

ORDINANCE NO. 76

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF \$105,000 OF MORTGAGE REVENUE BONDS OF THE VILLAGE OF OTTOVILLE, OHIO, UNDER ARTICLE XVIII, SECTION 12 OF THE OHIO CONSTITUTION, FOR THE PURPOSE OF PAYING PART OF THE COST OF CONSTRUCTING A WATERWORKS SYSTEM FOR THE VILLAGE; AUTHORIZING A MORTGAGE OF SAID SYSTEM AND EXTENSIONS THERETO WITH A PLEDGE OF THE REVENUES THEREOF; PROVIDING A FRANCHISE TO BE EFFECTIVE IN THE EVENT OF FORECLOSURE, AND DECLARING AN EMERGENCY.

WHEREAS, by Ordinance No. 72, adopted October 4, 1954, Council of the Village of Ottoville, Putnam County, Ohio, declared the necessity of constructing a waterworks system for the village, its operation as a public utility, and issuing \$80,000 of mortgage revenue bonds under authority of Article XVIII, Section 12 of the Ohio Constitution to pay part of the construction thereof, the balance of the cost to be paid from an issue of \$35,000 bonds authorized by a vote of the electorate November 2, 1954, and

WHEREAS, no referendum petitions were filed against said improvement within the time prescribed by law and the village desires to proceed with construction thereof, and

WHEREAS, it is now necessary to issue \$105,000 mortgage revenue bonds instead of \$80,000 as previously contemplated, which amount can, however, be serviced by the rates set forth in said Ordinance No. 72,

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Ottoville, Putnam County, Ohio, three-fourths of all of the members elected thereto concurring:

SECTION 1. That it is necessary to issue first mortgage waterworks revenue bonds of the Village of Ottoville, Ohio, in the principal amount of \$105,000, to pay part of the cost of constructing a waterworks system for the village, including all expenses incidental thereto. Said bonds shall be issued under authority of Article XVIII, Section 12, of the Constitution of Ohio, and shall be secured by a mortgage and a first lien on and

payable primarily from the gross revenues and properties of said waterworks system and all extensions, improvements, replacements and alterations at any time made in respect thereto, after provision only for the reasonable operating 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 services afforded by said utility, provided, however, that nothing in this ordinance shall be construed as pledging the general credit of the Village of Ottoville, Putnam County, Ohio, to the payment of said bonds or any part thereof, or the interest thereon.

SECTION 2. Said bonds shall be issued in the principal amount of \$105,000, for the purpose aforesaid. They shall be dated June 1, 1955, and bear interest at the rate of four (4%) per cent per annum, payable December 1, 1955, and semi-annually thereafter, on June 1 and December 1 of each year, until the principal sum is paid, as evidenced by the coupons to be attached to said bonds. Said bonds shall be numbered from 1 to 115, inclusive, all of said bonds to be of the denomination of \$1,000, each except bonds numbered 2, 4, 6, 8, 10, 12, 14, 16, 18, 32, 35, 38, 41, 44, 62, 66, 70, 86, 91 and 96, of the denomination of \$500, each, aggregating \$105,000 in principal amount. Said bonds shall mature in their consecutive numerical order on December 1 of each of the following years, in the following amounts:

\$1,000 in 1958;  
\$1,500 from 1959 to 1967, inclusive;  
\$2,000 from 1968 to 1973, inclusive;  
\$2,500 from 1974 to 1978, inclusive;  
\$3,000 from 1979 to 1983, inclusive;  
\$3,500 from 1984 to 1986, inclusive;  
\$4,000 from 1987 to 1989, inclusive;  
\$4,500 from 1990 to 1992, inclusive; and  
\$5,000 from 1993 to 1995, inclusive;

provided, however, that bonds of this issue maturing after

December 1, 1965, shall be callable, as a whole or in part, in their inverse numerical order on said date, or on any interest payment date thereafter, at par and accrued interest, plus a premium of 3% of par if called on or before June 1, 1975; plus a premium of 2% of par if called thereafter and on or before June 1, 1985; and plus a premium of 1% of par, if called thereafter and prior to maturity. Council shall by resolution determine the amount of bonds to be called and the date of redemption, and notice of any such call shall be given to the paying agent and to the Trustee hereinafter named, and to the original purchaser, and shall be published in a newspaper of general circulation in Cincinnati, Ohio, at least thirty (30) days prior to the date of redemption. Said bonds shall be designated, "First Mortgage Waterworks Revenue Bonds" and both principal and interest of said bonds shall be payable in lawful money of the United States of America at The Provident Savings Bank & Trust Company, Cincinnati, Ohio.

SECTION 3. Upon the face of each of said bonds shall be recited a reference to the constitutional provision and the ordinance under which issued. Each of said bonds shall express upon its face the purpose for which the same is issued and that it is a negotiable instrument but is payable only out of the gross revenues of the waterworks system and the extensions thereto, and is secured 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 years after the date of sale of said utility upon foreclosure. Said bonds shall be signed by the Mayor and 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 printed or lithographed thereon. Said bonds shall be prepared, issued and delivered under the direction of the Mayor and Village Clerk as provided in this ordinance.

SECTION 4. Said bonds are hereby awarded and shall be sold and delivered to The Weil, Roth and Irving, Co., Cincinnati, Ohio, upon their payment therefor in accordance with their written offer to purchase said bonds, which offer, now on file with council, is hereby accepted.

SECTION 5. Out of the proceeds from the sale of said bonds, \$4,200.00, and the accrued interest from date to date of delivery, shall be deposited in a separate fund designated as the "Bond and Interest Retirement Account" (hereinafter sometimes referred to as the "Bond Account" and created by Section 6 of this ordinance), for the payment of principal and interest during construction of said system. The balance of said proceeds 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 shall be used only for the purpose of paying for constructing the waterworks system for the village and all things necessary and incidental thereto. Said account 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. Any balance remaining in said fund after the completion of the improvements and the payment of all expenses in connection therewith, shall be transferred to the officers in charge of the Sinking Fund or Bond Retirement Fund to be by them placed in the Bond Account and shall be applied only to the payment of the interest and principal of the bonds

herein authorized and for no other purpose. The Trustee appointed herein is hereby designated the depository for the monies payable into the Bond Account under the provisions of this ordinance.

SECTION 6. Upon completion of the construction and commencement of operation of the waterworks system, but not later than June 1, 1958, the entire income and revenues of said waterworks system shall be set aside and deposited by the Treasurer in a special and separate fund which is hereby created and designated as the "Waterworks System Revenue Fund." Said Revenue Fund shall be administered as follows:

(a) there shall first be paid from said Revenue Fund the reasonable cost of operation and maintenance of said waterworks system; and (b) there shall also be paid from said fund into a fund hereby created and designated as the "Bond and Interest Retirement Account" (herein sometimes referred to as the "Bond Account"), all of the net earnings of the system during the calendar years 1956, 1957, and 1958, and thereafter 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 payment and bond maturity date, plus an amount equal to 20% of the principal and interest charges of said Bonds until there is a surplus in said Bond Account in addition to current principal and interest charges, equal at least to the principal and interest charges for the succeeding two years, which surplus shall be maintained in said Bond Account while any of the Bonds are outstanding; provided, however, that no future payments need be made into said Bond Account after the amount held therein equals the 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 therefor created be impaired for any reason, the amount of 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 officer or officers in charge of the Sinking Fund or Bond Retirement Fund and their 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 the 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 two year principal and interest surplus hereinbefore required to be accumulated 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 waterworks system to the village for its services or for its corporations, inhabitants and other users, shall be reasonable and just, and in any event shall be at all times 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 the interest on the bonds herein authorized, including all charges and excess funds required for the Bond Account under Section 6 hereof.

SECTION 9. It is hereby covenanted and agreed by the village with the holder or holders of the bonds herein authorized and provided for, that the village and each and every officer thereof will satisfactorily and punctually perform all duties with references 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 the duties specifically enjoined by law resulting from an office, trust and station within the meaning of Section 2731.01 of the Ohio Revised Code. The 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 revenues producing extensions, replacements, additions; provided, however, that no such additional bonds shall be issued unless, upon recommendation of the Mayor, the village council determines that the net earnings of the waterworks system will be increased by reason of the extensions, additions and/or replacements to be constructed with the proceeds of such additional revenue bonds then to be issued, in which event the village may procure the certificate of an independent engineer of good reputation satisfactory to the Trustee, setting forth an estimate of the amount by which the annual net earnings of the village waterworks system will be increased by reason of the expenditure of such proceeds, and thereupon an amount equal to such estimated increase

of the annual net earnings of the waterworks system for the two preceding years; and it is then determined that the average annual net earnings for the preceding two years, increased in such case by the amount of such estimated increase in annual net earnings, shall be equal at least to 1.50 times the greatest amount of money which will be required for principal and interest payments in any one year on all of the bonds to be outstanding immediately after the issuance of such additional bonds, including the bonds previously issued and the bonds then to be issued, then and in that event the village may issue additional mortgage revenue bonds, limited as aforesaid for revenue producing extensions, additions and/or replacements to the waterworks on a parity with the bonds herein authorized, said additional bonds to be secured equally and ratably by the mortgage hereinafter provided for and by the pledge of the revenues of the waterworks system.

Provided, further, that if the earnings of such waterworks system for the fiscal operating or calendar year immediately preceding such issuance of additional bonds, shall have been equal, after deduction of operating, maintenance, and reasonable repair, replacement and depreciation charges to 120% of the principal and interest requirements for the next ensuing fiscal year, of any bonds at the time outstanding and secured by a pledge of revenues of said system, plus the amounts necessary to pay the principal and interest requirements for the next ensuing fiscal year on 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 the issue) then and in such event the village may issue additional mortgage revenue bonds, limited as aforesaid for revenue producing extensions, replacements and additions to said waterworks system, to

be secured by a mortgage and pledged revenues secondary in lien to the first mortgage.

SECTION 10. Until the bonds herein authorized shall be fully paid, the village shall operate said waterworks system and maintain the same and all parts thereof in constant good condition and repair and maintain insurance upon the same, of a kind and in an amount which normally would be carried by private companies engaged in a similar type of business and shall by its Village Clerk, furnish to the purchasers of said bonds and to the Trustee under said mortgage, on forms supplied by them, full and satisfactory monthly reports, audits, statements, and other information from time to time in such form and detail as may be requested by either of them from and after the time that this waterworks shall have been constructed and placed on an operating basis, and shall permit any authorized representative of the purchasers or the holders of ten (10%) per cent in aggregate principal amount of the bonds at the time outstanding to inspect the waterworks system and all records, accounts and data of the system at all reasonable times.

SECTION 11. In order to secure the payment of the principal of and the interest on said bonds as the same shall become due and payable, the Mayor and Village 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 Provident Savings Bank and Trust Company of Cincinnati, Ohio, in trust for the purchaser or purchasers of said bonds, a good and sufficient first mortgage deed upon all of the waterworks property now owned by the village or hereafter acquired, together with all extensions, betterments and additions to said utility made during the time any of said bonds shall remain outstanding and unpaid, constituting the

waterworks system of the village. Said mortgage shall be in such form and 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 twenty-five (25%) per cent in amount of said bonds remaining unpaid or the trustee for said bondholders, on 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 in an amount which normally would be carried by a private company engaged in a similar type of business and in a minimum amount of the full insurable value of the waterworks system, payable to the trustee thereof, as its interest may appear. Charges of the Trustee under its contract with the village shall be paid as rendered from the Waterworks System Revenue Fund.

SECTION 12. In the event of any litigation commenced or pending in any court having jurisdiction, in which the village is a party involving the said waterworks plant and system, the operation of the same, the revenue from the same, or wrongful performance or failure to perform any of the terms and conditions of this ordinance, and there is at such time any default in the payment of any of such bonds or interest when and as the same fall due, the court, having jurisdiction of such cause, may appoint a receiver to administer and operate said waterworks plant and system on behalf of the Village of Ottoville, with full power to pay and to provide for the payment of such mortgage bonds outstanding against said waterworks plant and system, and

for the payment of the operating expenses, and to apply the income and revenue to the payment of such bonds and interest thereon in accordance with the ordinance and the provisions of the mortgage securing such indebtedness. The power of such receiver to provide for the payment of bonds that are due and outstanding shall not be construed as pledging the general credit of said village to the payment of said bonds, or any part thereof or interest thereon. Such receiver shall have such power, under the direction of the court, as receivers in general equity cases, and as provided by Section 713.09 of the Ohio Revised Code.

SECTION 13. In the event of the foreclosure of the mortgage provided for in Section 11, the purchaser or purchasers at such foreclosure sale shall be entitled to operate said waterworks 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 WATERWORKS SYSTEM IN AND FOR THE VILLAGE OF OTTOVILLE, OHIO, UPON AND UNDER THE STREETS, LANES, ALLEYS, AVENUES, AND OTHER 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 of the waterworks system of the Village of Ottoville, 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 property hereinbefore described and referred to in this ordinance and the mortgaged property shall be sold under such proceedings, the grantee is hereby granted the right for the full period of twenty 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 and public property in the said village and in the County of Putnam, State of Ohio, with the full and necessary privileges for the use of 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 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 theretofore owned or operated by said village as its public utility, known as its waterworks 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 thoroughfare or property, and whenever it shall in any way open any of said thoroughfares or property, for the construction or maintenance of any under-

ground 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 successors, and said village 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 allowance for operation and depreciation or replacement.

Section F. For a period of ten years after the taking effect of this franchise, the grantee may charge the following rates for supplying services of the waterworks system to the corporation and its inhabitants, and other users: twenty (20%) per cent in excess of the maximum rates and charges for such service in effect prior thereto.

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 monthly installments as the same accrues, out of the current revenues of the village collected or in the process of collections; and, in order to provide means for the payment of the account to be paid by said village under this contract, the said village in its annual budget and taxation and appropriation ordinance each year during the term of this contract, obligates itself to include and 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 "Waterworks System Fund" which

taxes, when collected, shall be 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 expenses, maintenance and a reasonable allowance for depreciation, a net return of 6-1/2% upon the reproduction cost of said utility after making reasonable allowances for depreciation of said utility since the time of installation and after taking into consideration the adequacy of the maintenance thereof, the village, by appropriate ordinance, shall raise such rates sufficiently to produce such return as provided in Sections 4909.34 to 4909.36, inclusive, of the Ohio Revised Code, except that it shall not be necessary for the said village to wait until one year before the expiration of said period, but duty to increase shall arise upon request of the grantee, forthwith, whereupon, in event that such action by the village is not taken, complaint may be filed with the Public Utilities Commission or its successors in office and proceedings had before said Commission as provided in Section 4909.34, et seq., of the Revised Code of Ohio. The Grantee's right to complain to said Commission shall be cumulative to its right to enforce performance of the above imposed duty on the village under the provisions of Section 2731.01 of the Ohio Revised Code.

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 event of the failure of the village and the grantee to agree, but in any event the rates shall be such as to enable the grantee to earn a minimum of 6-1/2% upon the reproduction cost of said utility, less depreciation, as hereinbefore provided, as determined by the public utilities commission after payment

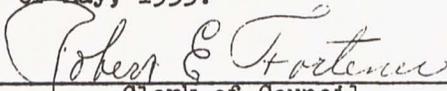
of operating expenses, maintenance and proper allowance for depreciation or replacement.

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 the said mortgage and the trustee designated therein.

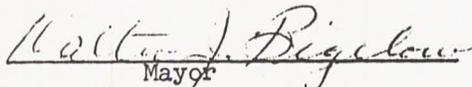
SECTION 14. Should it be judicially determined by a court having jurisdiction to pass upon the validity of this ordinance or the mortgage or bonds herein authorized, that any provision of the ordinance is beyond the powers of this council or said village or is otherwise invalid, then such decision shall in no way affect the validity of said mortgage or the validity of said bonds, or any proceedings related thereto, except as to the particular matters found by such decision to be invalid.

SECTION 15. This ordinance is hereby declared to be an emergency measure in that the public peace, safety, health and welfare of the inhabitants of the village require the construction without delay of the waterworks system, and it shall take effect immediately upon its passage and approval by the Mayor.

Adopted this 16th day of May, 1955.

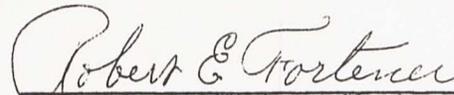
  
Clerk of Council

Approved this 16th day of  
May, 1955.

  
Mayor

C E R T I F I C A T E

The undersigned, Clerk of the Village of Ottoville, Ohio, hereby certifies the foregoing to be a true and correct copy of an ordinance passed by the council of said village on the 16th day of May, 1955.

  
Village Clerk