

1765.

BOARD OF EDUCATION—AUTHORITY TO ISSUE BONDS WITHOUT
VOTE OF ELECTORS DISCUSSED—UNIFORM BOND ACT.

SYLLABUS:

Under the provisions of Section 2293-2, General Code, read in connection with those of Section 7625, General Code, enacted as a part of the Uniform Bond Act, 112 O. L. 364, a board of education of a school district is authorized to issue bonds without a vote of the electors, within the limitations as to amount prescribed by Sections 2293-15 and 2293-18, General Code, for the purpose of completing a school building, which has been partially erected and constructed out of the proceeds of bonds issued by the board of education on a vote of the electors of the school district.

COLUMBUS, OHIO, February 25, 1928.

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

GENTLEMEN:—This is to acknowledge receipt of your recent communication in which you request my opinion upon the question therein stated, as follows:

“Under the provisions of Sections 2293-2, 2293-15 and Section 7625 of the General Code, as found in the Act at page 364 of 112 Ohio Laws, may such board of education, within the limitation prescribed in Section 2293-15, General Code, issue bonds without a vote of the people for the purpose of completing a school building for the construction of which building the board had theretofore issued bonds by a vote of the people?”

Your question, I take it, is one with reference to the authority of a board of education of a school district to issue bonds without a vote of the electors, for the purpose of completing a school building which has been partially erected and constructed out of the proceeds of bonds issued by the board of education on a vote of the electors, in an amount at the time estimated by the board to be sufficient for the purpose of erecting and constructing such school building.

This department has heretofore had occasion to consider similar questions arising under the then provisions of Sections 7625 and 7629, General Code. In an opinion of this department under date of February 29, 1912, Annual Reports of the Attorney General for 1912, page 1200, it appeared that bonds had been issued and sold by the board of education of a school district, on the approval of the electors, under Section 7625, General Code, for the purpose of improving a school building. The amount thus realized having been found to be insufficient to complete said improvement, the question of an additional bond issue for this purpose was twice submitted to the electors and defeated. Thereupon the question was presented to this department whether or not additional bonds could be issued by the board of education under the provisions of Section 7629, General Code, without a vote of the electors, and the opinion of this department was in the negative. Later, in an opinion of this department under date of April 23, 1915, Opinions of the Attorney General for 1915, page 536, it was held:

“Where a board of education of the school district submits the question of a bond issue to a vote of the electors of the district, under authority of, and in compliance with, the requirements of Section 7625, et seq., of the General Code, for any of the purposes mentioned therein, by submitting said

bond issue for an amount of money which said board estimates will be sufficient for said purpose, said board exhausts its authority for this particular purpose and cannot provide an additional sum for the same purpose, under authority of Section 7629, General Code.”

In a still later opinion of this department under date of January 25, 1918, Opinions of the Attorney General for 1918, page 175, a contrary view was taken with respect to the question involved in the prior opinions of this department, and it was there held that a board of education was authorized to issue bonds under Section 7629, General Code, without a vote of the electors, for the purpose of completing school buildings which had been partially erected and constructed out of the proceeds of bonds issued by the board of education under Section 7625, General Code, on a vote of the electors in an amount at the time estimated by the board to be sufficient for the purpose of erecting and constructing said building. This opinion, after calling attention to the fact that the then provisions of Section 7625, General Code, specifically authorized a board of education to issue bonds on a vote of the electors “to complete a partially built school house,” reads in part as follows:

“On a consideration of the provisions of Sections 7629 and 7625, General Code, it is apparent that the purposes for which bonds may be issued under Section 7629 are stated in far more general terms than are the purposes for which bonds may be issued under Section 7625, General Code. Inasmuch, however, as it appears that before the board of education of a school district can submit the question of a bond issue for any of the specific purposes mentioned in Section 7625 to the electors of the school district, such board of education must find that the funds at its disposal or that can be raised under Section 7629 are insufficient for the purpose, this to my mind is direct legislative recognition of the fact that the purposes for which bonds may be issued under Section 7629 are at least as broad and inclusive as those stated in Section 7625, and that within the limitations of Section 7629 bonds may be issued under said Section for any of the purposes for which bonds may be issued under Section 7625. This legislative recognition is the more significant on the point when we consider that both Section 7629 and Section 7625 were enacted in their present form by the same act of the Legislature (97 O. L. 357, 358). Indeed, inasmuch as bonds issued under Section 7629, General Code, for the purposes therein mentioned are issued in anticipation of income from taxes for such purposes levied or to be levied from time to time, it would appear that bonds might be issued for any purpose for which monies in the building fund of the school district or the proceeds of the tax levies might be used.”

Touching in a general way the question here presented, the case of *State ex rel. Stanton vs. Andrews, et al.*, 105 O. S. 489, should be noted. In that case the court had under consideration a proposed contract of a county building commission for the erection and construction of a county jail, at a contract price largely in excess of the proceeds of a bond issue which had been voted by the electors of the county for the purpose, under the then provisions of Sections 5638 et seq., General Code. The Supreme Court in this case held that:

“When the voters of a county sanction the policy of building a county jail by voting a bond issue in an amount certain, the policy adopted is one involving the expenditure of no greater sum than that approved, and a

building commission is without power to contract for such building under its adopted policy and plan involving an estimated expenditure of an amount in excess of that sanctioned by the voters."

In its opinion in this case the court, among other things, says :

"The Legislature provided that the contracts let must be within the limits of the estimates adopted, and a construction of the provisions of the statutes clearly indicates a limitation of the estimate within the amount expendable for the given purpose, and the amount expendable for such purpose is substantially limited to that approved by the electorate of the political subdivision."

Though the Supreme Court in the case above cited was obviously not passing on the precise question here presented, nor upon the question previously considered by this department in its opinions above referred to, it is quite clear, in view of the fundamental principles recognized and applied by the court in the above cited case, that the question presented in your communication cannot be answered in the affirmative unless the authority of a board of education to issue bonds without a vote of the electors for the purpose of completing the school building under the circumstances stated in your question is affirmatively given by statutory provision.

Section 7625, General Code, enacted as a part of the Uniform Bond Act, 112 O. L. 364, 380, reads :

"The taxing authority of any school district in addition to other powers conferred by law shall have power to purchase, construct, enlarge, expand, complete, improve, equip and furnish buildings and play grounds for public school purposes, and acquire real estate with or without buildings thereon, and easements for such purpose."

Section 2293-2, General Code, likewise enacted as a part of the Uniform Bond Act, 112 O. L. 365, provides as follows :

"The taxing authority of any subdivision shall have power to issue the bonds of such subdivision for the purpose of acquiring or constructing, any permanent improvement which such subdivision is authorized to acquire or construct. But no subdivision or other political taxing unit shall create or incur any indebtedness for current operating expenses, except as provided in Sections 2293-3, 2293-4, 2293-7 and 2293-24 of the General Code. The estimate of the life of permanent improvements proposed to be acquired, constructed, improved, extended or enlarged from the proceeds of any bonds shall be made in any case by the fiscal officer of the subdivision and certified by him to the bond-issuing authority and shall be binding upon such authority."

Since the provisions of Section 7625, General Code, give to the board of education of a school district the power to *complete* buildings for school purposes without any limitation therein stated on the power granted to the board of education, and Section 2293-2, General Code, empowers such school district to issue bonds for the purpose of constructing any permanent improvement "which such subdivision is authorized to * * * construct", I see no escape from the conclusion that the board of education of a school district has the power to issue bonds to com-

plete a school building in the district when such building has been erected and constructed to its incomplete state from the proceeds of bonds issued by a board of education on the vote of the electors of the school district. That the work to be done in completing an unfinished school building is a permanent improvement under the provisions of Section 2293-2, can hardly be doubted. As before noted, Sections 7625 and 2293-2, General Code, were enacted in and as a part of the same act and the apparent intent and purpose of the Legislature, as disclosed by the comprehensive provisions of this act, is to authorize a school district or other political subdivision, within the limitations and in the manner provided for in said act, to issue bonds for any permanent improvement that it is authorized to acquire or construct.

By way of specific answer to your question, I am of the opinion that the board of education of a school district has the power to issue bonds without a vote of the electors for the purpose stated in your inquiry, subject, of course, to the limitations as to the amount of such bond issue provided for in Sections 2293-15 and 2293-18, General Code, enacted as a part of the Uniform Bond Act above referred to. In conclusion it will be observed that this opinion is confined to the precise question stated in your communication, as I have construed the same. It may also be observed that if the board of education of a school district faithfully observes the statutory provisions relating to contracts calling for the expenditure of monies in hand as the proceeds of bonds issued on a vote of the electors of a school district for the purpose of erecting, constructing and equipping a school building, there will rarely be any occasion for resort to a subsequent bond issue, either with or without a vote of the electors of the school district, for the purpose of completing such school building.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1766.

INSURANCE—CONTRACT TO MAINTAIN REPAIRS ON AUTOMOBILES
DISCUSSED.

SYLLABUS:

Where a company in Ohio in consideration of a sum certain, contracts to maintain repairs in a workmanlike manner of certain exterior parts of an automobile from a certain date to a certain date, made necessary by collision or other similar accidental violence, the transaction is a contract substantially amounting to insurance under the terms of Section 665, General Code.

COLUMBUS, OHIO, February 27, 1928.

HON. WILLIAM C. SAFFORD, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

“At your convenience, will you kindly give consideration to the enclosed specimen contract of the National Service Guarantee, Incorporated, of Hartford, Connecticut.