

officer to comply with the provisions of Section 24 of the General Code is willful and flagrant, such conduct would be ground for the removal of such delinquent officer under Section 10-1, General Code, which provides, among other things, that any person holding office in this state, who willfully neglects to perform any official duty imposed upon him by law, or who is guilty of gross neglect of duty, misfeasance, malfeasance or non-feasance, shall be deemed guilty of misconduct in office, and shall be removed from office in the manner provided by said section and Sections 10-2, 10-3 and 10-4, General Code.

In addition to the above, I am clearly of the opinion that compliance with the terms of Section 24, supra, can be compelled by an action in mandamus. Section 12283 of the General Code reads as follows:

“Mandamus is a writ issued, in the name of the state, to an inferior tribunal, a corporation, board or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.”

The directions contained in Section 24 of the General Code are clear and specific, the statute specially enjoining that “on or before Monday of each week every state officer, state institution, department, board, commission, college, normal school or university receiving state aid shall pay to the treasurer of state all moneys, checks and drafts received for the state, or for the use of any such state officer”, etc., during the preceding week, whether such moneys be from taxes, assessments, licenses, premiums, fees, penalties, fines, costs, sales, rentals or otherwise.

Where, therefore, any state officer, board or institution coming within the terms of Section 24, fails to pay in moneys received for the state or for use of such officer, board or institution, during the preceding week, on or before Monday of each week, such officer, board or institution may be compelled by an action in mandamus to pay to the treasurer the moneys so received.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2462.

**BOND ISSUES—JOINT TOWN HALL—VILLAGE AND TOWNSHIP—MUST  
BE SUBMITTED TO ALL ELECTORS IN TOWNSHIP.**

**SYLLABUS:**

1. *Where bonds are to be issued for the construction of a joint town hall under authority of Sections 3399 et seq., General Code, the village and the township must agree upon their proportionate shares of the cost of the work and the question of issuing the bonds for such respective shares must be submitted separately to the electors of the two subdivisions.*

2. *In voting upon the township's share of such bonds, all the electors of the township may participate, including those residing within the village limits.*

COLUMBUS, OHIO, August 20, 1928.

*The Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge your recent communication as follows:

“The Tax Commission has before it for approval the application of the Council of the Village of Jefferson, Ashtabula County, Ohio, and of the Township Trustees of Jefferson Township, Ashtabula County, Ohio, seeking consent of the Tax Commission to vote on bond issues for the purpose of erecting a joint town hall.

The Commission, acting upon a similar application at an earlier date, authorized a special election on the question of issuing bonds for the erection of said joint town hall, May 15, 1928. The question was submitted in a divided form. The people of the township voting separately on a portion of the bond issue, while the people of the village voted separately on the balance of said issue. The bond issue in the township failed to carry by the necessary majority. Now, in seeking the re-submission of the question to the voters, other questions have been raised relative to the legality of the former election.

The Commission desires a formal opinion on the following questions:

(1) Should the bond issue, as a whole, be submitted to the voters of both village and township?

(2) If the bond issue is divided, should the voters of the village be permitted to vote on the township's portion as well as the portion to be assumed by the village?

(3) In case of a division of the bond issue, what authority, should the voters approve the same, will let the contract and erect the building?”

The provisions of the General Code with respect to the joint construction of a public building by a village and a township are included in Sections 3399 to 3402, inclusive. These sections are as follows:

Section 3399. “The electors of a township in which a village is situated, and the electors of such village may if both so determine, as hereinafter provided, unite in the enlargement, improvement or erection of a public building.”

Section 3400. “For such purpose an application shall be made to and filed with the trustees of the township, signed by not less than twenty-five resident free-holders of such township, who are not residents of the village, and application shall also be made to and filed with the mayor of the village, signed by not less than twenty-five resident freeholders of the village.”

Sec. 3401. “At the next general township and municipal election after such applications have been so filed, the question as to whether or not a tax shall be levied upon all the property subject to taxation in such township and village for the enlargement, improvement or erection of a public building, shall be submitted to the electors of such township and of such village. Ten days' notice that the question will be submitted to the electors, shall be given by the trustees of the township and the mayor of the village, in a newspaper of general circulation in such township and village, which notice shall state the maximum amount of money proposed to be used for such purpose, and the rate of tax proposed to be levied.”

Section 3402. "If at such election two-thirds of the electors of the township and of the village voting, vote in favor of such improvement, the trustees of such township and the council of the village shall jointly take such action as is necessary to carry out such improvement."

While it is to be observed that the sections refer to the joint construction of a public building, this doubtless includes a town hall, which is to be used jointly by the municipal and township officials. These sections follow a group of sections relating to the construction of a town hall by a township alone. A similar election is held at which all of the electors of the township vote upon the proposition. If a majority vote for the construction, the trustees are, under the provisions of Section 3396, General Code, authorized to levy the necessary tax not to exceed four mills on the dollar valuation in any one year. The tax can be levied for not more than seven years and bonds may be issued by the trustees in anticipation of the collection of the tax.

It is to be observed that no specific authority is contained in the sections heretofore quoted for the issuance of bonds. Section 3402, General Code, does, however, provide that the trustees of the township and the council of the village shall jointly take such action as is necessary to carry out such improvement. In view of this language the answer to your first inquiry is somewhat difficult. I believe it will be well to analyze with some degree of particularity all of the sections in order to determine the character of the action which must be taken to accomplish the joint enterprise therein authorized.

Section 3399, General Code, clearly authorizes the electors of the township and the electors of the village to unite in the construction of a town hall. It necessarily follows that, upon the completion of the structure, each subdivision will have an interest therein. It also follows that, in order that an interest may exist, each subdivision must contribute toward the proposed structure.

The next section requires as a condition precedent to the submission of the question to a vote of the people, applications signed by twenty-five freeholders of the township who are not residents of the village and by twenty-five resident freeholders of the village. Thus a clear line of demarcation is made between the residents of the village and those residing in the township outside of the corporate limits.

In an opinion of this department, found in Opinions, Attorney General for 1915, Vol. III, page 2205, these sections were under consideration and the following conclusion was reached as expressed in the syllabus:

"Under the provisions of Section 3399 to 3402, G. C., inclusive, it is required that there shall be an affirmative vote of two-thirds of those voting in the township outside of the village to authorize further proceedings thereunder for enlargement, improvement or erection of a public building."

It is unnecessary to restate the reasoning upon which that conclusion was based, but it is to be noted that this statement is made solely with reference to the vote, provided in Section 3401, upon the question of levying a tax for the proposed building and does not refer in any way to any bond issue to be made for the cost of the improvement. In my opinion the two are entirely separate, that is to say, the question of joining and levying taxes must be submitted and the vote had in accordance with the rule outlined in the opinion above referred to, but this in no way affects the

question of the vote to be taken upon a subsequent bond issue if it is sought to issue bonds for the purpose of financing the proposed improvement. This conclusion is emphasized by the fact that Section 3402, General Code, requires a two-thirds vote in order to authorize the joint enterprise, but, by reference to the uniform bond act it is found that it is only necessary to secure a fifty-five per cent vote in order to issue bonds of any subdivision.

Section 3401, General Code, states that the question as to whether or not a tax shall be levied upon all the property subject to taxation in such township and village for the proposed improvement shall be submitted to the electors of such township and of such village. I believe that my previous opinion should be adhered to, and so far as the approval of the proposed joint improvement is concerned, the proposition must carry by a two-thirds vote of the village electors and a two-thirds vote of the electors of the township outside of the village counted separately. I further believe that such vote would authorize the levy of a separate tax by the village and the township and the township tax would of course be levied equally upon all the property in the township, including that located within the village. This would result in a double levy so far as the property located within the village is concerned.

It is to be observed that Section 3402, General Code, authorizes the trustees and the council thereafter to proceed to carry out the improvement. Of course, the improvement could be carried out by the mere making of a levy and its accumulation until sufficient funds were available for the structure. On the other hand, in the instance you cite, it is apparently the desire of the authorities that bonds be issued and the structure immediately built. Since there is no authority in the sections quoted for the issuance of bonds, resort must be had to the uniform bond act to determine the provisions of law applicable thereto.

Section 2293-2, General Code, authorizes the taxing authority of any subdivision to issue bonds for the purpose of constructing any permanent improvement which the subdivision is authorized to construct. In this instance the authority to construct is contained in the sections quoted, but I do not believe that it is sufficient to authorize the issuance of joint bonds. That is to say, it will be necessary for the township trustees and the council of the village to agree upon a definite amount of bonds to be issued by each of the subdivisions and then proceed independently to issue the bonds. Of course, this agreement must of necessity be entered into prior to the submission to a vote of the people of the proposed bond issue. The maturities of the bonds will be governed by the provisions of Section 2293-9, General Code.

As I have stated before, it would apparently be necessary for the bond issues themselves to be authorized by a vote of the people, unless in the case of the village its share may be issued without a vote under the provisions of Section 2293-14, General Code. Accordingly, it is my opinion that the township trustees and the village council should proceed, after agreement upon a definite amount to be borne by each subdivision, in the manner provided in Sections 2293-19 et seq., General Code, to submit to their respective electorates the question of issuing bonds for the proposed hall. Accordingly, under Section 2293-23, General Code, if fifty-five percent of those voting vote in favor of the proposition, the taxing authority may proceed with the issue. Manifestly, the issue must carry in each subdivision in order to effectuate the purposes of the improvement.

I believe it would be entirely proper to submit both the question of joining in the construction of the building as provided in Section 3401, General Code, and the question of issuing bonds at the same election. The question of joining would, however,

necessitate a two-thirds vote as indicated above, while the bond issue would only require a fifty-five per cent favorable vote in order to authorize the issuance of the bonds.

If the joinder in the improvement and the respective bond issues be all approved, then, after the issuance of the bonds, the village and the township trustees would have available certain funds for the construction of the proposed building. Thereupon, the two bodies acting jointly under authority of Section 3402, General Code, should proceed to advertise for bids, let contracts and supervise the work of construction of the improvement.

From what has been said, the answers to your first and second questions are obvious. Your inquiry deals solely with the bond issue, and, as I have stated, this bond issue, being separated in two parts, should be submitted separately to the voters of the village and township. That is to say, if the improvement is to cost \$100,000.00 and \$50,000.00 is to be assumed by the village and \$50,000.00 by the township, there should be submitted to the voters of the village a \$50,000.00 bond issue to pay the village's share of the improvement and a \$50,000.00 bond issue to the voters of the township to pay the township's share of the improvement. These issues must carry in each of the subdivisions by a fifty-five per cent vote in accordance with the provisions of Section 2293-23, General Code, and there must also be had, as a condition precedent to the issuance of the bonds, a two-thirds vote upon the proposition of joining in the improvement as heretofore suggested. Any other conclusion would nullify the provisions of Sections 3401 and 3402, and I do not feel justified in disregarding the express language of these sections. In my opinion the issuance of bonds is entirely separate from the authority to join together for the purpose of constructing the building.

Your second inquiry is as to whether the voters of the village are permitted to vote on the township's portion, as well as the portion to be assumed by the village. The voters of a village are, of course, electors of the township in which the village is located, and, since the proceedings for the issuance of the bonds are governed by the uniform bond act, which requires a vote of fifty-five per cent of the electors of the subdivision, voters in the village are entitled to vote upon the township issue.

In your third question you inquire as to what authority will let the contract and erect the building. Section 3402, General Code, plainly provides that the trustees of the township and the council of the village shall jointly take such action as is necessary to carry out such improvement. Accordingly, if the funds are provided, the two bodies, acting jointly, are authorized to proceed with such steps as may be necessary to effect the construction of the building.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*