bonds being issued, the commissioners of our county applied to the highway department for aid in improving or constructing a certain road prior to February, 1920, and passed a resolution providing for the issuance of \$95,000 of county bonds, subse-

quently a resolution for the issuance of \$10,000 additional bonds made necessary by an increase in the estimate was passed.

In as much as section 1223, as the same stood prior to February, 1920, was repealed by the legislature at the time the new section 1223 was passed, I desire to inquire as follows:

(1) Does section 1223, as passed by the legislature in 1920, apply in the above stated case, and are the commissioners authorized to issue bonds under section 1223 as amended in 1920?

(2) Are the commissioners authorized to issue bonds bearing not more than five per cent interest under section 1223, as it stood prior to the last amendment; the application for state aid having been made before the repeal of said section, or did the authority of the commissioners to issue bonds under section 1223, prior to its last amendment, cease with the repeal of said section 1223 in February, 1920?

(3) Should bonds issued under section 1223 be advertised as provided in section 6929 G. C., or as provided for in section 2294 G. C.?

(4) Should the commissioners repeal their resolution providing for an issue of \$95,000 and for an issue of \$10,000 of bonds, and pass a new resolution providing for the issue of \$105,000 of bonds, or should they advertise separately for the sale of \$95,000 and \$10,000 of bonds under the resolution already passed?

(5) Would the fact that the commissioners had advertised the \$95,000 issue, above referred to, under section 6929 G. C. and delivered the bonds under such advertisement, and the fact that the purchasers had subsequently turned the bonds back to the county and received back their money (the validity of the advertisement having been questioned) make it necessary to start an entirely new proceeding commencing with a new application to the highway department, or should the commissioners re-advertise the bonds without starting a new proceeding?

(6) Would the fact that \$10,000 issue of bonds had been advertised under section 6929 and a bid accepted, but that the bonds were not delivered by reason of a question as to the validity of the advertisement necessitates an entirely new proceeding?"

It may be stated in connection with your inquiry that the amendment of section 1223 to which you refer is found in house bill No. 699 (108 O. L., Part 11, p. 1188), effective February 17, 1920, and that said amendment provides a maximum interest rate of six per cent on the bonds authorized by said section, in lieu of the maximum interest rate of five per cent on such bonds authorized prior to the becoming effective of said amendment. It should also be stated that you have advised this department in personal conference that the pending proceedings you mention call for an interest rate of five per cent and that you have further advised in your letter of May 14th, that it is the intention of your county commissioners to re-offer at such interest-bearing rate of five per cent the \$105,000 of bonds which you mention.

In view of the decision of our supreme court on May 11, 1920, in the case of *State ex rel. Andrews vs. Zangerle, Auditor*, your first two questions may be

answered by the statement that by virtue of section 26 G. C. the road improvement proceedings to which you refer, having had their inception prior to February 17, 1920, may be carried to a conclusion and the bonds offered at five per cent or under, in conformity with the statutes as they read when such proceedings were begun, and are not affected or discontinued by said amendment of February 17, 1920; while on the other hand, by reason of said section 26, and for other reasons given by the supreme court in the above cited case, your county commissioners if they do not succeed in selling the bonds at five per cent or under, and are compelled to resort to an interest rate in excess of five per cent in order to make the sale, will then have no option other than to abandon the present proceedings and start anew with an application to the state highway commissioner for state aid.

Your third question may be answered briefly to the effect that as section 1223 and its related sections do not contain directions as to advertisement, etc., in connection with the offering at public sale of bonds authorized by said section, resort must necessarily be had to the only other section setting forth such directions, namely, section 2294 G. C. reading (106 O. L. 492) :

"All bonds issued by boards of county commissioners, boards of education, township trustees, or commissioners of free turnpikes, shall be sold to the highest bidder after being advertised once a week for three consecutive weeks and on the same day of the week, in a newspaper having general circulation in the county where the bonds are issued, and, if the amount of bonds to be sold exceeds twenty thousand dollars, like publications shall be made in an additional newspaper having general circulation in the state. The advertisement shall state the total amount and denomination of bonds to be sold, how long they are to run, the rate of interest to be paid thereon, whether annually or semi-annually, the law or section of law authorizing the issue, the day, hour and place in the county where they are to be sold."

You make mention of section 6929 G. C. ; but that section, unlike section 1223, contains specific direction as to advertising for sale the bonds which it authorizes, and as those bonds are for a different purpose than bonds under section 1223, it follows that section 6929 and previous opinions of this department with reference thereto, have no bearing on the advertisement for sale of bonds authorized by section 1223.

Answering your fourth question: If the proceedings prior to and including the passage of the two resolutions for the issue of bonds were correct, no reason is perceived for repealing them, when it is borne in mind that the commissioners intend to make the re-offering of the bonds at five per cent. Neither is any reason perceived which would require that the two issues be advertised separately, for it is to be kept in mind that the two issues relate to one improvement project, and that apt words may be used in one document to describe the dates, maturities, etc., of the two issues. On the other hand, the commissioners are at liberty to advertise the two issues separately if they consider it in the public interest to do so.

Your fifth and sixth questions may be answered together by the statement that an invalid advertisement of the sale of bonds would not have the effect of invalidating such valid steps as took place before the advertising was begun; hence an invalid advertisement of sale of bonds would not of itself make necessary the beginning of the proceedings anew.

Respectfully,
JOHN G. PRICE,
Attorney-General.