

Inasmuch as the legislature did not, by enacting Section 2638-1, supra, authorize the county commissioners to procure insurance against loss by reason of forgery, the reasoning and conclusions reached in the holdings of this office prior to the enactment of Section 2638-1, supra, as they relate to forgery insurance, are still applicable.

Specifically answering your inquiry, it is my opinion that the county commissioners, in the absence of any statutory provision authorizing them to procure insurance against loss of public funds in the custody of the county treasurer by forgery, would have no authority to purchase such insurance and pay the premiums for same out of the county treasury.

Respectfully,

HERBERT S. DUFFY,
Attorney General

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HOUSE BILL No. 701—BOARDS OF EDUCATION—DISCRETIONARY POWERS—ANTICIPATION OF FUNDS.

SYLLABUS:

Section 2 of House Bill 701, 116 O. L. Pt. 2 page 356, confers upon the board of education discretionary power as to whether money be borrowed in anticipation of the amount so certified to them by the Director of Education acting under the provisions of Section 1 of said act.

COLUMBUS, OHIO, March 24, 1937.

HON. HUGH A. STALEY, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR: I am in receipt of your letter of recent date which reads as follows:

“The Allen Township Board of Education has submitted to me the following question on which I would like to have your opinion:

Is it necessary for the school board to borrow on the certification of the Director of Education the amount he certifies, under House Bill No. 701, in order for the Board of Education to receive the amount so certified by the Director to the board of education?

Various boards of education in this county have received

information from certain educational sources to the effect that it is necessary to use the notes, which are supplied by the Director of Education, to borrow the money which the Director of Education's certificate shows is available to said board, in order to participate in said fund. This office is unable to fix such a construction upon the statute, but in order that no injustice may be done, I should like to have your opinion upon the matter.

If you should find that it is necessary for the boards to borrow, as provided by House Bill No. 701, what length of time is given the boards to complete the loan?"

In answer to your first question as to whether it is necessary for the school board to borrow money through the medium of the issuance of notes on the certification of the Director of Education, it would be opportune to first consider the authorization and birth of these certificates. Section 1 of House Bill 701, 91st General Assembly, special session, effective December 30, 1936, sets up three distinct steps of procedure. The first step is set forth in the first paragraph of Section 1:

"If the amount on deposit in the state treasury to the credit of the state public school fund, created by Section 7595 of the General Code, is inadequate on any of the quarterly payment dates as provided by Section 7595-1g of the General Code, to meet the full amount of the said certified quarterly payment to the school district, the auditor of state shall issue his warrants on the treasurer of state in favor of the respective districts for amounts which shall be in the same relationship, proportionately, to the certified amounts as the actual amount in the state treasury to the credit of the state public school fund is to the total of the certified quarterly payments for all of the school districts of the state."

When such a contingency does exist the Auditor, prior to the issuance of his warrants, certifies to the Director of Education and the State Controlling Board the actual amount of money deposited in the state treasury to the credit of the state public school fund. This step is contained in paragraph 2:

"In case of such a contingency, the auditor of state, prior to the issuance of his warrants, shall certify to the director of education and the state controlling board, the actual amount of money deposited in the state treasury to the credit of the state public school fund.

You will note in paragraph 3 that the Director of Education shall determine the amount due each school district in excess of the amount actually to be paid to the school districts out of the funds then available in the state public school fund, and after such determination certify the same to the board of education of each school district. This third step is set forth in paragraph 3:

“Upon receipt of such certification, the director of education shall determine the amount due each school district in excess of the amount actually to be paid to the school districts out of funds then available in the state public school fund; and, upon determining such amounts, he shall certify the same to the board of education of each school district.”

To summarize briefly, this Section 1 of House Bill 701, *supra*, it appears that the available funds are paid out proportionately to the certified amounts as the actual amount in the treasury will allow. Then, along with this payment, the Director of Education certifies to the respective boards of education the amount still due them upon their quarterly payment. These certifications specifically stipulate the amount yet due the respective boards of education of each district.

Section 2 of House Bill 701, *supra*, then authorizes the respective boards to borrow money on these respective amounts so certified, by the issuance of notes:

“In anticipation of the amount so certified, the board of education may borrow money not in excess of the amount so certified and may from time to time issue notes of the school district therefor.”

This section recites that the board of education may borrow money. It is my opinion that this recital in no way makes it mandatory upon the board of education to borrow money by the issuance of notes. Rather, I am of the opinion that the recital clothes the board of education with a discretionary power as to whether they deem it necessary to borrow money.

To substantiate this contention, it would be well to consider the general intent of the school foundation law. One of the main underlying purposes of this law is to render state financial aid to the various school districts. From a study of House Bill 701, *supra*, it will be noted that the principal of such notes issued thereunder is redeemable solely from the apportionments received from the state public school fund, while on the other hand, the interest on these notes must be paid by

the board of education issuing the same from any revenues accruing to the district except those from the state public school fund. If the language of Section 2 of this House Bill 701, *supra*, were to be considered as mandatory upon the board of education to issue notes, then it would be compelling boards of education in many instances to use their revenues to pay interest on notes that they might deem it unnecessary to issue in light of their financial requirements and circumstances. How then can a mandatory interpretation be placed upon Section 2 and yet coincide with the underlying principles of the school foundation law?

I am therefore of the opinion that it is discretionary with the board of education as to whether or not it will borrow money and issue notes in anticipation of the amount so certified to them by the Director of Education.

In view of the fact that your second question is predicated on the assumption that the borrowing of money is mandatory and I have rendered my opinion that it is discretionary, I do not feel that this second question need be answered.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

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APPROVAL—PETITION PROPOSING AMENDMENT TO THE
CONSTITUTION OF OHIO BY ADOPTION AND ADDING
TO ARTICLE XV, SECTION 11.

COLUMBUS, OHIO, March 24, 1937.

MR. GEORGE FORD, 154 *West Park Ave.*, Columbus, Ohio.

DEAR SIR: You have submitted for my examination a written petition signed by one hundred qualified electors of this state containing the following proposed constitutional amendment and a summary of the same:

“TEXT OF PROPOSED AMENDMENT:

BE IT RESOLVED BY THE PEOPLE OF THE
STATE OF OHIO: That the Constitution of Ohio be amended