

and inasmuch as the leases have been properly executed by you as Superintendent of Public Works and by the Fox Paper Company by the hands of C. R. Walker, its Vice President, duly authorized in the premises, and of Howard D. Porter, attorney for said company, who, by a resolution of the Board of Directors of the company, has been authorized to negotiate these leases, and since the provisions of these leases and the conditions and restrictions therein contained are in conformity with the statutory provisions above noted and with others relating to leases of this kind, I am approving these leases as is evidenced by my approval endorsed upon these several leases and the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2155.

PUBLIC SCHOOL FUND—BOARD OF EDUCATION—NOTES
ISSUED UNDER PROVISIONS OF HOUSE BILL 635 AS
AMENDED BY HOUSE BILL 701—MUST BE PAID DI-
RECTLY AND SOLELY FROM APPORTIONMENTS RE-
CEIVED AND NO OTHER FUNDS—HOW INTEREST PAID
—WHEN VIOLATION FOR NON-PAYMENT EXISTS.

SYLLABUS:

1. *Notes issued in anticipation of apportionments received from the state public school fund as provided for in House Bill 635 of the special session of the 91st General Assembly, as amended by House Bill 701 of said special session, must be paid directly and solely from such apportionments when received and from no other funds of the local boards of education; and interest on such notes shall be paid by the board of education issuing the same from any revenues accruing to the district except those from the state public school fund.*

2. *No violation of non-payment exists until such a time as the apportionments from the state public school fund for the specific purpose of paying such notes have been received and not applied to the retirement of the notes issued in anticipation thereof.*

COLUMBUS, OHIO, March 25, 1938.

HON. HUGH A. STALEY, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR: Your letter of recent date requesting my opinion reads as follows:

"The Allen Township School Board, of Darke County, Ohio, under the provisions of House Bill No. 635, borrowed \$1,000 from the First National Bank, of Ansonia, Ohio, and gave the note of the board, signed by the president and clerk of the board of education, as provided in paragraph 4 of said bill. The note matured on the 1st day of February, 1937, having been drawn in compliance with Section 4 of the Act, which reads:

'Such notes shall be payable on or before February 1, 1937, and shall bear interest from their date at a rate not exceeding 4% per annum, interest to be payable when notes are paid, shall be signed by the president and clerk of the board of education, and shall recite on their face that they are issued pursuant to this Act and the resolution authorizing the same.'

Paragraph 6 of the Act provides as follows:

'The principal of such notes shall be redeemed and paid by the boards of education issuing the same when and as such boards receive apportionments from the state public school fund for the specific purpose of paying such notes; provided, however, that the interest on such notes shall be paid by the board of education issuing the same from any revenues accruing to the district except those from the state public school fund. A district which fails to apply to the payment of such notes the revenue thus received, shall, from the date of such failure, no longer participate in any portion of the state public school fund.'

This board of education has not received any of its money from the state public school fund to be applied upon this note. However, this board has sufficient money now in the general fund to pay the note in full and thereby stop the further accrual of interest.

The question is, therefore: Can this board use the funds which it now has on hand to retire this note without invoking the penalty in paragraph 6 of House Bill No. 635, which penalty is in the language as follows:

'A district which fails to apply to the payment of such notes the revenues thus received shall, from the date of such

failure, no longer participate in any portion of the state public school fund.' ”

The authorization to issue notes under House Bill No. 635 of the 91st General Assembly, special session, as amended by House Bill 701 of said special session, effective December 30, 1936, must be strictly construed and the procedure is quite clear.

Coming to the vital section of this bill involved in your question, namely Section 6, I am of the opinion that the first sentence sets forth clearly the funds liable for the payment of these notes:

“The principal of such notes shall be redeemed and paid by the board of education issuing the same when and as such boards receive apportionments from the state public school fund for the specific purpose of paying such notes; provided, however, that the interest on such notes shall be paid by the board of education issuing the same from any revenues accruing to the district except those from the state public school fund.”

You will note that this sentence specifically provides for two things: First, the payment by the board of education issuing these notes *when and as such boards receive apportionments from the state public school fund for the specific purpose of paying such notes*; and, secondly, that the interest shall be paid by the board of education issuing the notes *from any revenue accruing to the district except those from the state public school fund*. In the absence of any further statutory provisions, powers or directions, the source of the payment of notes and the source of the payment of the interest on the notes must be strictly followed as set forth in Section 6 of this bill.

I am therefore of the opinion that the note principal cannot be paid from the general fund of your local board of education, and, secondly, that the interest on said notes shall be paid from any revenues accruing to the district except those from the state public school fund.

Concluding allow me to say that I am of the opinion that no violation of non-payment exists until such a time as the apportionments from the state public school fund for the specific purpose of paying such notes have been received and not applied to the retirement of the notes issued in anticipation thereof.

Respectfully,

HERBERT S. DUFFY,

Attorney General.