

3146.

APPROVAL, BONDS OF ALLEN COUNTY, \$40,400, FOR ROAD
IMPROVEMENTS.

COLUMBUS, OHIO, May 26, 1922.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

3147.

APPROVAL, BONDS OF HARDIN COUNTY, \$117,000, FOR ROAD
IMPROVEMENTS.

COLUMBUS, OHIO, May 26, 1922.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

3148.

APPROVAL, BONDS OF HARDIN COUNTY, \$58,500, FOR ROAD
IMPROVEMENTS.

COLUMBUS, OHIO, May 26, 1922.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

3149.

STATE TEACHERS RETIREMENT SYSTEM—WHERE BOARD OF
EDUCATION REFUSES OR NEGLECTS TO PAY NORMAL OR DE-
FICIENCY CONTRIBUTIONS TO SAID SYSTEM—HOW RECOURSE
OBTAINED—WHEN BOARD OF EDUCATION MAY BORROW
MONEY SINCE OPERATION OF GRISWOLD ACT.

1. *Where a board of education refuses or neglects to pay its normal or deficiency contributions to the state teachers retirement system, such local board of education is in dereliction of its duty and recourse should be had by those concerned to the provisions of sections 7610-1 G. C., which provides that the county board of education, or the probate court, as the case may be, shall discharge the duties which have been neglected by the local board of education, and where money has been paid out from the county general fund by those authorized for the local board of education, such sum shall be a charge against the school district for which the money was paid.*

2. *Since January 1, 1922, a board of education, in anticipation of the collection of current revenues in any fiscal year, may under the provisions of section 5655 (H. B. 33) borrow money and issue certificates of indebtedness, but no loans shall be made to exceed the amount estimated to be actually received from taxes*

and other current revenues for such fiscal year, after deducting all advances, nor shall such certificates run for a longer period than six months or bear a greater rate of interest than six per cent, nor shall they be sold for less than par with accrued interest.

COLUMBUS, OHIO, May 26, 1922.

HON. W. E. KERSHNER, *Secretary State Teachers Retirement System, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following question bearing upon the administration of the state teachers retirement system:

“If a board of education refuses or neglects to pay its normal and deficiency contributions to the state teachers retirement system, what is the proper procedure on the part of the retirement board in the collection of these contributions?”

Section 7896-44 G. C. provides in part as follows:

“Each employer of a teacher who is a member of the retirement system shall pay to the employers accumulation fund a certain per centum of the earnable compensation of each such teacher to be known as the ‘normal contribution’ and a further per centum of the earnable compensation of each such teacher to be known as the ‘deficiency contribution’. * * * Until the first such certification, the normal contribution shall be two and eight-tenths per centum of the members’ salaries and the deficiency contributions shall be two and seventy-seven hundredths per centum of the members’ salaries.”

Section 7896-47 G. C. provides in part as follows:

“Each employer shall pay annually into the employers accumulation fund, in such monthly or less frequent installments as the retirement board shall require, an amount certified by the retirement board which shall equal the per centum of the total compensation, earnable by all contributors during the preceding school year, which is the sum of the two rates per centum hereinbefore described and required to be computed, to-wit, the sum of the normal contribution rate plus the deficiency contribution rate. * * * ”

Section 7896-52 provides:

“ * * * Each employer shall certify to treasurer of said employer on each and every pay roll a statement as voucher for the amounts so deducted (from teachers’ salaries) and for the amount of the normal contribution and the deficiency contribution payable by the employer as provided in this act. * * * ”

Section 7896-53 G. C. reads in part:

“The treasurer of each employer (board of education) on receipt from the employer of the voucher for deductions from the salaries of teachers

and for the contributions of the employer as provided in this act, shall transmit monthly or at such times as the retirement board shall designate the amounts specified in such voucher to the secretary of the retirement board."

Under sections above quoted it is clear that there is a mandatory duty placed upon each board of education in the state and upon its clerk-treasurer, who is the agent and ministerial officer of the board of education, to perform the duties above named. It is noted that nowhere in the sections specifying these duties does it appear that the employer or the clerk-treasurer "may" do these things, but the word used is "shall", thus carrying a clear intent that these things should be done by a board of education without any question as to the advisability of doing it in any particular instance. In approaching an answer to your question your attention is invited to Opinion 2220, issued to you on July 1, 1921, and appearing at page 587, Vol. I, Opinions of the Attorney-General for 1921. In that opinion one of the questions under consideration was as to how a board of education, which had neglected or refused to levy a tax to meet the financial requirements of the state teachers retirement system, might raise funds to discharge its obligations put upon it by the state teachers retirement law. In the third branch of the syllabus of Opinion 2220, issued to you, it was held that:

"The normal contribution and the deficiency contribution due from a board of education to the state teachers retirement systems are valid, existing and binding obligations, and where a board of education has neglected or refused to levy a tax to pay such contributions, in the manner provided for in section 7896-55 General Code, and a transfer of moneys from other funds of the board of education is not possible under section 2296 et seq. G. C., such board of education may borrow money or issue bonds under authority of section 5656 G. C., to meet such obligations."

Your former inquiry was upon the question of where a board of education "neglected or refused to levy a tax to meet financial requirements of the state teachers retirement system" and your present question is where the board of education "refuses or neglects to pay" its contributions to the state teachers retirement system, even though it might have the needed funds in its control.

Several portions of the teachers retirement act have been quoted above to make it clear that it is one of the duties of each local board of education to forward to the state teachers retirement system its normal and deficiency contributions, based on its pay roll at such time as the state teachers retirement board may designate. The cases you have in mind are apparently those where a local board of education or its clerk-treasurer, in conjunction with the local board of education, refuses to make its normal or deficiency contribution to the state teachers retirement system or neglects to do the same. Where such a condition is the case the remedy lies in section 7610-1 G. C., as amended in 109 O. L., p. 552, and reading in part as follows:

"If the board of education in a district under the supervision of the county board of education fails * * * to pay out any other school money, needed in school administration, or to fill any vacancies in the board * * * the county board of education of the county to which such district belongs, upon being advised and satisfied thereof, shall perform any and all such duties or acts, *in the same manner as the board of education by this title is authorized to perform them.* But in a city district, or in an

exempted village district, the probate court, or in counties in which the probate court and the court of common pleas have been combined, the court of common pleas, upon being advised and satisfied thereof, shall act instead of the county board of education. All salaries and *other money* so paid by the county board of education, or by the probate court, or by the court of common pleas, shall be paid out of the county treasury from the general fund on vouchers signed by the president of the county board of education, or by the judge of the probate court, or by the judge of the court of common pleas, as the case may be, but they shall be a charge against the school district for which the money was paid. The amount so paid shall be retained by the county auditor from the proper funds due to such school district, at the time of making the semi-annual distribution of taxes."

From a reading of section 7610-1, *supra*, it would thus appear that where a local board of education neglects or refuses to pay its normal or deficiency contribution to the state teachers retirement system, the county board of education in a county school district, upon being advised and satisfied that there has been dereliction, shall thereupon proceed in the manner set forth in section 7610-1 G. C. as to the carrying out of the duties of the local board of education in that particular district. One of these duties, as indicated heretofore, is to send in the normal and deficiency contribution on the part of the local board of education or its proper officer. If the secretary of the state teachers retirement system cannot receive these contributions from the local board of education or its officers, then the matter should be taken up with the county board of education under the authority granted in section 7610-1 G. C. *supra*.

Since the question under consideration is the payments required by law by a board of education to the state teachers retirement system, it is proper to call the attention of those in charge of the retirement system to a newly enacted section appearing in H. B. 33 (Griswold Act), and in effect since January 1, 1922. The method by which a board of education could use 5656 to make its payment to the state teachers retirement system, was set out in Opinion 2220, issued to the secretary of the state teachers retirement system on July 1, 1921. Six months thereafter, on January 1, 1922, section 5655 went into effect and this newly enacted section, providing for the issuing of certificates of indebtedness in order to care for immediate obligations, reads as follows:

"In anticipation of the collection of current revenues in any fiscal year, the county commissioners of any county, the board of education of any school district or the township trustees of any township may borrow money and issue certificates of indebtedness therefor, but no loans shall be made to exceed the amount estimated to be actually received from taxes and other current revenues for such fiscal year, after deducting all advances. The sums so anticipated shall be deemed appropriated for the payment of such certificates at maturity. The certificates shall not run for a longer period than six months nor bear a greater rate of interest than six per cent and shall not be sold for less than par with accrued interest."

It will be noted that in section 5655 G. C. there is no time limit when such section is of no further effect, while on the other hand it is provided in section 5656 G. C., as amended by the Griswold Act (H. B. 33) that the right to borrow money or issue bonds in the manner provided in that section is limited to in-

debtedness created or incurred before the first day of January, 1924. The effect of this amendment to 5656 G. C. is that unless the section should be further amended by the next General Assembly, its provisions could not be used on indebtedness made after December 31, 1923. Attention is invited to section 5655 as now in effect, for the reason that if the secretary of the retirement board advised the boards of education which are derelict that they have been given this new authority of issuing certificates of indebtedness for a short time, the amounts due from the districts in question, necessary for the uniform operation of the retirement act, might be forthcoming from those persons from the time the obligations are due, especially where such obligations are the normal and deficiency contributions due from the board of education itself.

In reply to your question submitted, you are advised that it is the opinion of this department:

1. Where a board of education refuses or neglects to pay its normal or deficiency contributions to the state teachers retirement system, such local board of education is in dereliction of its duty and recourse should be had by those concerned to the provisions of section 7610-1, which provides that the county board of education, or the probate court, as the case may be, shall discharge the duties which have been neglected by the local board of education, and where money has been paid out from the county general fund by those authorized for the local board of education, such sum shall be a charge against the school district for which the money was paid.

2. Since January 1, 1922, a board of education, in anticipation of the collection of current revenues in any fiscal year, may under the provisions of section 5655 (H. B. 33) borrow money and issue certificates of indebtedness, but no loans shall be made to exceed the amount estimated to be actually received from taxes and other current revenues for such fiscal year, after deducting all advances, nor shall such certificates run for a longer period than six months or bear a greater rate of interest than six per cent, nor shall they be sold for less than par with accrued interest.

Respectfully,

JOHN G. PRICE,
Attorney-General.

3150.

APPROVAL, BONDS OF ROSSFORD RURAL SCHOOL DISTRICT, WOOD COUNTY, \$220,000, TO PURCHASE SITE AND ERECT SCHOOL HOUSE.

COLUMBUS, OHIO, May 26, 1922.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

3151.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS, FAYETTE, ASHLAND, HARDIN, ALLEN, OTTAWA, SANDUSKY AND STARK COUNTIES.

COLUMBUS, OHIO, May 29, 1922.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.