

ORDINANCE NO. 3 -- YEAR 1937.

AN ORDINANCE TO DECLARE THE NECESSITY OF CONSTRUCTING A NEW MUNICIPAL WATER WORKS SYSTEM IN THE VILLAGE OF CENTERVILLE, OHIO; TO AUTHORIZE THE ISSUANCE OF \$31,000.00 MORTGAGE REVENUE BONDS OF SAID VILLAGE UNDER SECTION 12 OF ARTICLE XVIII OF THE CONSTITUTION, AND THE UNIFORM BOND ACT, FOR THE PURPOSE OF CONSTRUCTING A NEW MUNICIPAL WATER WORKS SYSTEM; TO AUTHORIZE A MORTGAGE OF SAID SYSTEM AND THE EXTENSIONS THERETO WITH A PLEDGE OF THE REVENUES THEREOF; AND TO PROVIDE A FRANCHISE TO BECOME EFFECTIVE IN THE EVENT OF FORECLOSURE OF SAID MORTGAGE.

WHEREAS, it is necessary to construct a new Municipal Water Works System of the Village of Centerville, Ohio, and for such purpose, to issue mortgage Revenue Bonds under the provisions of Section 12, of Article XVIII of the Constitution and the Uniform Bond Act, as amended; and

WHEREAS, it is contemplated that the cost of constructing a new Municipal Water Works System will be paid by the issuance of mortgage Revenue Bonds; 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 the Bonds as sixteen (16) years;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF CENTERVILLE, STATE OF OHIO:

SECTION 1:

That it is hereby declared necessary in order to protect the health, safety and welfare of the inhabitants of the Village to construct a Water Works System of said Village. That in order to raise money with which to pay the cost of constructing a Municipal Water Works System of the Village (hereinafter sometimes referred to as the "utility" or "public utility", and which shall, at all times, be interpreted as including the distribution mains thereof) by the construction of a well supply, pumping plant, storage tank, the purchase of lands and right-of-way in connection therewith, interest during construction, and engineering, legal and administrative charges in connection with construction of the project, (herein called the "Project", the completed Project, and all additions and improvements thereto, and replacements thereof subsequently constructed or acquired being herein called the "System"), it is deemed necessary by the Council of the Village of Centerville, Ohio, to issue and sell mortgage Revenue Bonds of the Village in the aggregate amount of \$31,000.00 which shall be secured by a mortgage upon the property and an exclusive first lien on and payable primarily from the gross revenues of said 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 the covenant of said Village to maintain certain rates and collect certain charges for the facilities and service afforded by said utility; provided, 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.

SECTION 2:

That said Bonds shall be of the following description:

TITLE OF BONDS: FIRST MORTGAGE WATER WORKS REVENUE BONDS.

DATED: FEBRUARY 1st, 1937.

DENOMINATIONS: \$1,000.00.

NUMBERS: One to thirty-one (1 to 31) inclusive.

MATURITIES: One bond of \$1,000.00 shall mature on September 1, 1938, and two bonds of \$1,000.00 each shall mature starting September 1, 1939 to September 1953, inclusive, which maturities are hereby determined to be in substantially equal annual installments.

INTEREST RATE: Five (5) per cent per annum, payable semi-annually on the 1st day of March and the 1st day of September in each year, beginning September 1, 1937.

PLACE AND MEDIUM OF PAYMENT: At the office of the Village Treasurer, Centerville, Ohio, in such funds as are on the respective dates of payment of the principal of and interest on the Bonds, legal tender for the payment of debts due the United States of America.

SECTION 3:

vision, the statutes and the Ordinance under which issued. Each of said bonds shall express upon its face the purpose for which the same is issued; that said bond is payable only out of the gross revenues of the 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 fiscal officer and sealed with the Corporate Seal. Each of the interest coupons attached to said Bonds shall bear the facsimile signature of the fiscal officer. Said Bonds shall be prepared, issued and delivered under the direction of the Mayor and the fiscal officer. 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 owners 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.

SECTION 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 2295-27, 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 Clerk of the Village of Centerville, Ohio, but not for less than their par value and accrued interest. 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 Payment Fund to be applied to the payment of the principal and interest of said Bonds in the manner provided by law.

SECTION 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 members 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 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 and Interest Retirement Fund Account" (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.

SECTION 6:

From and after the delivery of any Bonds issued under the provisions of this Ordinance the entire income and revenues of said 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 "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.

SECTION 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.

SECTION 8:

The rates for services rendered by said 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:

- (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 said Bonds

SECTION 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.

SECTION 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.

SECTION 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 Bond holders or any holder of any amount of outstanding Bonds to inspect the Water Works System and all records and accounts of data of the System at reasonable times.

SECTION 12:

In order to secure the payment of the principal of and interest on said bonds as the same shall become due and payable, the Mayor and the Clerk, being the fiscal officers of the Village, and the President and Clerk of the Board of Trustees of Public Affairs, are hereby authorized and directed in the name of and on behalf of the Village, to make, execute, acknowledge, and deliver to the purchaser of said bonds or to a trustee to be selected by such purchaser, and to his heirs or to 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 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 Water Works System, on behalf of the municipality, with power to provide for the payment of such mortgaged bonds outstanding against said 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 Water Works System upon default, as provided in this Ordinance, and in the mortgage securing said bonds.

SECTION 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 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 Water Works System in and of the Village of Centerville, Montgomery County, Ohio, upon and under the

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

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 Water Works System of the Village of Centerville, Ohio, and any person, association of persons, 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 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 the 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.
- 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 year during the term 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 "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 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.

SECTION 14:

Each Section of this Ordinance, and each subdivision 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.

SECTION 15:

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

PASSED; January 29, 1937.

Approved: L. E. Bradford (Signed)
Mayor

Attest: C. F. Zimmerman (Signed)
Clerk of Council.

.....