

3360.

APPROVAL, BONDS OF VILLAGE OF ROCKY RIVER, CUYAHOGA COUNTY, \$22,301.00.

COLUMBUS, OHIO, May 17, 1926.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3361.

APPROVAL, BONDS OF VILLAGE OF PARMA HEIGHTS, CUYAHOGA COUNTY, \$39,480.31.

COLUMBUS, OHIO, May 17, 1926.

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

3362.

APPROVAL, BONDS OF NORWICH SPECIAL SCHOOL DISTRICT NO. 1, FRANKLIN COUNTY, \$15,000.00.

COLUMBUS, OHIO, May 19, 1926.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3363.

COMPENSATION OF BUILDING COMMISSIONERS APPOINTED UNDER SECTION 2333 G. C. DISCUSSED.

SYLLABUS:

The building commissioners appointed under Section 2333 of the General Code are entitled to receive not more than two and one-half per cent of the amount raised by the county from taxes raised, or from the sale of bonds for the purpose of constructing the building.

COLUMBUS, OHIO, May 20, 1926.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your communication as follows:

“You are respectfully requested to furnish this department with your written opinion upon the questions presented by the enclosed copy of letter written by the prosecuting attorney of Mahoning County with reference to the compensation of the members of the Building Commission appointed for the construction of a tuberculosis hospital.

"You will please note that the receipts for the construction of this building come from the following sources:

Sale of interest in District Tuberculosis Hospital at Springfield	\$96,773 71
Interest on the proceeds of such sale	1,693 42
Amount realized by sale of bonds	203,000 00
Transferred from maintenance fund	80,000 00

"We are advised that this last item was transferred by the county commissioners with authority of the Common Pleas Court from their road and bridge fund.

Question 1. May the item of \$96,773.71 and \$1,693.42, the interest on the same, be included in the basis for the calculation of the compensation of the building commissioners fixed by section 2334, General Code, at not to exceed 2½% of the amount received by the county from taxes raised or from the sale of bonds for the purpose of constructing the building?

"Question 2. May the item of \$80,000.00 be included in the basis for the computation of such compensation?

"You will also please note that the expenditures include the following items:

Site	\$25,000 00
Building	272,811 43
Permanent Equipment	38,467 96
Furnishings	17,300 31

"Question 3. May the items of \$25,000.00 for site, \$38,467.96 for permanent equipment and \$17,300.31 for furnishings, be included in the basis for the compensation of the Building Commissioners?"

Your communication does not disclose under what sections of the General Code it is attempted to build and maintain a tuberculosis hospital. However, it is believed that it is by virtue of section 3141-1 of the General Code, which in part provides as follows:

"In any county which has joined in the erection of a district tuberculosis hospital and in which such hospital has not capacity to afford suitable accommodations for all cases of tuberculosis that should be admitted to such institution, and where the trustees of such district tuberculosis hospital or the joint board of county commissioners fail or refuse to provide additional accommodation in such hospital, the county commissioners may with the consent of the state department of health, erect and maintain a county tuberculosis hospital. For the purpose of constructing and maintaining such county hospital the county commissioners may issue bonds and shall annually levy a tax and set aside the funds necessary for such maintenance."

This section authorizes the county commissioners to issue bonds for the purpose of constructing and maintaining a tuberculosis hospital and to levy a tax and set aside funds necessary for such maintenance.

Section 2333 of the General Code relating to the building of county buildings, provides as follows:

"When county commissioners have determined to erect a court house or other county building at a cost to exceed twenty-five thousand dollars, they shall submit the question of issuing bonds of the county therefor to vote of the electors thereof. If determined in the affirmative, within thirty days

thereafter, the county commissioners shall apply to the judge of a court of common pleas of the county who shall appoint four suitable and competent freehold electors of the county, who shall in connection with the county commissioners constitute a building commission and serve until its completion. Not more than two of such appointees shall be of the same political party."

This section provides for the issuing of bonds when the commissioners have determined to erect a county building at a cost to exceed \$25,000.00, and further provides that the Common Pleas Court shall appoint four suitable and competent freeholder electors, who in connection with the county commissioners shall constitute a building commission.

Section 2334 of the General Code provides as follows:

"The persons so appointed shall receive a reasonable compensation for the time actually employed, to be fixed by the court of common pleas and on its approval paid from the county treasury. Their compensation in the aggregate shall not exceed two and one-half per cent of the amount received by the county from taxes raised or from the sale of bonds for the purpose of constructing the building."

Your communication states that amounts realized by sale of bonds for the purpose of building a county tuberculosis hospital was \$203,000.00; the amount realized from the sale of interest in the district tuberculosis hospital was \$96,773.71; that the interest on the proceeds of such sale was \$1,693.42; that the amount transferred from the maintenance fund was \$80,000.00; making a total of \$381,467.13 available for the purpose of building a county tuberculosis hospital.

Your question is what part of this amount may be used in figuring the maximum compensation which may be allowed by the Common Pleas Court to the persons appointed by the Common Pleas Court as members of the building commission.

In an opinion of the Attorney General found in the Opinions of the Attorney General for 1917, Vol. 2, page 435, it was held as follows:

"Under section 2334 G. C. the members of the building commission are entitled to receive only two and one-half per cent of the amount received by the county from taxes raised for the purpose of constructing the building or from the amount received by the county from the sale of bonds for the purpose of constructing the building. The commissioners are not entitled to any per cent of money received from an insurance company to cover loss of an old building by fire even though this money is expended by the building commission in the construction of the new building."

The above opinion referred to is approved and followed in so far as it relates to the money which was secured by the sale of the county's interest in the District Tuberculosis Hospital and the interest on the proceeds of such sale.

With reference to the \$80,000.00 which was transferred by authority of the Common Pleas Court from the road and bridge fund to the building fund of the tuberculosis hospital a different question is presented. The funds transferred from the road and bridge fund were, it is believed in the first instance, raised by taxation and if these funds are legally subject to transfer by the Common Pleas Court from the road and bridge fund to the building fund of the tuberculosis hospital, it is believed that it may be said that they are taxes raised for the purpose of constructing the building.

If the county commissioners on application to the Common Pleas Court may transfer money from one fund under their jurisdiction to another fund, which is also under their jurisdiction, it is believed that the taxes are raised for any purpose for which the county commissioners may use said moneys.

The money transferred to the building fund does not lose its identity as moneys raised by taxation by reason of being transferred from one fund to another. As long as the same has not been expended for any purpose it may be said to be money raised by taxation.

It is therefore my opinion that moneys legally transferred by the county commissioners from other funds to the building fund can be considered in figuring the compensation due the building commissioners under section 2334 of the General Code.

You are therefore advised that the building commissioners appointed under section 2333 of the General Code are entitled to receive not more than two and one-half per cent of the amount raised by the county from taxes raised or from the sale of bonds for the purpose of constructing the building.

Respectfully,

C. C. CRABBE,
Attorney General.

3364.

ABSTRACT, STATUS OF TITLE TO PREMISES IN OUTLOT NO. 7, BUTLER COUNTY, OHIO, IN THE VILLAGE OF OXFORD.

COLUMBUS, OHIO, May 20, 1926.

President and Trustees of the Miami University, Oxford, Ohio.

GENTLEMEN:—You have submitted a certificate of title made by Paul Scudder, Attorney at Law, Hamilton, Ohio, dated May 12, 1926, and request my opinion as to the status of the title of the premises situated in Outlot No. 7, in the County of Butler, State of Ohio, in the village of Oxford, which are more fully described in the decree attached to said certificate.

From the certificate submitted, it is the opinion of this department that the property above described is in the name of the trustees of The St. Matthews Lutheran Church of Darrrtown, Ohio, free from encumbrances, unless there should be some taxes assessed against such property which are a lien and unpaid. The certificate does not definitely state what the situation is in reference to taxes.

I have further examined a deed which has been submitted and executed by the trustees of said church, which it is believed is sufficient to convey said premises to the University when same is properly accepted.

Under the terms of the deed it will be the duty of the trustees of the church to pay the taxes, if any, that may now be a lien upon said premises.

The certificate and deed are being returned herewith.

Respectfully,

C. C. CRABBE,
Attorney General.