

**HEALTH, STATE BOARD OF: Department of Commerce
and Industry—effect of order to increase bonded debt.**

April 3, 1937.

Hon. W. H. Frazier,
Assistant Director,
State Board of Health,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of April 2 submitting the following question with reference to House Bill No. 287:

“I would like to have your opinion as to whether or not the provisions contained in this Act concerning the issuing of bonds, including the remonstrant feature, would apply when a municipality was forced to issue bonds to comply with a final order of the Department of Commerce and Industries under the provisions of the Stream Pollution Act, chapter 152 of the Acts of 1935.”

It will be noted that the recent session of the General Assembly passed House Bill No. 287 which became a law March 9, 1937, and by the terms of which the total tax rate on property inside the corporate limits of any city or town are limited to two dollars on each one hundred dollars of taxable property therein. Section 7 of the Act provides that,

“No tax levies or rates to meet the principal and interest of any obligations hereafter issued under clause (d) of section 6 hereof shall be made unless prior to the issuance of such obligations a petition or petitions shall be filed by at least 50 owners of taxable real estate in the municipal corporation desiring to issue such obligations praying for the issuance of such obligations, or if such number of petitioners shall be greater in any case than a majority of the owners of taxable real estate in any such municipal corporation, then by a majority of such owners. Said petition or petitions shall be filed with the body vested with authority to authorize the issuance of such obligations and shall be verified under oath of one or more of the signers

and shall have attached thereto a certificate of the auditor of the county to the effect that all such petitioners are owners of taxable real estate in such municipal corporation; * * * provided, however, that if in any case, within thirty (30) days after the publishing of such notice, a remonstrance or remonstrances shall likewise be filed by owners of taxable real estate in such municipal corporation greater in number than the number of petitioners, which remonstrance is likewise duly verified and certified praying that no such obligations be issued, then no such obligations shall be issued. No further petition shall be filed for the issuance of such obligations which have been defeated by remonstrance, within a period of one year after the filing of such remonstrance."

It will be noted that the petition signed by at least 50 owners of taxable real estate is required where bonds are to be issued by a municipal corporation which will require taxes in excess of the two-dollar rate to meet the interest and principal upon "any obligations hereafter issued under clause (d) of section 6 hereof." Section 6 above referred to, contains other conditions under which municipal corporations may issue bonds payable from funds derived from taxation for other enumerated purposes, even though such issuance operates to require a rate above two dollars, to-wit:

"(a) to meet the principal and interest upon any funding, refunding or *judgment funding* obligations of any municipal corporation;

(b) to meet the interest or principal upon any outstanding obligations of any municipal corporation or of any *judgment taken* against any municipal corporation; * * * "

The question therefore presented is whether or not the final order of the Department of Commerce and Industries issued to a municipal corporation, requiring the expenditure of public funds for the abatement or correction of any pollution condition of any water, is sufficient to authorize the issuance of general obligation bonds by such municipality when the issuance of such operates to raise the tax rate above the two-dollar limitation.

Chapter 152 of the Acts of the General Assembly, 1935, provides the manner in which such orders may be issued. Section 9 of the Act provides the method of issuing bonds to comply with the terms of such final order and provides that such bonds may be either direct obligation bonds or revenue bonds.

It is apparent that the provisions of House Bill No. 287 passed by the Indiana General Assembly, 1937, do not apply to the revenue bonds. It is my opinion, however, that a municipal corporation could not lawfully issue general obligation bonds to comply with the provisions of an order of the Department of Commerce and Industries, where the same operated to increase their indebtedness beyond the two-dollar rate, as fixed by the Act of 1937, unless such order was reduced to a judgment of a court.

Section 8, chapter 152 above referred to, provides for an appeal to the Circuit Court or Superior Court of any county where such violation is alleged to exist, to vacate and set aside the final order of the Department of Commerce and Industries. Clearly, if the court should affirm the order, then the city or other municipal corporation would be authorized to issue bonds, which obligations would be within sub-section (a), section 6 of the 1937 Act, which specifically refers to *judgment funding* obligations and perhaps also within sub-section (b), section 6, which refers to any *judgment taken* against such municipal corporation.

It is my further opinion that the final order of the Department of Commerce and Industries, standing alone, would not have the rank and dignity of a judgment, as referred to in section 6 of the above Act. Of course, the municipal corporation by petition and notice, as provided in section 7 of the 1937 Act, may provide for the issuance of general obligation bonds unless defeated by remonstrance. If this cannot be done then it is my opinion that the only other way to escape the limitations, as fixed in the 1937 Act, would be to have the final order of the Department of Commerce and Industries approved by a judgment of the local court.