

ORDINANCE NO. 12 - 1939

An ordinance fixing the bond and salary of the Deputy Marshal, and declaring an emergency.

Be It Ordained by the Council of the Village of Centerville, Montgomery County, Ohio:

Sec. 1. That the bond of the Deputy Marshal be, and the same hereby is, fixed at the penal sum of One Thousand (\$1,000.00) Dollars, as of the 15th day of April, 1939.

Sec. 2. That the salary of the Deputy Marshal be, and the same hereby is, fixed at the sum of One Hundred thirty-five (\$135.00) Dollars per month.

Sec. 3. That this ordinance is declared to be an emergency measure for the reason that the public peace, health and safety of the Village of Centerville require the immediate fixing of such bond and salary to permit of the immediate employment of a Deputy Marshal and shall take effect upon its passage.

Passed this 24th day of April, 1939.

*Lulla Brown* CLERK

MAYOR

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ORDINANCE NO. 13 - 1939

An ordinance to authorize the issuance of \$37,500 of mortgage revenue bonds of the Village of Centerville, Montgomery County, Ohio under Section 12 of Article XVIII of the Constitution and the Uniform Bond Act of the State of Ohio for the purpose of raising money to pay the cost of constructing a general water works system for said Village; to authorize a mortgage of said system and the extensions thereto with a pledge of the revenues thereof; to authorize a franchise to become effective in the event of foreclosure of said mortgage.

WHEREAS, It is necessary to issue mortgage revenue bonds in the aggregate sum of \$37,500 of the Village of Centerville, Montgomery County, Ohio, under the provisions of Section 12 of Article XVIII of the Constitution and the Uniform Bond Act of the State of Ohio to pay the cost of constructing a general water works system for said village, the council of said Village having determined the necessity of constructing said General Water Works System by Ordinance No. 3 passed on the 29th day of January, 1937; and,

WHEREAS, This council has requested the village clerk to issue his certificate as to the estimated life of the improvements to be constructed from the proceeds of the bonds, hereinafter referred to, and the village clerk has certified to this council such estimated life as exceeding five (5) years and has further certified the maximum maturity of said bonds as forty (40) years;

NOW, THEREFORE, Be It Ordained, by the Council of the Village of Centerville, Montgomery County, Ohio, three-fourths (3/4) of the members elected thereto concurring:

Sec. 1: That it is deemed necessary, by the council of the Village of Centerville, Montgomery County, Ohio, in order to raise money with which to pay the cost of constructing a general water works system for said

Village (hereinafter sometimes referred to as the "Utility" or "Public Utility", and which shall be interpreted at all times as including the distribution mains thereof), to issue and sell mortgage revenue bonds of said village in the aggregate amount of \$37,500, which shall be secured by a mortgage and an exclusive first lien on, and payable primarily, from the gross revenues of said general water works system, and all extensions, improvements, replacements, and alterations at any time made in respect thereto after provision only for the reasonable operation and maintenance expenses thereof, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same and by covenant of said village to maintain certain rates and collect certain charges for the facilities and services afforded by said utility; providing, however, that nothing in this ordinance shall be construed as pledging the general credit of said village to the payment of said bonds or any part thereof or interest thereon; said bonds shall be issued in one lot and notes shall not be issued in anticipation of the issuance of said bonds.

The cost of constructing the same shall include the acquisition of an adequate water supply together with the necessary lands, easements and rights of way in connection therewith; the construction of a pumping and filtration plant and storage tank; interest during construction and engineering, legal and administrative charges in connection with the project (herein called the "Project", the completed project and all additions and replacements thereto subsequently constructed or acquired, being hereinafter called the "System").

Sec. 2: That said bonds shall be of the following description:

TITLE OF BONDS: FIRST MORTGAGE WATER WORKS REVENUE BONDS

DATED: March 1, 1939

DENOMINATIONS: \$500.00 each except the last eight (8), which shall be for the sum of \$250.00 each.

NUMBERS: 1 to 79, both inclusive

MATURITIES: One \$500.00-bond shall mature on December 1, during each of the years 1940 to 1945, both inclusive; two \$500.00-bonds shall mature on December 1, during each of the years 1946 to 1952, both inclusive; three \$500.00-bonds shall mature on December 1, during each of the years 1953 to 1961, both inclusive; the remaining bonds shall mature during each of the years 1962 to 1968, both inclusive at the rate of \$2,000.00 aggregate principal per year; provided, however, that said bonds shall be subject to call or redemption, in whole or in part, on any interest payment date at par in their inverse serial order.

INTEREST RATE: Five (5%) per cent per annum, payable semi-annually on the first days of June and December in each year beginning December 1, 1939.

PLACE AND MEDIUM OF PAYMENT: At the Main Office of The Winters National Bank and Trust Company of Dayton, Ohio in such funds as are legal tender for the payment of debts due The United States of America on the respective dates of payment

of the principal of and interest on the bonds.

Sec. 3: Upon the face of each of said bonds shall be recited a reference to the Constitutional Provision, the Statutes and the Ordinance under which issued; each of said bonds shall express upon its face the purpose for which same is issued; that said bond is payable only out of the gross revenue of the general water works system and extensions thereto and is secured further by a mortgage and a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate said utility, which franchise extends for a period of twenty (20) years after the date of sale of said utility upon foreclosure. Said bonds shall be signed by the Mayor and the Village Clerk and sealed with the corporate seal; each of the interest coupons attached to said bonds shall bear the facsimile signature of the Village Clerk; said bonds shall be prepared, issued and delivered under the direction of the Mayor and the Village Clerk. Each bond shall contain on its face and be subject to the following provisions:

This Bond is subject to the conditions and every holder hereof by accepting the same agrees with the obligor and every subsequent holder hereof that:

- (a) The delivery of this Bond to any transferee if not registered, or if it be registered if the last registered transfer be to bearer, shall vest title in this Bond and the interest represented thereby in such transferee to the same extent and for all purposes as would the delivery under like circumstances of any negotiable instrument payable to bearer;
- (b) The obligor and any agent of the obligor may treat the bearer of this Bond, or if it be registered in the name of a holder, the registered holder of this Bond, as the absolute owner hereof for all purposes and shall not be affected by any notice to the contrary;
- (c) The principal of and the interest on this Bond will be paid, and this bond and each of the coupons appertaining thereto are transferable, free from and without regard to any equities between the obligor and the original or any intermediate holder hereof or to any setoffs or cross-claims; and
- (d) The surrender to the obligor or any agent of the obligor, of each of the coupons or of this Bond if not registered, or if it be registered if the last registered transfer be to bearer, or the receipt of the registered holder for the principal hereof if this Bond be registered in the name of a holder, shall be a good discharge to the obligor for the same.

Sec. 4: That said Bonds shall be first offered at par and accrued interest to the Treasurer of the Village of Centerville, Ohio, under the provision of Section 2293-37, and if said Treasurer refuses to take any or all of said Bonds, then said Bonds shall be sold either at a Private or Public Sale under the direction of the Village Clerk of the Village of Centerville, Montgomery County, Ohio, in the manner to be determined by the Village Council. In case of Public Sale the amount of the certified check to accept bids shall be \$200.00. The proceeds from the sale of said Bonds, except the premium and accrued interest thereon, shall be used for the purpose aforesaid and for no other purpose. The premium and accrued interest received from such sale shall be transferred to the Bond Retirement Fund to be applied to the payment of the principal and interest of said Bonds in the manner provided by law.

Sec. 5: The proceeds from the sale of said Bonds, except premium, if any, and accrued interest thereon, shall be placed in the treasury to the credit of the proper fund and deposited in a Bank or Banks which are mem-

bers of the Federal Deposit Insurance Corporation in a special account or accounts, and be used only for the purpose of paying for the aforesaid improvements to the General Water Works System of the Village and all things necessary and incidental thereto. The premium, if any, and accrued interest received from the sale of said Bonds shall be transferred to the Treasurer to be by him placed in a separate fund designated as the "Bond Retirement Fund" (hereinafter sometimes referred to as the "Bond Account"), and shall be applied by said Treasurer only to the payment of the interest on and principal of the Bonds herein authorized, and for no other purpose.

Sec. 6: From and after the delivery of any Bonds issued under the provisions of this Ordinance the entire income and revenues of said General Water Works System shall be set aside and deposited by the Treasurer in a separate and special fund which is hereby created and designated as the "General Water Works System Revenue Fund". Said Revenue Fund shall be administered as follows:

There shall first be paid from said Revenue Fund the reasonable cost of operation and maintenance of said System including replacements and depreciation; and there shall also be paid from said fund into the Bond Account, from month to month, such amount as will be necessary to pay the principal and interest requirements on the Bonds on the next ensuing interest or bond maturity date, plus an additional margin of 20% of the principal and interest requirements for so long a time as is necessary to create a surplus equal to the principal and interest requirements on the Bonds for the next succeeding two (2) years; provided, however, that no further payments need be made into said Bond Account after the amount therein equals the entire amount of interest and principal that will be payable at the time of their maturity on all bonds then remaining outstanding. Should the revenues in any one year be insufficient to meet all the aforesaid charges of the Bond Account and should any surplus theretofore created be impaired for any reason, the amount of any such deficiency or impairment shall (unless previously made up out of other funds of the Village available for that purpose) be paid into the Bond Account from the first available revenues the following year and shall be in addition to the other requirements of the Bond Account.

Sec. 7: The Treasurer of the Village and his successors in office shall have charge of the Bond Account and said Bond Account shall be used only for the purpose of paying the principal of and interest on the Bonds herein authorized to be issued. Said Bond Account shall be deposited in a bank or banks which are members of the Federal Deposit Insurance Corporation and shall be kept continuously secured by a pledge to the Village of direct obligations of the United States of America having an aggregate market value, exclusive of accrued interest, at all times at least equal to the balance on deposit in said account or accounts, except that such account or accounts may be secured by a surety bond or bonds; provided, however, that the 20% surplus hereinbefore required by Section 6 hereof may be invested in direct obligations of the United States of America until such times as needed for the payment of the principal of and interest on said Bonds.

Sec. 8: The rates for services rendered by said General Water Works System to said Village for its services or for its corporations, inhabitants, and for other users, shall be reasonable and just, but, in any event, shall at all times be sufficient to produce gross revenues adequate:

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(continued)

- (a) to pay the reasonable and proper expenses of operation and maintenance of the utility, including necessary replacements and depreciation, and
- (b) to pay, when due, the principal of and interest on the Bonds herein authorized, including all charges and excess funds required for the Bond Account under Section 6 hereof.

Sec. 9: Service rendered to the Village by said utility for public purposes, including a reasonable rental for fire hydrants, shall be charged against the Village and shall be paid for by it in monthly installments, as the service accrues, out of the current revenues of the Village collected or in the process of collection, and the tax levy of said Village made by it for its necessary current expenses. The revenue from such service shall be paid into the Revenue Fund hereinbefore referred to.

Sec. 10: It is hereby covenanted and agreed by the Village with the holder or holders of the Bonds herein authorized and with each of them and with the trustees for said holders hereinafter provided for, that the Village and each and every officer thereof will satisfactorily and punctually perform all duties with reference to said utility required by the Constitution and Statutes of the State of Ohio, by this Ordinance and by the mortgage hereinafter provided for, all and each of which duties are hereby defined and established to be duties specifically enjoined by law resulting from an office, trust and station within the meaning of Section 12283 of the General Code of Ohio, and said Village hereby irrevocably covenants, obligates and binds itself so long as any of the bonds are outstanding not to issue additional bonds pledging any portion of the revenues of the System except for revenue producing extensions, replacements and additions; provided, however, that no such additional bonds shall be issued unless the earnings of the system for the fiscal, operating or calendar year immediately preceding the issuance of such additional bonds shall have been equal, after deduction of operation, maintenance and reasonable repair and replacement charges, to 120% of the principal and interest requirements for the next ensuing fiscal year of the Bonds at the time outstanding for the same utility, plus the amounts necessary to pay the principal and interest requirements for the next ensuing fiscal year on account of the proposed issue (such requirement as to principal to be determined by dividing the amount of the next issue by the number of years to the final maturity date of such issue), then and in such case the Village may issue additional mortgage revenue bonds, limited as aforesaid, for revenue producing extensions, replacements and additions to said System, to be secured by a mortgage and pledged revenues secondary in lien to the mortgage and pledge covering the present issue.

Sec. 11: Until the bonds herein authorized shall be fully paid, the Village shall operate such public utility and maintain the same and all parts thereof in constant good order and repair and maintain full insurance which normally would be carried by private companies engaged in a similar type of business in a minimum amount of the full insurable value of said public utility, and shall furnish to the purchaser of said bonds or to the trustees under said mortgage full and satisfactory reports, audits, statements, and other information from time to time in such form and detail as may be requested by either of them, and shall permit any authorized representative of any Bank or Trust Company which may be named Trustee by the Bondholders or any holder of any amount of outstanding Bonds to inspect the General Water Works System and all records and accounts of date of the System at reasonable times.

Sec. 12: In order to assure the payment of the principal of and interest on said Bonds, as the same shall become due and payable, the Mayor

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and the Village Clerk and the Members of the Board of Trustees of Public Affairs of said Village are hereby authorized and directed in the name of and on behalf of the Village to make, execute, acknowledge and deliver to The Winters National Bank and Trust Company of Dayton, Ohio, its successor, or successors, in trust for the purchaser, or purchasers, of said bonds, a good and sufficient first mortgage deed upon all the property of said public utility now owned by the Village and all such property acquired from the proceeds of said bonds, together with all extensions, betterments and additions to said public utility at any time made or acquired by the Village during the time any of said bonds shall remain outstanding and unpaid, consisting of the General Water Works System of the Village and all machinery or equipment used or useful in connection therewith, the distributing mains of said utility, all valves, meters, fire hydrants, manholes, and all other property and supplies forming a part of said public utility, including all real estate and rights in real estate owned by said Village in connection with said public utility. Said mortgage shall be in such form and shall contain such terms, covenants and conditions not inconsistent with this ordinance as shall be approved by the purchaser of said bonds and the Solicitor of said Village. Said mortgage shall contain a condition that in case the Village shall make default in the payment of any of said bonds or the interest thereon or of any of the terms of said mortgage or this Ordinance, the owners or holders of 25% in amount of said bonds remaining unpaid or the trustee for said bondholders, on his or its own initiative, may elect to declare the entire amount of said bonds due and payable and that, upon default in the payment thereof, said mortgage may be foreclosed. Said mortgage shall also provide that the Village shall carry full insurance which normally would be carried by a private company engaged in a similar type of business in a minimum amount of the full insurable value of the public utility, payable to the trustees thereof, as its or their interest may appear.

Should there occur any default in the payment of the principal or interest of any of the bonds authorized, upon the petition of the holders of 25% of the bonds then outstanding and unpaid, any Court having jurisdiction of the action may appoint a receiver to administer the General Water Works System, on behalf of the municipality, with power to provide for the payment of such mortgaged bonds outstanding against said General Water Works System, for the payment of the operating expenses, and to apply the income and the revenues to the payment of said bonds and interest thereon, in accordance with the provisions of this Ordinance, and of the mortgage securing said bonds, such receiver to have the usual powers under the direction of the Court, of receivers in general equity cases, and as provided in Sections 3619-1 to 3619-4 of the General Code of Ohio; provided, however, that the authority herein granted to appoint a receiver shall in no way affect or interfere with the right of foreclosure and sale of the said General Water Works System upon default, as provided in this Ordinance, and in the mortgage securing said bonds.

Sec. 13: In the event of the foreclosure of the mortgage provided for in the preceding section, the purchasers, at such foreclosure sale, shall be entitled to operate said General Water Works System as improved or extended under the terms of the following franchise, which is hereby ordained and established to take effect immediately upon the confirmation of such foreclosure sale, to-wit:

Franchise to construct, maintain and operate a public utility known as The General Water Works System in and of the Village of Centerville, Montgomery County, Ohio, upon and under the Streets, Lanes, Alleys,

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(continued)

Avenues, and other public thoroughfares of said Village, and to fix and prescribe the terms and conditions under which said operation shall be constructed.

Section A - Hereafter when the word "grantee" appears in this franchise it shall be held to mean and include the purchaser or purchasers at judicial sale upon foreclosure of the mortgage on the General Water Works System of the Village of Centerville, Ohio, and any person, association, partnership or corporation who shall, upon such foreclosure, become the owner of said public utility, and this franchise, shall inure to the benefit of such person, association, partnership or corporation and their heirs, executors, administrators, successors and assigns.

Section B - In the event that any judicial foreclosure shall be had of the mortgage hereinbefore described and referred to in this Ordinance and the mortgaged property shall be sold under such proceedings, the grantee is hereby granted the exclusive right for the full period of twenty (20) years from the date of such foreclosure sale or the final confirmation thereof, if such confirmation be then required under Ohio procedure, to construct, maintain, operate and extend, upon, along and under the streets, lanes, alleys, avenues, and other public thoroughfares or property for the purpose of constructing, erecting, maintaining, operating and extending water mains, valves, meters, fire hydrants, manholes and all other apparatus necessary for the operation of the water works system for all purposes.

Section C - This franchise shall be held to apply to and give the exclusive right to own and operate all the property rights and interest therefor owned or operated by the said Village as its public utility, known as its General Water Works System, including the distribution mains with all extensions, betterments, replacements and new equipment which have been made or added thereto by said Village prior to the taking effect of this franchise, together with the extensions and betterments which may thereafter be made from time to time by the grantee during the life of this franchise.

Section D - The grantee, in the construction, maintenance, extension and repair of said public utility, shall not unnecessarily interrupt or obstruct the passage upon any street, lane, alley, avenue or other public thoroughfares or property for the construction or maintenance of any underground construction; it shall replace such thoroughfares and property in as good a condition as before undertaking such work. The grantee shall hold the Village harmless from any liability, cost, damage or expense which shall arise or be caused by the occupancy or use of streets, lanes, alleys, avenues, or other public thoroughfares or property by said grantee.

Section E - The grantee, in the operation of said public utility, shall be subject at all times to such reasonable regulations of the Council of the said Village or its corporate successor, as shall not interfere with the ability of such grantee to earn a fair return upon the reproduction cost of said utility, less depreciation, after proper allowances for operation and depreciation or replacement.

Section F - For a period of ten (10) years after the taking effect of this franchise, the grantee may charge the following rates for supplying the services of the System to the corporation and inhabitants thereof:

- A. Minimum charge up to and including 7,500 gallons, \$4.50 per quarter.
- B. Next 20,000 gallons per quarter \$0.25 per 1,000 gallons.

- C. All over 27,500 gallons per quarter \$0.20 per 1,000 gallons.
- D. Private Fire Hydrants, \$15.00 per year.
- E. Public Fire Hydrants, \$15.00 per year

Water services rendered to the Village by said utility for public purposes, shall be charged against the Village and shall be paid for by it in quarterly installments as the same accrues, out of the current revenues of the Village collected or in the process of collection. The payments to be made by said Village to said grantee for such services to be furnished to the Village, shall be paid to the grantee quarterly on or before the 10th days of March, June, September and December in each year during the terms of the contract; and, in order to provide means for the payment of the amount to be paid by said Village under this contract, the said Village in its annual budget and taxation and appropriation Ordinances each during the terms of this contract, obligates itself to include and to levy a sufficient sum on all the taxable property in the said Village to pay for the services rendered as aforesaid, the proceeds of which levy shall be placed in a fund to be designated as the "General Water Works System Fund" and which taxes, when collected, shall be held inviolate for that purpose.

Section G - In the event that the above rates, which are minimum rates, not maximum rates, shall prove insufficient to enable said grantee to earn, after payment of operating expense, maintenance and a reasonable allowance for depreciation, a net return of 6% upon the reproduction cost of said utility after making reasonable allowances for depreciation of said utility since the time of its installation, and after taking into consideration the adequacy of the maintenance thereof, the Village, by appropriate ordinances, shall raise such rates sufficiently to produce such return, as provided in Section 614-44 of the General Code of Ohio, except that it shall not be necessary for said Village to wait until one year before the expiration of said period, but the duty to increase shall arise upon request of the grantee, forthwith, whereupon, in the event that such action by the Village is not taken, complaint may be filed to the Public Utilities Commission or its successors in office, and proceedings had before said Commission as provided in Section 614-44, et seq., of the General Code of Ohio. The grantee's right to complain to said Commission shall be cumulative to its right right to enforce the performance of the above imposed duty on the Village under the provisions of Section 12283 of the General Code of Ohio.

Section H - For the second ten year period of this franchise, the rates to be charged by said grantee shall be fixed by the Council of said Village by and with the consent of the grantee or by the Public Utilities Commission or its successors in office in the event of the inability of the Village and grantee to agree, but, in any event, the rates shall be such as to enable the grantee to earn a minimum of 8% upon the reproduction cost of said plant, less depreciation, as hereinbefore provided, as determined by the Public Utilities Commission after payment of operating expenses, maintenance and proper allowance for depreciation or replacement.

Section I - This franchise shall take effect immediately upon the confirmation by the Court of the foreclosure sale of the property covered by the mortgage of the Village to the purchaser of the Bonds secured by said mortgage and the trustee designated therein.

Sec. 14: Each Section of this Ordinance, and each sub-division of any Section thereof is hereby declared to be independent, and the finding or holding of any Section or subdivision of any Section thereof to be invalid or void shall not be deemed or held to effect the validity of any other Section or subdivision of this Ordinance.

Sec. 15: This Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed this 8th day of May, 1939.

Luella Brown CLERK

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MAYOR

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ORDINANCE NO. 14 - 1939

ACCEPTING APPLICATION FOR ANNEXATION OF TERRITORY

Be It Ordained by the Council of the Village of Centerville, Montgomery County, Ohio, three-fourths (3/4) of the members elected thereto concurring ;

Sec. 1. That the application of said Village of Centerville for the annexation of the following described contiguous territory:

"Situate in the Township of Washington, in the County of Montgomery and State of Ohio and being a part of the Southwest Quarter of Section 19, Town 2, Range 6, MRs. and described as follows:

"Beginning at an Iron Pin in the Southwest Corner of Section 19 in the center of the Centerville-Bellbrook Road and in the present corporation line of the Village of Centerville; thence with the West line of said section and the present corporation line North 2 degrees - 10 minutes East - 2697.2 feet to an Iron Pin in the Northeast Corner of the Corporation Limits of the Village of Centerville; thence South 88 degrees - 59 minutes East 1212.4 feet to an Iron Pin; thence South 2 degrees - 15 minutes West - 2686-3 feet to an Iron Pin in the South line of said section and the center of the Centerville-Bellbrook Road; thence with the South line of said section North 89 degrees - 30 minutes West - 1208.5 feet to the place of beginning, being the same territory as described in Deed Book 765, Page 150 of the Deed Records of Montgomery County."

an accurate map of which territory together with the petition for its annexation and other papers relating thereto and a certified transcript of the proceedings of the County Commissioners in relation thereto are on file with the Village Clerk of said Village, be and the same is hereby accepted.

Sec. 2. This ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed this 8th day of May, 1939.

Luella Brown CLERK

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MAYOR