

1396.

BOARD OF EDUCATION—WHEN AUTHORITY OF HOUSE BILL 713 (108 O. L. 1199) AND HOUSE BILL 567 (108 O. L. 709) MAY BE USED FOR EXEMPTING LEVIES FOR INTEREST AND SINKING FUND PURPOSES.

A board of education may use the authority of house bill 713 to submit to a vote of the electors the question of exempting levies for interest and sinking fund purposes on account of bonds issued prior to January 20, 1920, from all tax limitations and such vote may be had at the primary election to be held in August, 1920. It may use the authority of house bill 567 for the same purpose so far as interest and sinking fund levies on account of bonds issued under that law are concerned and such vote must be had at the regular election held in November, 1920.

COLUMBUS, OHIO, July 2, 1920.

HON. WALTER W. BECK, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR—Acknowledgment is made of the receipt of your letter which reads as follows:

“I wish to submit for your consideration house bill 713 and house bill 567. Under house bill 713 the board of education having any bonded indebtedness on January 20th may, by a vote of the people, submit to the electors of said district the proposition of exempting from the limitation of 5649 to 5649-3a and 5649-5b all subsequent levies for interest and sinking fund purposes on account of such bonds.

Under the language of that statute would you consider that its provisions would include bonds issued by resolution of a school district under the provisions of 567 to fund deficiencies of such subdivision? If not, I take it that a report will have to be made to the tax commission as provided in section 6 of house bill 567 and the matter submitted to the electors in November of 1920 as provided in house bill 567 under section 8.

It would, of course, be much simpler to take care of all bonded indebtedness existing prior to 1920 at the election in August if the same is permitted.”

It is assumed, as your letter indicates, that the board of education has taken advantage of the provisions of house bill No. 567 and has issued, by resolution, bonds to fund deficiencies found to exist at the time specified in that bill. If the board of education has not now done so it is too late and you have no question for answer.

Your question, on the above assumption, is whether or not in order to take the levies required for interest and sinking fund purposes on account of bonds issued prior to January 20, 1920, out of all tax rate limitations provided by law you may lawfully use the authority of house bill No. 713 to that end instead of proceeding as required under house bill No. 567.

Bonds issued by resolution of the board of education to fund deficiencies under the authority of house bill No. 567, if properly done, must have been issued not “later than the first Monday of October, 1919.” This is the latest date provided in that act for such resolution. Bonds, having been so issued, are now among those contemplated in house bill No. 713.

Sections 1 and 2 of house bill No. 713, omitting forms of the ballot, are as follows:

“Section 1. The commissioners of any county, the trustees of any township, the council or other legislative body of any municipal corporation, or the board of education of any school district having a bonded indebt-

edness on January 20, 1920, or having authority by a vote of the electors at an election held prior to said date, to issue such bonds, or having provided for the issuance of such bonds without a vote of the electors by ordinance or resolution adopted on or before said date, whether the effectiveness thereof was postponed until after said date by laws or charter provisions requiring publication or subjecting such ordinance or resolution to a referendum, or not, may, at any regular or primary election held in the year 1920 or in any year thereafter during the life of any such bonds submit to the electors of such county, township, municipal corporation, or school district, in the manner provided by sections 5649-5 and 5649-5a of the General Code the proposition of exempting from the limitations of sections 5649-2, 5649-3a and 5649-5b of the General Code all subsequent levies for interest and sinking fund purposes on account of such bonds. In the resolution providing for such submission, the rate of taxes that would be required for such purposes in the next succeeding year on the basis of the duplicate made up in the year in which the resolution is adopted shall be set forth, together with the number of years during which the exemption would apply. * * * * *

Section 2. If a majority of the electors voting thereon at such election vote in favor thereof, it shall be lawful to levy taxes within such taxing district for such purposes during the remainder of the life of such bonds at such rate, annually, as may be necessary to pay the interest on such bonds and to provide a sinking fund for their retirement at maturity, irrespective of any of the limitations prescribed by the sections of the General Code mentioned in section 1 of this act."

The language here used is without ambiguity and so clear that no discussion seems to be required. The legislature intended to provide and does provide a way for exempting interest and sinking fund levies on account of bonds outstanding prior to January 20, 1920, from all tax limitations. No argument that is cogent can be adduced to say that this bill cannot be available for a board of education desiring to remove such levies from the tax limitations provided by law. Where a board of education has such bonded indebtedness and has complied with all the conditions of the law it may proceed under such bill to a vote and the vote of the electors of the school district may be had at the primary election to be held in August, 1920.

But, as your letter suggests, a method to exempt levies for interest and sinking fund purposes on account of bonds issued by resolution of a board of education is provided in House Bill 567. The full text of House Bill 567 will not here be quoted, only the sections thought necessary are given in full:

Section 2 of House Bill 567 provides for a resolution, passed not later than the first Monday in October, 1919, requiring a statement of the accounting officer of the board showing the deficiencies then existing, if any. This statement includes an estimate of the amount necessary to provide for the fixed charges and current expenses of the subdivision for the remainder of the then *current fiscal year*. In section 12 of this act the term "current fiscal year" is made to include the remainder of the school year of 1919, the ensuing school year and that part of the school year ending on March 1, 1921.

Section 3 provides for the issuing of bonds, by resolution of the board of education, in the amount certified by the accounting officer in his statement but not for a larger sum.

Section 4 provides for the denomination of the bonds, which may not run to exceed eight years, and for their execution, purpose, sale, and interest rate.

Section 5 provides for the payment of interest and for a sinking fund by an annual levy of a tax within the maximum rate for all tax levies of the subdivision. It also

provides for the application of any inheritance tax coming to the subdivision to the payment of interest and for sinking fund purposes.

Sections 6 and 7 are as follows:

"Section 6. At the time of making up their annual budget in the year 1920 as to boards of education, or in the year 1921 as to all others, the taxing authorities may determine whether or not the revenues of the subdivision from all existing sources, including inheritance and income taxes, are sufficient to meet all other needs of the subdivision without exempting the levies required to be made by section 5 hereof from the limitation on the combined maximum rate for all taxes levied in the subdivision during the remainder of the period within which they are to be made, if any. For this purpose they shall cause to be made up and filed with the Tax Commission of Ohio, on forms prescribed by it, a financial statement under oath of the financial officer of the subdivision, showing the facts and information referred to in section 2 of this act, as of the first day of July, 1920, as to school districts, or as of the first day of July, 1921, as to all others, and relating to the remainder of the period within which levies are required to be made by section 5 hereof, together with such other facts and information as may be required by the tax commission in the forms prescribed by it, provided, however, that the limitation on the amount of the fixed charges of the subdivision prescribed by said section 2 shall not apply for the purpose of such financial statement. The tax commission shall investigate such statement and shall afford to the taxing authorities an opportunity to be heard publicly thereon. If the commission finds that the facts given in such statements are true and that the estimates of future needs and revenues are reasonable, it shall certify its findings to the taxing authorities not later than the second Monday in September, 1920, as to boards of education or 1921 as to all others. If the tax commission finds otherwise it shall revise such statement and certify its findings in like manner not later than such date.

Section 7. Upon receipt of the tax commission's certificate the taxing authorities shall determine whether or not it is necessary to make the levy required by section 5 of this act outside of the limitation on tax levies. If they so determine by a majority vote of all their members elected or appointed they shall by resolution so passed declare such necessity and order that the question of exempting such levies from the limitation on the combined maximum rate shall be submitted to the electors of the subdivision. Such resolution shall specify the estimated rate of such levy and the number of years during which it is to be levied."

Section 8 provides for the submission of the proposition to the vote of the electors of the school district at the regular election to be held in November 1920.

Section 10 provides in case of a favorable vote for the budget commission and the county auditor to readjust the levies of the subdivision accordingly "and thereafter beginning with the duplicate of 1920 for boards of education the tax levies required to be made in such subdivision by section 5 hereof shall not be subject to any limitations on tax rates." It further provides that after the beginning of the next ensuing fiscal year the inheritance tax distributed to the subdivision shall no longer be applied exclusively to the payment of the interest and sinking fund on account of such bonds.

House Bill 713 was passed some months after the passage of House Bill 567. The latter bill in no express terms refers to the earlier though both provide authority for exempting tax levies for interest and sinking fund on account of bonds issued by a board of education from all the limitations of the law as found in sections 5649-2 5649-3a and 5649 5b of the General Code. Under House Bill 713 the board of educa-

tion is not required to submit to the tax Commission any question and need not do so although it is otherwise under the former bill. In House Bill 567 the legislature having provided for the issue of bonds for deficiencies then existing by resolution of a board of education was of necessity obliged to provide for interest and for a retirement at maturity of bonds so issued, which it did.

House bill 713, passed January 29, 1920, refers in express terms in section 4 thereof to house bill 712, passed January 22, 1920, said house bill 712 being an act designed to afford relief to municipal corporations drawn on lines similar to house bill 567, passed June 18, 1919. This fact is mentioned because it is important as showing that the legislature had before its mind, as indeed it is always presumed to have, all acts passed to afford relief to taxing subdivisions. No reference is made in house bill 713 to any other act.

From a comparison of these acts and the further fact that no express reference is made in house bill 713 to house bill 567 it is the opinion of this department that a board of education may elect to proceed under either of the laws mentioned, at the present time, to exempt the levies for interest and sinking fund of the bonded indebtedness of such board existing prior to January 20, 1920 created by resolution, as provided in section 3 of house bill 567. And, further, the board having elected to proceed under authority of house bill 713 and a vote had at the primary election in August, 1920, proving unfavorable, if it be deemed expedient, could again submit the same question for a decision of the electors under house bill 567 at the regular election held in November, 1920, provided, of course, that all of requirements of house bill 567 had been complied with.

Respectfully,

JOHN G. PRICE,
Attorney General.

1397.

APPROVAL, TWENTY LAND LEASES AND TWO WATER LEASES, LAND OWNED BY THE STATE.

COLUMBUS, OHIO, July 2, 1920.

HON. JOHN I. MILLER, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—I have your letter of June 24, 1920, in which you enclose the following leases, in triplicate, for my approval:

LAND LEASE.	VALUATION.
To The Miami Valley Electric Company, pole line in Sidney Feeder.....	\$1,666 66
Hattie J. Wickliff, Pataskala, Ohio, cottage site at Buckeye Lake.....	400 00
Catherine Krause, cottage site at Buckeye Lake.....	600 00
John Reuter, Nelsonville, Ohio, oil lease, Hocking Canal, Hocking County, one-eighth royalty bonus.....	100 00
W. G. Johnson, cottage site, Buckeye Lake.....	200 00
Oscar E. Seydler, cottage site, Buckeye Lake.....	200 00
Mrs. Minnie B. Scheu, Montezuma, Ohio, agricultural lease, south shore St. Marys Lake.....	500 00
C. P. and Mary C. Duffy portion of abandoned Hocking Canal, Logan, Ohio.....	350 00