

the redemption of the bonds at maturity. Such tax levy is required by the provisions of article XII, section 11, of the Ohio constitution.

(2) The transcript fails to show that the bonds have been offered to and rejected by the board of sinking fund commissioners of the school district as required by section 7619 G. C., although the district has an outstanding bonded indebtedness.

(3). The transcript fails to show affirmatively that the items of indebtedness to be refunded are such as constitute valid and binding obligations of the district.

The transcript is deficient in other respects, but in view of the objections above stated, I deem it unnecessary to set them forth in detail.

I therefore advise the industrial commission not to accept the bonds.

Respectfully,

JOHN G. PRICE,
Attorney-General.

2082.

BOARD OF EDUCATION—TWO BOND ISSUES AUTHORIZED BY ELECTORS OF SCHOOL DISTRICT OF CITY OF MIDDLETOWN AGGREGATING \$200,000—BONDS NOT ISSUED—CAN BOARD BY RESOLUTION MAKE CORRECTION WHERE ELECTORS AUTHORIZE “EXEMPTION OF INTEREST AND SINKING FUND LEVIES ON ACCOUNT OF OUTSTANDING BONDS FROM ALL TAX LIMITATIONS” BUT BY INADVERTENCE WORDS ARE NOT INCLUDED “OF ALL BONDS AUTHORIZED TO BE ISSUED BY VOTE OF ELECTORS AT ELECTIONS HELD PRIOR TO DATE OF JANUARY 20, 1920”—BOARD AUTHORIZED TO PASS SUCH RESOLUTION.

No authority is conferred on a board of education by sections 5649-6a and 5649-6b of the General Code to submit to the electors of their school district the question of exempting from all tax limitations interest and sinking fund levies for any specific bonded indebtedness of the district. The question submitted must be that of exempting from all tax limitations the necessary interest and sinking fund levies on account of all outstanding bonded indebtedness of the district, which term includes not only bonds issued prior to January 20, 1920, but also bonds authorized to be issued prior to that date by a vote of the electors or by a resolution of the board of education which have not actually been issued until after that date.

After the approval of the electors of a school district is secured in the manner provided by sections 5649-6a and 5649-6b, a board of education of a school district may levy taxes irrespective of the limitations of sections 5649-2, 5649-3a and 5649-5b to pay interest upon and create a sinking fund for the redemption of the bonded indebtedness of the district including not only bonds issued and outstanding January 20, 1920, but also bonds not issued but authorized to be issued prior to that date either by a vote of the electors or by a resolution of the board, even though in the resolution of the board of education submitting such tax exemption question to the electors no specific mention was made of such authorized but not yet issued bonds.

COLUMBUS, OHIO, May 16, 1921.

HON. ISAAC C. BAKER, *Prosecuting Attorney, Hamilton, Ohio.*

DEAR SIR:—I have your letter of March 24, 1921, together with the enclosures therein mentioned, requesting my opinion as follows:

"The board of education of the Middletown school district on February 11, 1916, passed a resolution declaring it necessary to take steps to acquire real estate for and to build and equip a new high school building. They also voted to issue bonds in the sum of \$200,000.00 for the purpose of securing real estate for erecting and equipping a new high school building in said school district and by their resolution they resolved that a special election should be called for the purpose of submitting to the electors of said school district the matter of the issuance of these bonds. The election was had and the bonds were voted upon favorably.

They then passed another resolution when they found that this amount would not be sufficient to erect and finish a new high school and to build two grade schools. In this resolution they resolved to submit to the voters the proposition of issuing an additional \$500,000.00 in bonds and by their resolution provided that it should be voted upon on the fourth day of November, 1919. The matter was submitted to the electors and was favorably voted upon.

On June 19, 1920, a resolution was duly passed by the board to submit to the electors of Middletown school district, the proposition of exempting from all tax limitations, all subsequent levies for interest and sinking fund purposes on account of the bonded indebtedness of said school district. This was submitted to the electors on August 10, 1920, the form of votes being as follows:

'For exempting interest and sinking fund levies on account of outstanding bonds from all tax limitations "yes".

For exempting interest and sinking fund levies on account of outstanding bonds from all tax limitations "no".'

This resolution passed by a vote of approximately two to one.

Now these \$700,000.00 worth of bonds had not been issued, although the electors had empowered the board to issue them. So you see by the resolutions of this board, that they, by inadvertence, left out 'and of all bonds authorized to be issued by vote of the electors at elections held prior to date of January 20, 1920.' The board since said election has passed a resolution to correct the mistake in a similar resolution.

In taking the matter up with the auditor of this county, he had his doubts as to whether or not this could be corrected in order to exempt these bonds which are ready to be issued. The school board accordingly took the matter up with Shaffer and Williams, bond attorneys of Cincinnati, Ohio, and they advised them to pass this amended resolution, as in their opinion it would cure the defect, and they prepared the resolution and forwarded it on to the board of education and it has been duly passed by them.

The question upon which we would like your opinion in order that there may be no question as to the duty of the auditor in this matter, is whether or not in your opinion this mistake is properly corrected and whether or not the interest and sinking fund levies on account of these bonds which have not been issued, but which have been voted upon by the people, are exempt from all tax limitations. We should like your opinion on this in order that we might be fully informed as to the procedure that has taken place by this board.

I am likewise sending herewith a complete copy of the procedure of the board, and would especially request that you return the same to my office after you have given your opinion in the matter."

I also have before me a letter, dated April 15, 1921, from Messrs. Shaffer &

Williams, attorneys of Cincinnati, Ohio, in which they at some length set forth their opinion in support of the view that interest and sinking fund levies necessary for the bonds referred to in your letter as having been authorized by a vote of the electors prior to January 20, 1920, but not yet issued, are outside of all tax limitations.

Your question is largely determined by an interpretation of the language of sections 5649-6a and 5649-6b G. C. which I quote:

"Section 5649-6a. The commissioners of any county, the trustees of any township, the council or other legislative body of any municipal corporation, or the board of education of any school district having a bonded indebtedness on January 20, 1920, or having authority by a vote of the electors at an election held prior to said date, to issue such bonds, or having provided for the issuance of such bonds without a vote of the electors by ordinance or resolution adopted on or before said date, whether the effectiveness thereof was postponed until after said date by laws or charter provisions requiring publication or subjecting such ordinance or resolution to a referendum, or not, may, at any regular or primary election held in the year 1920 or in any year thereafter during the life of any such bonds submit to the electors of such county, township, municipal corporation, or school district, in the manner provided by sections 5649-5 and 5649-5a of the General Code the proposition of exempting from the limitations of sections 5649-2, 5649-3a and 5649-5b of the General Code all subsequent levies for interest and sinking fund purposes on account of such bonds. In the resolution providing for such submission, the rate of taxes that would be required for such purposes in the next succeeding year on the basis of the duplicate made up in the year in which the resolution is adopted shall be set forth, together with the number of years during which the exemption would apply. The form of ballots cast at such election shall be:

'For exempting interest and sinking fund levies on account of outstanding bonds from all tax limitations "Yes".

For exempting interest and sinking fund levies on account of outstanding bonds from all tax limitations "No."'

"Section 5649-6b. If a majority of the electors voting thereon at such election vote in favor thereof, it shall be lawful to levy taxes within such taxing district for such purposes during the remainder of the life of such bonds at such rate, annually, as may be necessary to pay the interest on such bonds and to provide a sinking fund for their retirement at maturity, irrespective of any of the limitations prescribed by the sections of the General Code mentioned in section 1 (G. C. 5649-6a) of this act."

From the language of section 5649-6a, just quoted, it was clearly the legislative intent to authorize a board of education to submit to a vote of the electors of their school district the question of exempting from all tax limitations interest and sinking fund levies for all bonded indebtedness of such school district. It seems also from the language used to have been the legislative intent that the term "all bonded indebtedness should include not only bonds issued and outstanding on January 20, 1920, but also all bonds authorized to be issued before that date, either by a vote of the electors or by a resolution of the board of education. This intent is particularly clear from the wording of the form of the ballot required by section 5649-6a to be used at an election held thereunder.

The sections quoted do not authorize a board of education to submit to the

electors the question of exempting from all limitations of taxation interest and sinking fund levies necessary for any specific bonded indebtedness. On the contrary, the language used indicates a legislative intent that the question if submitted at all must be submitted as to all bonds of the district whether issued and outstanding on January 20, 1920, or merely authorized prior to that date in the manner defined in the act.

If my interpretation of the law quoted is correct, then of necessity the action of the board of education of Middletown city school district and the results of the election were either illegal and a nullity or they accomplished the removal of interest and sinking fund levies necessary for the two bond issues authorized by the electors prior to January 20, 1920 from all tax limitations.

I do not have before me a certified copy of the resolution of the board of education providing for such submission to the electors, but I assume that the third paragraph of your letter correctly quotes the language of the resolution. If this assumption is correct, I believe the language of the resolution "bonded indebtedness of said school district", construed in the light of the language of section 5649-6a, is broad enough to include not only bonds issued and outstanding January 20, 1920, but also bonds authorized to be issued prior to that date either by a vote of the electors or by proper resolution of the board of education.

I have some doubt as to the curative effect of the action of the board of education in adopting the resolution correcting "nunc pro tunc" their resolution of June 19, 1920. If the board of education were authorized by law to submit to the electors the tax exemption question as to any particular bond issue or merely as to outstanding bonds as distinguished from authorized but not yet issued bonds, the result of the election and the extent of the authority created thereby would be determined by what the board of education actually did as revealed by their record, rather than by what they intended to do but failed to record; otherwise the electors would be unable to intelligently exercise their right of franchise. As applied to the situation here presented, I doubt the authority of the case of *Howard, et al. vs. Aufrance, et al.*, decided by the court of appeals of Butler county, Ohio, and cited in letter of Messrs. Shaffer & Williams, as the facts there presented were to my mind entirely different from the facts presented in your letter.

However, in view of my opinion as to the interpretation of the language of section 5649-6b, the effect of the curative resolution is immaterial.

I am therefore of the opinion that the necessary interest and sinking fund levies for the bonds referred to, aggregating \$700,000, may be made outside of all the tax limitations.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2083.

APPROVAL, BONDS OF FRANKLIN COUNTY, OHIO, IN AMOUNT OF \$340,000 FOR RESTORATION OF SHADEVILLE BRIDGE.

COLUMBUS, OHIO, May 16, 1921.

Industrial Commission of Ohio, Columbus, Ohio.