

2985.

BOND ISSUE—NO LIMITATION AS TO AMOUNT OF BONDS THAT MAY BE ISSUED BY BOARD OF EDUCATION UNDER SECTION 7630-1 G. C.—WHAT LIMITATIONS REQUIRED—WHEN BONDS ISSUED UNDER SECTION 7625 G. C. NOT SUFFICIENT TO BUILD SCHOOL HOUSE AND INDUSTRIAL COMMISSION LATER FORBIDS USE OF OLD BUILDING, BONDS MAY BE ISSUED UNDER SECTION 7630-1 G. C.

1. *There is no limit as to the amount of bonds that may be issued by a board of education under section 7630-1 G. C. but such section cannot be used by a board of education unless it is not practicable to secure the necessary funds under sections 7625, 7626, 7627, 7628, 7629 and 7630, G. C. and a board of education in operating under section 7630-1 G. C. should use discretion and good judgment that the bond issue under such section be protected by a sufficient tax duplicate.*

2. *Where a board of education has issued bonds under section 7625 G. C. to build a school house and the funds derived therefrom were not sufficient to build the same, leaving the building unfinished, and in the meantime an order has been placed against the old school building in the district by the Industrial Commission, forbidding its use for school purposes, such district may issue bonds under section 7630-1 G. C. if it is not practicable to issue further bonds under sections 7625, 7626, 7627, 7628, 7629 and 7630 G. C. to complete such school building.*

COLUMBUS, OHIO, April 13, 1922.

HON. HARRY BRITTON, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter of recent date requesting the opinion of this department upon the following three questions:

“(1) Under section 7630-1 of the General Code of Ohio can boards of education issue and sell bonds to replace or to rebuild a school building which has been wholly destroyed by fire, without a vote of the people?”

“(2) Under the above section is there any limit as to the amount of bonds that can be issued?”

“(3) Under the above section can a board of education issue and sell bonds without a vote of the people, to finish building a school house, when the first issue was approved by a vote of the people, and the money derived therefrom was not sufficient to build the same, provided however that in the meantime the school house they had been using had been condemned by an order of the Industrial Commission?”

Your first question is answered in Opinion No. 2902, issued by this department on February 25, 1922, a copy of which was sent you immediately upon receipt of your request. The syllabus of Opinion 2902 reads as follows:

“1. Under the provisions of amended section 7630-1 (109 O. L., p. 336) a board of education may issue bonds without a vote of the people upon the same for the purpose of rebuilding or repairing a school house or constructing a new school house, where the school house formerly used was destroyed by fire or other casualty, or if the use of the same for its intended purpose was prohibited by an order of the Industrial Commission, but before a board of education can avail itself of the provisions of section 7630-1

it must appear that it is not practicable to secure the necessary funds under sections 7625, 7626, 7627, 7628, 7629 and 7630.

"2. Under the provisions of section 5649-4 G. C., a board of education issuing bonds under the provisions of section 7630-1 G. C. may levy a tax sufficient to provide therefor, irrespective of any limitations."

Section 7630-1 G. C. reads as follows:

"If a school house is wholly or partly destroyed by fire or other casualty, or if the use of any school house or school houses for their intended purpose is prohibited by an order of the Industrial Commission of Ohio or its successor in such authority, and the board of education of the school district is without sufficient funds applicable to the purpose, with which to rebuild or repair such school house or to construct a new school house for the proper accommodation of the schools of the district, and it is not practicable to secure such funds under any of the six preceding sections because of the limits of taxation applicable to such school district, such board of education may issue bonds for the amount required for such purpose. For the payment of the principal and interest on such bonds and on bonds heretofore issued for the purpose herein mentioned and to provide a sinking fund for their final redemption at maturity, such board of education shall annually levy a tax as provided by law."

From a reading of the above section you will notice there is no limitation appearing in the section as to the amount of bonds that can be issued where recourse is had to section 7630-1 G. C. Apparently this has been left to the discretion and good judgment of the board of education of the school district in question, for unless the board can find a purchaser for the bonds after they are issued, little would be accomplished in securing the desired results. That is to say, the board of education should limit its bond issue under any section of law to the needs of the case as far as can be ascertained, having in mind also that if the tax duplicate becomes overburdened with bond issues and obligations, just to that extent will the opportunity of selling the bonds be lessened. This is a practical question which should be worked out in each and every district according to all the facts surrounding that particular case. Under section 7630-2 G. C., which you will find quoted in full in Opinion 2902, there is a limitation placed upon every school district as to the "net indebtedness" that may be created. This net indebtedness shall never exceed six per cent of the total value of all the property in the school district as listed for taxation, unless certain conditions should obtain as set forth in section 7630-2. However, as far as your question is concerned, the section further provides that "bonds issued under authority of section 7630-1 of the General Code for the replacement of condemned or destroyed school houses, (shall) \* \* \* be likewise excluded from the calculation of the net indebtedness of school districts." As set forth in Opinion 2902, bonds cannot be issued under section 7630-1 G. C. unless "it is not practicable to secure such funds under any of the six preceding sections, because of the limits of taxation applicable to such school district." These six preceding sections (that is, preceding section 7630-1) include sections 7625 and 7629 G. C., and bonds issued under these two sections must be computed in the "net indebtedness" described in section 7630-2 G. C. Where it is clearly established that it is not practicable to secure funds for the emergencies mentioned in section 7630-1 G. C., by using sections 7625, 7626, 7627, 7628, 7629 and 7630 G. C., then section 7630-1 G. C. should be used and bonds issued under this section are not to be con-

sidered in the net indebtedness of the school district, and under the provisions of section 5649-4 G. C. the board of education shall levy a tax sufficient to provide therefor, irrespective of any limitations.

In your third question you desire to know whether a board of education, which has issued bonds heretofore (presumably under section 7625 G. C.) for the building of a school house, and the money derived therefrom was not sufficient to build the same, may now issue further bonds under section 7630-1 in a case where in the meantime the use of the school building has been forbidden by an order of the Industrial Commission. You indicate that the former bond issue upon a vote of the people was entirely regular and that the building is now unfinished. Since the first bond issue an order has been placed by the Industrial Commission against the use of the school building in the school district and this must be obeyed. When a board of education receives an order from the Industrial Commission providing that a building or buildings cannot be used for school purposes, it is then the duty of the board of education to repair or rebuild, as the case may be, by first using sections 7625, 7626, 7627, 7628, 7629 and 7630 of the General Code. If there would be a case where a board of education had sufficient funds to take care of such emergency without a bond issue of any kind, the board could expend its proper funds at hand for that purpose. Such a case might obtain under the provisions of section 7587-1, where a board of education is given authority to establish and maintain a replacement fund "to restore, repair or improve" school property damaged, demolished or destroyed. If a board of education had a replacement fund or other funds that could be used for building or repair, and these were found to be insufficient, it could then use sections 7625 G. C., et seq., and if these sections were not sufficient, it could then use section 7630-1 G. C.

In a case largely similar to the one you have in mind an opinion was issued by this department on July 19, 1919, to Hon. Frank M. Cunningham, Prosecuting Attorney, Lebanon, Ohio, the same appearing at page 816, Vol. I, Opinions of the Attorney-General for 1919, the syllabus reading as follows:

"A board of education which has issued bonds under sections 7630-1 and 7625 of the General Code and finds that the amount of the bond issue will not be sufficient to construct a school house which is necessary for the proper accommodation of the schools of the district, may, by complying again with these sections, issue additional bonds in an amount sufficient to produce the required aggregate sum necessary to construct such building."

The above opinion applies at the present time unless in a case where the bonds issued under section 7625 (mentioned in the opinion) would cause the net indebtedness of the school district to exceed the limitations in per cent set forth in section 7630-2 G. C.

In reply to your inquiry, then, you are advised that it is the opinion of this department that:

1. There is no limit as to the amount of bonds that may be issued by a board of education under section 7630-1 G. C., but such section cannot be used by a board of education unless it is not practicable to secure the necessary funds under sections 7625, 7626, 7627, 7628, 7629 and 7630 G. C., and a board of education in operating under section 7630-1 G. C. should use discretion and good judgment that the bond issue under such section be protected by a sufficient tax duplicate.

2. Where a board of education has issued bonds under section 7625 to build a school house and the funds derived therefrom were not sufficient to build the same, leaving the building unfinished, and in the meantime an order has been placed against

the old school building in the district by the Industrial Commission, forbidding its use for school purposes, such district may issue bonds under section 7630-1 G. C., if it is not practicable to issue further bonds under sections 7625, 7626, 7627, 7628, 7629 and 7630 G. C. to complete such school building.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

2986.

BANKS AND BANKING—BOARD OF EDUCATION—AMOUNT OF SCHOOL FUNDS THAT MAY BE DEPOSITED IN BANK UNDER SECTION 7604 G. C. CANNOT EXCEED AMOUNT OF BANK'S PAID-IN CAPITAL STOCK.

*The amount of school funds that may be deposited in a bank by a board of education under authority of section 7604 G. C. cannot, in any case, or under any circumstances, exceed the amount of the bank's paid-in capital stock.*

COLUMBUS, OHIO, April 13, 1922.

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

GENTLEMEN:—Your letter of recent date inquiring whether or not a board of education may, under authority of section 7604 G. C., deposit school funds in a bank in excess of the amount of the banks paid-in capital stock, was duly received.

Section 7604 G. C. reads as follows:

“Within thirty days after the first Monday in January, 1916, and every two years thereafter, the board of education of any school district by resolution shall provide for the deposit of any or all moneys coming into the hands of its treasurer. But no bank shall receive a deposit larger than the amount of its paid-in capital stock and in no event to exceed one million dollars, except that in case the board of education shall find that it will be for the best interests of any school district such bank or banks shall be permitted to receive an amount in no event to exceed five million dollars.”

The provisions of this section, placing a limitation on the amount of school funds that may be deposited in banks, first appeared as a part of the act passed April 25, 1904, providing for the reorganization of the common schools of the state. 97 O. L., pp. 334, 351; section 3968 R. S. That act authorized the board of education to provide by resolution for the deposit of moneys coming into the hands of its treasurer, but subject to the express limitation that “no bank shall receive a larger deposit than the amount of its paid-in capital stock, and in no event to exceed three hundred thousand dollars (\$300,000.00).” The sectional number was changed in the revision or codification of the Ohio Laws in 1910, and is now designated as 7604 of the General Code. While the section, under the new designation, has been amended four times, the express limitation that “no bank shall receive a deposit larger than the amount of its paid-in capital stock,” has never been eliminated. See 101 O. L., p. 290; 106 O. L., p. 328; 108 O. L., pt. 1, p. 20; 109 O. L., p. 215. The scope of the