

\$5,000.00, with the Southern Surety Company as surety, to cover the faithful performance of his duties as resident deputy state highway commissioner in Division No. 3.

In your letter you state that this duplicate bond is issued in lieu of the original for the reason that the original is not on file in the office of the Secretary of State and that you can find no record of the same in your office.

It will be noted that in the body of the bond the name "Tracey Brindle" appears and that it is signed "Tracey S. Brindle". There is no evidence before this department at this time that Tracey Brindle as mentioned in the body of said bond is one and the same person as Tracey S. Brindle who signed the bond.

The signature of the principal and the name as given in the body of the instrument should be the same.

The bond should also recite that this is a duplicate to take the place of one executed on the fifteenth day of August, 1923, and which has been lost. Otherwise it would appear as an original bond. The word "duplicate" at the top is not sufficient to identify it.

The financial statement, the certificate of the Department of Insurance and the power of attorney of Mr. Atkinson should relate to the fifteenth day of August, 1923, rather than the present time.

For the above mentioned reasons I cannot approve said bond.

When these corrections have been made you may again submit the bond for my approval.

Respectfully,
EDWARD C. TURNER,
Attorney General.

297.

APPROVAL, BONDS OF VILLAGE OF FAIRVIEW, CUYAHOGA COUNTY,
OHIO—\$17,244.61.

COLUMBUS, OHIO, April 6, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

298.

DISAPPROVAL, BONDS OF VILLAGE OF WESTON, WOOD COUNTY, OHIO
—\$4,700.00.

COLUMBUS, OHIO, April 6, 1927.

Re: Bonds of village of Weston, Wood county, \$4,700.00.

Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Upon examination of the transcript for the above bond issue and the supplementary information furnished in response to correspondence from this office, it appears that the 1926 tax duplicate of the village is \$970,660.00. This is shown by the certificate of the auditor of the county.

The financial statement which has been furnished further shows that there is at present outstanding general bonded indebtedness to the amount of \$8,000.00 and that there is a balance in the sinking funds of \$259.36. The net indebtedness of the village would accordingly be at least \$7,740.00 applying all the balance of the sinking fund to the general indebtedness rather than to the special assessment bonds.

The present bond issue is in the amount of \$4,700.00, and it is proposed to issue these bonds without a vote of the people.

Section 3940 of the General Code specifically provides that the total indebtedness created in any one fiscal year by council of a municipal corporation without a vote of the people shall not exceed one-half of one percent of the total value of the property in such municipal corporation as listed and assessed for taxation. The village is therefore without authority to issue these bonds.

I further call your attention to the fact that the present net indebtedness being at least \$7,740.00 plus the proposed issue of \$4,700.00, would make an aggregate indebtedness of \$12,400.00, which is in excess of the one per cent limitation provided in Section 3941 of the General Code.

I am assuming that the present bonded indebtedness was not authorized by vote of the people. For these reasons, it is obvious that the issuance of these bonds by the village would be illegal, and I am therefore compelled to advise you to reject the same.

Respectfully,

EDWARD C. TURNER,

Attorney General.

299.

DISCHARGE—HOW PRISONER MAY BE DISCHARGED FROM JAIL—
TUMEY CASE.

SYLLABUS:

A prisoner may not be discharged from jail before the expiration of his sentence unless his case be reversed, or he be discharged under a writ of habeas corpus, or discharged under the Insolvent Debtors Act, or discharged under the Insolvent Prisoners Act, or paroled under the Indigent Prisoners Act.

COLUMBUS, OHIO, April 7, 1927.

HON. E. A. BROWN, *Prosecuting Attorney, Circleville, Ohio.*

DEAR MR. BROWN:—I beg to acknowledge receipt of yours of April 2nd, reading as follows:

“Would you advise release of prisoners now in our county jail committed by the mayors and justices of the peace for the payment of fines for liquor violations?”

The only methods I know for releasing such prisoners prior to the expiration of their sentences is through a reversal of the judgment under which they were sentenced, through a discharge under a writ of habeas corpus, a discharge under the Insolvent Debtors Act (G. C. 11148 to 11155), or a parole under the Indigent Prisoner Act (G. C. 12382). General Code 2576 applies only where the fine is due the county.

Therefore, it is my opinion that there is no authority for the release of such prisoners prior to the expiration of their sentences without either an order from a court or a proceeding had by virtue of some statute authorizing such discharge.