3341.

DISAPPROVAL, BONDS OF VILLAGE OF BATAVIA, $2,000, FOR PURPOSE OF FUNDING CERTAIN INDEBTEDNESS OF SAID VILLAGE.

COLUMBUS, OHIO, July 12, 1922.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

Re: Bonds of the village of Batavia in the sum of $2,000, for the purpose of funding certain indebtedness which from its limits of taxation said village is unable to pay at maturity.

GENTLEMEN:—An examination of the transcript submitted of the proceedings of the council and of other officers of the village of Batavia relating to this issue of bonds discloses certain objections which in my opinion are fatal to the validity of this issue.

In the first place it appears that the ordinance providing for this issue of bonds was passed on a suspension of the rules by the affirmative vote of four members of council only present and voting thereon. Assuming that as required by law said village has an elected or appointed membership of six, the action taken by council in the enactment of this ordinance was in violation of section 4224 G. C. which provides that an ordinance shall not be passed on a suspension of the rules except by a three-fourths vote of all members elected thereto. Touching the situation at hand, it is obvious that the provisions of this section require the affirmative vote of not less than five of the six elected members of the village council to pass this ordinance on a suspension of the rules, and the motion to suspend the rules and the ordinance itself not having received this number of votes, the same is invalid.

In the second place, I note that the ordinance in question does not provide specifically for the date of the bonds and in this respect the ordinance is defective. But assuming from the provisions of the ordinance that it was the intention of the council that the bonds covering this issue should bear a present date or one of the immediate future, said ordinance is fatally defective in the provision made therein that the first bond of the series covering this issue should mature six years from date. Speaking in practical terms, section 2295-12 G. C., 109 O. L. 348, requires in its application to the bond issue in question that the first bond of the series should mature not later than September 1, 1923. In this connection I note that this bond ordinance was passed May 6, 1922, and in arriving at my conclusions with respect to the operation of section 2295-12 I assume that a tax levy for interest and sinking fund purposes for this bond issue was included in the tax budget for the year 1922.

The objections above noted in my opinion are fatal to the validity of this issue of bonds and you are advised not to purchase the same.

Respectfully,
JOHN G. PRICE,
Attorney-General.