

1847

1. EDUCATION, BOARD OF—MAY IN ABSENCE OF ANY RESTRICTIONS IN BOND ISSUE ALTER PLANS—ERECTION OF NEW FIRE PROOF SCHOOL BUILDING—SUBJECT TO CONTRACTUAL OBLIGATIONS—SECTION 4834-10 G. C.
2. SECTION 4785-3 G. C. PROVIDES FOR SPECIAL ELECTION TO BE HELD ON DAY OF GENERAL ELECTION.
3. NECESSARY PREREQUISITES TO SUBMIT QUESTION OF ISSUANCE OF BONDS TO VOTE OF ELECTORS—CONSENT OF DEPARTMENT OF TAXATION AND DIRECTOR OF EDUCATION—SECTION 2293-15b G. C.

SYLLABUS:

1. A board of education may, in the absence of any restrictions in the bond issue, and pursuant to Section 4834-10 of the General Code of Ohio, alter plans as prepared for the erection of a new fire proof school building under said issue, subject, of course, to any contract into which the board may have entered.

2. Section 4785-3 of the General Code of Ohio provides for a special election to be held on the day of a general election.

3. The consent of the department of taxation and the director of education are necessary prerequisites to submitting the question of issuance of bonds to a vote of the electors pursuant to Section 2293-15b of the General Code of Ohio.

Columbus, Ohio, June 6, 1950

Hon. Webb D. Tomb, Prosecuting Attorney
Seneca County, Tiffin, Ohio

Dear Sir :

This will acknowledge receipt of your communication in which you request my opinion, as follows :

"The Board of Education of a local school district passed a resolution for the submission of a bond issue to the electors of the district for the erection of a new high school building. This issue was favorably passed upon by the electors of the district at the general election in November, 1946.

"The building is now in the process of completion, but the funds available from this bond issue being inadequate to complete the building contemplated, this Board of Education now desires to submit to the electors of the district the question of an additional issue of bonds to furnish additional funds for the erection and improvement of said building under the provisions of Section 2293-15b.

"The Board has asked me to obtain your opinion upon the following questions :

"1. May the Board alter the plans as prepared for the erection of the building under the first issue (which has been passed upon) so as to provide additional classrooms instead of an auditorium-gymnasium which it was contemplated would be built from the funds available from the issue voted in 1946?

"2. Assuming that the issue for the additional funds were submitted to the electors at the general election in 1950, would it be necessary to obtain the consent of the Director of Education? In this connection, reference is made to the fourth paragraph of General Code Section 2293-15b, which provides for obtaining the consent of both the Director of Education and the Department of Taxation for the submission of such questions at a primary or special election instead of at a general election?"

In response to my request for additional information concerning the ballot submitted to the voters, a copy of said ballot was furnished by you, which reads as follows :

"Shall bonds be issued by The New Riegel Local School District, Seneca County, Ohio, for the purpose of ACQUIRING REAL ESTATE FOR NEW FIRE PROOF SCHOOL BUILDING AND FOR CONSTRUCTING AND EQUIPPING NEW FIRE PROOF SCHOOL BUILDINGS, in the

sum of One Hundred and Sixty Thousand Dollars, and a levy of taxes be made outside of the ten mill limitation estimated by the county auditor to average three and twenty hundredths mills for each one dollar of valuation, which amounts to thirty-two cents for each one hundred dollars of valuation, for a maximum period of twenty-three years to pay the principal and interest of such bonds."

It must be observed that the voters were approving the bond issue for the purpose of (1) acquiring real estate for new fire proof school building, (2) constructing said fire proof school building, and (3) equipping same. It must be further observed that the only restriction the voters placed on the board of education when said bond issue was approved was that such building was to be a new fire proof school building; therefore, the duty of determining the number of classrooms to be provided or whether an auditorium-gymnasium is to be made a part of such fire proof building would be solely within the jurisdiction of their duly elected representatives, viz., the school board.

Section 4834-10 of the General Code provides that:

"The board of education of any school district, except a county school district, may build, enlarge, repair and furnish the necessary school houses, purchase or lease sites therefor, or rights of way thereto, or purchase or lease real estate to be used as playgrounds for children or rent suitable schoolrooms, either within or without the district, and provide the necessary apparatus and make all other necessary provisions for the schools under its control."

In the case of *State ex rel. Clark et al. v. Board of Education of Jefferson Township Rural School District*, 11 O. App. 146, the second branch of the syllabus reads as follows:

"The recital in a resolution of a board of education of a rural school district that a certain village was the most suitable locality for a school site, and the representations made by such board at the time a bond issue was submitted to the electors, can not limit the power of such board to later exercise its discretion and change the location of the site to meet the then needs of the school district."

I must conclude, therefore, that a board of education may, in the absence of any restrictions in the bond issue, and pursuant to Section 4834-10 of the General Code of Ohio, alter plans as prepared for the

erection of the building under said issue; subject to any contractual obligations the board may have incurred since the issuance of said bonds.

Section 2293-15b of the General Code provides in part that:

“The provisions of section 2293-22 of the General Code, requiring the question of issuance of bonds to be submitted to a vote of the electors at a general election shall be waived for submitting an issue under this act and such question may be submitted, with the consent of the department of taxation of Ohio and the director of education, to a popular vote at a primary election or at a special election called, according to law, for that purpose. * * *”

I must assume that it is the wishes of the board, in order to stay within the limitations of the net indebtedness and for the purpose of not having the proposed issuance of bonds considered in such limitation, to submit the issue pursuant to Section 2293-15b, even though such submission would be voted on at the time of the general election. Query: Does the fact that the question of issuing such bonds to be submitted is on a day which falls on the day of the general election, take it outside of paragraph 4, Section 2294-15b, supra, in so far as requiring approval of the department of taxation and the director of education? Section 4785-3, paragraph d, General Code, provides:

“The term ‘special election’ shall mean any election other than the elections required by law to be regularly held on the day of a general or primary election, provided, however, that a special election may also be held on the day of a general or primary election.”

It is thus apparent that even though the question of issuance is submitted on the same day as the general election, such election is waived and a special election should be called for such question; in other words, if the question of issuance is submitted pursuant to Section 2293-15b other than at a primary, it thus becomes a special election and the consent of the department of taxation and the director of education must be obtained before such special election is called.

In view of the foregoing, it is my opinion that:

1. A board of education may, in the absence of any restrictions in the bond issue, and pursuant to Section 4834-10 of the General Code of Ohio, alter plans as prepared for the erection of a new fire proof school

building under said issue, subject, of course, to any contract into which the board may have entered.

2. Section 4785-3 of the General Code of Ohio provides for a special election to be held on the day of a general election.

3. The consent of the department of taxation and the director of education are necessary prerequisites to submitting the question of issuance of bonds to a vote of the electors pursuant to Section 2293-15b of the General Code of Ohio.

Respectfully,

HERBERT S. DUFFY,
Attorney General.