

upon these articles of incorporation. In reply will say it is believed that paragraph 5 of section 176, General Code of Ohio governs this class of articles of incorporation in the matter of fees to be charged, which provides:

"For filing articles of incorporation formed for religious, benevolent or literary purposes or of corporation not organized for profit but not mutual in their character, or of religious or secret societies * * * two dollars."

Respectfully,
C. C. CRABBE,
Attorney General.

3182.

AUTHORITY OF BOARDS OF EDUCATION TO BORROW MONEY DISCUSSED—QUESTIONS RELATING TO THE EDUCATIONAL EQUALIZATION FUND ANSWERED.

SYLLABUS:

1. *Boards of education under section 5655 of the General Code may borrow money in anticipation of the August, 1926, settlement of taxes and may use such money for the payment of contracts and obligations incurred prior to July 1st, 1926.*

2. *The Director of Education may not prior to July 1st, 1926, use any of the \$2,000,000.00 appropriated for the second year of the biennium in the educational equalization fund.*

3. *The Director of Education may after July 1st, 1926, use part of the \$2,000,000.00 appropriated for the second year of the biennium in the educational equalization fund for the purpose of assisting boards of education in meeting obligations assumed for and during the school year ending June 30, 1926.*

4. *Boards of education in state aid districts who have used the August, 1926, distribution of taxes for the payment of contracts and obligations of the school year ending June 30, 1926, may enter into contracts for the school year of 1926 and 1927, if the Director of Education has awarded such district an amount of state aid sufficient to cover such contracts at the end of the fiscal year for 1926.*

5. *Boards of education in non-state districts in which the August distribution of taxes has been largely consumed for the payment of obligations and contracts incurred prior to July 1st, 1926, may enter into contracts for the school year 1926 and 1927 to the extent only to which they have funds for the payment of such contracts.*

6. *The Bureau of Inspection and Supervision of Public Offices may under the Vorys act prescribe a system of accounts which the boards of education of school districts are bound to follow.*

7. *Section 5660-1 of the General Code permits boards of education to appropriate for a three months period a fund in the nature of a contingency fund for minor purchases and such purchases need not be certified for each individual purchase unless the same exceeds the sum of \$500.00.*

COLUMBUS, OHIO, March 10, 1926.

HON. VERNON M. RIEGEL, *Director of Education, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

"Section 5655 as amended by the 86th General Assembly permits boards of education to borrow money and issue certificates of indebtedness under certain conditions in anticipation of revenues to be received from taxes during the same fiscal year. Do you interpret this section to mean that boards of educa-

tion may borrow in anticipation of the August, 1926, settlement of taxes for the payment of contracts and obligations of the school year ending June 30, 1926?

May I, as director of education, prior to July 1st, 1926, use any of the \$2,000,000 appropriated for the second year of the biennium in the educational equalization fund for the purpose of assisting boards of education in state aid districts in meeting obligations assumed for and during the school year ending June 30, 1926? If your answer to the foregoing is negative may I, as director of education, use any of said \$2,000,000 appropriation after July 1, 1926, for the purpose of assisting boards of education in meeting obligations assumed for and during the school year ending June 30, 1926? If boards of education in state aid districts use the August, 1926, distribution of taxes for the payment of contracts and obligations of the school year ending June 30, 1926, may these boards enter into contracts for the school year 1926-27, depending upon participation in the \$2,000,000 appropriation in the educational equalization fund for the second year of the biennium?

Section 5660 specifically prohibits boards of education from entering into contracts, agreements or other obligations unless the chief fiscal officer certifies that the money to meet such contracts, agreements or obligations is in the treasury or in process of collection. Will this section in any way prevent boards of education in state aid districts from entering into contracts for the school year 1926-27, or may the clerks of these districts count the probable receipts from the educational equalization fund as funds in the process of collection? May boards of education in non-state aid districts enter into any contracts for the school year 1926-27 if the August distribution, 1926, of taxes has been largely consumed for the payments of obligations and contracts for the school year ending June 30, 1925?

We are in receipt of an inquiry from the superintendent and board of education of Sandusky, Ohio, asking whether it will be necessary under the operation of the new Vorys law for boards of education to follow all of the divisions of accounts prescribed by the Bureau of Inspection and Supervision of Public Offices, or whether some of these accounts may be grouped and combined for the purpose of simplifying the bookkeeping.

The same superintendent and board of education, along with several others, have asked for an interpretation of section 5660, section 7, as it applies to minor purchases for home economics departments, janitorial departments and other departments where it is impossible to determine in advance just what supplies will be needed."

Your first question is whether boards of education may under section 5655 as amended in 111 Ohio Laws, page 371, borrow money in anticipation of the August settlement of taxes to pay contracts and obligations of the school year ending July 30, 1926.

Section 5655 of the General Code provides 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. The proceeds of any such certificates shall be used only for the purposes for which the anticipated revenues or taxes were raised, collected or appropriated. No political subdivision or taxing district shall borrow money or issue certificates in anticipation of the February tax settlement before January 1 of the year of such settlement."

This section permits boards of education to borrow money in anticipation of the collection of current revenues in any fiscal year and issue certificates of indebtedness therefor. It further provides that such loans should not exceed the amount estimated to be received from taxes and other current revenues for such fiscal year after deducting all advances. It further provides that the certificates shall not run for a longer period than six months nor bear a greater rate of interest than six per cent. It further provides that the proceeds of such certificates shall be used only for the purposes for which the anticipated revenues or taxes were raised, collected or appropriated.

Section 5649-3g, a part of the same act, which contains section 5655, provides in part as follows:

"At the beginning of each fiscal year, * * * the board of education of every school district, * * * shall make appropriations classified for the several purposes for which expenditures are to be made for and during the said fiscal year from the funds of such * * * school district. * *."

Section 260-1 of the General Code, a part of the same act, in part provides:

All provisions of law heretofore or hereafter enacted and relating to the levying of taxes, the collection, appropriation or expenditures of revenues or the making of financial reports or statements for a fiscal year or other year shall be construed to refer and apply to the fiscal year as herein defined, * * *."

The fiscal year mentioned in the above quotation is provided in the first sentence of the same section which provides in part as follows:

"* * * beginning with January 1, 1926, the fiscal year of every * * * school district, * * * shall begin at the opening of the first day of January of each calendar year and end at the close of the succeeding thirty-first day of December."

By the above sections the fiscal year mentioned in section 5649-3g begins on January 1st, and ends on December 31st of each calendar year, and as section 5649-3g authorizes at the beginning of each such fiscal year the appropriation for the several purposes for which expenditures are to be made for the said fiscal year, appropriations at that time are made for the incoming revenues from the February and August distributions.

There seems to be no inhibition against expending the revenues received at the August distribution for obligations incurred prior to such distribution as long as such expenditures are confined to the fiscal year.

Your second question is whether you as the Director of Education may prior to July 1st, 1926, use any of the \$2,000,000 appropriated for the second year of the bi-

ennium in the educational equalization fund for the purpose of assisting boards of education in state aid districts for obligations assumed for and during the school year ending June 30, 1926.

In section 1 of Amended House Bill No. 517, which is the general appropriation act, may be found the following :

“The sums herein appropriated in the column designated ‘first year,’ or in the column designated ‘biennium’ shall not be expended to pay liabilities or deficiencies existing prior to July 1st, 1925, or incurred subsequent to June 30, 1927; though so appropriated in the column designated ‘second year’ shall not be expended prior to July 1, 1926, nor to pay liabilities incurred subsequent to June 30, 1927.”

The answer to your second question is readily apparent when considering the wording of this part of this section. This section prohibits the expending prior to July 1st, 1926, of money appropriated in the column designated “second year.”

Your third question is whether you as director may use the \$2,000,000 appropriated for the second year of the biennium after July 1st, 1926, for the purpose of assisting boards of education in meeting obligations assumed for and during the second year ending June 30, 1926.

A reference to the part of the general appropriation act quoted above will show that for the amount designated in the first year of the biennium that the same may not be used for obligations incurred prior to the first day of July, 1925, or liabilities incurred subsequent to June 30, 1927, and the sum designated in the column designated second year of the biennium shall not be used to pay liabilities incurred subsequent to June 30, 1927.

This limits the amounts appropriated for the biennium to liabilities and obligations incurred during the biennium and I can find no inhibition against expending after July 1, 1926, the amount appropriated for the second year of the biennium to pay obligations incurred during the first year of the biennium.

Your fourth question is if the boards of education in state aid districts used the August, 1926, distribution of taxes for the payments of contracts and obligations of the school year ending June 30, 1926, may such boards enter into contracts for the school year of 1926 and 1927 depending upon participation in the educational equalization fund for the second year of the biennium.

The answer to this question would depend upon when state aid was allowed the district. Section 7595-1 of the General Code, as amended in 111 Ohio Laws, page 481, provides that the application for participation in the state educational equalization fund for the ensuing school year shall be made at any time prior to July 31st, of any year. If the application for participation in the state educational equalization fund is made to the director and the director is able to determine that said district will be entitled to a certain amount of funds from such state educational equalization fund, it would seem that since these funds have been appropriated for the use of the director that it can be said that such funds are in process of collection since the same have been granted by the director.

As section 5660, as amended in 111 Ohio Laws, page 371, prohibits boards of education from entering into contracts, agreements or other obligations unless the chief fiscal officer certifies that the money to meet such contracts, etc., is in the treasury or in process of collection, it will be necessary that the director grant a certain amount of state aid before these funds may be considered in the treasury or in process of collection. As by this same section contracts for salaries for educational employes which extend beyond the end of the fiscal year in which made are deemed sufficient if certified to the end of the fiscal year, it is only necessary that sufficient funds be

allowed by the director to carry the district until the succeeding fiscal year. If the director awards the district state aid sufficient to meet such contracts until the end of the then fiscal year I can see no reason why the funds granted may not be considered in process of collection.

Your fifth question is, may boards of education in non-state aid districts enter into contracts for the school year of 1926 and 1927, after the August distribution for 1926 of taxes has been largely consumed for the payment of obligations and contracts for the school year ending June 30, 1925.

As section 5660 mentioned above prohibits the entering into contracts unless the certificate of the fiscal officer is made that the money is in the treasury or in process of collection if the August distribution which would be the only revenues available for the fiscal year of 1926 have been largely consumed, and the district is not eligible for state aid, they would be unable to enter into contracts for the year 1926 and 1927.

Your sixth question is whether it will be necessary under the operation of the new Vorys law for boards of education to follow all of the divisions of accounts prescribed by the Bureau of Inspection and Supervision of Public Offices, or whether some of these accounts may be grouped and combined for the purpose of simplifying the bookkeeping.

Section 274 of the General Code provides that the Bureau of Inspection and Supervision of Public Offices shall have power to inspect and supervise the accounts and reports of the offices of each taxing district in the state of Ohio. And section 277 of the General Code provides that the Auditor of State, as chief inspector and supervisor, shall prescribe and require the installation of a system of accounting and reporting for the public offices named in section 274. It further provides that said system shall be uniform in offices of the same grade and shall prescribe the form of receipts, vouchers and documents required to separate and verify each transaction.

The above sections grant the Bureau of Inspection and Supervision of Public Offices authority to install a system of accounting for school districts and to require that such a system be followed.

The seventh question asks for an interpretation of section 5660 as it applies to minor purchases for departments where it is impossible to determine in advance what supplies will be needed.

House Bill No. 527, enacted by the General Assembly at a special session on January 15th, has amended section 5660 by adding supplemental section 5660-1. This section provides that nothing contained in section 5660 of the General Code shall be construed to require a separate certificate of the chief fiscal officer for each item of expenditure but that certificates may be issued by the chief fiscal officer certifying that a certain sum of money had been lawfully appropriated or authorized or directed for a certain purpose and that thereafter for said purpose from said fund over a period not exceeding three months and not extending beyond the end of the fiscal year, expenditures may be made, orders for payment and expenditure approved and contracts, agreements and obligations for the expenditure of money may be made and assumed, provided the total sum shall not exceed the sum so specified.

It further provides that for expenditures exceeding \$500.00 a separate certificate shall be required. This section may be followed for all minor items and a certain sum may be appropriated for contingencies in departments for a period of three months and the matter of purchases to be made for such departments may be made out of such appropriation without a certificate of the fiscal officer.

Respectfully,
C. C. CRABBE,
Attorney General.