

4016.

**BOND ISSUE—ISSUED PURSUANT TO VOTE OF ELECTORS—MAY
BE REFUNDED AND SOLD AT HIGHER RATE OF INTEREST.****SYLLABUS:**

Bonds which have been issued pursuant to vote of the electors may be refunded as provided in Section 2293-5, General Code, and such refunding bonds may be sold at a greater rate of interest than that borne by the bonds refunded.

COLUMBUS, OHIO, February 1, 1932.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“The City of Fostoria, on or about September 1, 1931, defaulted in the payment of \$11,450.00 worth of City Bonds. The reason given is that the amount of delinquent taxes reduced the revenue and income of the City to the point where such default occurred. A portion of these bonds were issued after being voted upon by the people for the reason that they were outside the 15 mill limitation.

The Finance Committee of the Council of the City of Fostoria now inquires as to whether or not the City may refund such bonds as were voted outside the limit, and if so, whether or not they can increase the rate of interest above that named in the original bonds.”

Section 2293-5, General Code, as amended by the 89th General Assembly, provides:

“With the approval of the bureau of inspection and supervision of public offices, the taxing authority of any subdivision at any time prior to June 30, 1933 may refund any outstanding bonds of the subdivision which are about to mature. The bureau shall approve such issue only when it finds and to the extent it finds that no other method of payment in whole or part exists. In its order approving such issue, it shall fix the maturities of the bonds to be issued, subject to the provisions of sections 2293-9 and 2293-12 of the General Code. No such bonds shall mature more than fifteen years after their date of issue. The interest and retirement levies thereon shall have the same status with respect to the limitation imposed by article twelve, section two of the constitution as the interest, sinking fund and retirement levies of the indebtedness which is refunded.”

The foregoing section in its present form contains no limitation as to whether or not bonds sought to be refunded were issued pursuant to authority of the electors or without a vote of the electors. It is therefore my opinion that voted bonds may be refunded under authority of this section the same as unvoted bonds.

With respect to the matter of interest, Section 2293-5, *supra*, does not limit the rate of interest which refunding bonds shall bear to that borne by bonds refunded. This section is one of the sections of the Uniform Bond Act and accordingly after authorization pursuant to the approval of the Bureau of Inspection and Super-

vision of Public Offices, the bonds should be offered to the sinking fund trustees as provided in Section 2293-27, and in the event of rejection, they should be advertised and sold pursuant to the provisions of Sections 2293-28 and 2293-29, General Code, to the responsible bidder submitting the highest bid based upon the lowest rate of interest.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

4017.

OFFICES INCOMPATIBLE—CLERK OF VILLAGE AND CLERK OF BOARD OF TRUSTEES OF PUBLIC AFFAIRS—EXCEPTION WHERE DUTIES OF TWO OFFICES HAVE BEEN MERGED BY VILLAGE COUNCIL UNDER SECTION 4281 G. C.

SYLLABUS:

The clerk of a village may not be employed as clerk of the board of trustees of public affairs where the duties of the two offices have not been merged by action of the village council as provided in section 4281, General Code, from which conclusion it necessarily follows that such clerk may not receive the compensation provided for each of said offices.

COLUMBUS, OHIO, February 1, 1932.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your recent letter which reads as follows:

“We respectfully request your opinion on the following matter:

Branch two of opinion of the Attorney General found on page 20 of the 1914 Opinions, reads as follows:—

‘The village clerk may not be clerk of the board of trustees of public affairs and receive compensation therefor as these offices are incompatible.’ Sec. 4281 G. C., as amended in 113 O. L., 641 reads as follows:

‘The clerk shall keep the books of the village, exhibit accurate statements of all moneys received and expended of all the property owned by the village and the income derived therefrom and of all taxes and assessments, and the village council may by a majority vote merge the duties of the clerk of the board of trustees of public affairs with the duties of clerk of the village, allowing said clerk of the village such additional assistants in performing such additional duties as the council may determine, and such additional compensation for such additional duties as may be provided by the action of the council.’

In your Opinion No. 808, found on page 1241 of the 1929 Opinions, it is held in branch four as follows:—

‘When the duties of the clerk of the board of trustees of public affairs of a village are merged with the duties of the clerk of the village by authority of amended Section 4281 General Code, provision may be made by council for the payment to the said clerk of additional compensation during his term of office, and said additional compensation may lawfully be paid from water works funds.’