

4116.

APPROVAL, NOTES OF WILLOUGHBY RURAL SCHOOL DISTRICT,
LAKE COUNTY, OHIO—\$100,000.00.

COLUMBUS, OHIO, March 1, 1932.

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

4117.

APPROVAL, BONDS OF VILLAGE OF LYNTHURST, CUYAHOGA
COUNTY, OHIO—\$10,000.00.

COLUMBUS, OHIO, March 2, 1932.

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

4118.

LIBRARY TRUSTEES—MAY BORROW ONE-THIRD OF AMOUNT ESTI-
MATED FROM TAXES DURING THE YEAR—AUTHORIZED TO
ISSUE SIX MONTHS' NOTES.

SYLLABUS:

The provisions of Section 7, of Am. S. B. 323 authorize the board of public library trustees to borrow one-third of the aggregate amount of funds to be received by it from the proceeds of such tax during the year, and it is not limited to one-third of the amount of the semi-annual settlement. Such board may issue its notes therefor at an interest rate not to exceed six per cent and payable not to exceed six months after the date thereof.

COLUMBUS, OHIO, March 2, 1932.

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

GENTLEMEN:—I am in receipt of your request for opinion, as follows:

“At the request of the librarian of the D. Public Library, we are submitting the following questions for your written opinion:

Section 7, of Senate Bill No. 323, as enacted by the 89th General Assembly, contains the following:

‘In the years 1932 and 1933 any Board of Public Library Trustees or any Board of Township Park Trustees may in anticipation of the distribution herein authorized, borrow not to exceed one-third of the distributable share of such Board and issue its notes therefor, payable not

more than six months after date, bearing not to exceed six per cent interest.'

QUESTION: Does this provision refer to the first distribution to be made at the May, 1932 settlement, or does it refer to the whole distribution to be made in the year 1932; in other words, is it one-third of the half distribution, or one-third of the whole distribution for the year?"

Your inquiry involves an interpretation of the meaning of "not to exceed one-third of the distributable share of the board" as contained in Section 7, of Am. S. B. 323, enacted by the 89th General Assembly. Such section permits a board of public library trustees or township park trustees to borrow money in anticipation of the collection and distribution of the proceeds of the tax levied under the so-called Intangible Tax Law.

The general authority for issuing bonds or notes is contained in the Uniform Bond Act. (By virtue of Section 8289 of the General Code a bond and a promissory note are of like legal effect.)

The Uniform Bond Act, as stated in its title, was enacted for an express purpose, "To revise and codify the laws relating to the issuance of bonds by political subdivisions."

Section 2293-4 of the General Code, which authorizes the issuance of bonds in anticipation of the collection of taxes, reads as follows:

"In anticipation of the collection of current revenues in and for any fiscal year, the taxing authority of any subdivision may borrow money and issue notes therefor, but the aggregate of such loans shall not exceed one-half of the amount estimated to be received from the next ensuing semi-annual settlement of taxes for such fiscal year as estimated by the budget commission, other than taxes to be received for the payment of debt charges, and all advances. The sums so anticipated shall be deemed appropriated for the payment of such notes at maturity. The notes shall not run for a longer period than six months and the proceeds therefrom shall be used only for the purposes for which the anticipated taxes were levied, collected and appropriated. No subdivision shall borrow money or issue certificates in anticipation of the February tax settlement before January first of the year of such tax settlement."

From the language of the Uniform Bond Act, it is apparent that bonds may be issued only by "The taxing authority of any subdivision." Such act further defines "taxing authority or bond issuing authority" as meaning:

"'Taxing authority' or 'bond issuing authority' shall mean in the case of any county, the county commissioners; in the case of a municipal corporation, the council or other legislative authority of such municipal corporation; in the case of a school district, the board of education; and in the case of a township, the township trustees."

Such section defines "Subdivision" as follows:

"'Subdivision' shall mean any county, school district except the county school district municipal corporation or township in the state."

Since these notes are not to be issued by a political subdivision, as defined by the statute, I therefore am not considering or expressing an opinion on the

constitutionality of such portion of Section 7, supra, under the provisions of Article XII, Section 11, of the Constitution of the State of Ohio.

This office has consistently held that the Uniform Bond Act repealed either impliedly or expressly those sections of the statute authorizing boards of public library trustees to issue bonds. See Opinions of the Attorney General for 1928, Volume 4, page 3097; 7, of Am. S. B. 323 grants the power to a board of library trustees to issue notes or bonds, there is no authority in the statute for the issuance of such evidence of indebtedness. However, the express language of such section is that such board may borrow and may issue its notes. There is therefore a direct conflict between such section and the Uniform Bond Act.

It must be borne in mind, however, that the Uniform Bond Act is a general act, laying down provisions for borrowing funds and issuing bonds by all political subdivisions generally, while the provisions of Section 7, of Am. S. B. 323 are special provisions with reference to public library trustees and boards of township park trustees only, and that the authority contained in such section is limited to the years 1932 and 1933. Being a special statute, it must be construed as an exception to the Uniform Bond Act. Such has been held by the Supreme Court in *State ex rel vs. Connor*, 123 O. S., 310, the syllabus of which case is as follows:

“Special statutory provisions for particular cases operate as exceptions to general provisions which might otherwise include the particular cases and such cases are governed by the special provisions.”

See also *Gas Company vs. Tiffin*, 59 O. S., 420, 441, and *State ex rel. vs. Zangerle*, 100 O. S., 414.

Upon examination of Sections 7 and 8, of Am. S. B. 323, it becomes apparent that the only mention of distributable share in such act is the distributable share for the year, even though such distributable share is paid in two installments by the treasurer. Such act referring to the semi-annual distribution uses the language “proportionate share of such taxes” in describing the interest of each subdivision in the semi-annual distribution. Since the legislature has used the language “distributable share” only as referring to the annual share, I must conclude that it was the intention of the legislature to authorize library trustees to borrow not to exceed one-third of that amount to which the board of public library trustees would be entitled from the proceeds of the Intangible Tax Law revenue.

Specifically answering your inquiry, I am of the opinion that the provisions of Section 7, of Am. S. B. 323 authorizes the board of public library trustees to borrow one-third of the aggregate amount of funds to be received by it from the proceeds of such tax during the year, and it is not limited to one-third of the amount of the semi-annual settlement. Such board may issue its notes therefor at an interest rate not to exceed six per cent and payable not to exceed six months after the date thereof.

Respectfully,

GILBERT BETTMAN,

Attorney General.