
November 14, 1938.

Hon. C. A. Ketchum, Secretary,
State Board of Tax Commissioners,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter referring to Section 7 of Chapter 119 of the Acts of 1937 and requesting an interpretation of the above section upon the points indicated by the following question:

"When fifty, or more owners of taxable real estate within a municipal corporation file a petition for a bond issue and the same has been subsequently accepted by the municipal officers, a resolution is adopted for a determination to issue such bonds and for the giving of notice to taxpayers and when such notice is duly published, can any of the petitioners thereafter sign his name to a remonstrance relative to the same bond issue and be legally counted as a remonstrator?"

The Act of which Section 7 referred to, supra, is a part, is entitled:

"An Act concerning tax levies, rates and budgets and providing for the fixing thereof, limiting the amount of the same and repealing all laws in conflict therewith, and declaring an emergency."

Acts of 1937, p. 646.

Section 3 of said Act fixes a limitation upon the total of all tax rates on property within any municipal corporation for all municipal corporations for which the property therein is taxable, except as otherwise provided in the Act.

Acts of 1937, p. 646.

Section 6 excepts from the limitations of Section 3 taxes levied for certain designated purposes as set out in subdivision (a), (b), (c), (d) and (e) thereof. Subdivision (d) of section 6, which is the one particularly involved in your question, pro-
vides that the limitations fixed in Section 3 shall not apply to
levies or rates required by municipal corporations "to meet
the interest and principal upon any other obligations hereafter
issued which in their issuance have been petitioned for and
issued in accordance with the provisions of this Act."


Thereafter follow the provisions of Section 7, the interpreta-
tion of which you desire, which so far as is necessary for the
determination of your question, is as follows:

"No tax levies or rates to meet the principal and inter-
est 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 obliga-
tions 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 at-
tached 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; if
said body shall determine to issue said bonds petitioned
for, then notice of the filing of such petition shall be
given by publication one time in two (2) newspapers
of opposite political parties published in such municipal
corporation or in one (1) such paper if only one (1).
be there published, or in case no newspaper is there
published, then, the same shall be published in any two
(2) newspaper representing the two (2) leading politi-
cal parties, published in the county and having a gen-
eral circulation in such municipal corporations, of
(or) if only one (1) such paper be there published then
such notice published in such paper shall be sufficient to
comply with the requirements herein, and by posting
such notice in three (3) public places 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 obligation 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."


An examination of the language of Section 7, as well as of subdivision (d) of Section 6, reveals very clearly the fact that the filing of the requisite petition is jurisdictional. That is, the body authorized to issue obligations of the municipality, in order to make them payable out of a tax levy, is powerless to act unless and until the requisite petition is filed. Upon the filing of such petition, however, it is equally clear that such body acquires the jurisdiction and power to determine to issue the bonds petitioned for. If the body thus authorized to determine the question determines not to issue the bonds, that is the end of the matter. If, on the other hand, the body authorized to issue the obligations of the municipality, except for such limitation, having received the petition, determines to issue the bonds, notice is then required to be given of the filing of such petition in the manner set out in the statute. From the date of such notice, thirty days is allowed by the statute within which remonstrances may be filed against the issuing of the obligations, it being provided that if the number of remonstrators exceeds the number of petitioners, in that event, no such obligations shall be issued.

Your question is as to whether persons who have signed the petition may, after jurisdiction has been obtained by the issuing body by virtue of said petition, withdraw their names or may sign a remonstrance against their own petition so as to enable their names to be counted as remonstrators. I think it is well settled by analogy by the authorities in this state that the petitioners under such circumstances would not be authorized
to withdraw their names so as to defeat the jurisdiction of the issuing body.


In the last case cited a drainage proceeding was involved, and one of the questions was as to whether a petitioner could dismiss the proceedings after the drainage commissioners had filed a report and an order had been made approving the assessment. It was held that he could not do so and in passing upon the question, the court said on page 245:

"Heiney moved to dismiss the proceedings, but his motion was overruled, and of this ruling he complains in a separate assignment of errors. Prior to the time this motion was made, the drainage commissioners had filed a report and an order was made approving the assessment. Subsequently, Heiney joined the drainage commissioners in a petition to vacate the report and order, representing that owners of lands benefited were not made parties. On this second petition an order was made vacating the former order, and directing that notice be given to those persons owning lands omitted from the first petition, and those persons came in and entered an appearance. This motion came too late. Rights had been acquired and money expended on the faith of the order made upon the first report, and justice requires that a petitioner should not be allowed to destroy rights which his own act had been the means of creating."

In my opinion, that is the situation here. Under the 1937 Act the municipal body ordinarily authorized to issue bonds is precluded from issuing except on a petition filed in conformity with Section 7 of the Act. The petition, therefore, is a prerequisite of jurisdiction, and when the requisite petition is filed and the notice is issued, from that time forward every person owning taxable real estate in the municipality is affected by the jurisdiction thus acquired. It may well be that more persons than the ones who signed the petition are in favor of it, and they, as well as the petitioners, in my opinion, have acquired a right to insist upon the continuance of jurisdiction of the issuing body to act. See also the case of the State v.
Gerhardt, supra, referring especially to page 474 where the above language quoted from Carr, et al., v. Boone, et al., supra, is quoted with approval.

In my opinion, under the 1937 Act petitioners may not legally withdraw their names from the petitions so as to oust the issuing body of jurisdiction after the petition has been filed and the notice required by the Act has been issued. This, however, does not quite answer your question, which goes further and asks whether a name during the time allowed for remonstrating may be withdrawn from the petition and placed on the remonstrance and as to what the effect of such a procedure would be. This presents an interesting question, which, so far as I have been able to find, has not been passed upon, by analogy or otherwise, by our own Supreme Court.

It is clear, I think, however, that the right to remonstrate extends during the entire thirty-day period allowed by the statute, and, of course, during that time names on a remonstrance may be added or removed, but no names can be removed from remonstrances nor can any be added thereto after the thirty-day period has expired. In other words, the remonstrance speaks as of its condition at the end of the thirty-day period, and I think by analogy the petition in the absence of fraud or some other similar ground which might authorize a person to withdraw his name, must speak as of the date when it is filed and the notice issued. This, it seems to me, is a reasonable view to take. The petition may be in the making during a long period of time during which a petitioner would have the right to withdraw or remove his name, but after the petition is filed and the notice issued, it seems to me that the statute contemplates that no additional names can be added to it and upon a similar basis that those which are then on the petition cannot be withdrawn. If they cannot thereafter be withdrawn, then in my opinion, such names could have no place on a remonstrance.

It seems to me that the intention of the statute is to determine the question of majorities upon the basis of the names of legally qualified petitioners upon the petition at the time it is filed and of remonstrators upon the remonstrances at the latest date upon which the remonstrance can be filed.