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BONDS—WHERE SUBDIVISION ISSUES IN ANTICIPATION OF DELINQUENT TAX COLLECTION—SECTION 2293-43, G. C.—SIMILAR BONDS MAY AGAIN BE ISSUED AGAINST SUBSEQUENT DELINQUENT TAXES AND ASSESSMENTS—DATE—SEMI-ANNUAL TAX SETTLEMENT NEXT PRECEDING FIRST ISSUANCE.

SYLLABUS:

When, pursuant to the provisions of Section 2293-43 of the General Code, a subdivision issues bonds in anticipation of collection of delinquent taxes, such subdivision may again issue similar bonds under the provisions of said section, against those taxes and assessments which became delinquent subsequent to the date of the semi-annual tax settlement next preceding the first issuance of such bonds.

COLUMBUS, OHIO, March 27, 1939.

HON. MARVIN A. KELLY, *Prosecuting Attorney, Portsmouth, Ohio.*

DEAR SIR: This will acknowledge receipt of your communication which reads as follows:

“I am submitting to you the following facts and question for a formal opinion which I would appreciate getting as soon as possible:

On April 15, 1937, Scioto County issued delinquent tax bonds under the provisions of Section 2293-43. The Tax Commission of Ohio had approved the request of Scioto County to make such issue on January 20, 1937. In each succeeding tax settlement since the August tax settlement in the year 1936 there has been placed in the ‘delinquent tax bond sinking fund’ all the delinquent taxes collected for and to the credit of Scioto County on the duplicates of 1935 and prior years, with the exception of delinquent taxes collected on the duplicate year of 1933, such delinquent taxes having been obligated by the issuance of scrip in December, 1934. This scrip is being retired as required by law at each tax settlement.

The delinquent tax bonds above referred to are issued against the delinquent taxes unpledged *at the time of the August settlement in the year 1936*, to pay bonds, scrip notes or certificates. Since that time taxes on the duplicate years of 1936 and 1937 have become delinquent, and as of the August and Oc-

tober settlements in the year 1938 the following taxes are delinquent:

Real and Public Utilities

1936..... \$35,158.42 1937..... \$47,831.46

Personal General

1937..... \$ 1,996.90 1938..... \$ 1,234.94

GRAND TOTAL..... \$86,221.72

In view of the foregoing facts, the specific question which we are asking is:

Can Scioto County legally issue delinquent tax bonds under the provisions of Section 2293-43 against the real and public utilities delinquencies of 1936 and 1937 and the personal tax delinquencies of the years 1937 and 1938?"

The authority for the issuance of bonds in anticipation of collection of delinquent taxes is contained in Section 2293-43 of the General Code, which section, in so far as the same is pertinent hereto, reads as follows:

“Authority is hereby given to the various political subdivisions of Ohio to issue bonds, which authority and indebtedness thereby created shall not be subject to the limitations or included in the calculation of future indebtedness prescribed by sections 2293-14, 2293-15, 2293-16, 2293-17 of the General Code of Ohio, but such bonds may be issued only under the conditions and circumstances following, to-wit:

(a) The political subdivision, desiring to issue such bonds shall obtain from the county auditor of the county in which such subdivision is situated a certificate showing the total amount of delinquent taxes, due and unpayable to such subdivision at the last semi-annual tax settlement.

(b) The fiscal officer of such subdivision shall prepare a statement, from the books of the subdivision, which he shall verify under oath, which shall contain the following facts of such subdivision:

1. The total bonded indebtedness.
2. The aggregate amount of outstanding accounts or notes payable of the subdivision, incurred prior to the commencement of the current fiscal year.

In calculating the above amount there shall be included all

forms of scrip, certificates and other evidences of indebtedness issued by the subdivision but there shall not be included notes issued in anticipation of bond issues. The indebtedness of any non-tax-supported public utility shall not be included in this statement.

2a. Except in the case of school districts, the aggregate current year's requirement for poor relief as defined by law which the subdivision is unable to finance excepting by the issue of bonds.

3. The indebtedness outstanding through the issuance of any bonds, notes or scrip pledged or obligated to be paid by any delinquent taxes.

4. The total of any other indebtedness.

5. The net amount of delinquent taxes unpledged to pay any bonds, scrip, notes or certificates. Delinquent assessments on improvements on which the bonds have been paid shall be included in this item.

6. The budget requirements for the fiscal year for bond, note and scrip retirement.

7. The estimated revenue for the fiscal year.

(c) The certificate and statement provided for in sub-sections (a) and (b) shall be forwarded to the tax commission of Ohio together with a request for authority to issue bonds of such subdivision in an amount not to exceed seventy per centum of the net unobligated delinquent taxes and assessments due and owing to such subdivision, as set forth in item 5 in part b of this section.

(d) No subdivision shall be authorized under this act to issue bonds in excess of a sufficient amount to pay the indebtedness of the subdivision as shown by item 2 of the statement described in sub-section (b) of this act, and except in the case of school districts to provide funds for poor relief, as shown by item 2a of the statement described in sub-section (b) of this act.

(e) The tax commission of Ohio shall grant to such subdivision authority requested by such subdivision as restricted by sub-sections (c) and (d) hereof and shall make a record of the certificate, statement and grant in a record-book devoted solely to such recording and which shall be open to inspection by the public.

* * * * *

From the above it is at once apparent that any political subdivision of Ohio desiring to issue bonds in anticipation of collection of delinquent taxes, may issue such bonds in an amount not to exceed seventy per cent of the net unobligated delinquent taxes due and owing to such sub-

division and not in excess of an amount sufficient to pay the aggregate outstanding accounts or notes payable of such subdivision incurred prior to the commencement of the current fiscal year.

It will likewise be noted that the above section, after providing for the preparation of a statement by the fiscal officer of the subdivision, showing the total bonded indebtedness, the aggregate amount of outstanding accounts or notes payable of the subdivision, incurred prior to the commencement of the current fiscal year, and the total of any other indebtedness, with certain exceptions, further provides that the Tax Commission of Ohio shall grant to such subdivision, under the restrictions contained in said section, authority to issue such bonds against the delinquent taxes unpledged to pay any of the indebtedness set out in paragraphs (a) and (b) of said section.

In the matter before me, delinquent tax bonds were issued against delinquent taxes unobligated for any of the debts above stated, at the time of the August 1936 settlement.

It would seem that the answer to your question depends entirely upon determining which delinquent taxes are obligated for the retirement of said bonds. In other words, are only those taxes which were delinquent at the time of the August 1936 settlement so obligated, or are all delinquencies which may have accrued after the August 1936 settlement and which may accrue in the future, until such bonds are retired, so obligated.

In making such determination, the provisions of paragraphs (h) and (j) of Section 2293-43, *supra*, appear to be helpful. Said paragraphs read in part as follows:

“(h) The percentum of delinquent taxes and assessments collected for and to the credit of such subdivision after such exchange or sale of bonds as certified by the tax commission under this act shall be paid to the authority having charge of the sinking fund of the subdivision, which money shall be placed in a separate fund for the purpose of retiring such bonds so issued. * * *”

“(j) * * * The budget commission of the county in which the subdivision is located shall annually allocate such portion of the *then* delinquent levy due such subdivision which is unpledged for other purposes to the payment of interest and the retirement of the bonds issued under authority of this act.”

The only conclusion which can be logically reached from the above language is,—that the only moneys which must be placed in a separate fund for the purpose of retiring said bonds are those received each year in payment of the net unobligated delinquent taxes and assessments which were delinquent at the time of the issuance of said bonds. Such

being the case, it would naturally follow that any delinquent taxes which had accrued since the semi-annual settlement next preceding the issuance of such bonds, are unobligated and bonds may again be issued by such subdivision against such unobligated delinquent taxes.

Therefore, in specific answer to your question, it is my opinion that Scioto County may legally issue bonds in anticipation of collection of delinquent taxes under the provisions of Section 2293-43, General Code, against those delinquent taxes which have accrued since the August settlement in the year 1936.

Respectfully,

THOMAS J. HERBERT,

Attorney General.