

The transcript fails to show that council has made provision for the levy of a tax upon all the taxable property of the village to provide for any deficiency resulting from the failure to levy or collect special assessments. Such action on the part of council is by the terms of section 3914-1 G. C. mandatory and is an essential step in the proceedings to authorize the issuance of valid bonds.

I therefore advise the Industrial Commission that the bonds are not valid obligations of the village and that they should not purchase the same.

Very respectfully,

JOHN G. PRICE,  
*Attorney-General.*

3045.

GRISWOLD ACT—INTERPRETATION OF SECTION 5649-1b G. C. OF SAID ACT—CERTIFICATE OF FISCAL OFFICER OF SUBDIVISION SHOULD INCLUDE STATEMENT THAT BONDS AUTHORIZED HAVE BEEN SOLD AND IN PROCESS OF DELIVERY—ORDINANCE AUTHORIZING BOND ISSUE SHOULD SPECIFY MATURITIES, RATE OF INTEREST AND TIME OF PAYMENT OF INTEREST OF BONDS.

1. *The certificate of the fiscal officer of the subdivision required to be made by section 5649-1b of the General Code (the Griswold act) should include a statement that the bonds authorized by the resolution, ordinance or other measure and certified to the auditor, have been sold and are in process of delivery.*

2. *The ordinance, resolution or other measure authorizing the issuance of bonds should specify the maturities, rate of interest and time of payment of interest of the bonds so authorized and the fiscal officer is required merely to certify the measure as passed without any separate schedule of amounts required to be levied in each year.*

COLUMBUS, OHIO, May 1, 1922.

*Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—The Commission request the opinion of this department as to the interpretation of certain provisions of section 15 of the so-called Griswold Law, 109 O. L. 336-344 therein designated as section 5649-1b of the General Code.

The Commission's letter is as follows:

"Section 15 of the Griswold law provides that 'every such resolution, ordinance and measure shall be certified by the fiscal officer of political subdivision to the county auditor 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. \* \* \*

*Question:* What constitutes a sufficient certification to the county auditor to warrant him in submitting said levies to the budget commissioners?

*First:* Should there not be a certificate of the fiscal officer accompanying the certification of the bond resolution declaring that the bonds had actually been sold and delivered?

*Second:* Should there not be a schedule with the above certification

showing the specific amount required each year for the payment of bonds and interest as they become due?"

A more complete quotation of the section which requires interpretation may be made:

"Section 15. 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. \* \* \*"

Let it be observed that the first sentence of this section provides that "every such resolution, ordinance or measure shall be certified" without stating when the certification shall take place. In the absence of a time provision, the ordinary rule of construction would be that certification should be made within a reasonable time after the occurrence of the fact to be certified to, having regard to the purpose of the certification. The purpose of the certification in this instance is the levy of taxes. By section 14 it is provided that the first maturity of any issue of bonds shall be fixed not earlier than the date fixed by law for the final settlement between the county treasurer and the political subdivision of the taxing district next following the inclusion of a tax for the issue in the annual budget by the county auditor. It is obvious, therefore, that the certification would be ineffective unless made in time for the inclusion of the tax to meet the first maturity and the first installment of interest; and inasmuch as the maturities must be "in substantially equal annual installments," it follows that the first tax levying period following the issuance of the bonds is the last date at which the certification can be made with effect.

On the other hand, however, bonds are frequently authorized and are not issued or sold for some time, due to conditions in the market or to defects in the procedure which have to be remedied. Therefore, to hold that the certification should immediately follow the passage of the ordinance would produce an absurd result if the bonds were not issued prior to the tax levying period in question; for the tax would be levied without any bonds to be paid as yet; in fact, such a tax levy might be said to be illegal, as there would be no purpose in existence for which the levy might be made.

It follows from these observations that the certification ought not to be made until the bonds are sold, in order to avoid the absurdity of levying a tax for no purpose whatever.

But in connection with this statement it should be observed that if bonds are authorized, and are not sold prior to the next ensuing tax levying period, the authority to issue them under that ordinance or resolution, expires. The measure will then have to be amended so as to readjust the maturities to a new initial tax levying period. In other words, if bonds that are authorized by a measure becoming effective, say in May, be offered for sale and not disposed of and issued prior to the first Monday in August (see sections 5649-3b and 5649-3c of the General Code), then the subsequent issuance of them under the original resolution or ordinance would be unauthorized and the proceedings would have to be amended so as to postpone the date of the first maturity (which may be assumed to have

been fixed with reference to the inclusion of the levy and the date mentioned) for at least another year.

Coming back to the main question, it is observed that section 5649-1b refers to "the resolution, ordinance or other measure under which bonds are issued or authorized." It may be fairly inferred from this language that the bonds must be issued—i. e. sold—before the section applies. In other words, nothing is required to be certified until the bonds are issued. This interpretation is consistent with the practical necessities of the case as above outlined.

It is accordingly the opinion of this department on the first question submitted by the Commission that the certificate required by section 5649-1b should include a statement to the effect that the bonds authorized by the resolution, ordinance or other measure have been issued—that is, that they have been sold and are in process of delivery.

The second question is answered, it is believed, in the language of the section itself, which requires merely that the resolution, ordinance or measure shall be certified. This measure will of necessity fix the amount of the entire issue maturing in each year, and the rate of interest and date of payment of interest. From these facts apparent on the face of any ordinance that is properly drawn, the county auditor can for himself ascertain the exact amount required each year for the payment of bonds and interest. If the ordinance does not disclose these facts it is not a valid ordinance under section 14 of the Griswold act (section 2295-12 G. C.). That section which has been referred to in this opinion provides as follows:

"Section 14. 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 fiscal tax settlement between the county treasurer and the political subdivision of 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."

It is true that this section does not expressly say that the maturities of the bonds and the rate and payment periods of the interest shall be fixed in the resolution or ordinance itself, but that is a fair inference from its provisions. In many, if not all, instances of statutes authorizing the issuance of bonds for specific purposes, it is expressly provided that the resolution or ordinance authorizing such issuance shall contain these particulars. See section 3917 G. C. which provides that:

"Such resolution shall \* \* \* state \* \* \* the aggregate amount of bonds to be issued \* \* \* their number and denomination, the date of maturity, the rate of interest they shall bear, and the place of payment of principal and interest."

See also section 3939, the initial section of the so-called Longworth act containing the following language:

"In such amount and denominations, for such period of time, and at such rate of interest, not exceeding six per cent, per annum, as said council may determine."

See also section 2435 dealing with certain county bonds. In short, it is believed that regardless of the specific statutory provisions which may or may not be

found in all cases, the determination of maturities, rate of interest, etc., is an essential part of the function of borrowing money and cannot be separated from it, so that the borrowing authority must determine this matter, and cannot delegate it to the purely executive officers who may be called upon to sign and deliver the bonds.

The second question submitted by the Commission is therefore answered in the negative, for the reason that the ordinance if properly drawn and legal, will show on its face the facts needed by the auditor in order to enable him to discharge his duty under section 5649-1b of the General Code.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

3046.

TAXES AND TAXATION—DELINQUENT PERSONAL TAXES—AUTHORITY OF COUNTY TREASURER WITH RESPECT TO LEVYING UPON PERSONAL PROPERTY FOR PAYMENT OF SAID TAXES—PROCEDURE—WHEN PROSECUTING ATTORNEY MUST REPRESENT COUNTY TREASURER.

*The county treasurer is without authority to require or direct the sheriff to levy upon goods for the payment of delinquent personal taxes.*

*The county treasurer by himself or deputy is authorized by section 2658 to seize personal property for the satisfaction of delinquent taxes charged on his duplicate, but may not delegate this power or impose this duty upon any other county officer.*

*In case he is unable to collect such taxes by distress, the county treasurer is authorized by section 2660 to obtain a rule to show cause, which upon becoming absolute, has the force and effect of a judgment upon which execution may be issued to the sheriff and levied as in other cases of judgments.*

*Or, the treasurer, without showing that he is unable to collect by distress, may bring a civil action in his own name under section 5697 G. C., and obtain a judgment upon which execution may be issued to the sheriff. In such event no exemptions are available to the judgment debtor.*

COLUMBUS, OHIO, May 1, 1922.

HON. J. KENNETH WILLIAMSON, *Prosecuting Attorney, Xenia, Ohio.*

DEAR SIR:—Receipt is acknowledged of your recent letter requesting advice of this department as follows:

“The treasurer of this county has turned over certain delinquent tax statements to the sheriff of the county requesting that he levy upon goods for the payment of delinquent personal tax.

I know of no authority whereby the treasurer can do this. The only way I know that the treasurer can collect delinquent tax is in accordance with General Code, Section 2658, by distress, and in accordance with Section 5697, by civil action. Is there any authority whatsoever whereby the treasurer can delegate this to the sheriff of the county and is the prosecuting attorney required to bring this civil action for the treasurer in case the treasurer decides to proceed in accordance with G. C. 5697? If the treasurer decides to proceed according to G. C. 2658, who actually distrains the goods and chattels charged with such taxes? In other words, can the treasurer delegate this to any other officer?”