

68.

BOND ISSUE—WHERE BALLOT STATES “SHALL BE ISSUED FOR THE PURPOSE OF CONSTRUCTING FIREPROOF ADDITION TO SCHOOL HOUSE AND FURNISHING SCHOOL HOUSE,” PROCEEDS OF ISSUE MAY BE EXPENDED TO INSTALL HEATING PLANT, IN SUCH BUILDING.

*SYLLABUS:*

*Where bonds are authorized by an election under authority of Section 7625, et seq., General Code, and the ballot provides that such bonds shall be issued “for the purpose of constructing fireproof addition to school house and furnishing school house,” the proceeds of such bond issue may be expended for the installation of a heating plant in such addition, which will also, incidentally, furnish heat to a portion of the old building.*

COLUMBUS, OHIO, February 11, 1927.

HON. LYNN B. GRIFFITH, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—The following is a copy of your recent communication to this office:

“A \$50,000 bond issue was voted upon and passed by the Braceville township school district, Trumbull county, at our general election on November 2, 1926; and, in advertising for bids from contractors, the architect has included an item of a heating plant for a part of their present school building, as well as for the fireproof addition which is to be constructed from the proceeds of the \$50,000 bond issue.

The form of ballot voted upon designated ‘for the purpose of constructing fireproof addition to school house, and furnishing school house.’

Bids were received for a heating plant for the addition to school house, and a heating plant for auditorium in present school building.

If these bonds were taken by the Industrial Commission, would your office pass upon a transcript under these circumstances?”

In response to my request for additional information relative to the heating system used, later you wrote me as follows:

“The minutes of the clerk of the board show the following entry:

‘It was moved \* \* \* that the following bids be accepted:

HEATING:

Clark Co. Wm. M., lump bid-----	\$5,800 00	
National add.-----	840 00	
	<hr/>	\$6,640 00
Alt. on extension to auditorium, lump bid -----	\$4,500 00	
National add.-----	510 00	
	<hr/>	5,010 00
Total -----		<hr/>
		\$11,650 00'

We have taken the matter up with the board of education, and find this heating system for the auditorium is an extension from the heating system that will be installed in the new addition to the auditorium which is about fifty feet from the addition, and contains two class rooms. However, the heating plant itself is to be installed in the addition to be constructed.”

The doubt which arises in your mind results from the fact that the heating plant to be installed in the new addition is also to be used incidentally for the heating of a portion of the old building, whereas the form of ballot used described the bond issue as being "for the purpose of constructing fireproof addition to school house and furnishing school house."

It scarcely can be questioned that the installation of a heating plant is a necessary and proper incident to the construction of a building. In fact, this department, in Opinions of the Attorney General for 1920, at page 825, has ruled that the installation of a heating plant "was a rebuilding or repair of the building itself and not a mere furnishing of the building." Obviously the same reasoning would apply to original construction and the word "constructing" would comprehend the installation of a heating plant. The justification for this particular heating plant, therefore, must be found in the first part of the phraseology of the ballot and not in the latter part, to wit, "furnishing school house." In other words, I am of the opinion that the installation of a heating plant is not a mere furnishing.

In the present case the heating plant, in so far as it is used for the purpose of heating the fireproof addition to the school house, would, under the rule above stated, be comprehended within the authority to construct such addition. The extension of such a heating system to include the heating of a portion of the old building, is not, in my opinion, a material variance from the purposes set forth in the ballot.

You further advise me that the resolution submitting the bond issue to a vote described the purpose of the issue in the same language as the ballot.

Answering your question specifically, therefore, I am of the opinion that the form of ballot voted upon is sufficiently broad to comprehend the expenditure of the funds for a heating plant in the new addition, which, incidentally, may extend to cover a portion of the old building.

You will understand, of course, that this opinion is limited in its scope and that there may be other questions affecting the validity of the issue which may develop upon examination of the transcript.

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

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69.

APPROVAL, BONDS OF PAINESVILLE RURAL SCHOOL DISTRICT,  
LAKE COUNTY, \$15,500.00.

COLUMBUS, OHIO, February 11, 1927.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*