

garded as serving one continuous term together with the mandate that the minimum term must be served before one is eligible for parole.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

2792.

BOND ISSUE—AUTHORIZATION VOTED BY ELECTORS—DECISION OF BOARD OF EDUCATION NOT TO ISSUE—MAY THEREAFTER RE-CONSIDER.

SYLLABUS:

1. *The authorization of an issue of bonds by the electors of a subdivision places no mandatory duty upon the taxing authority to issue the bonds so authorized or any part thereof.*

2. *In the event the taxing authority, after the question of issuing bonds has been favorably voted upon by the electors, determines that the issuance of such bonds is not necessary, there is nothing to preclude such taxing authority from thereafter determining that their issuance is necessary and proceeding under the provisions of Sections 2293-25 to 2293-29, inclusive, of the General Code.*

COLUMBUS, OHIO, January 2, 1931.

HON. FRANK F. COPE, *Prosecuting Attorney, Carrollton, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"I would like your opinion on the following statement of facts:

At the November election of this year, the Orange Township Rural School District voted a bond issue to build a school building in the amount of \$31,000. After the vote a resolution to issue bonds after submission to the electors under Section 2293-2 and subsequent sections was submitted to the board and upon a special meeting this resolution was voted down by said board.

Now, we desire to know just what is the status of this proposed bond issue. Does the voting down of the bond issue by the board after it was voted for by the electors kill the bond issue? If so, is it permanently dead or may it be revived by a subsequent board?

The board of education owing to the loss of certain territory and the smallness of their tax duplicate have deemed this action advisable. Is this power discretionary with the board or is it a mandatory duty? In either event, what is the status of the proposed bond issue and improvement?"

Section 2293-19 of the Uniform Bond Act provides that "the taxing authority of any subdivision may submit to the electors of such subdivision the question of issuing any bonds which such subdivision has power to issue." This section and Sections 2293-20 to 2293-23, inclusive, relate to the detailed steps to be taken in submitting to the electors the question of issuing bonds. Section 2293-23, General Code, sets forth the form of ballot and further provides as follows:

"If fifty-five per cent of those voting upon the proposition vote in favor thereof, the taxing authority of such subdivision shall have authority to

proceed under Sections 2293-25 to 2293-29, inclusive, with the issue of such bonds and the levy of a tax outside of the fifteen mill limitation, sufficient in amount to pay the interest on and retire such bonds at maturity."

Your attention is directed to the express language of the foregoing provision to the effect that a favorable vote upon the question of issuing bonds confers upon the taxing authority, which in the case of a school district is a board of education (Section 2293-1), "authority to proceed under Sections 2293-25 to 2293-29, inclusive." There is no language in this section indicative of the fact that a board of education has the mandatory duty to proceed with the issuance of bonds authorized by the electors, but it appears that the taxing authority has authority so to do in the event it should see fit.

Section 2293-25 and 2293-26 provide in part as follows:

"Whenever the taxing authority of a subdivision has legal authority to, and desires to issue bonds without vote of the people, it shall pass a resolution or ordinance declaring the necessity of such bond issue, its purpose and amount. In such resolution or ordinance the taxing authority shall determine, and in any case where an issue of bonds has been approved by a vote of the people, the taxing authority shall by ordinance or resolution determine, whether notes shall be issued in anticipation of the issue of bonds, and, if so, the amount of such anticipatory notes, not to exceed the amount of the bond issue, the rate of interest, the date of such notes, and their maturity, not to exceed two years. Except in the case of notes issued in anticipation of special assessment bonds, such notes shall be redeemable at any interest period and a resolution or ordinance providing for the issue of notes in anticipation of the issue of bonds shall provide for the levy of a tax during the year or years while such notes run, not less than that which would have been levied if bonds had been issued without the prior issue of such notes. A copy of such resolution or ordinance shall be certified by the fiscal officer of the subdivision to the county auditor of the county in which such subdivision is located."

Sec. 2293-26.

"If the taxing authority decides not to issue such anticipatory notes, or, if such notes are issued, when they are about to fall due, the taxing authority shall adopt a resolution or ordinance determining whether the bonds are to be issued in one lot or in installments, and fixing the amount of the bonds to be presently issued which shall not be greater than the amount authorized; fixing their purpose in accordance with the prior resolution or ordinance of the taxing authority; and fixing the date, rate of interest and maturity which, however, need not be the same as those fixed in the prior resolution or ordinance. If it is determined to issue bonds in installments, then a similar resolution or ordinance shall be adopted whenever a new installment of such bonds is to be issued. \* \* \* \* \*"

The provision that the taxing authority may, after bonds have been authorized by the electors, determine whether such bonds are to be issued in one lot or in installments, is also indicative of the fact that the issuance of bonds even though they have been authorized by the electors is discretionary with the taxing authority. As a matter of custom in the larger subdivisions bonds are frequently authorized by the electors in the amount of several million dollars for the purpose of acquiring sites, constructing school buildings and furnishing and equipping same, and then pursuant to such authorization, bonds are issued as needed in amounts sometimes

varying from \$50,000 to \$200,000 over a period of a number of years as the requirements of the subdivision demand.

If the present board of education has decided, as you state, against issuing these bonds at the present time, I know of no reason why this same board of education or any subsequent board of education of this district would be precluded from proceeding under the authority granted by the electors at any subsequent time, in the event that it should then appear to the board of education that the issuance of such bonds is necessary.

In your letter you make reference to the loss of certain territory by the school district. You do not state whether or not any territory has been detached from the district in question since these proceedings became pending, nor do you make any inquiry as to this matter. I assume, therefore, for the purpose of this opinion, that no territory has been so detached.

In view of the foregoing and in specific answer to your inquiry, it is my opinion that:

1. The authorization of an issue of bonds by the electors of a subdivision places no mandatory duty upon the taxing authority to issue the bonds so authorized or any part thereof.

2. In the event the taxing authority, after the question of issuing bonds has been favorably voted upon by the electors, determines that the issuance of such bonds is not necessary, there is nothing to preclude such taxing authority from thereafter determining that their issuance is necessary and proceeding under the provisions of Sections 2293-25 to 2293-29, inclusive, of the General Code.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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2793.

APPROVAL, BONDS OF VILLAGE OF WESTERVILLE, FRANKLIN COUNTY, OHIO—\$7,701.29.

COLUMBUS, OHIO, January 2, 1931.

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

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2794.

APPROVAL, BONDS OF BATH TOWNSHIP RURAL SCHOOL DISTRICT, SUMMIT COUNTY, OHIO—\$8,000.00.

COLUMBUS, OHIO, January 3, 1931.

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