

1902.

## APPROVAL, TWO GAME REFUGE LEASES.

COLUMBUS, OHIO, May 24, 1930.

HON. J. W. THOMPSON, *Commissioner, Division of Conservation, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval as to form, the following leases which describe lands to be used for State Game Refuge purposes, as authorized under the provisions of Section 1436 of the General Code:

No.	Lessor.	County.	Township.	Acres.
2068	Rudolph Raabe	Putnam	Sugar Creek	80
2069	Rudolph Raabe	Putnam	Sugar Creek	60

Upon examination, I have found said leases in proper legal form, and have endorsed thereon my approval as to form, and return them to you herewith.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1903.

REPEAL BY IMPLICATION—SECTIONS 4013 TO 4018, GENERAL CODE, GOVERNING A BOARD OF TRUSTEES OF THE LIBRARY SINKING FUND—IMPLIEDLY REPEALED BY UNIFORM BOND ACT AND BUDGET LAW.

## SYLLABUS:

*Sections 4013 to 4018, General Code, both inclusive, are repealed by implication by the Uniform Bond Act and the Budget Law, enacted by the 87th General Assembly, notwithstanding the fact that there may be outstanding bonds issued by a board of library trustees of a school district prior to the effective date of such acts.*

COLUMBUS, OHIO, May 24, 1930.

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

GENTLEMEN:—Your letter of recent date is as follows:

“You are respectfully requested to render this department your written opinion upon the following:

Under date of January 14th, 1929, your predecessor rendered Opinion No. 3141, in which it was held that since the enactment of the Uniform Bond Act, the bond issuing authority of a school library district is the board of education and not the board of library trustees, and in the issuance of such bonds the board of education must follow the proceedings set out in said act.

Sections 4013 to 4018, inclusive, of the General Code, provide for a library sinking fund, and the establishment of a board of trustees of such library sinking fund.

Question 1. Did the enactment of the Uniform Bond Act repeal by implication Sections 4013 to 4018, inclusive, of the General Code, and are the duties of the library board sinking fund trustees now performed by the Sinking Fund Commission of the school district?

Question 2. In the event a board of trustees of library sinking fund was created and bonds were issued (and are still outstanding) prior to the enactment of the Uniform Bond Act, would such library sinking fund trustees continue to function until all outstanding bonds were paid, or would its duties be taken over by the sinking fund commission of the school district?"

The opinion of my predecessor to which you refer was affirmed in my Opinion No. 869 rendered under date of September 14, 1929, to Hon. George Elliott McCormick, Ohio State Librarian.

Section 4013, General Code, provides:

"For the purpose of creating a sinking fund for the extinguishment of the bonds provided for in the preceding sections, the library board each year, until the payment of the bonds are fully provided for, may levy and collect a tax in addition to other taxes authorized to be levied by it, which shall not exceed two and one-half tenths of a mill upon the taxable property of the district taxed for the support of the library. Such tax shall be paid into the treasury of the board, and on order of the public officer charged by law with the duty of drawing warrants upon such treasury paid into the sinking fund hereinafter provided for, and by the trustees thereof applied, by order of the library board, to the extinguishment of such bonds, and to no other purpose whatever. The taxes so levied shall be certified and placed on the tax list and collected in the same manner as other taxes of the taxing district, and such tax shall be a lien upon the property on which it is assessed, the same as state and county taxes, and subject to the same penalties if delinquent."

Section 4014 provides that there shall be created a board of trustees of the library sinking fund who shall have the control of all moneys and securities for the payment of interest upon and for the redemption of bonds heretofore issued, or issued by a library board. This section also provides for the appointment of members of this board of trustees of the library sinking fund. Sections 4015 and 4016 provide for the bond of such members and the organization of such board. Section 4017 provides as follows:

"In the month of May in each year, and oftener if required, the trustees of such sinking fund shall certify to the library board the rate of tax, not to exceed the limit herein provided, necessary to provide a sinking fund for the payment of all bonds issued by authority of law for library purposes in such taxing district together with the amount necessary to be levied to provide for the payment of interest thereon, and the library board shall levy the amount so certified. Such board may increase the amount so certified, but the total amount so levied shall not exceed the limitation herein provided."

Section 4018 relates to the investment of the sinking fund.

I am advised that your inquiry relates to a board of library trustees of a school district. In view of the fact that the opinion of my predecessor to which you refer and my opinion No. 869 held that since the enactment of the Uniform Bond Act, bonds may no longer be issued by a board of library trustees, the sections authorizing such boards to issue bonds being repealed by implication by the enactment of the Uniform Bond Act, I have little difficulty in concluding that Sections 4013 to 4018, both inclusive, are likewise repealed by implication, in the event a school district has no outstanding bonds issued by a board of library trustees at the time of the effective date of the Uniform Bond Act, for the reason that no occasion may arise whereby the provisions of these sections may be invoked.

Considering your second question which relates to the applicability of these sections in the event there are outstanding bonds issued by a board of library trustees of a school district prior to the effective date of the Uniform Bond Act, the provisions of the Budget Law as enacted by the 87th General Assembly are pertinent. Section 5625-1 of this law, as amended by the 88th General Assembly expressly provides that the taxing authority in the case of a school district is the board of education. Section 5625-9 of this law, as amended by the 88th General Assembly, sets forth the various funds which shall be established. It is therein provided that there shall be established a sinking fund whenever any subdivision, which includes a school district under Section 5625-1, has outstanding bonds other than serial bonds. In the event a subdivision does not have any term bonds outstanding, it would appear that there is no longer any authority for the establishment of a sinking fund. This section also provides that each subdivision shall establish a bond retirement fund for the retirement of serial bonds or of notes or certificates of indebtedness.

Section 5625-10, as amended by the 88th General Assembly, relates to the distribution of revenue derived from tax levies and provides insofar as pertinent as follows:

“\* \* \* \* \*

All revenues derived from general or special levies for debt charges, whether within or without the fifteen mill limitation, which is levied for the debt charges on serial bonds or on notes or certificates of indebtedness having a life less than five years, shall be paid into the bond retirement fund; and all such revenue which is levied for the debt charges on all other bonds, notes, or certificates of indebtedness shall be paid into the sinking fund.

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It is obvious that the Budget Law has defined the board of education as the taxing authority of a school district and has vested that board with authority to levy taxes for the payment of outstanding term and serial bonds; also that unless a school district has outstanding term bonds, there is no longer any authority for the establishment of a sinking fund; also all revenue derived from general or special levies for the purpose of meeting principal and interest obligations on outstanding bonds, must be paid into the bond retirement fund or into the sinking fund of the district. There is no provision in the Budget Law for the payment of such revenue into a library sinking fund.

Having in mind these considerations, it is next necessary to consider the provisions of Section 5625-39 of the Budget Law as enacted by the 87th General Assembly, which section provides:

“That any act or proceeding taken prior to the date this act is filed with the Secretary of State authorizing any tax or debt charge to be levied, or any contract or expenditure to be made, shall be in no manner affected by this act, but such act or proceeding shall be completed, and the tax or debt charge shall be levied and the contract or expenditure shall be made in the same manner as if this act had not been passed; and if any such tax or debt charge is authorized by such act or proceeding to be levied outside of the combined maximum tax rate prescribed by Section 5649-5b of the General Code such tax or debt charge shall be levied during the period and for the purpose so authorized outside of the fifteen mill limitation established by this act.

That this act shall in no manner affect existing funds established in any subdivision or the expenditures therefrom until January 1, 1928, but upon such date all provisions of this act as to funds shall go into force and effect, and the balance, if any, in any special fund derived from a special

tax levy within the fifteen mill limitation that is abolished by this act shall be credited to the appropriate general fund unless otherwise provided by law.

The provisions of this act shall apply to the budget requirements and tax rate for the fiscal year 1928, and the time of adopting the tentative tax budget in 1927 is extended for such purpose until 30 days after this act shall be in effect."

I think it is clear under this section that the tax necessary to meet the interest and principal requirements of bonds heretofore issued by a board of library sinking fund trustees shall be levied "in the same manner" as if the Budget Law had not been passed. This does not necessarily mean that such tax must be levied by the same authority. The board of education which is now the taxing authority of a school district is obviously charged with the duty of levying the tax in the same manner as heretofore levied by the board of library trustees. It should be further observed that Section 5625-39, supra, specifically provides that the Budget Law shall not affect existing funds until January 1, 1928, "but upon such date all provisions of this act as to funds shall go into force and effect." Obviously the library sinking fund established pursuant to Sections 4013, et seq., was abolished by the enactment of the Budget Law. If the outstanding bonds are serial bonds, taxes levied by the board of education to meet their principal and interest requirements must now be paid into the bond retirement fund of the school district. If the outstanding bonds are term bonds, such taxation revenues must now be paid into the sinking fund of the school district.

In view of the foregoing and in specific answer to your questions, it is my opinion that Sections 4013 to 4018, General Code, both inclusive, are repealed by implication by the Uniform Bond Act and the Budget Law, enacted by the 87th General Assembly, notwithstanding the fact that there may be outstanding bonds issued by a board of library trustees of a school district prior to the effective date of such acts.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

1904.

APPROVAL, ARTICLES OF INCORPORATION OF THE ST. PETRI MUTUAL  
FIRE INSURANCE ASSOCIATION OF TOLEDO, OHIO.

COLUMBUS, OHIO, May 24, 1930.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am returning herewith, approved, Articles of Incorporation of the St. Petri Mutual Fire Insurance Association of Toledo, Ohio.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*