

1593.

APPROVAL, BONDS OF CANFIELD VILLAGE SCHOOL DISTRICT, MAHONING COUNTY, OHIO—\$10,500.00.

COLUMBUS, OHIO, September 20, 1933.

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

1594.

APPROVAL, BONDS OF TORONTO CITY SCHOOL DISTRICT, JEFFERSON COUNTY, OHIO—\$18,936.98.

COLUMBUS, OHIO, September 20, 1933.

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

1595.

DISAPPROVAL, BONDS OF JACKSON TOWNSHIP RURAL SCHOOL DISTRICT, BROWN COUNTY, OHIO—\$2,985.00.

COLUMBUS, OHIO, September 20, 1933.

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

Re: Bonds of Jackson Township Rural School District, Brown County, Ohio, \$2,985.00.

GENTLEMEN:—

I have examined the transcript of the proceedings relating to the above bond issue, which is a part of a bond issue aggregating in amount the sum of \$20,000.00, approved by vote of the electors of the above school district.

The transcript shows that the publication of the notice of the election at which the question of issuing said bonds was submitted to the electors was started on October 9, 1930, whereas, the election was held on November 4, 1930. Consequently, four weeks' notice of the election was not published as required by section 2293-21 of the General Code. In the case of *State, ex rel., vs. Board of County Commissioners of Fayette County*, 122 O. S. 456, the following is held:

“The provisions of Section 2293-21, General Code, relating to publication of notice of an election upon the question of issuing bonds, are mandatory.”

And in the case of *State, ex rel. Curren, vs. Rees*, 125 O. S. 578, the Supreme Court affirmed the judgment of the Court of Appeals of Cuyahoga County, which held that the provisions of the Uniform Bond Act must be strictly construed.

It is therefore my advice that you do not purchase these bonds.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1596.

DELINQUENT TAXES—MACHINERY, NOT FIXTURES MAY NOT BE SOLD FOR DELINQUENT REAL ESTATE TAXES ALTHOUGH ASSESSED AS REAL ESTATE.

SYLLABUS:

Machinery and equipment which have been assessed for taxation purposes as real estate, but which as a matter of law are not fixtures, may not be sold by the state for delinquent real estate taxes.

COLUMBUS, OHIO, September 21, 1933.

HON. I. K. SALTSMAN, *Prosecuting Attorney, Carrollton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“My opinion has been asked recently upon the interpretation of Section 2658 G. C. of Ohio and 5718-3 in connection with the sale of certain machinery and equipment located in a plant in this county.

As a matter of law, this machinery and equipment are not affixed to the realty and are not legally fixtures. However, when the assessment was made for taxes upon this plant, this machinery and equipment was listed and assessed as part of the real estate. It is now desired to sell both the land and the equipment for taxes.

The question is: ‘shall this machinery and equipment be sold as personalty, which it in fact is, rather than follow the section relating to the sale of real estate under which the taxes were assessed and also if it is to be sold under the laws relating to the sale of personalty how should the Auditor of Carroll County fix the amount for the personal taxes and apportionate it between the real estate and machinery and equipment?’”

In your request you state that the machinery and equipment in question are not legally fixtures. In answering your question, I assume that to be a fact.

Section 5322, General Code, defining “real property” and “land” for tax purposes reads as follows:

“The terms ‘real property’ and ‘land’ as so used, include not only land itself, whether laid out in town lots or otherwise, with all things contained therein but also, unless otherwise specified, all buildings,